

STATEMENT OF REASONS FOR THE DECISION OF THE VICTORIAN ABORIGINAL HERITAGE COUNCIL IN RELATION TO AN APPLICATION BY JAITHMATHANG TRADITIONAL ANCESTRAL BLOODLINE ORIGINAL OWNERS FIRST NATION ABORIGINAL CORPORATION

DATE OF DECISION: 7 August 2024

1. Decision

Pursuant to section 151 of the *Aboriginal Heritage Act 2006* (Vic) (**the Act**), the Victorian Aboriginal Heritage Council (**Council**) has determined the application (the **Application**) made by Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation for registration as a registered Aboriginal party (**RAP**). The Council has determined that it will not register Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation as a RAP under section 151 of the Act.

2. Decision Area

The Application concerned the area described as the 'Application Area' in **Attachment 1 (Decision Area)**.

The Decision Area in respect of which Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation seeks to be registered as a RAP begins at the Tambo River at Bindi and stretches downstream along the Murray River. It then follows the Tambo River to the northern edge of the Wabba Wilderness Park to the northern edge of the Alpine National Park, and then stretches west along that Park (including Lake Dartmouth). The Area then follows the southern ridge of the Alpine National Park to the Australian Alps Walking Track, stretches to the Dargo River to return to a point on the Tambo River which marks the starting point at Bindi.

3. Findings and Determinations

In determining the Application, the Council considered the below factors and made findings of fact in relation to the Decision Area. Where the Council has made a determination, this is set out below.

- a) *Whether Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation is a Native Title Party or Traditional Owner Group Entity (ss 151(2), (2A), (3)(a) and (3)(b) of the Act)***

Findings of fact:

Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation is not a registered native title claimant, a registered native title holder nor a native title party for the area which is the Decision Area.

Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation has not entered into a recognition and settlement agreement under the *Traditional Owner Settlement Act 2010* (Vic).

Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation has not entered into any native title agreement or agreed terms with the Commonwealth or State.

Determination:

Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation is not a registered native title holder for the Decision Area within the meaning of s 151(2) of the Act, has not entered into a recognition and settlement agreement in relation to the Decision Area within the meaning of s 152(2A) of the Act, is not a native title party for the Decision Area for the purposes of s 151(3)(a) and has not entered into any native title agreement for the purposes of s 151(3)(b) of the Act.

As such, Council is not obliged to approve Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation's Application under ss 151(2) or 151(2A) of the Act and has not taken any factor into account pursuant to ss 151(3)(a) or (b) of the Act.

b) Whether Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation is a body representing Traditional Owners of the Decision Area (s 151(3)(c) of the Act)

i. Membership and representation

In its Application, Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation indicated that:

- it represents Traditional Owners of the Decision Area.
- it was established for the formal recognition of the rights of bloodline descendants of the Jaithmathang people.
- it has undertaken consultation with Jaithmathang descendants and that the member rights documented in the Jaithmathang Traditional Ancestral Bloodline Original

Owners First Nation Aboriginal Corporation Rule Book have been determined through community discussions and meetings;

- its Apical Ancestors are:
 - **Jilbino** (b. 1828/d. 1884) (a.k.a Jenny Mutton, Jenny Cooper, Jane Jinny Cooper) – married to Richard Cooper;
 - **Richard Cooper** (b. 1841/d.1921) (a.k.a Young Dick Cooper, Dick Richard Than, A Gwa Cooper);
 - **Roderick McLeod** (b. 1854/d. 1886) – married to Amy Cooper;
 - **Amy Cooper** (b. 1869/d.1896) – daughter of Jilbino and Richard Cooper;
 - **John Roderick McLeod** (b 1890/d.1949 (a.k.a John Jack McLeod) – son of Roderick McLeod and Amy Cooper;
 - **Mary Blanche Stephens** (b. 1895/d. 1983) (a.k.a Mary Blanche Stevenson, Mary Blanche Coomes, Mary Blanche McLeod) – married to John Roderick McLeod.
- it has undertaken widespread consultation with Jaithmathang descendants.
- the descendants of the above Apical Ancestors form eight family groups, of which four are represented by members of Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation.
- the remaining four family groups support the Application.
- it has attempted to make contact with all known descendants of Jaithmathang Ancestors.
- it has received letters of support from the families it has contacted.

Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation has also provided to the Council a spreadsheet which is expressed as including a membership database of 30 names.

Findings of fact:

Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation's Rule Book states that a member of Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation must be:

- At least 21 years old (rule 2.1);
- An Aboriginal or Torres Strait Islander person (rule 2.2).

Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation's Rule Book includes an application for membership form (Schedule 1 of the Rule Book). This form allows an applicant for membership to indicate that they are 'Aboriginal', 'Torres Strait Islander' or 'neither'.

The 'Membership Eligibility' clause of the Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation's Rule Book (clause 2.1) does not require members of Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation to be Jaithmathang descendants or list any Apical Ancestors.

As of June 2023, Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation's 2023 annual report states that Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation has six members.

Based on the material provided in the Application:

- Five of the six Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation members are descendants of John Roderick McLeod, the grandson of Jilbino.
- A Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation member, Senior Elder, Loreman and Songman Goengallayin Jumma Jumma Myermyal Minkele Bubba, was born in Kempsey, New South Wales. He is a Senior Loreman and Songman and is recognised as such internationally, nationally, and locally, but not within Jaithmathang Country. As stated in the Application, Senior Elder, Loreman and Songman Goengallayin Jumma Jumma Myermyal Minkele Bubba was touched on the shoulder by a recently deceased Elder to take up the role and responsibilities of his bloodline birthright as the Senior Elder in getting Jaithmathang formally recognised.
- A Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation member, Senior Elder and Loreman Goengallayin Goro Konermar Wotter, is a member of the Stolen Generations. He was born in Adelaide and grew up in New South Wales and has 'regained his contemporary links to Jaithmathang Country, heritage, and culture by reconnecting with extended family members'.

The Council is aware of a claim made by Dhudhuroa Waywurru Nations Aboriginal Corporation that Jilbino is a Dhudhuroa Apical Ancestor.

Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation members are from four of eight family groups descended from Jaithmathang Apical Ancestors. Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation did not provide copies of letters of support from the remaining four families to the Council as part of the Application or in response to a further request from the Council, notwithstanding Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation's statements in its Application that it had received support from the remaining four families for the Jaithmathang Traditional Ancestral Bloodline Original

Owners First Nation Aboriginal Corporation (which indicates that the four families had been in contact with Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation), and that Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation had obtained letters of support from all those families it was able to contact.

In this respect, Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation advised that it is gathering members and support but that this will take longer than originally anticipated as finding and engaging with these remote family groups is time and resource consuming. Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation indicated that it considers that its activities in this regard will significantly increase its membership but noted that this process may take some time.

In relation to the spreadsheet expressed to contain a membership database, the Council noted that this indicates growth in Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation's membership, but that it could not be certain of the accuracy of this document as it has not yet been officiated through formal governance processes. In particular, the spreadsheet is not consistent with the membership of Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation which formed part of the Application or the Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation 2023 General Report published by the Office of the Registrar of Indigenous Corporations.

ii. Traditional Owners

In its Application, Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation stated that:

- It has wide recognition as representing the Jaithmathang Spiritual Gatekeepers and Cultural Care Takers of Jaithmathang land.
- It has not encountered any disputes as to the boundaries of Jaithmathang land in its efforts to obtain formal recognition.
- It has strong relationships and recognition from a 'range of other First Nations mobs locally to Jaithmathang'.
- It recognises its combined responsibility for some areas of shared Country with Taungurung, Gunaikurnai, Kroatungolong and Bidwell First Nations.
- It has received support for the Application from other Traditional Owner groups:
 - Gunaikurnai;
 - Taungurung;
 - Kroatungolong;

- Bidwell First Nations.

