

**KITSELAS FIRST NATION  
2018 INDIGENOUS ATMOSPHERIC BENEFIT AGREEMENT**

THIS AGREEMENT made the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_

**BETWEEN:**

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA**, as represented jointly by the Minister of Indigenous Relations and Reconciliation, and the Minister of Forests, Lands, Natural Resource Operations and Rural Development

("British Columbia")

**AND**

**KITSELAS FIRST NATION**, as represented by Chief and Council

("Kitselas")

Collectively all the "Parties"

**WHEREAS:**

- A. On February 22<sup>nd</sup>, 2017, British Columbia and the Great Bear Carbon Credit Limited Partnership entered into an agreement to support the registration of 100% of the Offset Units for the North and Central-Mid Coast Great Bear Forest Carbon Project; and
- B. Kitselas First Nation and British Columbia agreed to negotiate and attempt to reach agreement on an Indigenous Atmospheric Benefits Agreement in the Kitselas Reconciliation Agreement, dated March 30, 2017.

Now therefore in consideration of the premises and the covenants and agreements set out below, the Parties agree as follows:

**1.0 DEFINITIONS**

**1.1** In this Agreement:

**"Agreement"** means this Agreement between Kitselas and British Columbia and all Appendices to this Agreement;

**"Concurrent Agreement"** means an agreement, entered into by British

Columbia and Kitselas concurrently with this Agreement or subsequent to this Agreement if expressly acknowledged to be a Concurrent Agreement for the purposes of this Agreement, including the Kitselas LNG Benefits Agreement and the Kitselas LNG Coastal Fund Agreement, both signed March 30, 2017;

**“Comprehensive Consultation Agreement”**, means the agreement, entered into by British Columbia and Kitselas on February 15, 2018;

**“Director”** means the employee appointed under the *Public Service Act* who is designated as the director for the purposes of the *Greenhouse Gas Industrial Reporting and Control Act*, SBC 2014 c 29;

**“Event of Default”** means an event identified as an event of default under a Concurrent Agreement;

**“Great Bear Project Area”** means the North Coast shown as the Project Area on the map attached as Appendix 1;

**“Great Bear Project Offset”** means an emission offset unit derived from the atmospheric benefits that are:

- a) validated and verified in accordance with the Atmospheric Benefits Program Registration Agreement, between the Province and the Great Bear Carbon Credit Limited Partnership, dated February 22, 2017; and
- b) approved by the Director for issuance and credit for that Vintage Year.

**“Intentional Reversal”** means a Reversal caused by activities undertaken or authorized by British Columbia, or undertaken pursuant to a disposition of an interest in land by British Columbia;

**“Kitselas Offset”** means a Great Bear Project Offset transferred to Kitselas in accordance with section 3.2 of this Agreement;

**“Non-Intentional Reversal”** means a Reversal caused by factors not within the direct control of British Columbia, including trespass or natural causes such as fire, wind, disease or drought;

**“Provincial Buffer Pool”** means a pool that British Columbia may use at its discretion that consists of a portion of atmospheric benefits or Offset Units, other than atmospheric benefits or Offset Units distributed under an atmospheric benefits sharing agreement, and may also include:

- a) enhancements of carbon gas removal and reduction of greenhouse gas emissions, associated with other projects, and

- b) Offset Units derived from enhancements or reductions referred to in a subsection (a);

**“Offset Units”** has the meaning prescribed to it under the *Greenhouse Gas Industrial Reporting and Control Act*, SBC 2014 c 29;

**“Reconciliation Agreement”**, means the agreement, entered into by British Columbia and Kitselas on March 30, 2017;

**“Registry Administrator”** means the registry administrator referred to in section 6 of the *Greenhouse Gas Emission Control Regulation*, BC Reg 250/2015, and appointed under section 15 of the *Greenhouse Gas Industrial Reporting and Control Act*;

**“Reversal”** means emissions to the atmosphere of carbon previously sequestered where the emission reverses the reductions in the atmospheric carbon that has been:

- a) quantified in accordance with the project plans validated in accordance with the Emission Offsets Regulation, B.C. Reg. 393/2008, or any regulations or laws that replace the Emission Offsets Regulation, and
- b) that may be or was previously recognized as a Great Bear Project Offset, including a Kitselas Offset;

**“Term”** means the period of time this Agreement is in effect in accordance with section 6.1; and

**“Vintage Year”** means the calendar year to which the verification statement applies and the claimed Offset Units are established.

## **2.0 PURPOSE OF AGREEMENT**

2.1 This Agreement defines the negotiated agreement between the Parties regarding the Great Bear Project Area and the Great Bear Project Offsets to be shared with Kitselas.

