

STATEMENT OF REASONS FOR THE DECISION OF THE VICTORIAN ABORIGINAL HERITAGE COUNCIL TO IMPOSE CONDITIONS ON THE RAP REGISTRATION OF WAMBA WEMBA ABORIGINAL CORPORATION

DATE OF DECISION: 19 December 2024

1. Decision

The Victorian Aboriginal Heritage Council (**Council**) has decided to impose the following conditions (**the Conditions**) on the Registered Aboriginal Party (**RAP**) registration of the Wamba Wemba Aboriginal Corporation (**WWAC**) under section 154A(1) of the *Aboriginal Heritage Act 2006* (**Act**):

1. Within four months of 20 December 2024, WWAC is required to amend its Rule Book to:
 - a) Replace ‘*of the Ancestors listed in the Wamba Wemba Native Title Application*’ at rule 5.2.2 with ‘*Wamba Wemba Apical ancestor*’; and
 - b) Include a definition for ‘*Wamba Wemba Apical ancestor*’ at Schedule 1 that lists all Apical ancestors identified in its RAP Application dated 1 March 2023.
2. Within four months of 20 December 2024, WWAC is required to amend its Rule Book to include:
 - a) A rule that permits an amendment of the Rule Book to remove an Apical ancestor listed in the definition of ‘*Wamba Wemba Apical ancestor*’ at Schedule 1, but only if, prior to the removal:
 - i. WWAC and affected members of WWAC have provided their consent to the removal; and
 - ii. The descendants or family groups of the ancestor whose name is proposed to be removed have provided a written statement to WWAC in support of the removal.
 - b) A rule that permits the amendment of the Rule Book to add Apical ancestors to the definition of ‘*Wamba Wemba Apical ancestor*’ at Schedule 1;
 - c) A prescribed decision-making process that allows for the consideration of new material and evidence in support of the addition of Apical ancestors to the definition of ‘*Wamba Wemba Apical ancestor*’ at Schedule 1.
3. Conditions 1 and 2 will be reviewed by the Aboriginal Heritage Council in the event of a determination of native title under the *Native Title Act 1993* (Cth), or a recognition and settlement agreement under the *Traditional Owner Settlement Act 2010* (Vic), being made in respect of the RAP area or any part of the RAP area.¹

¹ The RAP Area refers to the area which was the subject of the decision to register WWAC as a RAP.

2. Background

a) RAP Application and Decision

On 1 March 2023, WWAC submitted an application (**Application**) for registration as a RAP. On 7 August 2024, Council approved WWAC's application to be registered as a RAP in respect of the **RAP Area**.

b) Amendment of eligibility rules

i) WWAC's Rule Book as at the time of the Application

At the time of the Application, WWAC's then-current Rule Book (**2013 Rule Book**) stated that in order to be eligible for membership, a person must be at least 15 years of age and a '*Wamba Wemba person*'. The 2013 Rule Book defined a '*Wamba Wemba person*' as a person who is descended through either parent to Aboriginal ancestors who occupied the Wamba Wemba Traditional area at the time of first contact by European settlers. The 2013 Rule Book stated that these Aboriginal ancestors included, but were not limited to, the following ancestors:

- **Edward Firebrace** – born circa 1855 and died in Swan Hill 1921
- **Edward Joachim** – born at Nemi near Edwards River
- **Eliza Edwards** – born circa 1840 near Moulamein
- **Ernest McGee** – born circa 1867 on Chowra Station at Neimer Creek, near Moulamein
- **George Allen** – born circa 1858 near Deniliquin
- **Henry Edwards** – born circa 1866 at Moulamein and died at Moonahcullah
- **Jemima Burns** – born circa 1854 at Gannawarra or Swan Hill
- **John Moore** – born 1800s and lived near Moulamein
- **Koombra Campbell (aka Alick)** – born circa 1848, died 1923
- **Mary/Margaret Smith** – born circa 1830
- **Mary Tattambo** – born early 1800s on Gonn Station
- **Richard and Sarah Wilson-Crow** – born early 1800s
- **Robert and David Taylor** – born circa 1850 Barham and 1852 Pental Island
- **Sarah Moore/Mayne** – born near Moulamein
- **Sarah Smith** – born circa 1858 at Long Lake, near Swan Hill
- **Wallin and Kathleen/Kitty**
- **William Day** – born circa 1840 and died near Moulamein 1900
- **William Sampson** – born 1851 at Deniliquin and died 1926 at Moonahcullah

In the Application, WWAC stated that the list of Apical ancestors included in the 2013 Rule Book was not exhaustive, and that the 2013 Rule Book allowed for the inclusion of other Wamba Wemba Apical ancestors if they were to be identified.

ii) WWAC's Updated Rule Book

The Application noted that WWAC was working towards the development of a governance model, and that this process may result in amendments to the 2013 Rule Book. During its consideration of the Application, Council was informed by WWAC that the 2013 Rule Book had been repealed and replaced via a special resolution passed at WWAC's Annual General Meeting held on 20 May 2023.

