

# STATEMENT OF BASIS ON WHICH THE VICTORIAN ABORIGINAL HERITAGE COUNCIL CONSIDERS IT WOULD BE APPROPRIATE TO VARY THE REGISTRATION AREA OF WURUNDJERI WOI WURRUNG CULTURAL HERITAGE ABORIGINAL CORPORATION

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DATE OF PROPOSAL: 7 June 2021

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## 1 Council's View

The Victorian Aboriginal Heritage Council (**Council**) has formed the view that it would be appropriate to exercise its power pursuant to section 155 of the *Aboriginal Heritage Act 2006* (**Act**) to vary the registration area of Wurundjeri Woi Wurrung Cultural Heritage Aboriginal Corporation (**WWW**). The variation Council considers appropriate relates to some, but not all, of an extension of its registration area sought by WWW.<sup>1</sup>

## 2 Procedural Background of Proposal

The following section provides a summary of the procedural steps leading to Council's eventual substantive consideration of whether to exercise its power to vary the area of the WWW's RAP application area.

Council received a written request to vary the registration boundary from WWW in August 2020. It is to this request that this proposal relates. However, the procedural background to consideration of this request involves earlier discussions between WWW and Bunurong Land Council Aboriginal Corporation (**BLCAC**) regarding their respective registration boundaries. It is therefore useful to commence by setting out the procedural background also to the BLCAC registration boundary variation request.

In 2017 BLCAC applied to Council for appointment as a registered Aboriginal party (**RAP**) under s 150 of the Act. Council acknowledged receipt of BLCAC's RAP application on 24 February 2017. BLCAC's RAP application was determined for part of the area it applied for on 19 July 2017. Council was advised shortly thereafter that BLCAC and Wurundjeri Woi Wurrung Cultural Heritage Aboriginal Corporation (**WWW**) had entered negotiations regarding overlapping areas of interest in respect of that part of BLCAC's application which Council had not determined in its favour. These negotiations were facilitated through the Victorian Government's *Right People for Country* program (**RPfC**).

Council acknowledged receipt on 25 September 2017 of correspondence from BLCAC advising that all negotiations between the parties had been put on hold, for some 6 to 12 months, at the request of WWW.

Council understood that negotiations facilitated by RPfC progressed throughout 2019.

Council wrote to BLCAC on 17 December 2019 informing it that any unresolved boundary

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<sup>1</sup>Whilst Council has discretion under s.155 to vary the registration area of a RAP of its own motion in practice consideration of this discretion to vary also occurs due to a request from the relevant RAP. Council has published a policy and procedure to assist RAP's who make such a request.

registration issues (arising from the 2017 RAP Application) would be resolved pursuant to under section 155 of the Act.

On 23 April 2020 Council gave public notice of BLCAC and WWW negotiations within what was described as “the Decision Area” (the area of BLCAC original RAP application that was not included in the original BLCAC RAP registration boundary), to seek current views of any affected party in relation to the Decision Area.

Due to concerns regarding COVID-19 during 2020 and the ability of parties to physically meet, Council undertook to refrain from making a decision on the BLCAC variation request.

On 26 August 2020 Council acknowledged receipt of WWW request for variation pursuant to section 155 of the Act. It is this request to which this proposal relates. The WWW request for variation was divided into three zones. The area referred to as “Zones 1, 1A, 1B, 1C, 1D” overlapped the entirety of the BLCAC request for variation.

Council wrote to WWW on 30 November 2020 advising that as negotiations had been on foot between WWW and BLCAC since 2017, continuing through 2019 to date, Council had resolved to determine the areas referred to as ‘Zones 1, 1A, 1B, 1C, 1D’ from materials that were the outcomes of the RPfC facilitated negotiations.

Given this overlap, Council had to form a view as to whether and how it should exercise its power of variation under s.155. Accordingly, Council wrote to both parties on 13 January 2021 issuing a direction seeking all material relevant to each party’s respective claims.

### **3 Area considered by Council under s.155**

As noted above, Council received WWW’s request for boundary variation pursuant to s 155 of the Act on 26 August 2020 (**Attachment 1**).

The variation request was made up of three zones, namely:

- Zone 1** Melbourne CBD and surrounds; contiguous with the southern boundary of WWW’s current registration area.
  - 1A** extends over Melbourne’s inner suburbs and continues in an easterly direction along the southern boundary of WWW’s current registration area.
  - 1B** extends over Melbourne’s western suburbs to the Werribee River.
  - 1C** extends over the Melbourne CBD.
  - 1D** extends over Melbourne’s south-eastern suburbs to the northern boundary of BLCAC’s current registration area and the western boundary of Gunaikurnai Land and Waters Aboriginal Corporation (**GLaWAC**)’s current registration area.
- Zone 2** Hanging Rock and surrounds; contiguous with the north western boundary of WWW’s current registration area.
- Zone 3** Mount Baw Baw Plateau and the Loch Valley, and including Noojee and Neerim East; contiguous with the eastern boundary of the existing RAP area.

Council has previously advised WWW of a process for dealing with Zone 2. That process (involving negotiations with other RAPs) is ongoing at this time. As such, Zone 2 is excised from the current s.155 variation consideration.

Council noted correspondence from Gunaikurnai Land and Waters Aboriginal Corporation (**GLaWAC**) dated 20 June 2020 which it provided to WWW on 28 June 2020 and again on

29 January 2021. The correspondence stated that GLaWAC noted that part of the proposed boundary negotiation area is still subject to negotiations between GLaWAC and the WWW and should not be included in the proposed boundary negotiation area.

Council noted correspondence from Wadawurrung Traditional Owners Aboriginal Corporation (**WTOAC**) from mid-2020 raising concerns over boundary negotiations between WWW and BLCAC overlap with asserted interest of WTOAC over the waters in the west of Port Phillip Bay, nearby WTOAC's RAP area.

