

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

**DATE OF DECISION: 5 December 2013**

**Decision**

On 5 December 2013 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**

Several parts of the remaining GLaWAC RAP application area were considered by Council. The parts of the GLaWAC RAP application that were considered are described below (**Decision Area**):

- The Wilsons Promontory area, including Wilsons Promontory and an area to the south-west of Warragul.
- The Thomson River area between Thomson Lake and the Wurundjeri Tribe Land and Compensation Cultural Heritage Council appointed RAP area.
- The Cobungra area, including an area in the north generally between the Cobungra and Dargo Rivers, west of Omeo.
- The Buchan River area between the Buchan and Timbarra Rivers.
- The East Gippsland area, generally east of the Murrindal and Snowy Rivers in the easternmost parts of the GLaWAC RAP application.

**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.

Council has been provided with material by other Traditional Owner groups and individuals in relation to the Decision Area over time. Council has considered all the material provided in relation to the Decision Area and Council was unable to 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.

## 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 with other groups. Council encouraged GLaWAC to do this and asked for further details of agreements or the outcomes of meetings held with neighbouring Traditional Owner groups.

GLaWAC has provided Council with some material about planned discussions with Traditional Owner neighbours for some areas within 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 about planned negotiations and discussions in relation to the Decision Area and was unable to determine if there had been any outcomes of those negotiations and discussions.

### **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 had regard to current and former RAP applications and material relating to competing Traditional Owner interests in the Decision Area. 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.

### **Summary**

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

- Evidence before Council did not rule out that GLaWAC represented some individuals with traditional, familial, historical and contemporary links to the Decision Area
- Council was unable to conclude that there had been any outcomes of negotiations with neighbouring Traditional Owner groups over competing interests in the Decision Area
- Competing claims by other Traditional Owner organisations in the Decision Area also meant that Council was unable to identify the extent of GLaWAC Country outside of its RSA area
- The lack of evidence available meant that Council was unable to satisfy the criteria under the Act and unable to register GLaWAC in the Decision Area

### **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