

**STATEMENT OF REASONS FOR THE DECISION OF THE VICTORIAN ABORIGINAL HERITAGE COUNCIL  
IN RELATION TO AN APPLICATION BY THE WADI WADI WEMBA WAMBA BARAPA BARAPA FIRST  
NATIONS ABORIGINAL CORPORATION**

**DATE OF DECISION: 30 March 2017**

**Decision**

The Victorian Aboriginal Heritage Council (**Council**) has declined the application of the Wadi Wadi Wemba Wamba Barapa Barapa First Nations Aboriginal Corporation (**WWB**) to be registered as a Registered Aboriginal Party (**RAP**) under the *Aboriginal Heritage Act 2006* (**Act**).

**Application Area**

The RAP application related to an area in the north west of Victoria, bounded by the Murray River from about Narrung to Echuca, the Dja Dja Wurrung RAP area in the south, and a line from Lake Buloke to Lake Tyrell and further to the Murray River in the west (**Application Area**). The Application Area overlapped part of the Barengi Gadjin Land Council Aboriginal Corporation (**BGLC**) RAP application area east of the BGLC appointed area, and the western arm of the Yorta Yorta Nation Aboriginal Corporation (**YYNAC**) appointed RAP area.

**Findings of Fact and Evidence**

Council has made the following findings of fact, based on the evidence and other material detailed.

***Native title (ss 151(2), 151(3)(a) and 151(3)(b) of the Act)***

WWB is not a registered native title holder for the Application Area. There is no registered native title holder for the Application Area. WWB's application stated that it was a native title party (referring to the native title application by the Wamba Wamba Barapa Barapa Wadi Wadi Peoples in the Federal Court that was on foot until 15 May 2015). Council has taken this status into account in assessing the application. No native title agreement exists in relation to the Application Area.

***Recognition and settlement agreement (s 151(2A) of the Aboriginal Heritage Act 2006)***

WWB's application was not made on the basis that it has a recognition and settlement agreement within the meaning of s 151(2A) of the Act. As such, Council finds that WWB is not a traditional owner group entity that has entered into a recognition and settlement agreement in relation to the Application Area.

***Representation - traditional and familial links (s 151(3)(c) of the Act)***

WWB's application was made on the basis that it represented the Wamba Wamba Barapa Barapa Wadi Wadi Peoples, and that the Wamba Wamba Barapa Barapa Wadi Wadi Peoples have traditional and familial links to the Application Area. In assessing this part of WWB's application, Council considered the matters set out below.

Council had before it information about WWB's membership including that:

- The WWB Constitution states that a WWB member must be a descendant from the Aboriginal people who occupied the WWB traditional area at the time of first contact with colonisers, and identify as a Wadi Wadi, Wemba Wamba or Barapa Barapa person.
- WWB has a membership of 7 people.

Council provided WWB the opportunity to address issues relevant to representation, such as the level of inclusivity of the Corporation, and asked WWB whether it had engaged with Traditional Owner organisations that claim to represent some of the same Traditional Owners WWB claims to represent and whether WWB planned to expand its membership. However, no response was provided in relation to these issues.

Council received comments regarding the WWB application, including comments from a group that claims traditional connection to part of the Application Area. That group raised concerns about WWB's ability to inclusively represent and be an authority for Traditional Owners of that area. Council gave WWB the opportunity to respond to that group's comments. WWB stated that the group providing the comments had misrepresented facts, that WWB has always been inclusive and democratic, and that only some individuals within the group object to WWB.

Council considered remarks of the Judge in the native title proceeding recorded in transcripts of the Federal Court directions hearings of 31 July 2014, December 2014, March 2015 and May 2015 that indicated issues of membership, authorisation and representation of the WWB were, at those times, unresolved. Council gave WWB the opportunity to respond to these remarks, however, no response was provided.

Based on the available information, Council finds that WWB represents some individuals with traditional and familial links to the Application Area but is not sufficiently representative of Traditional Owners of that area.

***Representation - historical or contemporary interest (s 151(3)(d) of the Act)***

WWB relied on its traditional links as the basis for its historical and contemporary links to the Application Area.

In considering this part of WWB's application, Council had regard to the same information and evidence considered in relation to WWB's traditional and familial links to the Application Area.

Council is of the view that WWB represents some Aboriginal people with historical and contemporary interest in Aboriginal cultural heritage relating to the Application Area but does not broadly represent Aboriginal people in this regard.

***Grant of fee simple (s 151(3)(e) of the Act)***

There has been no grant of land in fee simple made by the State or Commonwealth to an Aboriginal body. WWB did not rely on any grant of fee simple in support of its application.

