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23 August 2021

**Re: Response to the application for a mining licence (MIN007636f) by Kalbar Operations Pty Ltd**

In response to the application for a mining licence (MIN007636f) by Kalbar Operations Pty Ltd, the Gunaikurnai Land and Waters Aboriginal Corporation (GLaWAC) is submitting this letter, and the attached submission.

We are surprised the application for a mining licence has been made prior to the completion of the Environmental Effects Statement and note that the area for the mining licence is seemingly larger than Kalbar's retention licence as specified in the Environmental Effects Statement (EES) document. The submission as attached is the same as which GLaWAC provided in response to the EES, and equally applies.

We are uncertain why the mining licence invites submissions but is not present on the Government's Engage Victoria website. With the limited information we have to hand, we trust this follows due process and will be admissible but ask that if refinement is required, that we are contacted via our Policy and Program Manager, Lisa Hocking, [lisahocking@glawac.com.au](mailto:lisahocking@glawac.com.au).

Kind regards

A handwritten signature in black ink, appearing to read "R Fenwick".

**Roger Fenwick**  
**Chief Executive Officer**

A handwritten signature in black ink, appearing to read "Troy McDonald".

**Troy McDonald**  
**Board Chair**

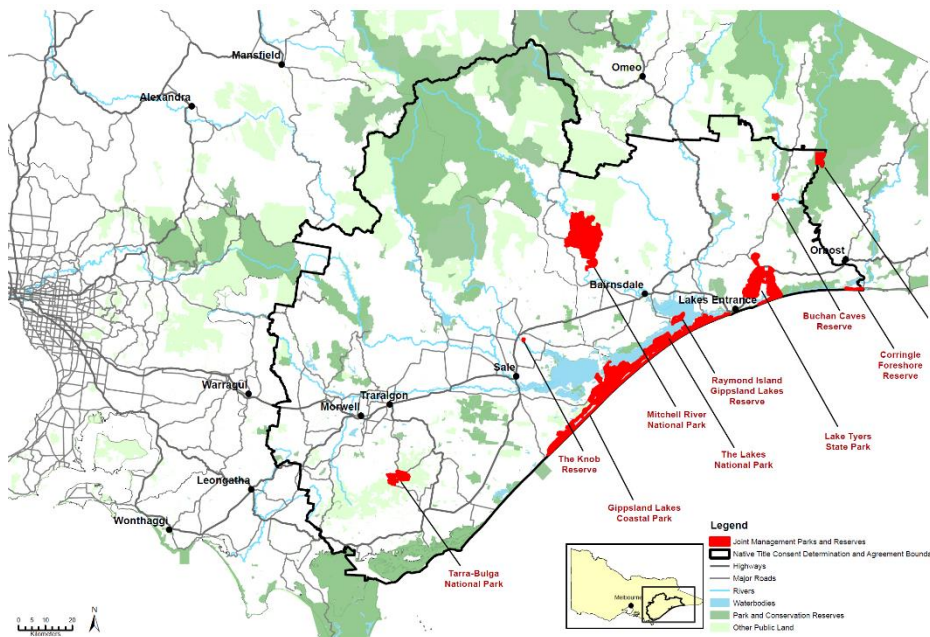
Gunaikurnai Land and Waters Aboriginal Corporation

29 Oct 2020

# GLaWAC Submission to the proposed Kalbar Fingerboards mine EES

## Summary

This submission has been prepared by the Gunaikurnai Land and Waters Aboriginal Corporation (GLaWAC) on behalf of the Gunaikurnai people. The Gunaikurnai people are recognised as Traditional Owners over about 1.33 million hectares in Gippsland – spanning from Warragul in the west, to the Snowy River in the east, and from the Great Divide in the north to the coast in the south, including 200 meters of offshore sea territory.



GLaWAC is the prescribed body corporate on behalf of the Gunaikurnai people, for the purposes of the Native Title Act 1993 (Commonwealth) and is a Registered Aboriginal Party for the purposes of the Aboriginal Heritage Act 2006 (Victoria). The State of Victoria has also entered into a Recognition and Settlement Agreement with the Gunaikurnai people. The Recognition and Settlement Agreement, executed under the *Traditional Owner Settlement Act 2010*, affords Gunaikurnai people rights relating to the use of public land within their Agreement area. Following a 2010 Joint Management Agreement, Gunaikurnai and Parks Victoria jointly manage 10 national parks and reserves across Gippsland.



This submission focuses on the importance of Country to the Gunaikurnai, the significance of the cultural landscape on which the proposed site sits, the proposed mine cultural assessment undertaken by Kalbar's consultants as part of the Environment Effects Statement and gives voice to the Traditional Owners concerned about the proposed mine.

