

DECISION OF THE VICTORIAN ABORIGINAL HERITAGE COUNCIL IN RELATION TO AN APPLICATION BY THE CANN RIVER ABORIGINAL SOUTH MONERO TRADITIONAL OWNERS WOMEN AND FAMILIES CULTURE AND HERITAGE CORPORATION INC.

DATE OF DECISION: 14 SEPTEMBER 2012

Decision

On 14 September 2012 the Victorian Aboriginal Heritage Council (**Council**) made a decision on the Cann River Aboriginal South Monero Traditional Owners Women and Families Culture and Heritage Corporation Inc. (**CRSM**) Registered Aboriginal Party (**RAP**) application.

This document provides the reasons for the decision by Council not to register CRSM as a RAP under Part 10 of the *Aboriginal Heritage Act 2006* (the **Act**).

Application Area

The area covered by the CRSM RAP application in far-east Gippsland begins in the south west at Pearl Point and extends northward to Bemm River and along Bemm River, Black Watch Track and Errinundra River to Brodribb River South Branch before extending north-eastward to just east of the Errinundra National Park. The northern boundary runs from the Errinundra National Park, parallel with Victorian/NSW border, to the Victorian coastline at a distance of between 6 and 15 kilometres from the border. The southern boundary is Victorian coastline from just east of Gabo Island to Pearl Point.

Reasons for Decision

Traditional and familial links

In accordance with the Act, Council accords priority to groups with traditional and familial links to a particular application area to give appropriate status and rights to Traditional Owner groups in cultural heritage management and protection. To best achieve the goals of the Act, Council prefers to appoint RAPs which are single, inclusive groups and representative of Traditional Owners in the respective application area.

CRSM stated it represents one of nineteen groups/clans of the Cann River/Cann Valley area. Council considered CRSM's claims of ancestry and identity supported by a family tree and various marriage, birth and death certificates. Council also considered other evidence provided by CRSM including accounts of oral history passed on from ancestors and historical documents.

While Council did not dispute that CRSM represented some individuals with traditional and familial links to the application area, Council noted that CRSM has adopted Model Rules which do not specify the criteria for membership of CRSM or how membership is determined. Council was provided with a list of ten members by CRSM however CRSM's Application for Association Incorporation states the organisation has five members and does not name them.

Council wrote to CRSM in May 2012 seeking more information about traditional links of its members and the criteria for membership. While CRSM responded to this letter, Council did not take the view that the information provided overcame the concerns it held on these matters. Council was therefore unable to establish who can and cannot be a member of CRSM, and whether membership is limited or not to the descendants of the identified

ancestors or clan which CRSM claims to represent. Based on the information available to it, Council also did not consider that CRSM was an organisation representative of all Traditional Owners with connection to the application area.

Historical and contemporary in Aboriginal cultural heritage and demonstrated experience in managing and protecting Aboriginal cultural heritage

CRSM asserted historical and contemporary interests, providing information to support these links including mentions in historical documents and descriptions of current activities of CRSM members. CRSM also provided evidence to support its claims that members have extensive experience in managing and protecting Aboriginal cultural heritage.

Council did not take the view that CRSM should be appointed as a RAP on the basis of its historical and contemporary interests in Aboriginal cultural heritage.

Other relevant matters

When considering a RAP application the Council seeks the views of Traditional Owners from the same region as the applicant or from neighbouring areas to best inform its decision. The Council placed advertisements in local and national newspapers in February 2012 for comment on the CRSM RAP application. Comments were received from one Traditional Owner corporation which included concerns about CRSM's ability to inclusively represent the Traditional Owners of the area included in the CRSM RAP application.

These comments were provided to CRSM with an opportunity to respond but no response was received by Council from CRSM.

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 CRSM is compatible with the Charter.

Summary

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

- Evidence before Council did not rule out that CRSM represented some people with traditional, familial, historical and contemporary links to the area covered by the CRSM RAP application.
- Lack of information regarding CRSM membership and membership rules resulted in Council being unable to confirm whether any or all of the CRSM members represent the clan group which CRSM claims to represent.

Conclusion

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

Denise Lovett

Chairperson
Denise Lovett
Victorian Aboriginal Heritage Council