Findings of fact:

In its Application, Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation did not provide documentary evidence of recognition of neighbouring Traditional Owner groups for its Application in its Application or in response to a request by the Council for evidence of this.

The Application included a letter from the Gunaikurnai Land & Waters Aboriginal Corporation. This letter supported an application for a grant made by Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation for the Aboriginal Community Mitigation and Crisis Management Grants Program. This letter did not refer to the RAP Application.

The Council notes that public submissions by Nindi-Ngujarn Ngarigo Monero Aboriginal Corporation (**NNMAC**) and Dhudhuroa Waywurru Nations Aboriginal Corporation (**DWNAC**) have raised objections to the Application on the basis that the Decision Area overlaps with their traditional Country.

Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation has responded to the objections raised by NNNMAC and DWNAC, noting that the native title claim made by Dhudhuroa, Waywurru and Ngurai Illum People Native Title Claim Group was not accepted for registration.

In their submissions, NNNMAC and DWNAC refer to the research of Dr Durrant and Alfred Howitt.¹ The NNNMAC and DWNAC have interpreted this research as evidence that Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation does not represent the Traditional Owners of the Decision Area.

Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation has responded to this point with the following statements:

- the diversity of Aboriginal nations, each with its own languages, customs, and land connections, makes it challenging to generalise about boundaries across the entire continent.
- Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation's efforts to identify and recognise Jaithmathang Nations' boundaries

¹ This research is discussed further under the heading 'Whether the Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation is a body representing Aboriginal people that has a historical or contemporary interest in the Aboriginal cultural heritage relating to the Decision Area (s 151(3)(d)(i) of the Act)'.

involved extensive consultation with First Nations Communities, Elders, and the use of both traditional knowledge, modern mapping techniques, and historical research completed by Dr Durrant.

- First Nations societies often have complex kinship and social structures, with overlapping and fluid boundaries based on different factors such as language, clan affiliations, and seasonal movements.
 - o Boundaries are not always clear-cut or static.
 - o The arrival of European settlers also disrupted traditional ways of life and land use and colonisation led to the displacement of many First Nations people, further complicating the understanding and recognition of traditional land boundaries.
 - o The rights and territories of Aboriginal peoples were not officially recognised by the government, and this meant that historical records are sparse and often biased towards perspectives of settlers rather than Indigenous inhabitants.
- First Nations cultures traditionally relied on oral histories and stories to convey information about land boundaries, which runs counter to the Western emphasis on written records, which leads to difficulties in translating these oral traditions into fixed boundaries recognised by Australian legal systems
 - o Based on our shared history there has always been an understanding of the concept of 'Yerto' or shared Country between clans which are common to both.
 - o Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation believes there is a fundamental misunderstanding in the literature (Howitt) in which Howitt mistakenly included Dhudhuroa people with Jaithmathang.
 - o To address this and achieve further clarity, Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation would require further research in collaboration with NNNMAC, DWNAC and Dr Durrant to create a greater understanding of the area in question.
- While Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation [believes it] has demonstrated that it has sound evidence for the determination of boundaries in the RAP, it encourages NNNMAC to work with Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal

Corporation to resolve any disputes and that it would be respectful to the outcome of such collaboration.

Determination:

One of the Council's key considerations when determining whether to register an applicant as a RAP is whether an applicant is inclusive and representative of all Traditional Owners of the area subject to the application.

The Council considered, in accordance with ss 151(3)(c) of the Act, the question of whether Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation is a body representing the Traditional Owners of the Decision Area.

