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**DECISION OF THE ABORIGINAL HERITAGE COUNCIL IN RELATION TO AN  
APPLICATION BY MAAR LAND COUNCIL ABORIGINAL CORPORATION TO BE A  
REGISTERED ABORIGINAL PARTY**

**DATE OF DECISION: 21 NOVEMBER 2007**

**Decision**

The Aboriginal Heritage Council has decided not to register the Maar Land Council Aboriginal Corporation (Maar) as a registered Aboriginal party (RAP) under the *Aboriginal Heritage Act* (the Act).

**Background**

A map showing the Application Area is attached (Attachment 1).

Council had regard to all relevant matters, a list of these matters is attached (Attachment 2). Details of the legal context for Council's decision are also attached (Attachment 3).

**Reasons for decision**

Maar was established as a representative organisation for Aboriginal peoples living and working in south-west Victoria. It does not represent any one distinct group of Traditional Owners.

Whilst the Council might be prepared to register a RAP which operates as a regional representative body, Council would want to be satisfied that the Traditional Owner groups within the Country of that organisation supported such an arrangement.

This reflects Council's strong belief that the right to manage and protect cultural heritage should primarily be exercised by the Traditional Owners belonging to that Country.

Council did not consider that Maar had established this support from Traditional Owner groups, although recognises that some members of Maar have traditional links to the area.

Council had regard to the fact that objections were made by the Kirrae Wurrung Native Title Group, Martang Pty Ltd, Gunditj Mirring Traditional Owner Aboriginal Corporation and Barengi Gadjin Land Council Aboriginal Corporation which represent Traditional Owner groups claiming overlapping interests in the Country over which Maar sought to be registered.

The Council did not accept that Maar had demonstrated its own organisational expertise in cultural heritage management and protection. In this regard, Council noted that Maar relied on the experience of Framlingham as the basis of its own expertise. Council took the view that Framlingham was quite a distinct organisation to Maar.

Taking into account all of the information set out above, as well as relying on its own cultural knowledge, Council has decided Maar would not be a suitable organisation to carry out the functions of a RAP for the Application Area.

## **Attachment 2.      *Relevant Matters***

### **1.      *Introduction***

Under s 150 of the Act, a RAP application must be in the approved form, contain certain information and the applicant must be a body corporate. The RAP Application met these requirements. Maar was incorporated under the *Aboriginal Councils and Associations Act 1976* (Cth) on 2 November 1994.

### **2.      *Maar not a Native Title Holder***

The RAP Application states that Maar is not a registered native title holder for the Application Area.

### **3.      *Maar not a Native Title Party***

The Rap Application states that Maar is not a native title party for any of the Application Area.

### **4.      *Native Title Agreements***

The Council has not been provided with details of any signed native title agreement involving Maar or any other native title party in relation to the Application Area.

### **5.      *Traditional and Family Links***

The Council noted that Maar did not represent any one distinct group of Traditional Owners.

Maar's application states that family groups represented in its membership have traditional and family links with the Application Area. Seven family groups are listed in the RAP application each belonging to either Kirrae Whurrong, Peek Whurrong or Djab Whurrong Traditional Owner groups.

The RAP Application states that other Aboriginal groups recognise these links, although Council notes no material was provided in support of this.

Maar's application states that some of its members are also members of the Kirrae Whurrong Native Title Group, and that they have informal relationships with Traditional Owner groups represented by organisations such as Worn Gundidj Aboriginal Co-operative, Gunditjmara Aboriginal Co-operative in Warrnambool, Brambuk Cultural Centre in Halls Gap, Windamara Aboriginal Corporation in Heywood, Wauthorrong Aboriginal Corporation in Geelong and Ballarat Aboriginal Corporation.

The application states that it is the intent of Maar to ensure that all Aboriginal people with traditional or family links to the application area are properly recognised in the structure, have the opportunity to participate in the operation of the organisation and are included in the deliberations for any cultural heritage management processes and procedures.

## 6. *Historical and Contemporary Links/Expertise in Cultural Heritage Management*

Maar was established in 1985 and included members from Aboriginal families and communities across all south west Victoria from Ballarat to Warrnambool and from Hamilton to the South Australian border. It also states that Maar was established with the expressed intent to ensure that 'our common interests, rights and objectives had a collective voice', and that membership of Maar was always open to Aboriginal people associated with the south west.

Maar's application states it has strong historic and contemporary interests and linkages to the application area, including the Otway Ranges and the Camperdown and Colac areas.