On balance, Council considered it was simplest for the purposes developing of the current proposal to excise from this proposal all areas of asserted interest by GLaWAC (relevant to Zone 3) and WTOAC (relevant only to waters adjacent to Zone 1) (**Attachment 2**) depicts the current Proposal Area. Council will communicate with affected parties shortly with a process of developing a proposal in relation to those areas of WWW's boundary variation request that have been excluded from the current proposal.

#### 4 Council's approach to s.155.

WWW is not a registered native title holder for the proposed boundary variation area within the meaning of section 151(2) of the Act, and has not entered into a RSA in relation to the Decision Area within the meaning of section 151(2A) of the Act. As such, Council is not obliged to approve WWW's application over the proposed boundary variation area to align with sections 151(2) or 151(2A) of the Act.

Council has broad discretionary power to make a variation to the registration of a RAP, including geographic boundary variations under s 155(2). Section 155 (1) of the Act requires the consent of the affected RAP to a variation of its registration boundary. As the boundary variation proposed by Council is to vary WWW's registration boundary to a somewhat lesser extent than was sought by WWW it will be necessary for Council to write to WWW to confirm WWW does in fact consent to the boundary variation proposed by Council. No other RAPs are within the proposed boundary variation area therefore no other consent is required.

It is clear Council's discretion to vary a registration area under s.155 must be exercised according to law.

In forming its view about how its discretion should be exercised Council had regard to:

- (a) the overall scheme and purposes of the Act<sup>2</sup>.
- (b) the requirements under ss.150 and 151 [in so far as they are relevant to a variation as opposed to a first registration].
- (c) consistent with (a) and (b) Council considered factors such as WWW's relationship to the undetermined part of the application area including traditional or familial links, its representativeness and inclusivity, any demonstrated expertise in managing and protecting [Aboriginal cultural heritage](#) in the [area](#) under consideration and its capacity to discharge its statutory functions in general
- (d) the contentions of other interested parties
- (e) Its obligations under the *Charter of Human Rights and Responsibilities Act 2006 (Vic)*
- (f) Whether WWW is prepared to consent to the variation Council thought appropriate.

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<sup>2</sup> The purposes are set out in s.1 of the Act

## 5. The Material considered

When forming its view as to how its discretion under s.155 should be exercised in this case Council had regard to the material in Schedule 1 to this Statement.

As the Act also requires Council members to be Aboriginal persons with demonstrable traditional or familial links to an area within Victoria and have relevant experience or knowledge of Aboriginal cultural heritage in Victoria (s 131(3)(a) and (c)) Council uses these attributes when considering the material before it and forming its views. Interested parties are expressly made aware of this in Council's publication *Section 155 Requests for Variations of Registration Policy and Procedure*.

## 6. Proposal Area

The following section particularises the area Council considers would be appropriate to add to WVV's existing registration area. The relevant area (**Proposal Area**) is shown in the attached map (**Attachment 2**) and is described as:

The Proposal Area is comprised of two parcels. The first and larger Proposal Area is bounded in the south-west by the Werribee River at the point an extension of Middle Rd would meet the Werribee River. The Proposal Area continues north-east to include all of Mt Cottrell at or above 160m above sea level as a shared area with BLCAC. The Proposal Area extends north-easterly to include the northern face of Mt Atkinson, then continues in a south-easterly direction to include the localities of Deer Park, Ardeer, Sunshine, Braybrook and Footscray meeting the original point of convergence of the Yarra River and the Maribyrnong River. The Proposal Area extends in a south-easterly direction to include the Docklands area to meet the high ground in South Melbourne, then extends easterly to include South Wharf, Southbank and the St Kilda Rd Arts Precinct to the highest point in the landscape at Government House. The Proposal Area then extends south-east following the southern-most margin of the Yarra River catchment to include the suburbs of South Yarra, Prahran, Toorak, Armadale and Malvern. The Proposal Area then follows the southern margin of the Gardiners Creek catchment to Wheelers Hill and includes the suburbs of Murrumbeena, Oakleigh, Chadstone and Mount Waverley.

From Wheelers Hill the area extends east across a section of the floodplain of Dandenong Creek including the catchment of Corhanwarrabul Creek and meets up with a point on the western margin of the Cardinia Creek catchment at Belgrave Heights. From this point the decision area follows the south-eastern margin of the Yarra River catchment and includes the townships of Emerald, Cockatoo and Gembrook. The Proposal Area extends in a north-easterly direction along the Yarra River catchment and meets the existing Wurundjeri RAP area at Basan Corner. The area then extends west and then south west past the localities of Gembrook, Cockatoo and Emerald following the entirety of the southern margin of the existing Wurundjeri RAP boundary. At Emerald the Proposal Area tends in a north-westerly direction to include Mt Dandenong and on to Lilydale. Tending south-westerly, continuing to follow the existing RAP area to include Mooroolbark, Bayswater and Camberwell. Continues west following the existing RAP boundary to include the eastern suburbs and inner-northern suburbs of metropolitan Melbourne and the entirety of the Melbourne CBD. At St Albans the area extends in a north-westerly direction and continues to follow the existing Wurundjeri RAP boundary to Mt Aitken. The area then tends south, following the existing RAP boundary to the start point of this decision area on the Werribee River. The area does not include zones within the registration area of any existing RAP.

The second area of proposal begins at the existing RAP area boundary just west of the northern face of Mt Beenak and extends east to include the catchment of the Little Yarra River to meet with the boundary of the GLaWAC partial overlap area near the point known as Spion Kopje. The area then extends north to the existing Wurundjeri RAP boundary, extends west to include the township of Powelltown, and continues to follow the existing boundary to meet up with the start point of this second decision area just west of the northern face of Mt Beenak. The area does not include zones within the registration area of any existing RAP.