The Council is not satisfied that Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation represents Traditional Owners within the Decision Area. This determination is made on the grounds that:

- the Rule Book does not require members of Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation to be Jaithmathang People or to be descended from an Apical Ancestor of the Jaithmathang People.
- Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation did not provide evidence of support from four of the eight families who are said to represent Jaithmathang people and eligible for membership of the organisation.
- Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation did not provide evidence of recognition by neighbouring Traditional Owners that it represents Traditional Owners within the Decision Area. Given the submissions by NNNMAC and DWNAC, it appears that there is a dispute as to the inferences which may be drawn from research of Dr Durrant and Alfred Howitt. NNNMAC and DWNAC have relied on the same body of evidence to support differing conclusions as to the Traditional Owners of the Decision Area.

As a result, the Council cannot be sufficiently certain that, on the evidence before it, that Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation represents Traditional Owners in respect of the Decision Area.

c) Whether the Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation is a body representing Aboriginal people that has a historical or contemporary interest in the Aboriginal cultural heritage relating to the Decision Area (s 151(3)(d)(i) of the Act)

i. Historical interest in the Aboriginal cultural heritage relating to the Decision Area:

The Application includes and refers to a report by Dr Jacqui Durrant, titled 'The Boundaries of Yaithmathang (Jaithmathang) Country – An Exploration of Ethnohistorical Sources', published in 2021, which:

- analyses primary historical and ethnohistorical records of Jaithmathang Country and details archival information on the Jaithmathang People.
- collates the accounts of several early European explorers and contains descriptions of the boundaries of Jaithmathang Country and people in relation to other Aboriginal groups in the region.
- contains evidence of the experiences and accounts of listed Apical Ancestor Jenny Cooper/'Jilbino' through her contributions to explorer and ethnographer Alfred Howitt's anthropological studies.
- contends that Jilbino was the only First Nations informant with lived experience on Jaithmathang Country.

The Application includes and refers to Alfred Howitt's book, *The Native Tribes of South-East Australia*, published in 1904, which:

- details the existence of Jaithmathang tribes in specific geographical boundaries obtained through a combination of First Nations informants and settler accounts.
- provides a record of Jaithmathang social organisation, tribal governance, beliefs, customs, and practices.

As further evidence of the historical existence/links of Jaithmathang people to the Decision Area, the Application refers to the existence of rock shelters, spear sharpening groves, quartz quarries, and petroglyphs containing song lines.

The Application also notes that in the 1820s the Jaithmathang people were recorded as a deceased people because of massacres and forcible removal from Country but that despite these circumstances there is evidence demonstrating direct linkage to current generations.

The Application provides specific information on Jilbino as evidence of Jaithmathang Peoples' historical connection to the Decision Area.

- Alfred Howitt's research collection 'The Howitt Papers', comprises collected field notebooks detailing his findings from anthropological studies completed with Lorimer Fison. Howitt and Fison undertook widespread research of classificatory systems of relationships, tribal class systems, and language groups in south-east Australia, including Jaithmathang. Their transcripts list Jilbino as a key informant regarding

kinship customs and tribal formalities and describe her as the 'last survivor of the Omeo tribe (which called itself Yaitmathang').

- Howitt's *The Native Tribes of South-East Australia* is based primarily on Howitt's relationship with Jilbino.

ii. Contemporary interest in the Aboriginal cultural heritage relating to the Decision Area:

In its Application, Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation states that in respect of its contemporary links to the Decision Area:

- the Country of the Application area is 'Jaithmathang Original Bimble, created by Bunjilla, our Spiritual Creator who made us caretakers, custodians, and protectors of the region'.
- the Decision Area is of deep cultural and spiritual significance to their Ancestors, and that the region is strongly interconnected with their Dreaming and ceremonial pathways as a place where they reconnect to their spiritual origins.
- 'although colonisation brought the near decimation of our people... our connection to Bimble (Country) and our sense of cultural responsibility to care for Bimble, has never wavered'.

Findings of fact:

The Council notes that public submissions by Nindi-Ngujarn Ngarigo Monero Aboriginal Corporation (**NNNMAC**) and Dhudhuroa Waywurru Nations Aboriginal Corporation (**DWNAC**) also refer to the research of Dr Durrant and Alfred Howitt. As noted above, the NNNMAC and DWNAC have interpreted this research as evidence that Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation does not represent the Traditional Owners of the Decision Area.

