Department of Premier & Cabinet

MINISTER FOR ABORIGINAL AFFAIRS: Correspondence regarding Aerolite Quarries Pty Ltd

Action required by: 6 January 2015

RECOMMENDATION

That you:

1 Sign the four attached letters in response to correspondence received regarding Aerolite Quarries Pty Ltd and the Three Sisters, Anakie.

☐ Agreed / ☐ Not agreed

Comments

The Hon Natalie Hutchins MP
Minister for Aboriginal Affairs
Date: 8.1.2015

KEY ISSUES

1. Four letters have been received by your office, from Federal and State MPs and Geelong business groups, which raise concerns that the registration of the Three Sisters, Anakie (Three Sisters) on the Victorian Aboriginal Heritage Register (Register) will have an adverse effect on both the existing and proposed operations of Aerolite Quarries Pty Ltd (Aerolite).

2. Under the Aboriginal Heritage Act 2006 (AH Act), the Secretary to the Department of Premier and Cabinet (the Secretary) (or their delegate) must record all known Aboriginal places on the Register. No assessment of whether the Three Sisters is an Aboriginal place, or to include it on the Register, has been made by the Secretary (or their delegate).

3. The receipt of these letters coincides with two ongoing proceedings, involving Aerolite, before the Supreme Court and VCAT. The proposed responses for you to sign (Attachments 2, 4, 6 and 11) note that this matter will be dealt with by the Secretary in accordance with the process established by the AH Act and note that the matter is the subject of two legal proceedings.

4. Mr Andrew Katso MP (State Member for South Barwon) (Attachment 1) has requested that you delay the listing of the Three Sisters on the Register until VCAT has handed down its decision regarding a separate planning permit application made by Aerolite.

5. [Redacted] has raised similar issues to Mr Katso (Attachment 3), and noted that affected land owners have no right to be heard in relation to proposed listings on the Register and has requested that you meet with Aerolite.

6. [Redacted] (Attachment 5) has raised similar concerns to those of [Redacted] above and has requested a meeting with you.

7. Mr Kenneth Jarvis OAM KSJ (Managing Director, Aerolite) wrote to Richard Marles MP (Federal Member for Corio) (Attachments 7-10) and raised similar concerns to those above. Mr Jarvis has requested a meeting with the Secretary.
ADDITIONAL INFORMATION
VCAT and Supreme Court Proceedings

1. Aerolite previously applied to the City of Greater Geelong (Council) for a planning permit to establish a new quarry adjacent to its existing scoria quarry in Anakie. The Council did not decide the permit application within the statutory 60 days. Aerolite challenged this non-decision at VCAT. The VCAT hearing has recently concluded and a decision regarding the planning permit is expected to be made in the coming weeks.

2. On 7 November 2014 Aerolite commenced proceedings, including urgent injunction proceedings, in the Supreme Court to prevent the Secretary (or their delegate) from including the Three Sisters on the Register. On 21 November 2014 the Supreme Court dismissed the application for an urgent injunction. However, Aerolite’s action to permanently restrain the Secretary from registering the Three Sisters is still before the Supreme Court. A further hearing date is yet to be fixed. Attempts at achieving a resolution of this matter are ongoing.

Effect of including the Three Sisters on the Register

3. Both Aerolite’s two operational quarries and the proposed new quarry are within, or partially within, the proposed registration area of the Three Sisters. All Aboriginal places in Victoria are protected by the AH Act regardless of their inclusion on the Register.

4. Section 145(1) AH Act imposes an obligation on the Secretary to record, on the Register, all known Aboriginal places in Victoria. Under section 148 of the Act, a Registered Aboriginal Party (RAP) acts as the primary source of advice and knowledge for the Secretary on matters relating to Aboriginal places located in the area for which the party is registered.

5. The Three Sisters is yet to be included on the Register. In September 2014 Wathaurung Aboriginal Corporation (WAC), the relevant RAP for the area which the Three Sisters is located, made a submission to the Office of Aboriginal Affairs Victoria (OAAV) to include the Three Sisters on the Register. OAAB is currently awaiting further information from WAC, prior to listing the Three Sisters on the Register.

6. If the Three Sisters is included on the Register, Aerolite would be required to obtain a cultural heritage management plan (CHMP) for its proposed quarry. In addition, Aerolite would be required to obtain either a cultural heritage permit or CHMP for its existing quarry operations.

7. Given Aerolite’s past use of the land and the potential effects of registration of the Three Sisters on its workforce, OAAB understands that the WAC is unlikely to obstruct the existing quarry operations by refusing to agree to a cultural heritage permit, or refusing to approve a CHMP. OAAB has indicated that it would assist in facilitating these discussions with WAC.