Our understanding is the proposed Kalbar mine site is entirely on private property although we do have some uncertainty in both the positioning of the works to access the river water Kalbar says it will source, and whether accessing water may require works on land that may be on leased Crown Land. We have not been notified to that fact.

The GLaWAC submission ascertains that:

- The cultural heritage assessment undertaken by consultants engaged by Kalbar did not examine the potential impacts on heritage robustly enough.
- The assessment has not included intangible values, nor sought to be informed by oral history, and has not acknowledged the importance of the water, land and the cultural landscape, nor the travel routes associated with the river upon which the site sits to the Gunaikurnai people.
- The proposed mine conflicts with the principles of the Gunaikurnai Whole of Country Plan, and of most of the Gunaikurnai Traditional Owners who have shared their views with GLaWAC.

## The cultural landscape: Brabralung Country

GLaWAC asserts that Kalbar Operations through its cultural assessment has not considered the broader landscape that the mine would impact on from a cultural perspective.

This is despite the EES Reasons for Decision under Environment Effects Act 1978 giving as one of the reasons for referring the proposal to an EES the *... "amenity and landscape values of the project area and those associated with the broader area, including the Mitchell River National Park."*<sup>1</sup>.

This submission uses the term 'cultural landscape' to describe not only the privately held site of the proposed Kalbar mine, but also how it is an integral part of a broader surrounding area. The cultural landscape is valued by the Gunaikurnai through a longstanding relationship with Country that embodies traditional knowledge of spirits, places, land uses and traditional ecological knowledge.

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<sup>1</sup> Reasons for Decision under Environment Effects Act 1978, EES referral number 2016-06



It is the view of the Gunaikurnai that consideration of the Kalbar proposal cannot be site specific but must be viewed in the context of it being a part of the surrounding Traditional Owner cultural landscape:

*“It is like chucking a rock into the water, and watching the effects ripple out – it is all connected.” – Gunaikurnai Elder, 2020.*

*“It’s part of our traditional lands, everything is connected. Our sacred places that make us who we are the Gunaikurnai people. We have an obligation to preserve the spiritual and social connections to our country for our future generations.” - Gunaikurnai Elder, 2020.*

Ministerial guidelines on assessing environmental effects note that an ESS could take into consideration how a proposal may impact not only the specific site, but also the landscape in which it sits<sup>2</sup>.

The proposed Kalbar Operations mine is on the Country of the Brabralung clan, one of the five clan groups of the Gunaikurnai.

The site is adjacent to Wangangarra (Gunaikurnai name for the Mitchell River upstream from Bairnsdale), the lifeblood of the Brabralung. It is overlooked by the Mitchell River National Park, a park jointly managed by GLaWAC and Parks Victoria. Note that Kalbar Operations in its EES has conceded the mine and the lights from the 24/7 operation will be visible from the Mitchell River National Park.

The site is on a major travel route used by the Gunaikurnai for many thousands of years.

*“Mitchell River was a major stop-off point for our old people.” - Gunaikurnai Whole of Country Plan, 2015*

Members of the Gunaikurnai community have deep ancestral, spiritual and broader cultural connections with the cultural landscape. A recent joint study at a one rock shelter 115 metres to the west of Wangangarra and about five to 10 kms from the Kalbar activity area showed occupation from before the last Ice Age to very recently.<sup>3</sup>

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<sup>2</sup> Ministerial guidelines for assessment of environmental effects under the Environment Effects Act 1978.

<sup>3</sup> **Community research in a public place: Wangangarra 1 rockshelter, Mitchell River National Park, East Gippsland, April 2020.** GLaWAC, the Monash Indigenous Studies Centre (Monash University), and the Australian Research Council Centre of Excellence for Australian Biodiversity and Heritage. Georgia L. Roberts, Russell Mullett, Bruno David, Joanna Fresløvd, Gunaikurnai Land and Waters Aboriginal Corporation, Jerome Mialanes, Fiona Petchey, Matthew McDowell, Vanessa N. L. Wong, Kat Szabo, Daniel Stoessel, Kyne Krusic-Golub, Lynette Russell.