***Land and natural resource management (s 151(3)(f) of the Act)***

WWB has not entered into an agreement with the State in relation to land and natural resource management in the Application Area. WWB listed a number of commercial-in-confidence agreements but none were with the State and within the meaning of s 151(3)(f).

***Other considerations (s 151(3)(g) of the Act)***

*Findings relating to parties to the Application Area*

Council strongly encourages organisations with overlapping claims for the same area to try to resolve such claims between themselves.

The WWB Application Area overlaps part of the YYNAC RAP area, and BGLC RAP application area and includes areas claimed by other neighbouring Traditional Owner groups that Council is aware of through RAP applications previously received.

The WWB application indicated WWB had intentions to pursue cooperative management agreement with neighbouring groups and WWB wrote to such groups in that regard.

Council wrote to WWB asking WWB to provide details of its plans and the timeframe for engaging with neighbouring Traditional Owner groups regarding the development of cooperative management agreements. WWB did not respond to this request.

Council finds WWB has taken some steps to engage with neighbouring groups about overlapping interests but has no evidence that discussions with such groups for that purpose have taken place.

#### *Organisational capacity*

Another matter that the Council takes into account when determining a RAP application is whether the RAP applicant is organisationally sustainable and capable of carrying out its obligations as a RAP. WWB provided Council with some information that supported its application in this regard, however detailed information about how WWB will function as a RAP, as could be provided in an operational plan and a governance charter, was not provided. Regarding WWB's organisational capacity, Council took the size of WWB's membership into account and noted that WWB did not yet employ a secretariat referred to in its proposed organisational chart. Council wrote to WWB seeking detailed information about how WWB will function as a RAP. WWB did not respond to this request.

Council finds that WWB demonstrates it has given some consideration to processes and governance that will be required to operate as a RAP. However Council is not satisfied that WWB has sufficient operational and governance arrangements in place to effectively carry out all the functions of a RAP prescribed in the Act.

#### *Cultural heritage management expertise*

WWB's application provided a list of cultural heritage management projects that WWB claims its members have been involved in and Council noted these.

### **Reasons for the decision**

The following steps have been taken in the decision making process.

#### ***Legislation***

In deciding WWB's application, Council has taken account of all matters it is required to consider under s 151 of the Act.

WWB is not a registered native title holder within the meaning of s 151(2) of the Act, nor has it entered into a recognition and settlement agreement in relation to the Application Area, within the meaning of s 152(2A) of the Act. As such, Council is not obliged to grant WWB's application under ss 151(2) or 151(2A) of the Act.

Council has considered the matters set out in s 151(3), and concludes that WWB has not established any of the factors set out in ss 151(3)(b), 151(3)(e) and 151(3)(f).

Council has considered, under ss 151(3)(c) and 151(3)(d), the question of whether WWB is a body that represents Aboriginal people with traditional or familial links to the Application Area (that is, Traditional Owners), and/or has historical or contemporary interest in Aboriginal cultural heritage relating to the Application Area and expertise managing and protecting such heritage. In regard to these sections of the Act, Council is not satisfied that WWB is a body sufficiently representative of the Traditional Owners of the Application Area (nor Aboriginal people with historical and contemporary interest in Aboriginal cultural heritage relating to the Application Area).

Council has considered other matters under s 151(3)(g) in accordance with Council policy set out in its 'General Principles - RAP Decision Making'. These primarily include whether WWB has reached agreements with neighbouring Traditional Owner groups in relation to contested Country and has organisational capacity to carry out the functions of a RAP. Council is not satisfied that WWB has agreements with neighbouring Traditional Owner groups regarding areas of common interest or sufficient organisational capacity to effectively perform the functions of a RAP.

***Policy set out in Council's 'General Principles - RAP Decision Making'***

Particular aspects of Council policy that were relevant to matters Council took into account in making a decision about the WWB application were as follows:

- To accord appropriate status to Traditional Owners including a preference to appoint Traditional Owner bodies corporate as RAPs.
- To appoint applicants as RAPs who have sufficient capacity to become RAPs.
- To give priority consideration to uncontested applications that are supported by the Traditional Owners of the Country affected by the application
- To appoint RAPs that are single, inclusive groups and representative of Traditional Owners in the relevant application area.

***Charter of Human Rights and Responsibilities***

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 s19(2)(d) of the Charter. Council formed the view that the decision to decline to register WWB is compatible with the Charter.

Council has also taken all matters detailed above into account, and declines WWB's application to be registered as a RAP over the Application Area.



Tim Chatfield  
**Victorian Aboriginal Heritage Council**