The Proposal Area entirely overlaps:

- asserted interests of BLCAC pursuant to its section 155 variation request lodged in 2017.
- asserted interests of Boonwurrung Land and Sea Council (Aboriginal Corporation) (**BLSC**).

## 7. Material Questions of Fact

Based on the material in Schedule 1 and its own cultural knowledge Council satisfied itself as to the following material questions of fact in relation to the Proposal Area.

### i) Whether WWW represents Wurundjeri Woi Wurrung People

WWW is not a Prescribed Body Corporate under the *Native Title Act 1993* (Cth) (NTA).

WWW does not hold native title on behalf of the Wurundjeri Woi Wurrung People and there are no other native title holders (within the definition of the Act and the NTA) within the Proposal Area.

Council noted the organisation representing the Wurundjeri Woi Wurrung People's interests was called the Wurundjeri Tribe Land and Compensation Council Aboriginal Corporation Inc during the period from 2009 to December 2018. In December 2018, the organisation was incorporated under the Office of the Registrar of Indigenous Corporations (**ORIC**) and subsequently changed its name.

Council noted that WWW membership is open to all people who identify as Wurundjeri or Woi-Wurrung and who can establish their descent from those people identified as Wurundjeri or Woi-Wurrung group members to the satisfaction of the Wurundjeri Council. Council notes that "Wurundjeri or Woi-Wurrung group members" mean People identified as members of the following local groups (or as identifiable descendants from earlier members of such groups) but not limited to:

1. The "Wurundjeri-Balluk",
2. The "Gunung-Willam-Balluk",
3. The "Kurung-jang-Balluk",
4. The "Ngaruk-Willam-Balluk",
5. The "Balluk-Willam",
6. The "Marin-Balluk",
7. The "Wurundjeri-Willam"; and
8. Those identified as members of the Yarra tribe, together with those who can trace their descent to any identified Woi-Wurrung or Wurundjeri Ancestor.

The WWW Rule Book provides that a fundamental objective of the Corporation is 'to reclaim and secure land and compensation through State and Federal Government as a result of the dispossession and dispersion of the Wurundjeri Tribes and Clans..., to establish a Centre and Keeping Place for the Wurundjeri Tribe and surrounding clans to maintain Aboriginal identity and for the protection of cultural heritage..., for the purpose of reinforcing spiritual, social and cultural contact with the land, to protect and maintain all lands claimed, to compile a register of sacred and significant sites, and to develop and implement cultural heritage programs for which the tribal elders shall be responsible.'

Council noted Rule 5.2 (Directors) of WWW's rule book which states that the directors of the corporation is not less than three (3) directors and not more that twelve (12) directors. This number includes officers appointed in accordance with rule 5.8 and up to three (3) independent or specialist non-member directors appointed in accordance with rule 5.7. To change the number of directors, members need to pass a special resolution at a general meeting or AGM to change the rule book. Such a resolution needs to be in the notice calling that meeting.

On the basis of the information before it, Council was satisfied that WWW is a body sufficiently representative of the Wurundjeri Woi Wurrung People. Council noted that this conclusion was consistent with its previous decision of 22 August 2008 to first appoint WWW as a RAP.

ii) Whether the Wurundjeri Woi Wurrung People are Traditional Owners of the Proposal Area

WWW has provided detailed anthropological and historical information that indicates traditional and cultural links of the Wurundjeri Woi Wurrung People to the Proposal Area. This information stems from WWW's own anthropological and historical research, as well as from material by Alfred William Howitt, George Langhorne, William Thomas Lorimer Fison, Norman Tindale, Diane Barwick, Edward Brown Addis, Ian Clarke and Robert Hamilton Mathews. Council commissioned research from Dr Fiona Skyring in 2012 regarding the greater Melbourne area of which it advised WWW it would consider. Due to the Wurundjeri Woi Wurrung People's overlapping claims of traditional interests in the Proposal Area, much of the information is stated in comparative terms between the two groups. Set against the objectives of the Act and its overall purpose and direction, the Council gives significant weight to traditional or familial links and considers it an important factor.

Council noted WWW's anthropological and historical information which provided the following findings applicable to the Proposal Area:

- I. WWW concluded that Alfred Howitt viewed the majority of BLCAC's boundary variation request area as Wurundjeri Woi Wurrung territory, except for two narrow strips of coastline. One section of coastline extended from either the Maribyrnong River or the Werribee River to Anderson's inlet and the other is on the eastern coast of Port Phillip.
- II. WWW referred to extracts from Lorimer Fison's 1890 book *The Aborigines of Victoria*. Its reading of the text supports a finding that Wurundjeri Woi Wurrung People inhabited the boundary variation request area while Bunurong-speaking groups were confined to the coastal areas on the east coast of Port Phillip Bay such as Mordialloc, Cape Schank, St Kilda and Sandridge.
- III. WWW referred to extracts from Robert Hamilton Mathews' published papers *The Aboriginal Languages of Victoria* (1902) and *Notes on Some Native Dialects of Victoria* (1903). These writings point to the Woiwurrung language being spoken on the Yarra, Saltwater and Werribee rivers, and extending from the main dividing range southerly to the coast at Geelong, Melbourne and Western Port.
- IV. WWW also referred to corroborating later or secondary source material including that of Norman Tindale, Diane Barwick and Ian Clark. WWW concludes that Norman Tindale's findings indicate that the entirety of the application was within Wurundjeri Woi Wurrung territory, save for a section on the eastern coast of Port Phillip Bay from about Mordialloc to about Dandenong.
- V. WWW concluded that Diane Barwick's findings indicate that the entirety of the undetermined part of BLCAC's 2017 application was within Woiwurrung territory, save for a narrow strip of coast along the west coast of Port Phillip Bay.
- VI. WWW puts forth that any findings in the above extracts that conclude that any areas within the undetermined part of BLCAC's 2017 application area were Bunurong territory are incorrect and conflict with contemporary Wurundjeri Woi Wurrung knowledge.

