

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

DATE OF DECISION: 17 JULY 2015

Decision

The Victorian Aboriginal Heritage Council (**Council**) decided that Kuuyang Maar Aboriginal Corporation (**Kuuyang Maar**) 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. Eastern Maar Aboriginal Corporation (**EMAC**) is currently a native title party for part of this area.

On 27 July 2011, a consent determination was made by the Federal Court of Australia for the Gunditjmara native title claim (**Native Title Determination**). This Native Title Determination recognised the native title rights of the Gunditjmara people and the Eastern Maar people for an area of land west of Kuuyang Maar's 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 EMAC, which has asserted to Council its interests over the entire area of the Kuuyang Maar's Application Area through its current RAP application over this area.

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 that are single, inclusive groups and representative of Traditional Owners in the relevant application area.

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

Council did not dispute that Kuuyang Maar represents some individuals with traditional and familial links to the Application Area, but had regard to the competing claim made by EMAC that it represents Aboriginal people with traditional and familial links in the Application Area. There is significant overlap between the clan groups and apical ancestors identified represented by the two groups.

Council notes that the competing claim by EMAC may be supported by the fact that it holds native title for land west of the 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. EMAC's native title application area extends over most of Kuuyang Maar's Application Area.

Council acknowledges Kuuyang Maar's efforts towards restarting a dialogue with Eastern Maar. Council members understand that these issues are complex. Council also sees it as important for Traditional Owners to have these discussions, especially where there are overlapping claims or interests. This is Council's vision for all Traditional Owners.

Other relevant matters

Council noted Kuuyang Maar's efforts in putting together Operational Plan materials for the purpose of this application, addressing Council's concerns about Kuuyang Maar's previous RAP application and reasons for decline.

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 KMAC is compatible with the Charter.

Conclusion

Council acknowledges there is no native title determination in relation to the Application Area. However, that EMAC are native title holders of land west of the Application Area, combined with their joint consent Native Title Determination over the 'Part B' area being made on the basis that Eastern Maar people (represented by EMAC) claim native title interests to the east of this area, meant appointing KMAC as a RAP for the Application Area would have been inconsistent with native title arrangements.

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



Rodney Carter

Victorian Aboriginal Heritage Council