The updated Rule Book (**2023 Rule Book**) was registered by the Registrar of Aboriginal and Torres Strait Islander Corporations on 14 June 2023. The 2023 Rule Book states that a member of WWAC must be at least 16 years of age, a '*Wamba Wemba Person*', and must demonstrate descent from at least one of the Apical ancestors listed in the Wamba Wemba Native Title Application (**Native Title Application**). The 2023 Rule Book defines '*Wamba Wemba*' to mean Aboriginal people who identify as Wamba Wemba, are descended from a Wamba Wemba Apical ancestor, and are accepted as being Wamba Wemba.

Council noted that this revised eligibility criteria for WWAC membership departed from the eligibility criteria as contained in the 2013 Rule Book and as described in the Application. In particular, Council noted that the 2023 Rule Book does not include a list of Wamba Wemba Apical ancestors and does not state that the Apical ancestors by which membership eligibility is determined is open to the inclusion of additional ancestors.

Upon noting these changes, Council requested clarification from WWAC as to why the 2023 Rule Book does not include a list of Wamba Wemba Apical ancestors. In response, WWAC noted that this omission was intentional, on the basis that the membership of WWAC will ultimately be determined by the Federal Court of Australia (**Federal Court**) through the current Native Title application.

3. Reasons for Decision

a) Imposition of Conditions

Council has a discretion under s 154A(1) of the Act to impose conditions on the registration of a RAP at any time.

i. WWAC's Representativeness of Traditional Owners of the RAP Area

In deciding to impose the Conditions, Council reflected on its decision to appoint WWAC as a RAP in respect of the RAP Area.² When determining an application for registration as a RAP, Council must take into account whether an applicant is a 'body representing the Traditional Owners of the area', pursuant to s 151(3)(c) of the Act. As such, Council's decision to appoint WWAC as a RAP was based on, among other things, WWAC being representative of the Traditional Owners of the RAP Area.

² See Written Statement of Reasons for Decision of the Victorian Aboriginal Heritage Council in relation to an Application by Wamba Wemba Aboriginal Corporation dated 7 August 2024, which includes a detailed explanation of Council's considerations of Wadi Wadi Traditional Owner interests within the RAP Area.

In particular, Council considered the interests of Wadi Wadi Traditional Owners within the RAP Area as raised in public submissions by the representatives of four family groups identifying as Wadi Wadi Traditional Owners. Council also considered matters raised in conversations that it had with representatives of two Wadi Wadi Traditional Owner families, the Nicholls and Davis families, who confirmed their eligibility for membership of WWAC through their descendancy from identified Wamba Wemba Apical ancestors.

Council also considered matters raised in conversations that it had with representatives of WWAC in June 2024 regarding the interests of the Nicholls and Davis families within the RAP Area. At the time of these conversations, WWAC representatives also confirmed the eligibility of members of the Nicholls and Davis families for membership of WWAC under its 2023 Rule Book and noted that they are welcome to join the organisation.

Having regard to the eligibility of these Wadi Wadi families for membership of WWAC under the 2023 Rule Book at this time, Council considered that the appointment of WWAC as a RAP over the RAP Area would not negatively affect the interests of these Wadi Wadi families or prevent them from participating in WWAC as members.

In reaching this conclusion, however, Council noted that the 2023 Rule Book did not include a list of Wamba Wemba Apical ancestors and, as such, that it was possible that membership eligibility may change in a way that would diminish Traditional Owner representation. Accordingly, Council proposed to place the Conditions on WWAC's RAP registration at the same time as WWAC's RAP appointment to ensure that its Rule Book structure and governance continued to allow for representative membership. As such, Council determined to register WWAC as a RAP on the basis that the Conditions could be imposed to uphold and maintain the determinations made by Council regarding WWAC's representativeness.

In reflecting on these considerations, Council determined that the Conditions are necessary to ensure that WWAC's Rule Book provides for the same (or a more expansive) membership base as at the time of Council's decision to appoint WWAC as a RAP. The Conditions provide assurance that all Wamba Wemba identifying Traditional Owners can be WWAC members and actively participate in cultural heritage management within the RAP Area, consistent with the representations made by WWAC through its RAP Application.

ii. Standard Practice among RAPs

In deciding to impose the Conditions, Council also had regard to the standard practice among RAPs in relation to membership eligibility rules and requirements. Specifically, Council noted that it is standard practice among RAPs to include a list of Apical ancestors within their Rule Book as part of their membership criteria. Council further noted that ten of the twelve current RAPs include a list of Apical ancestors within their Rule Books.

iii. Matters raised by WWAC relating to the Conditions

Potential impact upon the Wamba Wemba Peoples Native Title Claim Group

In correspondence in response to the proposed Conditions, WWAC asserted that the imposition of the Conditions would have a potential impact upon the Wamba Wemba Peoples

Native Title Claim Group (**Wamba Wemba Claim Group**). In particular, WWAC raised concerns that the Conditions have the capacity to affect the mediation process ordered by the Federal Court in the Native Title Application, and also in the First Peoples of the Millewa-Mallee Native Title Application.

