

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

DATE OF DECISION: 21 March 2013

Decision

On 21 March 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 their RAP application.

Decision Area

Several distinct parts of the remaining GLaWAC RAP application area have been considered by Council. The several outstanding parts of the GLaWAC RAP application considered together are described below (**Decision Area**):

- Wilsons Promontory, including areas east of Inverloch and west of Warragul
- The area between Thomson Lake and the Wurundjeri registered RAP area boundary
- The area west of Omeo near Hotham Heights
- The Far East Gippsland area

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. Despite requests Council was not provided with further information to support the registration of GLaWAC in the Decision Area and was unable to determine the extent of GLaWAC Country in the Decision Area.

Native title considerations

Council seeks to ensure that its decision-making as best as possible reflects relevant native title processes and outcomes. Council notes that in October 2010 Gunaikurnai achieved a native title consent determination and successfully negotiated a Recognition and Settlement Agreement (**RSA**) under the *Traditional Owner Settlement Act 2010 (Vic) (TOS Act)* with the State of Victoria in relation to its registered native title claim (**2010 RSA area**). Council has registered GLaWAC as a RAP for areas within the 2010 RSA area for which GLaWAC has applied to be registered.

The Decision Area is entirely outside the boundaries of the 2010 RSA area.

Other relevant matters

Mediation and regional meetings

Council has adopted the principle of encouraging RAP applicants to speak with neighbouring groups to resolve boundary and overlap issues and where possible to create co-operative

arrangements 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. Council supported a regional facilitation process between Far East Gippsland RAP applicants. GLaWAC informed Council that it did not wish to participate in the Far East Gippsland regional facilitation process. Despite requests, GLaWAC has not provided the details to Council of agreements or outcomes of discussions with neighbouring groups to support its RAP application in any areas within the Decision Area.

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 the RAP applications of Nindi-Ngujarn Ngarigo Monero Aboriginal Corporation (NNNM) and Bidwell-Maap Nation Aboriginal Corporation (Bidwell) and their claims to represent Aboriginal people with traditional and familial links in the Decision Area. Council notes that the ethno-historical record of Traditional Ownership in East Gippsland is particularly complex.

Council also had regard to the competing interests of Traditional Owner organisations in the Wilsons Promontory, Thomson Lake and Omeo areas and claims by Traditional Owner groups to represent Aboriginal people with traditional and familial links in the Decision Area.

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
- The lack of evidence available meant that Council was unable to register GLaWAC in 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 overlapping RAP applicants and other Traditional Owner organisations in the Decision Area also meant that Council was unable to identify the extent of GLaWAC Country outside of the 2010 RSA area

Conclusion

Taking all of these matters in to account, and relying on its own cultural knowledge, Council decided that it is unable to appoint GLaWAC as a RAP for the Decision Area.

Denise Lovett

Denise Lovett
Chairperson
Victorian Aboriginal Heritage Council