2.2 Notwithstanding any other provision in this Agreement, the Parties acknowledge and agree that no provision of this Agreement shall prejudice, limit, or derogate from any Aboriginal title, treaty or other Aboriginal rights. Further, nothing in this Agreement is intended to create or modify any Aboriginal title, treaty or other Aboriginal rights.

### **3.0 ATMOSPHERIC BENEFITS**

- 3.1 British Columbia will transfer to Kitselas ownership and the right to sell Kitselas Offsets in accordance with the terms of this Agreement.
- 3.2 Commencing on April 1, 2016, and in each fiscal year thereafter until April 1, 2040, British Columbia will transfer, from the BC carbon registry to Kitselas 3.68% of Great Bear Project Offsets calculated for the Great Bear Project Area for a Vintage Year, as available.
- 3.3 The Parties agree that costs allocated to the registration and issuance of Kitselas Offsets will be borne by Kitselas.
- 3.4 British Columbia will not sell any, or claim, or cause a claim to be made, in respect of any right, title or interest in, nor will it assist or support a third party in any such claim to any Kitselas Offset.
- 3.5 Kitselas will not sell any, or claim, or cause a claim to be made, in respect of any right, title or interest in atmospheric benefits or Great Bear Project Offsets other than Kitselas Offsets.
- 3.6 Kitselas will not assist or support any claim to be made by another party in respect of any right, title or interest in atmospheric benefits or Great Bear Project Offsets other than:
- a) a claim by British Columbia; or
  - b) a claim by a party that has entered into an indigenous atmospheric benefits sharing agreement, offset agreement or a nominal proponent agreement with British Columbia.
- 3.7 For greater certainty, the Parties agree that British Columbia may claim, cause a claim to be made, or assist or support a third party in any such claim in respect of any right, title or interest in atmospheric benefits or Great Bear Project Offsets other than Kitselas Offsets.

### **4.0 CARBON OFFSET PROJECT DEVELOPMENT, OPERATION AND INFORMATION**

- 4.1 The Parties acknowledge atmospheric benefits, before or after validation, verification or registration, are vulnerable to Reversals and nothing in this Agreement makes either Party liable to any other person for any loss or damages arising from the impact of a Non-Intentional Reversal on Kitselas Offsets.
- 4.2 Kitselas will mitigate the impact of:
- a) any Non-Intentional Reversal; and

- b) any Intentional Reversal resulting from a Crown decision undertaken at the request of Kitselas
- through the release of Kitselas Offsets.
- 4.3 British Columbia will manage a Provincial Buffer Pool to be used at its discretion to mitigate the impact on the atmosphere of Intentional Reversals in the Great Bear Project Area and Reversals associated with the other projects which have contributed to the Provincial Buffer Pool.
- 4.4 British Columbia will mitigate the impact to the atmosphere of Intentional Reversals in the Great Bear Project Area, other than Intentional Reversals that are a result of a Crown decision undertaken at the request of Kitselas by:
  - a) not using atmospheric benefits, reductions and enhancements in the Provincial Buffer Pool to produce emission offsets;
  - b) retiring emission offsets in the Provincial Buffer Pool; or
  - c) holding the emission offsets in the Provincial Buffer Pool and retiring them in proportion to that intentional reversal.
- 4.5 If the Kitselas Offsets held in reserve for mitigation of Project Reversals are insufficient to address the impact of the Non-Intentional Reversal or the Intentional Reversals that are a result of a Crown decision undertaken at the request of Kitselas the Parties will meet to discuss the options available.
- 4.6 If Kitselas is concerned that British Columbia is exercising its duties under an appropriate statute or regulation in a manner that increases the likelihood of a Reversal then, upon request by Kitselas, the Parties will meet to discuss these concerns.
- 4.7 This Agreement does not change or affect the positions the Parties have, or may have, regarding their jurisdictions, responsibilities or decision making authority, nor is it to be interpreted in a manner that would unlawfully interfere with that decision making authority.
- 4.8 Except with respect to representations, commitments, covenants or obligations made by British Columbia under this Agreement, Kitselas shall indemnify and save harmless British Columbia and its servants, employees, agents, contractors and licensees from any and all liabilities, damages, costs (including legal fees on a solicitor and own client basis), claims, suits or actions arising from any use made by Kitselas of the Kitselas Offsets, including the sale, trade, registration or other dealing with the Kitselas Offsets in any way, with any person or arising from any reduction in the marketability or value of Kitselas Offsets caused by releases to the atmosphere of carbon dioxide or other greenhouse gases from the Great Bear Project Area.
- 4.9 The Parties agree that nothing in this Agreement makes either Party liable for any

damages, loss, or costs incurred as a result of Non-Intentional Reversal from the Great Bear Project Area.