In contrast Council noted BLCAC's anthropological and historical information which asserted the following findings within the Proposal Area:

- I. At the point of British assertion of sovereignty, Bunurong-speaking groups articulated identity in terms of coastal water systems such as bays, estuaries and coastal streams. This can be distinguished from Woiwurrung-speaking groups, who articulated identity in relation to inland water systems such as the Yarra River system.
- II. In 1835, neither the Bunurong nor the Wurundjeri Woi Wurrung Peoples conceived boundaries as fixed lines on a map. Boundaries between both groups and individual clan estates resembled differing areas of exclusive and shared control separated by boundary corridors, as opposed to firm borders. British settlement further disrupted the oral transmission of traditional knowledge within the Application Area. Therefore, a definitive interface between Bunurong and Wurundjeri Woi Wurrung lines of sovereignty might never be established. However, it is possible to identify what the cumulative evidence is for each group demonstrating sovereignty in the different zones of the application area.
- III. Based on Alfred Howitt's conversations with William Barak, it can be inferred that the Bunurong occupied the coastal regions from the South Melbourne and St Kilda areas towards Geelong. Howitt's reports further describe the Bunurong People as occupying the coast between Werribee River and Anderson's Inlet.
- IV. Writings from contemporary observers such as Daniel Bunce, G Haydon, George Augustus Robinson and William Thomas point to the presence of known Bunurong figures in the areas between Werribee and the CBD. These areas lay within the traditional lands of two Bunurong clans: the Yalukit-willam and the Kurung-jang-balluk.
- V. The extent of the Bunurong Peoples' exercise of traditional rights and interests in areas west of the Melbourne CBD reached inland to the sources of Deep Creek near Mount Cottrell and potentially further.
- VI. The early ethnographic record, including Thomas' and Howitt's accounts of their conversations with Barak, indicates a strong Bunurong presence in the Dandenong Ranges. Barak described the area south and west of the Dandenong mountains as part of the 'bad country' in which Bunurong language was required. The topography and surface water flows of the region further indicate that the areas west of the Ranges and within the Patterson River catchment fall within Bunurong country.
- VII. Evidence available from the release of Thomas' journals demonstrates that the boundary between Bunurong and Wurundjeri Woi Wurrung territory in this area lay along the ridgelines of the Dandenong mountains. This boundary came down off the mountains at the junction of Dandenong and Narrawong creeks, a point which lies roughly at the modern junction of Wellington Road, Rowville and the Eastern Freeway.
- VIII. North of the Dandenong Ranges the creeks and rivers flow into the Yarra, and south of the Ranges they flow into the sea. This evidence therefore corresponds with Thomas' description of river catchments as being a determinant of boundaries between different groups. Sources recording conversations with William Barak demonstrate that another section of the boundary between Bunurong and Wurundjeri Woi Wurrung territory was demarcated by the stretch of Gardiners Creek that runs from Mount Waverley to its junction with the Yarra River.
- IX. Ian Clark's History of Stonnington indicates that Turruk and Tromgrin, sites situated between the Royal Botanical Gardens, Melbourne and Gardiners Creek, were on Bunurong Country.



- X. The writings of Thomas, Robinson, Howitt and Bunce generally support BLCAC's contention that there was a strong Bunurong presence in the eastern parts of the Application Area. BLCAC believes that the areas lay within the traditional lands of five Bunurong clans: the Yalukit-willam, the Ngaruk-willam, the Mayone-bulluk, the Baluk-willam and the Yallock-bulluck.
- XI. BLCAC contends that accounts of a Wurundjeri Woi Wurrung presence in the eastern parts of the Application Area "reads more like that of internally displaced people, exiled from their home estates" rather than people who actually exercised traditional rights and interests over the region.
- XII. Thomas, John Fawcner and Howitt consistently described the Bunurong People as coastal and estuarine people. This supports a conclusion that they were associated with both sides of the Yarra River in its estuarial zone. Bunurong man Derrimut was consistently described as inhabiting the Melbourne CBD area.
- XIII. Sources such as the diaries of Fawcner and Robinson support a contention that the Melbourne CBD lay within the traditional lands of the Bunurong. In particular, BLCAC argues that it lay within the clan estate of Derrimut and the Yalukit-willam.
- XIV. BLCAC states that Bunurong Country included parts of Melbourne's southern suburbs, including South Melbourne, Port Melbourne and St Kilda. These areas are where Derrimut was described as 'lay[ing] about' in 1858.

It was readily apparent to Council that the narratives supporting the anthropological and historical positions of each of BLCAC and WWW were conflicting in nature. While the various anthropological and historical materials submitted provided useful information to Council, they could not of themselves determine Council's proposal.

Council also noted correspondence from individuals of BLSC identifying as Boonwurrung People which BLSC contends that it has native title rights and interests over parts of the Application Area. On that basis, BLSC argues that no other RAP can be appointed over the Application Area, BLSC has been excluded from all negotiations in relation to the Application Area; and; criticises the factual and evidentiary bases of WWW's submitted documentation

Council noted the WWW response to this material, which asserted that BLSC hold no native title rights or interests, and that the Boonwurrung Native Title claim to which they refer (VID363/2020) has not been accepted for registration by the National Native Title Tribunal (**NNTT**). The WWW response also asserted that it is important to reflect that at all times WWW negotiated constructively with appropriate parties about boundary matters and as (according to WWW) guided by the Council.