Section 151(3)(d) of the Act requires the Council to take into account whether an applicant is a body representing Aboriginal people with a historical or contemporary interest **and** has demonstrated expertise in managing and protecting Aboriginal cultural heritage in that area.

Maar stated it has demonstrated expertise in the management and protection of Aboriginal cultural heritage and in this regard refers to numerous examples. However these examples appear to relate to work undertaken by Framlingham Aboriginal Trust rather than by Maar.

## 7. *Grants of Land*

Maar's application states that it holds Framlingham Forest in fee simple granted by the *Aboriginal Land (Lake Condah and Framlingham Forest) Act 1987 (Cth) (the 1987 Act)*. However a search conducted by the Council's Secretariat indicates that section 7 of the 1987 Act vested Framlingham Forest in the Kirrae Whurrong Aboriginal Corporation.

## 8. *Land and Resource Management Agreements*

Maar refers to Aboriginal Heritage Management Agreements that have been negotiated by Framlingham Aboriginal Trust.

## 9. *Other relevant considerations*

### Public Comments

Notice of the Maar RAP Application was published in the Koori Mail in August 2007.

Seven objections to the Maar RAP Application were received by the Council.

Maar was advised of comments received and given an opportunity to respond to them.

The substance of most of these comments was that Maar:

- Did not properly consult with Traditional Owners;
- Made its RAP Application without Traditional Owner knowledge or authority;
- Had been inactive since 1998; and
- was not constituted for management or governance by Traditional Owners.

Council was not prepared to rely on the minutes of the meetings held between 1995 and 1997 as showing support of Traditional Owners for the registration of Maar as a RAP.

Objections were received from Martang Pty Ltd on the basis that it represented Djab Wurrung members of Maar. Maar challenged this assertion, stating that Martang was not representative of the Djab Wurrung community and questioned the process for registering Martang as a RAP.

#### Overlapping application by Martang Pty Ltd

On 13 September 2007, the Council registered Martang Pty Ltd as a RAP over part of Maar's application area.

The Council gave both groups an opportunity to comment on the operation of section 153 of the Act that enables registration of more than one RAP over an area. Advice was received by both groups regarding dual registration. However, the Council decided it was unnecessary to consider this advice in detail given its approach to the considerations outlined above. Accordingly, the Council did not reach a view about the operations of s 153 of the Act.

### ***Attachment 3: Legal context of the decision made by the Council***

The Act, which came into operation on 28 May 2007, replaced Part IIA of the Commonwealth *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (the Old Cultural Heritage Laws) as providing the regulatory framework for protecting Aboriginal cultural heritage in Victoria.

The objectives of the Act are listed in s 3 of the Act and include:

- (a) to recognise, protect and conserve Aboriginal cultural heritage in Victoria in ways that are based on respect for Aboriginal knowledge and cultural and traditional practices;*
- (b) to recognise Aboriginal people as the primary guardians, keepers and knowledge holders of Aboriginal cultural heritage; and*
- (c) to accord appropriate status to Aboriginal people with traditional or familial links with Aboriginal cultural heritage in protecting that heritage.*

Part 9 of the Act creates the Council. The Council consists of 11 members appointed by the Minister. Each member is required to be an Aboriginal person with traditional or familial links to an area in Victoria; be resident in Victoria; and have relevant experience or knowledge of Aboriginal cultural heritage in Victoria. The Council is the only one of its kind in Australia.

Under s 132(2) of the Act, the Council is given the function of receiving and determining applications for registration of Aboriginal parties under Part 10 of the Act.

Part 10 of the Act provides for the creation of RAPs. RAPs play an important role under the Act for the protection of Aboriginal cultural heritage. The functions of RAPs are set out in s 148 of the Act and include:

- (a) to act as a primary source of advice and knowledge for the Minister, Secretary and Council on matters relating to Aboriginal places located in or Aboriginal objects originating from the area for which the party is registered.*

Part 10 of the Act also sets out the procedure for the creation of RAPs. Under s 150 of the Act, an application for registration as a RAP must be made to the Council. Section 151 of the Act sets out the considerations which the Council needs to take into account when deciding a RAP application.

Section 153 of the Act allows the Council to register more than one RAP for a particular area, but only if the Council is satisfied that this:

- (a) will not unduly hinder the ability of any of the RAPs for the area to exercise their powers and carry out their functions under this Act; and*
- (b) will not otherwise hinder the effective operation of the Act.*

Under s 151(1) of the Act, the Council is required to determine RAP applications within 120 days of receiving the application.