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**DECISION OF THE ABORIGINAL HERITAGE COUNCIL IN RELATION TO AN
APPLICATION BY GOOLUM GOOLUM ABORIGINAL CO-OPERATIVE LTD TO BE A
REGISTERED ABORIGINAL PARTY**

DATE OF DECISION: 6 December 2007

Decision

The Aboriginal Heritage Council has decided not to register the Goolum Goolum Aboriginal Co-operative Ltd (Goolum Goolum) as a registered Aboriginal party (RAP) under the *Aboriginal Heritage Act 2006* (the Act).

Background

A map showing the Application Area is attached (Attachment 1).

Council had regard to all relevant matters, a list of these matters is attached (Attachment 2). Details of the legal context for Council's decision are also attached (Attachment 3).

Reasons for decision

Goolum Goolum was incorporated in 1983 and has been delivering social services to Aboriginal people living and working in the Wimmera Mallee region for more than 20 years. Goolum Goolum was also responsible for cultural heritage management in the area under the former cultural heritage laws. Goolum Goolum's work over the past decades is an important reason why the local Aboriginal community in the Wimmera Mallee region remains so strong.

The Council acknowledges and respects the important work done by Goolum Goolum over the years and the vital role they play in servicing the community.

Goolum Goolum's application covers largely the same area that Barengi Gadjin Land Council (Barengi Gadjin) has been registered as a RAP for.

Council takes the view that groups recognised as RAPs should reflect native title arrangements as best as possible. The Council acknowledged the native title determination in favour of Barengi Gadjin in the Wimmera region, along with the associated ILUA and the native title settlement package as recognition of the

traditional links of Barengi Gadjin members to most of the Goolum Goolum Application Area.

Goolum Goolum services Aboriginal people living and working in the Wimmera area, including members with traditional links to the area.

Membership of Goolum Goolum is not restricted to Traditional Owners. Barengi Gadjin's membership is restricted to Traditional Owners of 5 Wimmera Groups that can demonstrate descent from identified apical ancestors.

It is the Council's strong belief that the right to manage and protect cultural heritage should primarily be exercised by the Traditional Owners belonging to that Country. Council believes that this is consistent with the objectives of the Act.

While the Council might be prepared to register a RAP which represented Aboriginal people living and working in a particular area, this would be unlikely if the Traditional Owner groups within that area did not support such an arrangement.

Council believes that Barengi Gadjin should represent Traditional Owners on land justice issues, including cultural heritage responsibilities whereas Goolum Goolum will continue to have an important role to play in supporting and servicing Aboriginal people in the Wimmera-Mallee area on other matters of social justice.

In its decision, the Council noted the substantial cross over in membership between Goolum Goolum and Barengi Gadjin.

The Council hopes its decision will form the basis for Traditional Owners in the area to work together to manage and protect their cultural heritage.

In deciding not to register Goolum Goolum, the Council has taken into account its own cultural knowledge as well as all of the relevant matters it is required to consider under the Act.

Attachment 2. Relevant Matters

1. Introduction

Under s 150 of the Act, a RAP application must be in the approved form, contain certain information and the applicant must be a body corporate. The RAP Application met these requirements. Goolum Goolum was incorporated under the *Co-operation Act 1981* (Vic) on 25 May 1983.

2. Goolum Goolum not a Native Title Holder

Goolum Goolum is not a registered native title holder for the Application Area.

3. Goolum Goolum not a Native Title Party

Goolum Goolum is not a native title party for any of the Application Area.

4. Native Title Agreements

The Council has not been provided with details of any signed native title agreement involving Goolum Goolum. The Council is aware of the ILUA that was made between Barengi Gadjin and the State of Victoria which covers much of the Application Area.

5. Traditional and Family Links

Goolum Goolum states that it represents the Wotjobaluk Traditional Owners. Council recognises that members of Goolum Goolum have traditional links to the area.

The membership rules of Goolum Goolum do not limit membership to Traditional Owners, and the RAP Application does not provide any information suggesting that Goolum Goolum solely represents Traditional Owners.

Council noted the significant cross-over in membership and representation between Goolum Goolum and Barengi Gadjin.

6. Historical and Contemporary Links/Expertise in Cultural Heritage Management

Goolum Goolum states that it represents Aboriginal people with historical links dating back 40,000 years.

The rules of Goolum Goolum state that its primary activity is the provision of community development programs to the Aboriginal community in the Wimmera region. As part of this activity, Goolum Goolum provides health, community, education, housing and cultural heritage services.

The Council recognises that Goolum Goolum has strong historical and contemporary links to the area as a service provider.

Goolum Goolum also held cultural heritage responsibilities for many years under the the former Archaeological and Aboriginal Relics Preservation Act 1972 and the Aboriginal and Torres Strait Islander Heritage Protection Act 1984.

The Council acknowledged the expertise and contribution of Goolum Goolum to cultural heritage protection and management.