## **5.0 USE OF BENEFITS**

5.1 Kitselas commits to use 50% of the benefits achieved through this Agreement to further priorities that will be set out by Kitselas, within 60 days of signing this Agreement, in Appendix 2: Reconciliation and Community Priorities.

## **6.0 COMMUNICATIONS AND INFORMATION EXCHANGE**

6.1 Kitselas and British Columbia will provide to each other notice of intention to make written public communications relating to this Agreement and provide the other party with an opportunity to review and comment on the communications.

## **7.0 TERM, TERMINATION OR WITHDRAWAL**

7.1 This Agreement is in effect from January 1 of the calendar year after British Columbia and Kitselas have signed and continues until March 31, 2040 unless terminated under sections 7.2 to 7.9.

7.2 If the Reconciliation Agreement is terminated, this Agreement will terminate effective December 31 of the year in which the Reconciliation Agreement terminates.

7.3 British Columbia may terminate this Agreement if Kitselas ceases to be a party to a Concurrent Agreement.

7.4 British Columbia must provide Kitselas 30 days written notice of intention to terminate under section 6.3.

7.5 Kitselas may withdraw from this Agreement by providing 30 days written notice of intention to withdraw.

7.6 The Parties will meet as soon as practicable after a notice of intention to terminate or withdraw has been provided by a Party in accordance with sections 6.4 or 6.5 to discuss and attempt to resolve the matter.

7.7 Any termination or withdrawal is effective December 31 of the year in which the notice in section 6.4 or 6.5 is received.

7.8 The termination of this Agreement or a withdrawal by Kitselas does not affect Kitselas' ownership and right to sell Kitselas Offsets for the calendar years prior to the termination date.

7.9 If a future sales commitment is affected by a termination under 6.2 or 6.3 or withdrawal under 6.4, the termination or withdrawal, as the case may be, may be

extended up to five years with agreement of British Columbia.

## **8.0 REVIEW AND AMENDMENT**

8.1 This Agreement may be amended from time to time only with the written consent of the Parties to the agreement.

## **9.0 REPORTING**

9.1 At British Columbia's request, Kitselas will provide in a timely manner:

- a) a summary of the annual total tonnes of Kitselas Offsets sold and gross revenues received for the previous calendar year by Kitselas from the sales of Kitselas Offsets, to be provided to British Columbia on a confidential basis;
- b) a financial statement confirming the use of proceeds from the sale of Kitselas Offsets are consistent with the goals and intended outcomes of the Reconciliation Agreement that is attested to by a designated representative of Kitselas; and
- c) a copy of any sales agreement that may be impacted by a termination under section 6.2 or 6.3 or withdrawal under section 6.4.

9.2 On or before July 31, 2022, and every five years thereafter, Kitselas will include an update in its annual report, required by the Reconciliation Agreement, on how benefits from this Agreement are being utilized with no less than 50% of the funds from the sale of Kitselas Offsets to support the activities outlined in Appendix 2.

9.3 Appendix 2 and the reports referred to in sections 5.2 and 5.3 will be made publicly available by Kitselas in a manner that can reasonably be expected to bring the Statement of Reconciliation Priorities and reports to the attention of its members and the Government of British Columbia.

## **10.0 NOT A TREATY**

10.1 This Agreement is not a treaty or a lands claims agreement, and does not recognize or affirm aboriginal or treaty rights within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.

## **11.0 REDUCTION FOR DEFAULT**

11.1 Notwithstanding any other provision in this Agreement, on the occurrence of an Event of Default, or at any time thereafter, British Columbia may by written notice delivered to Kitselas require that the Event of Default be remedied within a reasonable time period as identified in the notice ("**Default Notice**").

- 11.2 If British Columbia provides a Default Notice to Kitselas, the Parties will meet to discuss the matter and how the Event of Default may be remedied.
- 11.3 If an Event of Default is not remedied following a meeting in accordance with section 8.2 and within the time period identified in a Default Notice, British Columbia may by a further written notice to Kitselas reduce the Kitselas Offsets to be provided under section 3.2 to 60% of the annually calculated previous calendar year (“**Reduction Notice**”) unless the Parties agree otherwise.
- 11.4 Until the Event of Default is remedied or the Parties otherwise agree, a reduction applies to each distribution occurring on April 1 subsequent to the date of the Reduction Notice provided under section 8.3, but does not affect Kitselas ownership and right to sell Kitselas Offsets distributed prior to the date of the Reduction Notice.
- 11.5 No failure or delay on the part of the British Columbia to exercise its rights in relation to an Event of Default will constitute a waiver by the British Columbia of such rights.