### *Exercise of Council's own Knowledge and Expertise*

Under the Act (s 131) Council is established as a body of Victorian Traditional Owners who have knowledge or experience of Aboriginal Cultural Heritage in Victoria. Council may bring this knowledge and experience to bear in reaching its decisions, in respect of determining RAP registration boundaries under the Act.

Council further noted that under the Act it is charged with determining the boundaries of RAPs to a level of precision needed for the operation of the Act in contemporary society. Traditionally, the boundaries between different Traditional Owner groups may not have been set with such precision. However, Council is obliged to undertake its task to the best of its capacity.

Council noted that much of the anthropological material put before it emphasised the importance of the natural environment in Traditional Owners' perspectives as to the extent of their country. This view accords with Council members' own lived experience. In this regard Council sees as especially important the issue of water, particularly the question of what are, today, known as catchments. The direction of water flow provides a clear indication of the shape of country, its spirit; water catchments influence and define geography and the eco-systems within them. In the current context this fact has particular application to the notion, frequently mentioned in the historical materials, of the Wurundjeri Woi Wurrung people as the people of the Yarra (Birrarrung). In Council's understanding this phrase does not suggest that traditionally the Wurundjeri Woi Wurrung lived solely by (Birrarrung) but rather that their lands and the people that came from them were *defined* by this river. Thus, to Council, in general the crucial indicator of country is if the water in it flows into Birrarung and at times adjacent lands. Again, Council notes that its own views in this respect are also reflected in much of the "expert" anthropological writing Council had before it. On this issue Council observed:

*The rivers are our boundaries. One group would camp one side and another the other side. That's Cultural, that's behavioural.*

*The most important thing is when Elders talk about Country, they talk about the rivers and coastal areas and the flats being the boundaries of country. We must look to these places, asking where are the meeting points for the groups?*

*We look to Countries as the water catchment country out of the mountains. The water that falls to the ocean, that becomes saltwater, and the water that falls to the river, the freshwater. These understandings are in what Derrimut and Barrack were saying about Country. To culturally use the water flow to define Cultural ownership is a cultural logic explanation.*

The direction of water flow provides a clear indication of the shape of country; water catchments influence and define geography and the eco-systems within them. In the current context this fact has particular application to the notion, frequently mentioned in the historical materials, of the Wurundjeri Woi Wurrung people as the people of the Yarra (Birrarrung). In Council's understanding this phrase does not suggest that traditionally the Wurundjeri Woi Wurrung lived solely by (Birrarrung) but rather that their lands and the People that came from them were *defined* by this river. Thus, to Council, in general the crucial indicator of Country is if the water in it flows into Birrarung and at times adjacent lands. Again, Council notes that its own views in this respect are also reflected in much of the "expert" anthropological writing Council had before it.

A graphic representation of the Proposal Area is attached to this Statement. What follows is a verbal description of the Proposal Area by reference to the relevant physical features.

#### Landmark 1

Mount Cottrell, along with Mount Atkinson to the east, are prominent features of the landscape of the western part of the Proposal Area. The watershed of Country north of Mount Cottrell directs water to Toolern Creek, the Werribee River and Kororoit Creek.

*Mount Cottrell is an important cultural site to all Peoples. The mountain is a place of profound trauma, a cultural memory of the men, women and children; old and young; warriors and caregivers; who were massacred there. The Peoples who lived there left their Culture and trauma embedded in the landscape. We respect that trauma still experienced in descendants of those walked the Country. This is place of shared grief and so a place of shared custodianship.*

#### Landmark 2

The original point of convergence of the Maribyrnong and Yarra Rivers. This point is located on MacKenzie Road, West Melbourne, immediately to the south of the bridge crossing the Maribyrnong River on Footscray Road. Originally there was a large swamp west of the high ground of today's Melbourne CBD. The original swamp included parts of areas now known as West Melbourne, Coode Island, Docklands and the eastern end of Fishermans Bend. Historically, extending from the mouth of the Yarra River to today's Port Melbourne, a large barrier dune and subsequent dune field separated the swampland from the bay.

#### Landmark 3

What was originally called Emerald Hill, South Melbourne was a name for a rise that, from what we have been told, was a "natural pasture". This landmass is an unmistakable feature on the landscape. This landmass also serves as natural divide from the then swampy region of today's Albert Park to the south and the catchment of the lower Yarra River and West Melbourne swamp.

#### Landmark 4

The high-ground of the Royal Botanic Gardens, Melbourne and the present location of Government House. Again, another natural divide between the Yarra River immediately to the north and the swamplands of today's Albert Park to the south.

#### Landmark 5

The high ground at Dandenong Rd, Windsor that constitutes a section of the southern margin of the Yarra River catchment. This location serves as a natural divide between the catchment of the Yarra River to the north, the coastal region to the west and the extensive dune and swamplands to the south and southeast.

#### Landmark 6

The south-eastern margin of the Gardiners Creek catchment at Wheelers Hill. Country west and north of this point, is directed into Gardiners Creek, a significant tributary of the Yarra River. To the east and north-east of this point water is directed to the Dandenong Creek. With its origin in the Dandenong Ranges, Dandenong Creek was an invaluable resource to the Wurundjeri Woi Wurrung and the Bunurong Peoples alike. The section of Dandenong Creek immediately to the east of this point is a section of broad floodplain that provided game and fish.

#### Landmark 7

The north-western margin of the Cardinia Creek catchment at Belgrave Heights. The line from Landmark 6 to this point, crosses an important location along the Dandenong Creek floodplain. The boundary as determined here extends east from Location 6 (Wheelers Hill), crosses Dandenong Creek just north of where the present-day Wellington Road crosses the Eastern Freeway, a point which is close to the location of Clows Station.