The cultural landscape is also host to a part of the 30,000-year-old Bataluk Trail:



**Caption: The 30,000-year-old Bataluk Cultural Trail passes through the Fingerboards area.**

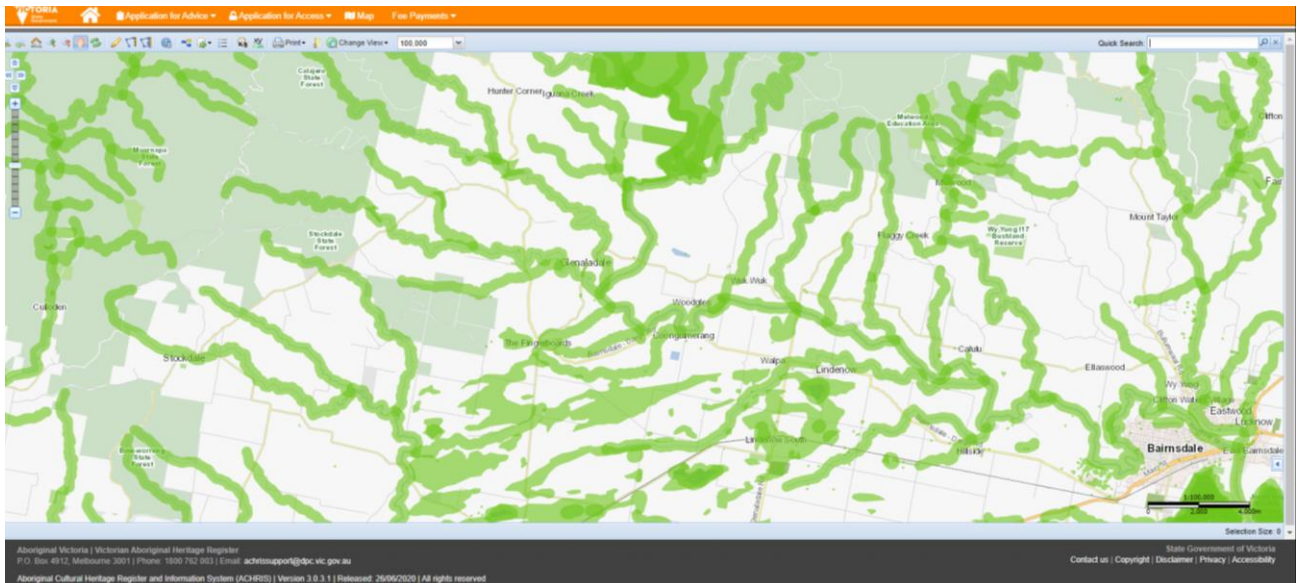
The connectivity of the cultural landscape includes Wangangarra and its tributaries, including the seasonal streams, and the freshwater ponds that are dotted in the area fed from groundwater<sup>4</sup>. The connectivity of the landscape extends further, both to the Gippsland Lakes through the Mitchell River connection, the Latrobe Valley through the groundwater aquifer, and from the Perry River and beyond.

GLaWAC is concerned about the impact of the proposed mine on the surface water and groundwater in the area; we concede we lack the technical knowledge to determine the level of risk, but through this submission wish to highlight the importance of Wangangarra, the seasonal streams in the area and the values they support, including freshwater cray, and the Perry River and the Chain of Ponds that are part of the Perry system. For the Gunaikurnai, the Perry River and the Chain of Ponds would have been a reliable source of freshwater, even in times of drought. Recently GLaWAC has partnered with the West Gippsland Catchment Management Authority to gain access to the Chain of Ponds (privately held) and better understand the significance of the area both now and in the past. Our understanding from our partnership with the CMA is there are 27 mapped ponds in the proposed mine area, and we are concerned regarding the potential impact of mining to these culturally significant ponds.

GLaWAC will defer to other experts who may comment on matters such as soil , geomorphology and sub surface water technicalities.

<sup>4</sup> It is believed ponds exist on the Kalbar site.

The proposed mine site sits within an area of Aboriginal Cultural Heritage Sensitivity, as recorded by the Aboriginal Cultural Heritage Register:



GLaWAC states through this submission that in failing to address the impact of the proposed mine on the cultural landscape, Kalbar has not adequately considered the extent of the risk to the Gunaikurnai tangible or intangible heritage.

*“It goes further than a CHMP (Cultural Heritage Management Plan) in terms of people’s strong connection to place – it’s our cultural obligation, our cultural rights and inherent rights to look after Country and have our voice heard.” – Gunaikurnai Elder, 2020.*

## The cultural assessment processes

GLaWAC notes the Aboriginal Heritage Regulations 2007 provides a framework for the level of assessment of cultural heritage, and that the proposed site has been subject to a complex assessment standard (we acknowledge the cultural assessment contained within the EES is a separate document to a Cultural Heritage Management Plan). We note to the triggers for a complex assessment:

## COMPLEX

If it is necessary to identify the extent, nature and significance of the Aboriginal cultural heritage in an area, and this cannot be accomplished without subsurface excavation, a 'complex assessment' is required.

