

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

DATE OF DECISION: 24 MAY 2012

Decision

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 register GLaWAC as a RAP for certain areas within the Gunai/Kurnai People native title determination and Recognition and Settlement Agreement area. On the same date, a decision was made by the Council to decline to register GLaWAC as a RAP for a separate part of their RAP application area. That decision is detailed in a separate decision document.

Area

The Decision Area is referred to as zone 2 and is in three parts, as shown on the attached map (**Attachment 1**). Part 1 is a discrete area on and around a bend in the Thomson River to the west and south-west of Aberfeldy. Part 2 is known as the Corner Inlet section and is south of Barry Beach. Part 3 is an area in west Gippsland located to the east of Baw Baw Village, including Tanjil Bren, and to the south of Baw Baw Village including Icy Creek, Vesper and Hill End. Each of the parts of zone 2 fall within the external boundary of the GLaWAC Recognition and Settlement Agreement (**RSA**) as detailed below (**Decision Area**).

Reasons for Decision

Native Title Determination and Recognition and Settlement Agreement

On 22 October 2010, the Federal Court of Australia handed down its decision in the Gunai/Kurnai People native title claim, and determined GLaWAC to hold native title for an area in the east of Victoria (**consent determination**). On the same day GLaWAC entered into an RSA under the *Traditional Owner Settlement Act 2010 (TOS Act)* over the same area. The consent determination/RSA area includes the Decision Area.

Section 151(2) and (2A) of the Act requires the Council to register an applicant that is a native title holder for the areas where native title exists and where the applicant is a traditional owner group entity that has entered in to an RSA. However, in late 2010 and early 2011 the Council received requests from the Native Title Unit of the Department of Justice and GLaWAC to defer any decisions affected by the consent determination and RSA to allow time for clarification and resolution of issues through meetings between affected parties.

In late 2011, the Council wrote seeking an update from GLaWAC and was told GLaWAC intended to proceed with Right People for Country to resolve the overlap. In further letters to GLaWAC in April and May 2012 the Council sought further updates, and indicated that the Council had reached the preliminary view that next time it met it would appoint GLaWAC for the decision area.

On 23 May 2012, the Council received a letter from GLaWAC requesting that Council delay its decision in order to allow more time to talk about the boundaries. The letter did not set out specific proposals for how these talks would be progressed or any additional information as to any plans in place to resolve issues raised by GLaWAC in the correspondence provided in early 2011.

Traditional and Familial Links

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

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

Council sought the views of neighbouring Traditional Owners to best inform its decision. 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

Part 3 of the Decision Area was also included in the RAP application area of the Wurundjeri Tribe Land and Compensation Cultural Heritage Council Inc (Wurundjeri). As with all overlapping RAP applications, the Council wrote to GLaWAC throughout 2010 and 2011 encouraging GLaWAC to have discussions with Wurundjeri to seek agreement about the most appropriate way of managing cultural heritage in this area under the Act. The Council was not provided with any further relevant information about such discussions.

Summary

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

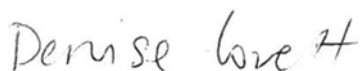
- Council had a valid RAP application before it by a native title holder/RSA party
- More than four years had passed since the initial overlap and more than 18 months had passed since the consent determination and RSA and Council had not been made aware of any progress of the discussions between GLaWAC and Wurundjeri
- 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 overlap in the near future.

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 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 register GLaWAC as a RAP for the Decision Area under ss151(2) & (2A) of the Act.



Denise Lovett
Chairperson
Victorian Aboriginal Heritage Council

Attachment 1

