

23 March 2018

To the Gunaikurnai native title holders

Consultation and Consent: Exploration, Retention and Prospecting Licence Applications on Gunaikurnai country

This letter concerns applications to the State, by various companies, for licences to explore or prospect on Gunaikurnai country. These companies are negotiating with the Gunaikurnai Land and Waters Aboriginal Corporation (**GLaWAC**) to seek its consent, on behalf of native title holders, to the grant of these licences by the State. It is important to note that if GLaWAC does not provide consent, the companies can seek for the licence to be granted without GLaWAC's consent and are usually successful.

As a PBC, GLaWAC is empowered to negotiate agreements for these licences on behalf of native title holders. However, in accordance with the *Native Title (Prescribed Body Corporate) Regulations 1999* (PBC Regulations), GLaWAC must undertake a process of consultation and consent with native title holders as a part of that agreement making process.

This letter commences the process for consultation and consent for agreements relating to all of the licence applications listed below. The letter also sets out:

- The licences applications currently on Gunaikurnai country;
- The standard terms set by the GLaWAC Board for agreements with companies for GLaWAC's consent to the State's grant of exploration, retention and prospecting licences;
- The legal requirements for negotiating these agreements;
- The process for consulting with native title holders and deciding whether consent has been achieved, as agreed at a Gunaikurnai native title meeting on 30 November 2012, and incorporated into the GLaWAC Rule Book.

It is important to note that, if granted, none of these licences will extinguish native title. Maps showing the locations of the applications are attached.

The licences

An exploration licence allows the company to look for mineral resources within the area of the licence. This will permit some ground disturbance such as drilling but it does not allow the company to mine the mineral for commercial purposes. At the exploration stage, the company is spending money and not making any money. The exploration licence applications currently under active negotiation are:

1. Exploration licence application 4975 – Tim Tatterson
2. Exploration licence application 5042 – Orion Gold NL
3. Exploration licence applications 5274, 5275, 5322 - ECI International Pty Ltd
4. Exploration licence application 5422 - Ian Alexander Rathjen
5. Exploration licence application 5427 - Cassilis Mining Pty Ltd
6. Exploration licence application 5541 - Castalian Exploration Pty Ltd
7. Exploration licence application 5539 - Kalbar Resources Ltd
8. Exploration licence application 5545 - Gippsland Iron Pty Ltd
9. Exploration licence application 6069 - Orion Gold NL
10. Exploration licence application 6021, 6027, 6048 - Kalbar Resources Ltd

A retention licence is essentially an exploration licence. It allows activities such as intensive exploration, research and other development activities required to demonstrate the economic viability of mining. Again, at this stage the company is spending not making money. There is one current retention licence application under active negotiation:

11. Retention licence application 6049 - Kalbar Resources Ltd

A prospecting licence is for small scale miners. This licence is limited to 5 years, cannot be renewed and the land that is covered by the licence cannot exceed five hectares. There are two current prospecting licence applications under active negotiation:

12. Prospecting licence application 1017 - Pacific Minerals (Vic) Pty Ltd
13. Prospecting licence application 6400 – Kenneth Gillin

GLaWAC standard terms for licence agreements

The standard terms for exploration and retention licence agreements set by the GLaWAC Board are set out below. It is important to note that these are consistent with terms set by other native title groups across the State and the country.

- An annual access fee of \$2500.
- For drilling < 300 mm diameter hole at the surface the following:
 - \$2 per drill hole for depths < 5m;
 - \$5 per drill hole for depths > 5m & < 20m;
 - \$10 per drill hole for depths > 20m & < 100m;
 - \$50 per drill hole for depths > 100m & < 200m;
 - \$100 per drill hole for depths > 200m.
- For large core bulk sample drilling, \$10 per cubic metre.
- For excavating, incl. costeaning, trenching, channelling, access tracks, and clearing of vegetation: \$1,000 per hectare.

The standard terms for prospecting licences are an upfront fee of \$5,000 payable at grant of licence; or \$1000 for each year of a prospecting licence, paid annually (licences are for a maximum of 5 years).

These are the terms for all of the above licence applications except, in the case of exploration, where negotiations started prior to the commencement of the new Board. In the case where there has been a lag time in negotiations, the Board remains open, as a matter of good faith, to finalising agreements on the basis of previous GLaWAC annual access fees.

Cultural heritage for these licences is managed in part under the *Aboriginal Heritage Act 2006*. However, the GLaWAC agreements contain additional and more stringent requirements for cultural heritage awareness, monitoring and protection.

Legal Requirements

Under the *Native Title Act 1993*, when a company makes an application to the State for any of the above licences they must negotiate with the GLaWAC on the behalf of the Gunaikurnai to obtain the consent of the Gunaikurnai to the grant of the licence. The *Native Title Act 1993* provides 6 months in which negotiations are to take place. At the end of the 6 months, the company can apply to the National Native Title Tribunal for the licence to be granted without consent of the Gunaikurnai native title holders. It is important to note that native title holders have no right of veto.

As a PBC, GLaWAC is empowered to negotiate an agreement for these licences on behalf of native title holders but, in accordance with the *Native Title Act (Prescribed Body Corporate) Regulations 1999* (PBC Regulations) must undertake a process of consultation and consent with native title holders. Obtaining consent does not mean the consent of every individual native title holder but the consent of the broader group.

The Gunaikurnai process for consultation and consent was agreed at a native title meeting on 30 November 2012, and was then incorporated into the GLaWAC Rule Book. That process is as follows:

That once the terms of the agreement have been settled by the Board, the terms of the agreement and supporting information is mailed out to the GLaWAC members inviting comment within 4 weeks of the mail out date. The cover letter to the members will state that:

- i. where no comments are received by the closing date then the requirements of consultation and consent will be deemed to have been met;
- ii. where there are comments but none in opposition, then the requirements of consultation and consent will be deemed to have been met;
- iii. where there are comments which oppose the agreement, that those comments are brought back to the Board who will make a decision as to whether the requirements of consultation and consent have been met based upon the number and substance of the comments received.

Your say

As stated above, this letter seeks to commence the consultation process as to whether native title holders consent to the agreements for the above licence applications on the terms set out in this letter.

All comments or questions you may have in relation to this letter, including the licence applications and the standard terms, should be directed to Ju-Lin O'Connor at First Nations Legal & Research Services on the phone number or email provided below.

Yours sincerely



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