WWAC stated that, pursuant to orders of the Federal Court, the Wamba Wemba Claim Group and the respondents to the Native Title Application were to commence mediation which may result in changes to the description of the Wamba Wemba Claim Group. WWAC then asserted that the imposition of the Conditions could further complicate this process and compromise the commitments made by the Wamba Wemba Claim Group to the Federal Court.

WWAC stated that it has chosen to use the description of their Apical ancestors as being the same as those named in the Native Title Application to ensure that any potential changes to the description of the Wamba Wemba Claim Group, resulting from mediation or orders of the Federal Court, would remain consistent with the Native Title Application and also with the definition of a Traditional Owner under the Act. WWAC also stated that its constitution would naturally evolve as the Native Title Application progresses through the Federal Court.

WWAC further stated that, pursuant to orders of the Federal Court made on 2 December 2024, an independent anthropological expert is to be appointed to inquire into and report on issues including the description and membership of the Wamba Wemba Claim Group. WWAC asserted that this Court order is highly relevant to the Conditions as the scope of the independent anthropological expert's inquiry relates to the same matters addressed by the Conditions. WWAC stated that the inquiry may result in amendments to the description of the Wamba Wemba Claim Group, and that the imposition of the Conditions may complicate and compromise this process.

WWAC also noted that an amended description of the Wamba Wemba Claim Group had been filed in the Federal Court, including the removal of Sarah Mein from the list of Wamba Wemba Apical ancestors - as voted unanimously by the Wamba Wemba People in a full group meeting held on 18 May 2024. WWAC stated that the enforcement of the Conditions would conflict with the amended description of the Wamba Wemba Claim Group and may lead to inconsistencies between the descriptions in the Rule Book and Wamba Wemba Claim Group.

Council is satisfied that the Conditions will not preclude the Wamba Wemba Claim Group from continuing to progress its Native Title Application, and nor will the Conditions prevent meaningful participation in events scheduled in that application.

In forming this conclusion, Council noted that Condition 2 allows for the removal of Apical ancestors from the WWAC Rule Book with the written consent of the descendants of the relevant ancestor, and as such, that the Conditions will not preclude changes to the Wamba Wemba Claim Group description where Apical ancestors are removed with the agreement of all parties, as per the instance concerning the mutually agreed removal of Sarah Mein.

Council further noted that Conditions 1 and 2 must be reviewed by Council in the event that a Native Title determination is made in respect of the RAP Area, or any part of the RAP Area, affected by the Conditions.

Concerns regarding procedural fairness and cultural protocols

WWAC requested a meeting with Council to discuss the Conditions in further detail prior to a decision by Council. WWAC noted that such a meeting was consistent with the principles of natural justice and would provide opportunity for an open dialogue in alignment with the cultural protocols of Traditional Owners. WWAC then stated that the failure of this requested meeting to take place indicated Council's unwillingness to meet with WWAC in a culturally appropriate manner.

Council provided WWAC with opportunities to meet with Council on several occasions in November and December 2024. WWAC advised Council that it was unavailable to meet on the dates proposed by Council in November 2024, and thereafter agreed to a meeting scheduled to take place on 6 December 2024. At this time, Council agreed to extend the deadline for WWAC's written response to the proposed Conditions to allow for this meeting to first take place. Upon Council's confirmation of this meeting, however, WWAC advised that it was no longer available to meet on the scheduled date.

On 6 December 2024, after unsuccessful attempts to meet and having received no written submission from WWAC, Council provided a final deadline of 17 December 2024 for WWAC to respond in writing, prior to Council making its decision.

In view of Council's willingness to meet and extension of the deadline for WWAC to provide a response, Council considers that it has afforded procedural fairness to WWAC in deciding to impose the Conditions.

iv. Charter of Human Rights and Responsibilities

Prior to making its decision to impose the Conditions, Council gave careful consideration to the distinct cultural rights of Aboriginal persons recognised in section 19(2)(d) of the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (**Charter**).

Council took into account that the imposition of the Conditions will operate to ensure that all Traditional Owners of the RAP Area are able to maintain and exercise their distinct cultural, spiritual, material, and economic relationship with the Country of the RAP Area.

As such, Council reached the view that the decision to impose the Conditions is consistent with its obligations under the Charter.

4. Conclusion

For the above reasons, Council decided to impose the Conditions on WWAC's registration as a RAP pursuant to s 154A(2) of the Act.



Acting Chairperson

Victorian Aboriginal Heritage Council