#### Landmark 8

Headwaters of the Little Yarra River and the northern watershed of Mount Beenak. All water from this high-ground is directed towards and into the Yarra River.

*The basis for drawing boundaries:*

On the problematic question of how to draw definitive boundaries Council drew upon its own cultural knowledge and made the following observation:

*Our Old People have often talked with us about the places where our mobs meet and where they diverge. Our relationship to Culture is our relationship to community and is fundamentally about our relationship to Country. Culture can sometimes be determined by the nature of the physical environment and the extent of Country is necessarily influenced by the landscape. What we read today is the dynamic of People living within the landscape.*

*These Countries are based on catchments. Water that flows to the ocean and water that flows to the river. We can follow a catchment from its most easterly and westerly points, across ridgelines and around floodplains and sandbelts. We think of standing and looking across Country, connecting the features and connecting the lines we can see with the Cultural lines we can feel.*

Adopting this principle (utilisation of “catchments”) for attempting to delineate the registration boundary of the registered Aboriginal parties that represent their constituent Traditional Owners provides a clear and consistent basis for developing a proposal to a necessary level of precision while still ensuring conformity with our Traditions. To a large extent Council’s proposal in relation to this boundary variation request has adopted this principle. At times though in relation to small areas it has been necessary to acknowledge contemporary realities and utilise features that have been created in more recent times. At times also the ‘bright line’ of the Birrarung catchment does not assist in reaching conclusions particularly in relation to the west of the decision area. In this case Council needed to rely to a greater extent on the views of WWW, the material provided by WWW in support of these views, the views of other Traditional Owners reflected in the materials before Council, and Council’s own knowledge of the extent of Wurundjeri Woi Wurrung people. On the tension inherent in reconciling the traditional approach to contemporary circumstances Council drew upon its own cultural experience and knowledge and adopted the following approach:

*The mountains, the rivers, the sea, the volcanic plains – points within the landscape that would have been markers for our Old People of their cultural and spiritual places. Colonisation has forced changes on Country through the movement or complete removal of these places, so we must find those markers in our hearts and reinstate them on the landscape. Today, as modern people living an ancient Culture, we are comfortable enough in ourselves to draw a line on a map. We are strong enough in the old ways to know, in our hearts, that the line it is as accurate as we can make it today. To identify a road or a new waterway as a boundary is our answer to a problem not of our creation.*

Having weighed up the material in Schedule 1 and, where that material involved matters within Council’s own experience or knowledge of Aboriginal cultural heritage, having utilised that experience and knowledge, Council formed the view that Wurundjeri Woi Wurrung People are the Traditional Owners of the Proposal Area (as set out in **Attachment 3**). Council considers WWW as representative of the Wurundjeri Woi Wurrung Peoples and that the Wurundjeri Woi Wurrung peoples country includes part of boundary variation area sought by WWW (as set out in **Attachment 3**).

- ii) What is WWW’s organisational capacity to discharge its statutory functions as a RAP regarding the Proposal Area?

One of Council's functions is to manage, oversee and supervise the operations of registered Aboriginal parties [s.132(2) (ch)].

WWW provided detailed information regarding its expertise and capacity in managing and protecting Aboriginal Cultural Heritage in its current RAP area and within the Proposal Area that was noted by Council. WWW also provided information as to Cultural Heritage management procedures operationally employed by WWW.

WWW stated in information provided to Council that it represents Aboriginal People who have a historical or contemporary interest in the Aboriginal Cultural Heritage of the Proposal Area. WWW's variation request provides for the WWW rule book which details constitutional governance procedures, in particular Council noted detailed policies and procedures regarding:

- I. Occupational Health and Safety policy
- II. Code of Conduct
- III. Issue Resolution Procedure
- IV. Hazard Reporting Procedure
- V. Hazard and Risk Management Procedure
- VI. Risk Assessment Policy
- VII. Incident Reporting Procedure
- VIII. Medical Emergency Procedure
- IX. Return to Work Policy and Procedures
- X. Manual Handling Policy and Procedures
- XI. Workplace Behaviour Policy
- XII. Site Access Policy
- XIII. Social Media Policy
- XIV. Drugs and Alcohol Policy
- XV. Asbestos Policy
- XVI. High Wind Speed Policy
- XVII. Plant and Machinery Policy
- XVIII. Wurundjeri Domestic Animal Policy Conditions
- XIX. Wurundjeri Onsite Toilet Policy
- XX. Rain and Heat Policy

Council noted WWW's significant operational structure, it's Cultural Heritage Management Process, and some current partnerships and projects namely North East Link Project, Mapping Extents of Stony Rises in Victorian Volcanic Plain, La Trobe University, Queen Victoria Market Precinct Renewal, Hanging Rock Ministerial Advisory Group, Great Forest National Park Proposal, Waterways of the Ministerial Advisory Committee.

Council had no reason to doubt the information provided by WWW referred to in the preceding 2 paragraphs.

Council acknowledged that WWW had been operating effectively as a RAP since its appointment in 2008 and had regard to the detailed information WWW provided as to its organisational structure and capacity.

Council was satisfied as to WWW's organisational capacity, sustainability and ability to undertake Cultural Heritage management and protection responsibilities as a RAP over the proposed boundary variation area.

- iii) What are the views of other parties whose interests may be affected by a registration variation in accordance with the Proposal Area

In considering the views of other parties whose interests may be affected by the registration variation over the Proposal Area, Council considered all submissions and relevant referenced materials provided in response to the open public comment period as well as WWW's response to these submissions.

Council also noted that previous RAP applications have been made within the Decision Area from the BLSC, Boon Wurrung Foundation, Yaluk-Ut Weelam Elders Council and Bunurong Land & Sea Association Inc.