7. *Grants of Land*

Goolum Goolum was granted Ebenezer Mission Cemetery under the *Aboriginal Lands Act 1991*.

Council specifically considered whether Goolum Goolum should be registered as a RAP over this site, but took the view that the same arrangements should apply over this land as for the surrounding area.

Goolum Goolum also hold title to a number of other properties which were noted by the Council, although were not required to be explicitly considered as they were not granted under a specific Act of Parliament.

8. *Land and Resource Management Agreements*

Goolum Goolum's application refers to a number of cultural heritage programs it is involved in but does not refer to any land and resource management agreements made with the State of Victoria.

9. *Other relevant considerations*

Public Comments

Notice of the Goolum Goolum RAP Application was published in the Koori Mail in August 2007.

Two objections were received by the Council. Goolum Goolum was advised of comments received and given an opportunity to respond to them.

The first objection was from Barengi Gadjin which said that Goolum Goolum should now focus on health, welfare and justice issues, and leave cultural heritage and native title business to Barengi Gadjin.

In response, Goolum Goolum raised concerns regarding the corporate capacity of Barengi Gadjin to act as a RAP, stated that the membership of Goolum Goolum was more inclusive and noted that cultural heritage forms a core and integral part of Goolum Goolum business.

The second objection came from an individual claiming that Goolum Goolum's RAP Application encroached on Dja Dja Wurrung Country and possibly other areas such as Jupagalk, and that Goolum was neither a Traditional Owner Group nor a Native Title Group.

Goolum Goolum disputed the claims made by the second objection.

A number of letters of support to Goolum Goolum's RAP Application were also provided, and considered by the Council.

Overlapping RAP application by Barengi Gadjin.

On 9 November 2007, the Council registered Barengi Gadjin as a RAP over much of the Application Area. Detailed reasons for this decision are separately available.

The Council gave both groups an opportunity to comment on the operation of section 153 of the Act that enables registration of more than one RAP over an area. Goolum Goolum suggested the area should be co-managed. Barengi Gadjin did not support the registration of any other group as a RAP within the area of their ILUA with the State of Victoria that was negotiated as part of the settlement of the Wimmera native title application.

The Council decided it was unnecessary to consider this issue in detail given its approach to the considerations outlined above. Accordingly, the Council did not reach a view about the operations of s 153 of the Act.

Other overlapping RAP applications

The Council is currently considering other RAP applications that overlap with the eastern part of the Goolum Goolum RAP Application including applications made by Jaara Jaara Loddon Aboriginal Corporation and Dja Dja Wurrung Clans Aboriginal Corporation.

It was not necessary to consider these in detail given Council's approach to the considerations outlined above.

Attachment 3: Legal context of the decision made by the Council

The Act, which came into operation on 28 May 2007, replaced Part IIA of the Commonwealth *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (the Old Cultural Heritage Laws) as providing the regulatory framework for protecting Aboriginal cultural heritage in Victoria.

The objectives of the Act are listed in s 3 of the Act and include:

- (a) *to recognise, protect and conserve Aboriginal cultural heritage in Victoria in ways that are based on respect for Aboriginal knowledge and cultural and traditional practices;*
- (b) *to recognise Aboriginal people as the primary guardians, keepers and knowledge holders of Aboriginal cultural heritage; and*
- (c) *to accord appropriate status to Aboriginal people with traditional or familial links with Aboriginal cultural heritage in protecting that heritage.*

Part 9 of the Act creates the Council. The Council consists of 11 members appointed by the Minister. Each member is required to be an Aboriginal person with traditional or familial links to an area in Victoria; be resident in Victoria; and have relevant experience or knowledge of Aboriginal cultural heritage in Victoria. The Council is the only one of its kind in Australia.

Under s 132(2) of the Act, the Council is given the function of receiving and determining applications for registration of Aboriginal parties under Part 10 of the Act.

Part 10 of the Act provides for the creation of RAPs. RAPs play an important role under the Act for the protection of Aboriginal cultural heritage. The functions of RAPs are set out in s 148 of the Act and include:

- (a) *to act as a primary source of advice and knowledge for the Minister, Secretary and Council on matters relating to Aboriginal places located in or Aboriginal objects originating from the area for which the party is registered.*

Part 10 of the Act also sets out the procedure for the creation of RAPs. Under s 150 of the Act, an application for registration as a RAP must be made to the Council. Section 151 of the Act sets out the considerations which the Council needs to take into account when deciding a RAP application.

Section 153 of the Act allows the Council to register more than one RAP for a particular area, but only if the Council is satisfied that this:

- (a) *will not unduly hinder the ability of any of the RAPs for the area to exercise their powers and carry out their functions under this Act; and*
- (b) *will not otherwise hinder the effective operation of the Act.*

Under s 151(1) of the Act, the Council is required to determine RAP applications within 120 days of receiving the application.