Determination

The Council acknowledges that the Application contains materials which relate to the Jaithmathang peoples' contemporary and historical interests in the Decision Area.

However, given the submissions by NNNMAC and DWNAC in respect of the historical links, it appears that there is a dispute as to the inferences which may be drawn from these sources. This is because NNNMAC and DWNAC have relied on the same body of evidence to support differing conclusions as to the Traditional Owners of the Decision Area and accordingly, the extent to which Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation has contemporary and historical interests in the Decision Area.

In view of this, as well as the absence of evidence of support from other neighbouring Traditional Owner groups, the Council has determined that it is possible that other Traditional Owner groups have historical and contemporary interests in the Aboriginal cultural heritage relating to the Decision Area. On this basis, the Council does not have sufficient evidence to support a conclusion that Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation is a body representing Aboriginal people that have a historical or contemporary interest in the Aboriginal cultural heritage relating to the Decision Area to the extent that Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation should be registered as a RAP in relation to the Decision Area.

As a result, the Council cannot be sufficiently certain that, on the evidence before it, that Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation's historical and contemporary interest in Aboriginal cultural heritage in the Decision Area is sufficient to justify registering Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation as a RAP in respect of the Decision Area.

d) Whether Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation has demonstrated expertise in managing and protecting Aboriginal cultural heritage in the Decision Area (s 151(3)(d)(ii) of the Act)

In its Application, Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation states that:

- its members are engaged in cultural heritage management (**CHM**) and protection activities within the Decision Area and frequently visit Country to engage in CHM activities.
- it has been working closely with government departments including the [former] Department of Environment, Land, Water and Planning (**DELWP**), the North East Catchment Management Authority (**NECMA**), and the Alpine Shire Council (**ASC**) to 'develop core cultural initiatives and environmental projects'.
- it has been involved with the following CHM-related matters:
 - an Alpine Ecology workshop attached to a NECMA-funded landscape-scale project in north-east Victoria.
 - the Aboriginal Community Mitigation and Crisis Management Grants Program - Cultural Cool Burning program.
 - with non-Traditional Owner expert consultants, creating records of endangered flora and fauna, noting the impact of introduced species on Country, developing that organisation's current fire management policy, and informing it as to CMP goals.
 - the Animal Species Conservation Initiative.

- Alpine Ecology and Cultural Heritage training programs for young Traditional Owner people.
- educational support for the Mountain Pygmy Possum Recovery Project for NECMA.
- partnering with NECMA to develop Northeast Regional Catchment Strategy.
- participating in the eDNA Project on species management.
- as part of a cultural consultation with the University of Melbourne, co-authoring a University of Melbourne research report on Bogong moth monitoring and conservation.
- weed control.
- engaging in the development of the Victorian Aboriginal Water Roadmap.
- it aspires to undertake a range of future CHM projects, such as developing community-led projects including: Bushfire Recovery, cultural cool burning program, Caring for Country, Bushbank programs, endangered species protection, Indigenous Rangers Program and a water management program.

In its Application, Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation provided copies of letters of support from [former] DELWP, NECMA and the Alpine Shire Council.

- These letters relate to Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation's application for the 'Aboriginal Community Mitigation and Crisis Management Grants Program – Cultural Cool Burning Program'.

Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation has provided its Country Plan as part of the Application.

- The Country Plan is 'facilitated by the Nallawilli Group'. Through the Country Plan, Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation 'aims to develop programs to assist in reinstating traditional practice in fire and water management and provide cultural education, training, and upskilling opportunities'.

Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation has indicated that it plans to partner with government and other stakeholders to implement land management plans and engage in other CHM activities within the Decision Area.

Findings of fact:

The Application does not provide specific details of the activities undertaken by Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation in respect of CHM.