As noted earlier, Council also considered the views of BLCAC in determining the WWW boundary variation request. These views were contained in the material BLCAC submitted in support of the BLCAC boundary variation request. BLCAC's views were also contained in the responses BLCAC provided to the materials submitted by WWW.

Council also noted correspondence from individuals of BLSC identifying as Boonwurrung People. The views expressed in this correspondence have been identified above.

## 8. Charter of Human Rights and Responsibilities

As part of developing this proposal, 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 sections 19 (2)(a) and 19(2)(d) of the Charter.

For the purposes of exercising its statutory functions under the Act it is necessary for Council to reach conclusions as to the identity of the Traditional Owner group for particular tracts of country. In this instance in relation to this proposed boundary variation area Council has identified the Wurundjeri Woi Wurrung people as the relevant Traditional Owners. As noted above Council considered and rejected the assertions by BLCAC and BLSC that the Bunurong/Boonwurrung people were the relevant Traditional Owners for the boundary variation proposal area. Having reached this conclusion, in determining the impact of Council's proposal on upon cultural rights Council can necessarily only consider the cultural rights of Wurundjeri Woi Wurrung people.

Council formed the view that the decision to alter WWW's registration is compatible with the Charter. In its deliberations, Council acknowledged that not all Traditional Owners of the Proposal Area are members of WWW and that some Traditional Owners do not wish to be represented by WWW. Council acknowledged that the proposal to extend WWW's registration boundary may, in some circumstances, impact on the ability of those Traditional Owners to enjoy their identity and culture and maintain their distinctive spiritual, material and economic relationship with the land and waters and other resources in the Proposal Area.

However, Council noted that the extension of WWW's RAP boundary provides a formal mechanism through which Traditional Owners can exercise their distinct cultural rights protected under the Charter

Council also took into account that it has the ongoing function of managing, overseeing and supervising the operations of WWW under s 132(2)(ch) of the Act, and that it is empowered under s 154A of the Act to impose conditions on WWW at any time, including a condition to ensure inclusiveness and representativeness of WWW so as that all Traditional Owners of Wurundjeri Woi Wurrung Country are able to exercise their cultural rights as members of WWW.

Further to this, Council's decision does not preclude future applications for registration variation over the Proposal Area from other Traditional Owner groups. If any of these groups were to consider preparing a future registration variation application over the Proposal Area,

Council would expect to be provided with evidentiary information towards traditional and familial connections, representativeness and inclusivity.

Council considers that these factors lessen the extent of any limitation to the rights contained in s 19 of the Charter caused by the decision to extend WWW's registration boundary. Additionally, and having regards to the factors discussed above, Council further determined that there were no less restrictive means reasonably available to achieve the purpose of the decision. The purpose of the decision being to appoint registration of an inclusive and representative Traditional Owner body as a RAP to protect and manage cultural heritage within the proposed boundary variation area.

WWW provided detailed information to support its claim of traditional ownership of the proposed boundary variation area and evidence of its effective representation of the Traditional Owners of that area. Taking into account the purposes of the Act (including one of the 'main purposes' being 'to empower Traditional Owners as protectors of their cultural heritage...'), Council formed the view that any limitation to the rights of those Traditional Owners not represented by WWW, is justified by the importance of Council determining who should be the RAP for an area subject to an application. In this regard, Council was satisfied that WWW inclusively represents Traditional Owners of the Proposal Area and Council did not identify any less restrictive means available to achieve this purpose, other than the proposed variation of WWW's registration boundary.

## Conclusion

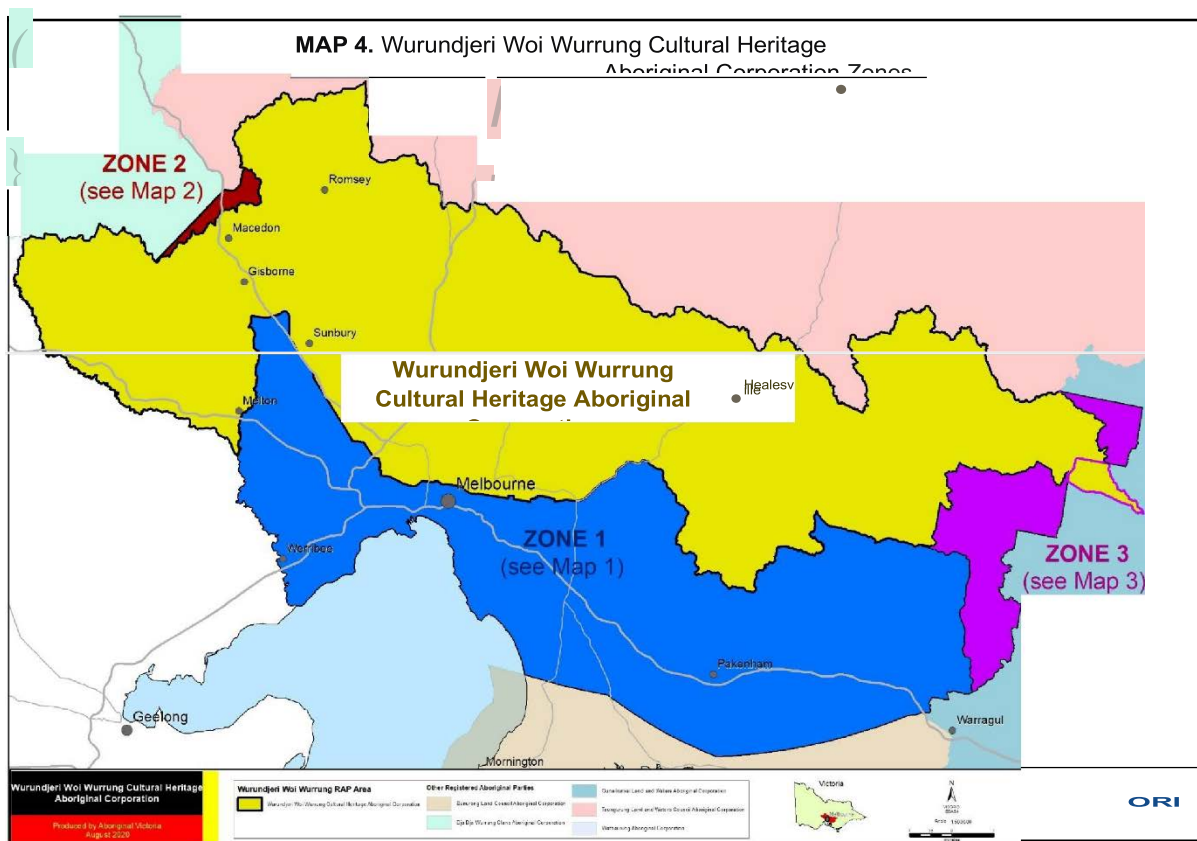
Having taken all matters detailed above into account, Council considered WWW an inclusive group representative of Traditional Owners in the relevant Proposal Area and has formed the view that it would be appropriate to exercise its power under s.155 to extend WWW's registration as a RAP over the Proposal Area.