8. To date, Aerolite has been unwilling to apply for a cultural heritage permit for its existing quarry operations and continues to maintain that the Three Sisters is not an Aboriginal place. Aerolite is contending that the anthropological evidence in support of the Three Sisters relates instead to the nearby You Yangs.

Note: vcat has been updated to reflect vcat decision 8/01.

ENDORSED BY

Heritage Reform Officer, Office of Aboriginal Affairs Victoria (OAAB)
Jane Sweeney, A/Executive Director, OAAB ☎️ [redacted] or [redacted]
Mark Duckworth, Executive Director, Intergovernmental Relations and Citizenship ☎️ [redacted]

In consultation with DPC Legal Branch ☑
9 December 2014

The Hon Natalie Hutchins MP
Minister for Aboriginal Affairs
Parliament House
Spring Street
MELBOURNE VIC 3002

Dear Minister

I write to make a representation on behalf of my constituents, [redacted] and [redacted], who are currently employed by Aerolite Quarries located in Anakie.

They have approached me seeking advice and assistance about the future of their employment with Aerolite Quarries due to an application currently before the Office of Aboriginal Affairs Victoria (AAV) that has the potential to cease the operations of the Quarry.

Aerolite Quarries Pty Ltd is owned by Director, Ken Jarvis and is situated on the three volcanic cones in Anakie, known as “the Anakies” or “The Three Sisters”. Scoria extraction has occurred from the site since its establishment in 1932 and the business currently employs 16 people from the local area and supports many other local businesses and contractors.

The proposal by AAV to list the Quarry as an “Aboriginal Place” on the Victorian Aboriginal Heritage Register poses significant risk for the ongoing operation not only of Aerolite Quarries but also other agricultural land holdings, and tourism businesses in the vicinity, including vineyards and Fairy Park.

They understand that there may be conflicting documentary evidence to suggest that the proposed registration of “The Three Sisters” actually relates to the nearby You Yangs.

The employees advise that the Director, Mr Jarvis only became aware of the proposal to register the site following a phone call to AAV on 6 November 2014 in response to a follow up telephone enquiry in preparation for an application to a VCAT Hearing for an expansion of Aerolite Quarries.

The employees have been advised that according to the requirements of the Aboriginal Heritage Act 2006 that listing of the “The Three Sisters” site will immediately have disastrous implications for Aerolite, its employees, suppliers and their families.
I seek your support to delay any listing of site of the “The Three Sisters” until VCAT has ruled on the current planning application for 255-355 Brownes Rd, Anakie as VCAT’s decision in this matter will include by necessity, a determination of the weight of evidence of the Aboriginal significance, if any, on the proposed Quarry site and the inferences on the existing quarries.

I hope that you can assist as a decision by the AAV to register the site as a place of Aboriginal significance will have serious impact on the operations of Aerolite Quarries and the future employment of my constituents.

Thank you for your consideration of this matter.

Yours sincerely

Andrew Katos

ANDREW KATOS MP
Member for South Barwon
Mr Andrew Katos MP  
Member for South Barwon  
152 High Street  
BELMONT VIC 3216

Dear Mr Katos,

AEROLITE QUARRIES PTY LTD, ANAKIE

Thank you for your letter dated 9 December 2014 outlining the concerns of certain constituents in your electorate about the request to record the Three Sisters, Anakie, on the Victorian Aboriginal Heritage Register (Register) as a known ‘Aboriginal place’ under the Aboriginal Heritage Act 2006 (Vic) (the Act). In particular, those concerns relate to the belief that the inclusion of the Three Sisters, Anakie, on the Register will adversely affect their employment situation. I also note your indication of the existence of conflicting documentary evidence which suggests that the proposed registration of the Three Sisters, Anakie, relates instead to the nearby You Yangs.

Under the Act, the Secretary to the Department of Premier and Cabinet (the Secretary), rather than the Minister for Aboriginal Affairs, is responsible for maintaining the Register and amending or revoking an entry in the Register under the Act. The Act provides that the Secretary must record all known Aboriginal places in Victoria on the Register. The Act also provides that the relevant Registered Aboriginal Party for an area is to act as a primary source of advice to the Secretary in relation to Aboriginal places within that area.

Any request to register an area of land as a known Aboriginal place will be dealt with in accordance with the requirements of the Act.

As these issues remain the subject of ongoing proceedings in the Supreme Court, it is not appropriate for me to comment further at this stage.