

**DECISION OF THE VICTORIAN ABORIGINAL HERITAGE COUNCIL IN RELATION TO AN APPLICATION BY BIDWELL-MAAP NATION ABORIGINAL CORPORATION.**

**DATE OF DECISION: 21 March 2013**

**Decision**

On 21 March 2013 the Victorian Aboriginal Heritage Council (**Council**) decided not to register Bidwell-Maap Nation Aboriginal Corporation (**Bidwell**) as a Registered Aboriginal Party (**RAP**).

**Decision Area**

The Bidwell RAP application covers the Far East Gippsland area east of the Snowy River. The RAP application boundaries are the Snowy River in the west of the area, the New South Wales/Victoria state border in the north and east and Victorian coastal waters in the east and south (**Decision Area**).

**Reasons for Decision**

**Traditional and familial links**

One of the objectives of the *Aboriginal Heritage Act 2006 (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 that are representative of Traditional Owners in the relevant application area and that are supported by the Traditional Owners of the Country affected by the application.

Membership of Bidwell is open to all Aboriginal and Torres Strait Islander people over the age of 15. There is no requirement in the Bidwell rules that prospective members identify a connection to the Bidwell-Maap nation or to any particular Traditional Owner group. Council is therefore unable to conclude that Bidwell is sufficiently representative of Traditional Owners of the Country affected by the application.

**Cultural heritage management expertise**

Bidwell claimed to have experience in the cultural heritage management field. However, Bidwell did not provide further details or evidence of this experience.

**Other relevant matters**

**Operational Capacity**

Council has adopted as a principle that where appropriate it will move quickly to register the core country of applicants representing Traditional Owners who have sufficient capacity to become a RAP. Council requested an operational plan and the details of any steps taken to manage the responsibilities of becoming a RAP. Bidwell did not provide any further information.

## **Overlapping RAP applications and Traditional Owner interests**

On the information available to Council, it was not clear that Bidwell-Maap meets the Council's principle to give priority to applications made by groups who represent Traditional Owners and that are supported by Traditional Owners of the Country affected. While Council did not dispute that Bidwell represented some individuals with traditional and familial links to the Decision Area, Council had regard to the competing claims made by Nindi Ngujarn Ngarigo Monero Aboriginal Corporation (NNNM) and Gunaikurnai Land and Waters Aboriginal Corporation (GLaWAC) that they represent Aboriginal people with traditional and familial links in the Decision Area. The large majority of the Decision Area is covered in parts by the RAP applications of NNNM and GLaWAC, respectively, and Council notes that the ethno-historical record of Traditional Ownership in Far East Gippsland is particularly complex. Council was therefore unable to determine the extent of Bidwell core country in the Decision Area.

## **Mediation and regional meetings**

Council has adopted the principle of encouraging RAP applicants to speak with neighbouring groups to resolve boundary and overlap issues and where possible to create co-operative arrangements with other groups. Council encouraged Bidwell to do this and supported a regional facilitation process to discuss overlapping RAP applications and interests. Despite requests Council was not provided with the details of any agreements or of the outcomes of meetings.

## **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 Bidwell is compatible with the Charter.

## **Summary**

Having regard to the information presented above as well as other relevant factors, Council reached the following conclusions:

- Evidence before Council did not rule out that Bidwell represented some people with traditional, familial, historical and contemporary links to the Decision Area, however, Bidwell is not an appropriate organisation to be appointed as a RAP
- Council was unable to confirm that Bidwell had sufficient capacity to become a RAP
- Council was unable to conclude that there had been any outcomes of negotiations with neighbouring Traditional Owner groups over competing claims in the Decision Area
- The lack of evidence available to Council and the overlapping RAP applications in the Decision Area meant that Council was unable to identify the extent of Bidwell core country

## **Conclusion**

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

Denise Lovett

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