To give effect to this proposal Council seeks WWW's consent to the proposed variation.

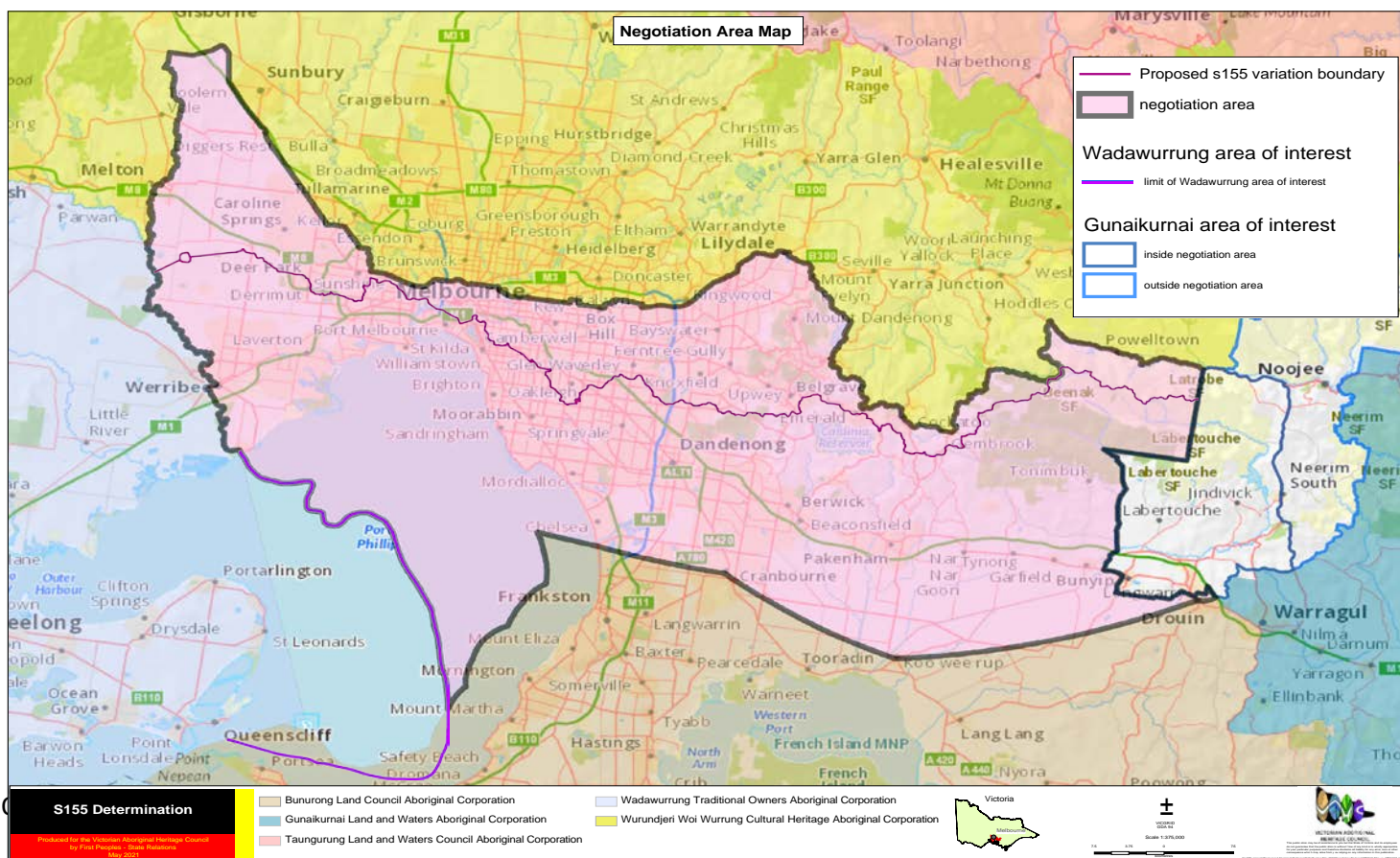


Rodney Carter  
**Chair**  
**Victorian Aboriginal Heritage Council**

# Attachment 1 – Map of Original Decision Area – Zone 1



# Attachment 2 – Map of Proposal Area with GLaWAC and WTOAC areas of interest excised





### Attachment 3 – Map Extent of Council Determination of WWW Country