A significant proportion of the information provided in the Application relating to CHM activities relates to proposed future activities and aspirational initiatives in this context.

The Application does not include:

- A policy and procedure manual or an operational plan for CHM activities;
- Information about Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation's operating systems for undertaking CHM activities.
- Information on the outcomes of completed project that further the protection of Aboriginal cultural heritage.

Following a request for further information by the Council, Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation provided information on additional future projects it wishes to undertake in relation to CHM in the Decision Area. Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation also provided its 'On Country Project List 2024', its Forest Management Plan and its On Country Fire Strategy to the Council.

Determination:

The Council has determined that the Application does not demonstrate expertise of Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation in managing and protecting Aboriginal cultural heritage in the Decision Area. This is on the basis that the specific actions undertaken by Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation in respect of CHM, its processes and procedures for CHM activities and its operating systems for CHM functions were unclear. Although Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation provided information in respect of future proposed CHM projects and activities, these did not demonstrate expertise in this context.

e) The existence of a grant of land in fee simple made by the State or Commonwealth to an Aboriginal body under a specific power in a State or Commonwealth Act (s 151(3)(e) of the Act)

Findings of fact:

The State or Commonwealth has not made a grant of land in fee simple to an Aboriginal body under a specific power in a State or Commonwealth Act.

Determination:

The Council could not take into account the existence of any grant of land in fee simple made by the State or Commonwealth to an Aboriginal body under a specific power in a State or Commonwealth Act in relation to the Decision Area, as none has been made.

f) Whether Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation has entered into an agreement with the State in relation to land and natural resource management in the Decision Area (s 151(3)(f) of the Act)

Findings of fact:

Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation has not entered into an agreement with the State in relation to land and natural resource management in the Decision Area.

Determination:

The Council has taken into account the fact that Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation has not entered into an agreement with the State in relation to land and natural resource management in the Decision Area.

g) Other matters considered by the Council to be relevant (s 151(3)(g) of the Act)

i. Overlapping interests and objections

Findings of fact:

The Council is aware that there are various overlapping interests of other Traditional Owner groups affecting the Decision Area. These include:

- Gunaikurnai Traditional Owners;
- Dhudhuroa Waywurru Traditional Owners;
- Duduroa Dhargal Traditional Owners;
- Dalka Warra Warra Mittung Traditional Owners; and
- Nindi-Ngujarn Ngarlgo Monero Traditional Owners.

The Council received four submissions in response to its public consultation regarding the Application. These included:

- A submission from the State of Victoria which provided information and which did not otherwise indicate a view as to the outcome of the Application.
- Three submissions were received from or on behalf of Traditional Owner groups:
 - The NNNMAC objected on the grounds that the Decision Area overlaps with Traditional Ngarigo Monero Country.
 - The DWNAC and Gary Murray objected to the Application on the grounds that the Decision Area includes, in large part, Country asserted by Dhudhuroa People/DWNAC to be Dhudhuroa Country, that DWNAC intends to lodge its own RAP application, that Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation's asserted Apical ancestor Jilbino has been identified as a Dhudhuroa woman/Apical ancestor in research, that Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation did not consult in any capacity, that it does not have a credible link to the Decision Area and that all of its members live interstate.
- The Dhudhuroa Waywurru Nations Aboriginal Native Title Claim group objected on the grounds that the Decision Area overlaps with their Traditional Country.

ii. Corporate governance and capacity

The Application states that:

- Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation has agreed decision-making structures, processes, and organisational capacity.
- Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation's members are involved in the leadership and management of the Nallowilli Group. A member of Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation is also the Chairman of the Nallowilli Group.
- Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation 's members' experiences within the Nallowilli Group demonstrate Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation's extensive experience in corporate governance and skill in business management.
- Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation states that its link with the Nallowilli Group demonstrates skills transferrable to management of CHM activities.

The Application includes a letter of endorsement from the law firm of MinterEllison, stating that the firm supports Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation in regard to its RAP Application and organisational governance.