A complex assessment involves disturbance or excavation of all or part of the activity area. Controlled manual excavation using trowels, spades, sieves and brushes should be undertaken before other methods are used.

A complex assessment may include a collection of oral history.

**Caption: Aboriginal cultural heritage and the environment effects process: complex assessment Victorian Government 2007.**

We present that the cultural assessment was not robust enough in terms of its methodology, failure to capture oral history, lack of inclusion of intangible heritage and values, and failure to consider the cultural landscape, as stated above.

*"The surveys they (Kalbar) have done, it's only a very tiny amount. The mine site itself is huge – it would take years to survey it properly and it's not just what's on top, it's what's underneath, too." – Gunaikurnai Traditional Owner, 2020.*

During 2016 when the EES commenced GLAWAC went into voluntary special administration and as a result temporarily relinquished its Registered Aboriginal Party (RAP) status. We believe during this time the Approvals process for any Cultural Heritage Management Plan (CHMP) analysis was transferred to Aboriginal Victoria as is the case for any areas not covered by a RAP. We acknowledge this presented challenge for Kalbar, and this led to assessments taking place without an agreed archeological methodology.

In addition to a more fulsome investigation of the site, in talking with elders and Gunaikurnai Community members, GLAWAC understands there are significant cultural values still to be investigated.

*"It's in a trade area – there are boundary trees right there, metres from the site. That Fingerboards is a very significant place that has been used by Gunaikurnai People for thousands of years." – Gunaikurnai Traditional Owner, 2020.*

*"It's part of our story, and our spirituality." – Gunaikurnai Traditional Owner, 2020.*

Amendments to the Aboriginal Heritage Act give rise to the significance and subsequent means for registration and protection of Intangible Aboriginal Cultural Heritage, and we look to Kalbar to acknowledge and address that requirement.

Similarly, where the flora and fauna on site have cultural values and uses, we look to have that acknowledged. We believe this aligns with the Ministerial guidelines on Environment Effects Statement:

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*As the descendants of Victoria's original inhabitants, Indigenous people have social, spiritual, economic and cultural interests, in part related to the land and water, which may need to be addressed within the EES process<sup>5</sup>.*

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GLaWAC regained its status in May 2017 and is a stable Traditional Owner organization with a strong RAP team on board. While our RAP team have now been in conversations with Aboriginal Victoria and the proponent we are concerned that our Authority regarding any approvals has still been removed from us, based on the original Notice of Intention lodgment date only and not our current capability to perform this review and oversight function.

Given GLaWAC was in voluntary special administration when notified about the project, we seek Aboriginal Victoria to redress the omission of a complex cultural assessment, and to give GLaWAC the authority as the approving group.

## Consultation

In addition to the above, this submission seeks to give voice to the concerns over the proposed mine of members of Gunaikurnai Community. While GLaWAC has no right of veto, we want to air the thoughts and feelings raised to us in relation to the proposed mine:

*"It saddens me. It makes me feel sad and upset that it's part of our culture and our teaching. If you take that away, we can't teach the young people." – Gunaikurnai Traditional Owner, 2020.*

Initial consultation held by Kalbar was hampered by GLaWAC being in voluntary administration, which as mentioned previously saw Aboriginal Victoria taking the lead. We feel the summary of stakeholder consultation as included in the Cultural Heritage Assessment (Table 12) fails to acknowledge these challenges both in its reporting, and also in timing the delivery of the assessment to better align with Traditional Owner rights.

We note that despite the. Aboriginal cultural heritage and the environment effects process environment effects advisory note August 2007 that "*A complex assessment may include a collection of oral history*" may be required, no oral history was collected.

