

DECISION OF THE VICTORIAN ABORIGINAL HERITAGE COUNCIL IN RELATION TO AN APPLICATION BY KUUYANG MAAR ABORIGINAL CORPORATION.

DATE OF DECISION: 1 NOVEMBER 2012

Decision

On 1 November 2012 the Victorian Aboriginal Heritage Council (Council) decided that Kuuyang Maar Aboriginal Corporation (KMAC) should not be appointed as a Registered Aboriginal Party (RAP).

Application Area

The RAP application related to a large area in south-west Victoria, generally south of the Hamilton Highway, east of Painkalac Creek and west of the Marri River, including Warrnambool, Framlingham Mission Station; Camperdown; Apollo Bay; Lorne; Winchelsea; Colac; Cressy; Derrinamllum (Application Area).

Reasons for Decision

Native title considerations

There has been no determination of native title in the Application Area and there are no current native title claims for the application area.

On 27 July 2011 a consent determination was made by the Federal Court of Australia of the Guditjmara native title claim (Native Title Determination). This Native Title Determination recognised the native title rights of the Guditjmara people and the Eastern Maar people for an area of land immediately to the west of the KMAC RAP application area.

In the reasons for its decision, the Federal Court stated that:

The connection material provided to the State established that the Eastern Maar people exercise their rights at and have particular connections with a number of locations in the Part B area, as well as lands to the east of it.¹

The prescribed body corporate for the Eastern Maar people is the Eastern Maar Aboriginal Corporation (EMAC). EMAC has asserted to Council its interests over the entire area of the Kuuyang Maar RAP application.

Traditional and familial links

One of the objectives of the *Aboriginal Heritage Act 2006* (AH Act) is to accord appropriate status to Aboriginal people with traditional and familial links with Aboriginal cultural heritage in protecting that heritage. Consistent with this objective, Council accords priority to groups with traditional and familial links and has adopted a principle of ensuring groups recognised under the cultural heritage laws as best as possible reflect those under native title arrangements.

¹ *Lovett v State of Victoria (No 5)* [2011] FCA 932 at para 16.

In order to ensure the effective operation of the AH Act, Council prefers to appoint RAPs which are single, inclusive groups and representative of Traditional Owners in the relevant application area.

KMAC has stated that it represents the Kirrae/Girae Wurrung, Djagurd Wurrung, Gadubanud and Gulidjan Traditional Owners in south-western Victoria.

In a letter dated 19 March 2012, EMAC advised that it claimed an interest over the entire KMAC RAP application area.

While Council did not dispute that KMAC represented some individuals with traditional and familial links to the application area, Council had regard to the competing claim made by EMAC that it represents Aboriginal people with traditional and familial links in the RAP application area.

Council notes that the competing claim by EMAC can be supported by the fact that it holds native title for land immediately to the west of the RAP application area and that the recognition of native title for that area was done on the basis that the Eastern Maar people claimed similar rights over land to the east.

Other relevant matters

KMAC was asked on several occasions to provide a copy of a RAP operational plan. KMAC declined to provide such a plan.

Charter of Human Rights and Responsibilities

The 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 s 19(2)(d) of the Charter. The Council formed the view that a decision to decline to register KMAC is compatible with the Charter.

Conclusion

Council acknowledges there is no native title determination in relation to the RAP application area, and EMAC has not made a RAP application for this area. However, the fact that EMAC are native title holders of land to the west of the RAP application area, combined with the fact that that Native Title Determination was made on the basis that the Eastern Maar people (as represented by EMAC) claimed native title interests to the east of the native title area meant that appointing KMAC as a RAP for the RAP application area would have been inconsistent with the native title arrangements created by the Native Title Determination.

Taking all of these matters into account, and relying on its own cultural knowledge, the Council decided KMAC was not an appropriate organisation to appoint as a RAP for the area included in its RAP application.



Mick Harding
Acting Chairperson
Victorian Aboriginal Heritage Council