## **12.0 FURTHER ASSURANCES**

- 12.1 The Parties will execute any other documents and do any other things that may be necessary to carry out the intent of this Agreement.
- 12.2 The Parties are committed to resolving any disputes that may arise in the implementation of this Agreement and may utilize dispute resolution mechanism as agreed to by the Parties including mediation.
- 12.3 Kitselas agrees that British Columbia’s provision of Kitselas Offsets in this Agreement fully satisfies Kitselas’ expectations for the implementation of section 4.9 of the Reconciliation Agreement.

## **13.0 APPROPRIATION**

- 13.1 Notwithstanding any other provision of this Agreement, any distribution under section 3.2 is subject to:
- a) there being sufficient monies available in an appropriation, as defined in the *Financial Administration Act*, to enable British Columbia in any Fiscal Year or part thereof when any such distribution is required, to make that distribution; and
  - b) Treasury Board, as defined in the *Financial Administration Act*, not having controlled or limited expenditure under any appropriation necessary in order to make such distribution.

## **14.0 INTERPRETATION**

14.1 In this Agreement:

- a) headings are for convenience only, do not form part of this Agreement and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Agreement;
- b) a reference to a statute includes every amendment to it, every regulation made under it, and any law enacted in substitution for it or in replacement of it; and
- c) unless it is otherwise clear from the context, the use of the singular includes the plural, and the use of the plural includes the singular.

## **15.0 GOVERNING LAW**

15.1 This Agreement will be governed by and construed and interpreted in accordance with the laws of the Province of British Columbia.

## **16.0 ENUREMENT**

16.1 This Agreement will enure to the benefit of and be binding upon the Parties and their respective successors.

## **17.0 NO ASSIGNMENT**

17.1 This Agreement may not be assigned, either in whole or in part without the consent of either Party.

## **18.0 NOTICES**

18.1 A notice, document, request, approval, authorization, consent or other communication (each a "communication") required or permitted to be given or made under this Agreement must be in writing and may be given or made in the following ways:

- a) delivered personally or by courier;
- b) transmitted by facsimile transmission; or
- c) mailed by post in Canada in any form which requires a receipt.

18.2 A communication will be considered to have been given or made, and received:

- a) if delivered personally or by courier, at 9:00 a.m. on the business day after the day on which it was received by the addressee or a responsible representative of the addressee;
- b) if sent by facsimile transmission and if the sender receives confirmation of the transmission, at 9:00 a.m. on the next business day after the day on which it was transmitted; or
- c) if mailed in Canada in any form which requires a receipt, when the postal receipt records that it was received.

18.3 A communication must be delivered, transmitted to the facsimile number or mailed to the address of the intended recipient set out below:

**For: British Columbia**

Attention:	Minister of Indigenous Relations and Reconciliation
Personal or courier delivery:	Parliament Buildings Victoria, British Columbia
Facsimile transmission:	(250) 387-5594
Postal delivery:	PO Box 9468 STN PROV GOVT Victoria, British Columbia V8W 9E2

**For: Kitselas First Nation**

Attention:	Director of Lands and Resources
Facsimile transmission:	(778) 634-3796
Postal delivery:	2225 Gitaus Road Terrace, British Columbia V8G 0A9

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**19.0 EXECUTION IN COUNTERPARTS**

19.1 This Agreement may be executed in counterparts and by facsimile. Each signature shall be deemed to be an original signature and all executed documents together shall constitute one and the same document.

**THIS AGREEMENT HAS BEEN EXECUTED AND DELIVERED** as of the day and year first above written.

EXECUTED in the presence of ) **HER MAJESTY THE QUEEN**  
) **IN RIGHT OF THE PROVINCE**  
) **OF BRITISH COLUMBIA**  
) as represented by the Minister of  
) Indigenous Relations and Reconciliation  
)  
)  
\_\_\_\_\_)  
As to the signature of the Honourable Scott Fraser, Minister of  
Honourable Scott Fraser, Minister of Indigenous Relations and Reconciliation  
Indigenous Relations and Reconciliation