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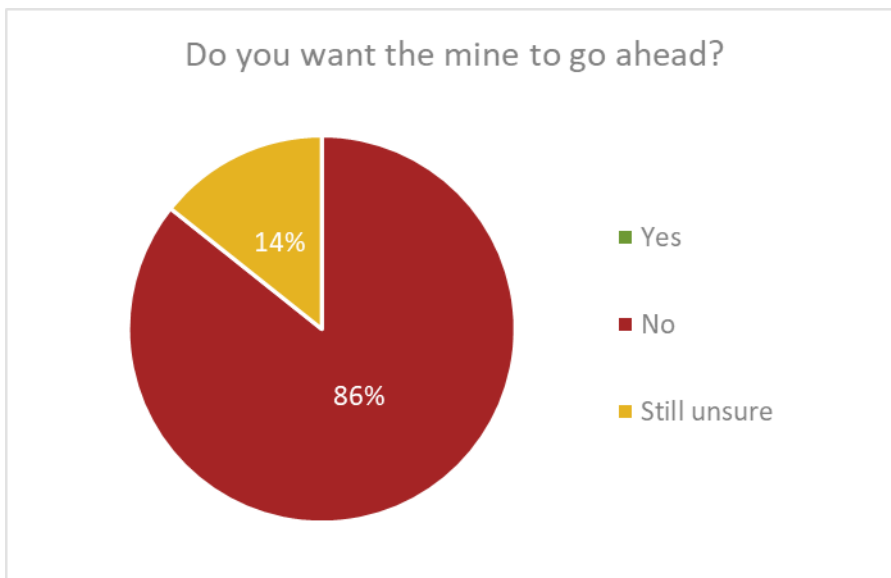
<sup>5</sup> Ministerial Guidelines for assessment of environmental effects under the Environment Effects Act 1978, Seventh edition, 2006.



We respectfully point out that Kalbar Operations, through its actions and feedback regarding GLaWAC in the EES demonstrates a lack of cultural awareness and understanding of cultural lore. We respect they believe in their project and have a right to progress but feel the process in the lead up to the release of the EES could be improved.

Within the engagement and preparation of the Cultural Heritage Impact Assessment GLaWAC did prove an interim position statement on the mine proposal and answered questions raised by community in a range of forums. We also voiced concerns to the proponent when we heard that they had commenced revegetation and vegetation propagation plans with an Aboriginal organisation outside of the Gunaikurnai settlement area.

GLaWAC has also re-tested the views of the Gunaikurnai Community through a series of on-line consultations, with the following results:



Results from a webinar and online survey for Gunaikurnai members, October 2020.



## Whole Country Principles that GLaWAC upholds and uses for its decision-making:

### Look at what was there before

*When we are healing and restoring degraded landscapes, we should try to put back the plants and animals that used to be there.*

### Sustainable use

*Our approach to managing Country is to balance resource use with conservation – they are all part of the same.*

### Take only what you need – leave some for others.

*Seek collective benefits*

*We use our resources for the benefit of our mob rather than seek individual gain.*

### We have the right to be on our Country

*Traditional Owners should not be restricted in accessing our traditional Country. At the same time, we should have the right to restrict access to others who disrespect and damage our sensitive areas.*

### Our traditional knowledge is valuable

*Our traditional practices and approaches sustained the land for thousands of years. Our Country should be managed in harmony with our traditional ways.*

*We need to take the time to understand what natural and cultural heritage exists out on Country.*

*It can't be managed properly if we don't know what is there.*

### We have cultural obligations

*It is our inherent responsibility to look after Country – to heal the damage of the past and protect it for future generations.*

### Everything is connected

*All our Country is linked. There is no separation between our landscapes, waterways, coasts and oceans, and natural and cultural resources. All are linked and bound to our people, law and custom.*

## Conclusion

GLaWAC respects the right of the proponent to investigate and progress their proposal.

GLaWAC determines however that the proposed Kalbar project is at a scale and impact that cannot co-exist with the cultural heritage values of the site, its waterways, and the landscape it sits within.

We acknowledge a complex assessment was undertaken but was not to a standard to determine the nature and extent of Aboriginal cultural heritage within the activity area – we are trying to address this with further fieldwork.

In April 2019, GLaWAC published an interim position statement on the Kalbar mine proposal:

As a result of the opinions and voices of the Gunaikurnai Traditional Owners, and having reviewed the Kalbar EES, GLaWAC stands by its April 2019 statement, and seek to advise the Minister accordingly:

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*GLaWAC is opposed to any development that conflicts with the principles of our Whole of Country Plan and Elders' advice.*

*Gunaikurnai Country has long been altered and modified to suit the colonisation process and while we acknowledge the world has moved on, we believe it is time for us to assert more vigorously the rights of the Traditional Owners and their families and friends.*

*The rights and views of the Traditional Owners of Gunaikurnai country must be respected and understood. Aboriginal people are part of their country and they have a deep spiritual connection and responsibility to care for country.*

*The proposed mining operation will disturb and hurt the cultural connection of the Traditional Owners to the land, air and water that is part of the development area.*

*Any government decision regarding the site must not disrespect or undermine this connection.*

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Until further investigations are carried out by GLaWAC on site, the extent of risk to cultural heritage and how it could be best managed is unclear. However, the concern held by the Gunaikurnai is very real indeed.

*"If Kalbar desecrate sacred sites, how are they going to answer to our Old People?"  
– Gunaikurnai Elder, 2020.*