

DECISION OF THE ABORIGINAL HERITAGE COUNCIL TO DECLINE TO REGISTER A PART OF THE REGISTERED ABORIGINAL PARTY APPLICATION BY GUNAIKURNAI LAND AND WATERS ABORIGINAL CORPORATION (6)

DATE OF DECISION: 24 MAY 2012

Decisions

On 24 May 2012 the Victorian Aboriginal Heritage Council (Council) made two decisions on the Gunaikurnai Land and Waters Aboriginal Corporation (GLaWAC) RAP application. This document provides the reasons for the decision to decline to register GLaWAC as a RAP for an area overlapping with a RAP application by Wurundjeri Tribe Land and Compensation Cultural Heritage Council Inc (Wurundjeri).

Area

The decision area covers an area in west Gippsland from Myrree south to Noojee, to Neerim East to Crossover, then South East to Brandy Creek, to Drouin, to Langwarry then North to Gentle Annie and then further North and to the East to Toorong (Decision Area). This decision area is covered by an overlapping RAP application made by the Wurundjeri.

Reasons for Decision

Part 10 of the *Aboriginal Heritage Act 2006* (the Act) requires Council to consider a number of matters in making a decision.

Native Title Determination and Recognition and Settlement Agreement

No part of the Decision Area is covered by the Gunai/Kurnai People native title claim or Recognition and Settlement Agreement (RSA).

Other s151 matters

Native Title Party

The area was included in the GunaiKurnai People native title claim (VC97/4) however the claim was amended to remove the area from the claim. The Council proceeded on the basis that it did not appear the GLaWAC was a native title party for the purposes of s 151(3A) of the Act, however that there had previously been a claim of the Gunaikurnai people over the area which was later withdrawn was acknowledged.

Native Title Agreement

On 22 October 2010 GLaWAC entered in to an Indigenous Land Use Agreement (ILUA) with the State of Victoria. The decision area was not included in the ILUA, however the ILUA may have some relevance to parts of the decision area.

Traditional and Familial Links

The Council has previously made a decision which recognised GLaWAC as an organisation representing Gunaikurnai Traditional Owners that was able to demonstrate strong traditional links.

Historical and contemporary interest

GLaWAC does not rely on any historical or contemporary links for its RAP Application.

Grant of land in fee simple

The GLaWAC application stated that GLaWAC does not hold any grant of land in fee simple made under a specific power in a State or Commonwealth Act.

Land and natural resource management agreements

There are no relevant land or resource management agreements relating to the decision area. The RSA between GLaWAC and the State of Victoria of 22 October 2010 deals with natural resource management, and provides that the State and GLaWAC will commence negotiations with a view to entering into a Natural Resource Agreement. However, this agreement relates only to areas covered by the Gunaikurnai consent determination and RSA, and therefore does not relate to the decision area.

Other relevant matters

Expertise in cultural heritage management

Since GLaWAC's registration in 2007 it has carried out the responsibilities of a RAP, including evaluating 10 cultural heritage management plans, demonstrating expertise in cultural heritage management.

Public Comments

When considering a RAP application the Council seeks the views of neighbouring Traditional Owners to best inform its decisions. The Council placed advertisements in local and national newspapers in 2007 for comment on the GLaWAC RAP application. Two comments were received and these were provided to GLaWAC with an opportunity to respond.

Agreement between overlapping RAP applicants

In 2007 Wurundjeri made a RAP application for an area including the Decision Area. Council first wrote to GLaWAC about the Wurundjeri overlap in July 2008 seeking comment. In August 2008 GLaWAC responded and objected to the Wurundjeri RAP application where it overlapped with GLaWAC's RAP application.

As with all overlapping RAP applications, the Council wrote to GLaWAC several times in 2010, 2011 and 2012 encouraging GLaWAC to have discussions with Wurundjeri to come to agreement about the most appropriate way of managing their cultural heritage under the Act. The Council was not provided with an agreement for the overlapping areas.

GLaWAC responded:

- in August 2008 stating GLaWAC were "committed towards the need to meet other neighbouring Traditional Owner groups"
- in February 2011 stating GLaWAC requested the Council defer any decision to allow for further progress, emphasised GLaWAC was keen to meet with Wurundjeri, and the Council would be kept informed of progress
- on 23 May 2012 requesting that the Council delay its decision to allow more time to talk about the boundaries.

Summary

Having regard to the information discussed above as well as other relevant factors, the Council reached the following conclusions:

- More than four years had passed since the initial overlap and more than 18 months had passed since the consent determination and RSA, and
- The Council had not been made aware of any progress of the discussions between the GLaWAC and Wurundjeri
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- The Council could not be satisfied there were specific plans in place for future discussions between GLaWAC and Wurundjeri and there was consequently no demonstration of a likely resolution of the matter in the near future.
- If GLaWAC comes to an agreement with Wurundjeri GLaWAC is able to make a further RAP application for the Decision Area based on that agreement

Charter of Human Rights and Responsibilities

The Council gave careful consideration to the *Charter of Human Rights and Responsibilities Act 2006 (Charter)*, in particular the relevant distinct cultural rights of Aboriginal persons in s 19(2)(d) of the Charter. The Council formed the view that a decision to decline to register GLaWAC is compatible with the Charter.

Conclusion

Taking all of these matters into account, and relying on its own cultural knowledge, the Council decided to decline to register GLaWAC as a RAP for the Decision Area.

Denise Lovett

Chairperson

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Victorian Aboriginal Heritage Council