

DECISION OF THE VICTORIAN ABORIGINAL HERITAGE COUNCIL IN RELATION TO AN APPLICATION BY GUNAIKURNAI LAND AND WATERS ABORIGINAL CORPORATION TO BE A REGISTERED ABORIGINAL PARTY

DATE OF DECISION: 23 MAY 2008

Decision

The Victorian Aboriginal Heritage Council (the Council) has decided to register the Gunaikurnai Land and Waters Aboriginal Corporation (GLaWAC) as a registered Aboriginal party (RAP) over part of the area it has sought to be a RAP.

The Council is still considering the remaining area for which Gunaikurnai has sought to be a RAP.

A map showing the area for which GLaWAC has been made a RAP (the RAP Area) is attached (Attachment 1).

Reasons for Decision

The Council has taken the view that GLaWAC is an organisation that represents Traditional Owners of the RAP Area. The Council is giving priority to applications made on behalf of Traditional Owners.

As a general rule, the Council believes that groups recognised as RAPs under the *Aboriginal Heritage Act 2006* should as best as possible reflect those recognised under native title arrangements. While no native title determination has been made for this area, GLaWAC represents the Gunai/Kunai people, who have a registered native title claim over the RAP Area.

The Council was aware that another native title claim has been made over the RAP Area by a group calling itself the Kurnai Clans. The National Native Title Tribunal did not register the Kurnai Clans native title claim and one of the reasons given for this was that the members of the Kurnai Clans native title claim group were likely to be all part of the broader Gunai/Kurnai native title claim group. The Council was informed by GLaWAC that all members of Kurnai Clans are eligible to be members of GLaWAC.

While the Kurnai Clans have not applied to be a RAP for this area and did not object to the GLaWAC RAP application, the Council took into account the potential interests

being claimed by them. Nevertheless the Council took the view that GLaWAC should be registered as a RAP.

The Council is not going to expect parties to prove their traditional ownership to the same degree as they might need to in a native title case. For the purposes of the Act, the Council accepted that GLaWAC represents Traditional Owners of the RAP Area.

The Council is mindful that under the old cultural heritage laws, Traditional Owners around Victoria were not always involved in cultural heritage management over their Country. Accordingly, the Council did not consider it necessary for GLaWAC, which represents Traditional Owners, to have an established record of expertise in delivering cultural heritage services provided that it is capable of doing so. Nonetheless, Council notes that members of the Governing Committee of GLaWAC have many years of experience in cultural heritage management in the RAP area.

The Council is aware that GLaWAC is a relatively new organisation. However, GLaWAC states that it is the successor to the Gunai/Kurnai Instructing Committee which has been managing and protecting cultural heritage in the RAP Area by agreements under the Native Title Act. In relation to its governance capacity, GLaWAC has put in place processes for cultural heritage decision-making and provided Council with a detailed operational plan.

The Council was satisfied GLaWAC will be capable of carrying out the functions of a RAP.

The Council considered registering GLaWAC for the whole of its application area. However, the Council took the view that it should defer making a decision over a number of areas which are being contested by other neighbouring Traditional Owner groups to enable further discussions to be held between these groups.

The parts of the RAP Application Area that are not included in the RAP Area are areas which are the subject of competing claims by other Traditional Owner groups and the Council wishes to consider these areas at a later date.

This approach is consistent with Council's practice of encouraging RAP Applicants to discuss their RAP applications with neighbouring groups and to try to resolve disputes themselves. If these discussions do not lead to an agreement that is acceptable to Council, then it will be up to the Council to determine which, if any, groups should be appointed as RAP over these areas.

Having regard to these matters, and relying on its own cultural knowledge, Council took the view that GLaWAC should be registered for the RAP Area.



Signed:

Tim Chatfield
Acting Chair
Victorian Aboriginal Heritage Council