

**DECISION OF THE VICTORIAN ABORIGINAL HERITAGE COUNCIL IN RELATION TO AN APPLICATION BY GUNAIKURNAI LAND AND WATERS ABORIGINAL CORPORATION.**

**DATE OF DECISION: 17 July 2015**

**Decision**

On 17 July 2015 the Victorian Aboriginal Heritage Council (**Council**) decided not to register Gunaikurnai Land and Waters Aboriginal Corporation (**GLaWAC**) as a Registered Aboriginal Party (**RAP**) for certain parts of its RAP application.

**Decision Area**

The Decision Area is shown in the attached map (**Attachment 1**). This area includes the entire Wilsons Promontory area and also includes an area north of Foster and then west towards Venus Bay. The Decision Area was most recently added to the RAP application area on 30 June 2014 but has also been considered by the Council on previous occasions in March and December 2013.

**Reasons for Decision**

**Traditional and familial links**

One of the objectives of the *Aboriginal Heritage Act 2006 (Act)* is to accord appropriate status to Aboriginal people with traditional and familial links with Aboriginal cultural heritage in protecting that heritage. Consistent with this objective, Council accords priority to groups that are representative of Traditional Owners. Council has previously made decisions which recognise GLaWAC as an organisation representing Traditional Owners, demonstrating traditional links to the area for which GLaWAC has already been registered as a RAP.

In June 2014, GLaWAC advised it would provide more information about the traditional and familial links asserted to the Decision Area. Council wrote to GLaWAC on several occasions after that requesting more information but did not receive it. Council has been provided with material by other Traditional Owner groups and individuals in relation to the Decision Area.

Council has considered all the material provided in relation to the Decision Area and Council was unable to conclusively determine the extent of GLaWAC Country.

**Native title considerations**

Council seeks to ensure that its decision-making as best as possible reflects relevant native title processes and outcomes. On 22 October 2010 the Federal Court of Australia in a consent determination found that the Gunaikurnai people held native title rights and interests in an area outside of the Decision Area. On the same date GLaWAC successfully negotiated a Recognition and Settlement Agreement (**RSA**) under the *Traditional Owner Settlement Act 2010 (TOS Act)* with the State of Victoria in relation to GLaWAC's registered native title claim (**RSA area**). Council has previously registered GLaWAC as a RAP for areas within the RSA area for which GLaWAC has applied to be registered.

Council notes that the Decision Area is entirely outside the external boundary of the RSA area.

GLaWAC is a native title party for the Decision Area following the registration of the Gunaikurnai native title claim on 20 April 2015 (Federal Court number VID 37/2014). Council took this into account as required by s 151(3) of the Act.

Council also took into account that in making the decision to register the claim (**Registration Decision**), the Registrar noted interests have been asserted by Boon wurrung/Bunurong people over the same or part of the area. The Registrar also notes in the Registration Decision there was nothing which would prevent the Boon wurrung/Bunurong people from making a competing claim for native title. The Registration Decision makes it clear it will be the role of the Federal Court to decide whether the facts

asserted on behalf of Gunaikurnai are true or not and the Registrar's role is only to identify if the registration test was satisfied.

### **Other relevant matters**

#### **Mediation and regional meetings**

Council has adopted the principle of encouraging RAP applicants to speak with neighbouring Traditional Owner groups to resolve boundary and overlap issues and where possible to create co-operative arrangements and agreements. GLaWAC advised the Council in June 2014 that it intended to continue to work with the Boon Wurrung/Bunurong people until the issue of traditional ownership was resolved in the Decision Area.

GLaWAC did not provide Council with any information about the outcomes of any discussions with its neighbours in relation to the Decision Area. Council considered all material provided by GLaWAC and other groups and was unable to determine if there had been any outcomes of negotiations and discussions.

Council acknowledges GLaWAC's stated commitment to working with its neighbours and encourages it to continue and even strengthen its efforts.

#### **Overlapping RAP applications and other Traditional Owner interests**

Council has adopted the principle of giving priority consideration to uncontested applications made by groups that represent Traditional Owners of the Country affected. Council considered the competing interests of Traditional Owner organisations in the Decision Area where those organisations claim to represent Aboriginal people with traditional and familial links.

On the information before it, Council was therefore unable to determine the extent of GLaWAC country in the Decision Area.

### **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 in to account, and relying on its own cultural knowledge, Council decided that it was unable to appoint GLaWAC as a RAP for the Decision Area.



**Rodney Carter**  
**Chairperson**  
**Victorian Aboriginal Heritage Council**