Findings of fact:

Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation was established and registered with the Office of the Registrar of Indigenous Corporations in August 2020.

The membership of Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation is made up exclusively of Aboriginal Directors, who are all currently Jaithmathang descendants and Elders.

The Nallawilli Group is a group of First Nations companies with joint ventures in technology, workplace supplies and financial businesses.

Determination

Upon note of the public submissions in response to the Application and as noted above, the Council considers that the Application Area is subject to competing interests by other Traditional Owners. As a result, the Council is not able to be satisfied that Jaithmathang peoples are the sole Traditional Owners of the Application Area.

On the evidence before it, the Council is also not satisfied that Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation has taken measures to consult or engage in boundary discussions with these Traditional Owners with interests within the Application Area. Correspondingly, the Council is unable to determine that Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation is an organisation which sufficiently represents the Traditional Owners of the Decision Area.

The Council notes that Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation relies on a connection between itself and the Nallawilli Group as evidence of its capacity to carry out RAP functions. However, the Council is not satisfied, based on the information provided, that the Nallawilli Group has skills and experience in the area of CHM or that the link between Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation and the Nallawilli Group demonstrates skills which are transferable to the management of CHM activities.

The Council's view is that although the Nallawilli Group may provide a source of revenue to support Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation, the extent of the connection between the parties and the form and level of

support provided to Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation is not clear.

The Council notes that the Decision Area is relatively extensive. The Council is not satisfied that Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation, with a membership of six, has sufficient financial and practical capacity to undertake all RAP functions in this area.

The Council considers that the evidence provided does not support a view that Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation's members have sufficient experience or knowledge in CHM which would allow Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation to effectively carry out RAP functions in this context.

4. Additional matters

The Council considered the following additional matters in its decision-making process.

a) Policy

The Council applied its policies as contained in its 'Fact Sheet for RAP applicants on registration of multiple RAPs for a single area' and 'General Principles - RAP Decision Making'. It is the Council's policy to accord appropriate status to Traditional Owners including a preference to appoint Traditional Owner bodies corporate as RAPs.

It is also the Council's policy to appoint RAPs that are single, inclusive groups and representative of Traditional Owners in the relevant Decision Area.

b) Charter of Human Rights and Responsibilities

Prior to making its decision, the Council gave careful consideration to the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (**Charter**), having particular regard to the distinct cultural rights of Aboriginal persons recognised by s 19(2)(d) of the Charter.

The Council formed the view that the decision to decline to register Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation as the RAP in relation to the Decision Area is consistent with its obligations under the Charter.

In deciding not to grant the application in relation to the Decision Area, the Council took account of the fact that Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation will not be able to protect Aboriginal cultural heritage in the

Decision Area if it is not registered as a RAP. However, the Council notes there are other mechanisms in the Act which ensure the protection of cultural heritage, and which enable relevant Aboriginal people to participate in the protection of cultural heritage in the Decision Area (including the obligations of various entities to consult with relevant Aboriginal persons in relation to Aboriginal cultural heritage in the Decision Area).

In any event, taking into account the factors set out in s 151(3), particularly the factor contained in s 151(3)(c), when read with the purposes of the Act (including one of the 'main purposes' being 'to empower traditional owners as protectors of their cultural heritage...'), the Council is of the view that any limitation to the Jaithmathang People's rights is justified by the importance of the Council ensuring that it is satisfied as to the Traditional Owners of the Decision Area prior to appointing a RAP. In this regard, Council has not identified any less restrictive means available to achieve this purpose, other than rejecting Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation's Application in relation to the Decision Area.

Conclusion

Council declines Jaithmathang Traditional Ancestral Bloodline Original Owners First Nation Aboriginal Corporation's application to be registered as a RAP over the Decision Area.



Monica Morgan

Chairperson of the Quorum

Victorian Aboriginal Heritage Council

Attachment 1

