

## STATEMENT OF REASONS FOR THE DECISION OF THE VICTORIAN ABORIGINAL HERITAGE COUNCIL IN RELATION TO AN APPLICATION BY TAUNGURUNG LAND AND WATERS COUNCIL ABORIGINAL CORPORATION

**DATE OF DECISION: 8 February 2019**

### **1. Decision**

The Victorian Aboriginal Heritage Council (**Council**) has approved, in part, an application from the Taungurung Land and Waters Council (Aboriginal Corporation) (**TLWCAC**), formerly the Taungurung Clans Aboriginal Corporation (**TCAC**), to be registered as a registered Aboriginal party (**RAP**) under section 151 (2A) of the *Aboriginal Heritage Act 2006* (**the Act**).

### **2. Decision Area**

Council made a decision to appoint TLWCAC for part of TLWCAC's RAP application area (**Decision Area**). A map showing the Decision Area is depicted in **Attachment 1**.

The Decision Area comprises two areas:

1. the triangular area to the north west of the area over which TLWCAC had previously been appointed as a RAP, bound by the Yorta Yorta Nation Aboriginal Corporation RAP area, the Campaspe River, and the Bendigo Murchison Road
2. the area between the area over which TLWCAC had previously been appointed as a RAP and the Ovens River.

### **3. Background**

TLWCAC first submitted a RAP application in October 2007.

On 26 October 2018, the Victorian Government, TCAC (now known as TLWCAC) and the Taungurung Traditional Owner group signed a recognition and settlement agreement under the *Traditional Owner Settlement Act 2010*.

On 30 January 2019, TLWCAC wrote to Council requesting a variation to the area in respect of which its RAP application was made, for the main purpose of aligning the application area with the area in respect of which it had entered into the RSA (**the Decision Area**).

On 8 February 2019, Council agreed to the requested variation.

The variation did not remove that part of the application area to the north of the Decision Area which overlaps Yorta Yorta Nation Aboriginal Corporation's RAP area. No decision has been made in respect of this area.

#### 4. Reasons for decision

Section 151 (2A) of the Act provides that:

*“If an applicant for registration is a traditional owner group entity for an area in respect of which the entity has entered into a recognition and settlement agreement, and the area in respect of which the application is made is within the external perimeter of the area described in the agreement-*

*(a) The Council must register the applicant as the registered Aboriginal party for the area in respect of which the application is made; and*

*(b) No other applicant can be registered for the area in respect of which the application is made, except a registered native title holder.”*

As noted above, TCAC (now known as TLWCAC) entered into a RSA on 26 October 2018 in respect of the Decision Area. For this reason, Council approved TLWCAC's RAP application in respect of this area.

#### ***Charter of Human Rights and Responsibilities***

Prior to making the relevant decision, Council gave careful consideration to the *Charter of Human Rights and Responsibilities Act 2006 (Charter)*, having particular regard to the distinct cultural rights of Aboriginal persons recognised in section 19(2)(d) of the Charter.

In its deliberations Council acknowledged that the decision to appoint TLWCAC may impact, in certain circumstances, on the ability of Traditional Owners of the Decision Area, other than TLWCAC members, to enjoy their identity and culture and maintain their distinctive, spiritual and economic relationship with the land, waters and other resources in the Decision Area. For example, people who identify as Traditional owners of the Decision Area, other than TLWCAC members, may be limited in their ability to participate in the protection and management of Aboriginal cultural heritage in the Decision Area.

However, Council noted that, given the terms of s 151(2A) of the Act, it did not have a discretion as to whether to approve or not approve that part of the RAP application area that aligned with TLWCAC's RSA area. Further, Council noted that the decision to appoint TLWCAC provides a formal mechanism through which Traditional Owners of the Decision Area will be able to exercise their distinct cultural rights protected under the Charter.

Accordingly, Council considered that there was no less restrictive means reasonably available to fulfil its statutory obligations, and that the decision to register TLWCAC is compatible with the Charter.



Rodney Carter

**Chair**

**Victorian Aboriginal Heritage Council**

Attachment 1