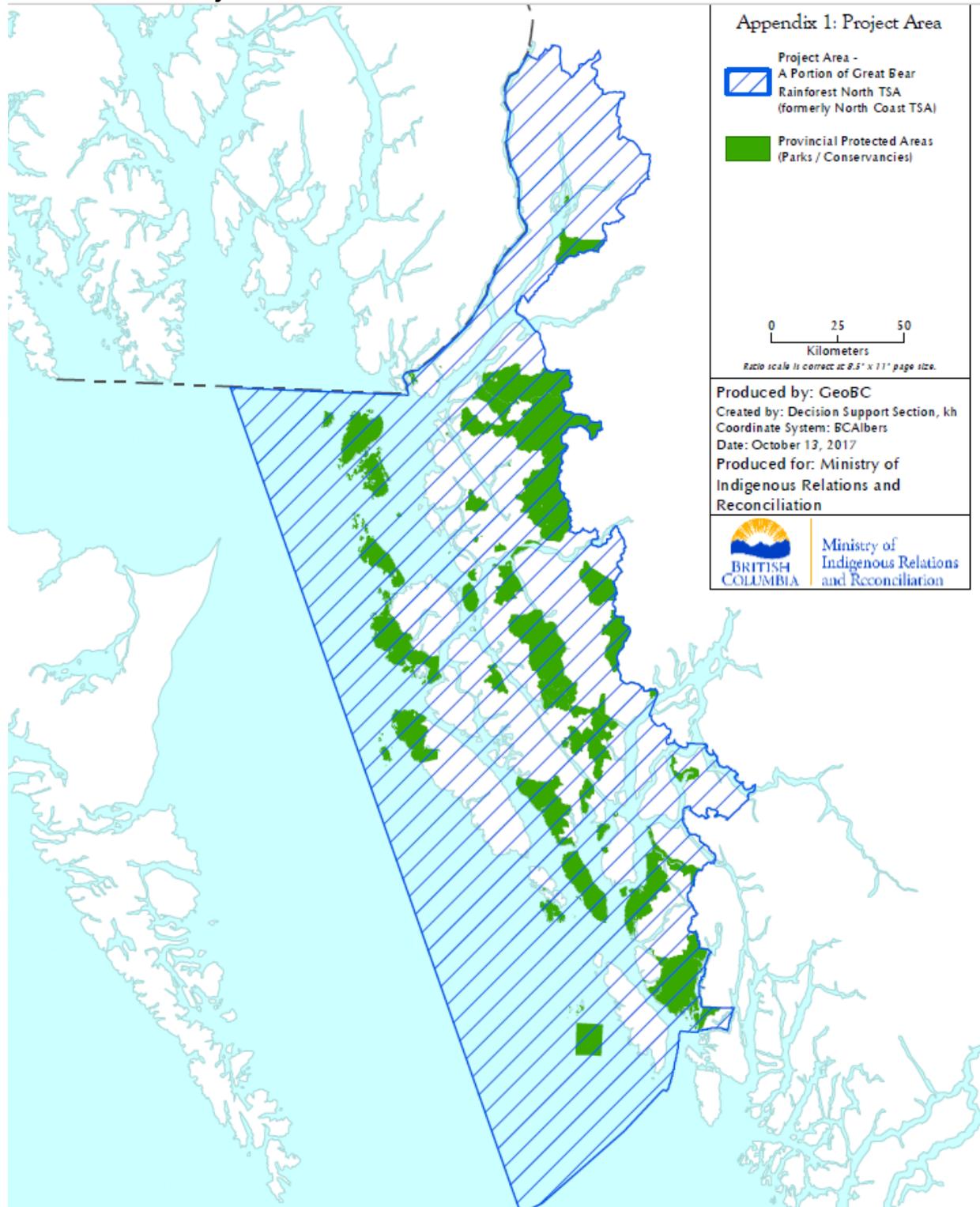
EXECUTED in the presence of ) **HER MAJESTY THE QUEEN**  
) **IN RIGHT OF THE PROVINCE**  
) **OF BRITISH COLUMBIA**  
) as represented by the Minister of  
) Minister of Forests, Lands, Natural  
) Resource Operations and Rural Development  
)  
)  
\_\_\_\_\_)  
As to the signature of the Honourable Doug Donaldson  
Honourable Doug Donaldson, Minister Forests, Lands, Natural  
Minister Forests, Lands, Natural Resource Operations and Rural  
Resource Operations and Rural Development  
Development

ON BEHALF OF KITSELAS FIRST NATION, as represented by:

\_\_\_\_\_  
Witness as to the signature  
Chief Joseph Bevan, Kitselas First Nation

\_\_\_\_\_  
Chief Joseph Bevan  
Kitselas First Nation

# APPENDIX 1: Project Area



**APPENDIX 2:**

**Statement of Reconciliation Agreement Priorities**

- Outcomes specific to the Reconciliation Agreement to be achieved by Kitselas from 2017 through 2022

<b>Reconciliation Agreement / Community Priority</b>	<b>Outcome</b>