

# Traditional Decision Making in Native Title

**Finding a pathway through the cultural, legal and  
administrative maze**

Presented by:

**Graham Castledine**, Partner, Castledine Gregory  
with input from **Royce Evans**, heritage officer

&

**Elaine James**, Heritage Advisory Committee member,  
Kuruma Marthudunera Aboriginal Corporation

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# Overview

- Introduction
- Hypotheticals
- NTA and Regulations
- CATSI Act and Rule Books
- Proposed Law Reform
- KMAC Example

# Hypothetical 1

*A native title claim group is meeting to make an important decision in relation to a proposed mining agreement. There are five main families who make up the claim group and the mining agreement will affect the traditional lands associated with two of the families in a more significant way than the other two.*

*There is disagreement as to whether a traditional decision making process applies to the making of the decision. Some members consider that the group's traditional practice is to have each family meet and decide whether it supports or opposes a significant proposal, but that the families most affected should have the most influence. Others believe that the group has never had to traditionally deal with mining proposals and that a simple majority vote should be taken once the group as a whole has been fully informed.*

*The matter is eventually put to a vote of the whole group over the protests of a substantial number present. At the end of the vote there is a slender majority in favour of the mining agreement notwithstanding that no members of the two most affected families supported the proposal.*

# Hypothetical 2

*A group of determined native title holders meet to decide whether to enter into an ILUA with a large mining company. The meeting is both a meeting of the common law native title holders and a general meeting of members of the PBC. Not all common law native title holders are members of the PBC.*

*It is agreed within the group that a traditional decision making process applies to this matter which involves holding several meetings and giving the opportunity for everyone to talk out all concerns until the whole group is ready to either move forward with the proposal or reject it.*

*The PBC's rule book states that native title decisions should be made by consensus but this does not necessarily require all members to vote in favour of the decision. The rule book also states that members must vote by a show of hands unless a poll is demanded.*

*The meetings go on for several hours and many objections are raised and talked out. Eventually the group is asked if they are ready to move forward and accept the ILUA and there is a general verbal expression of assent. The CEO of the PBC then asks for a show of hands in favour of the ILUA. Many of those attending are uncomfortable at the idea of putting their hand up as this is not a normal part of their traditional practice. Ultimately, about 70% of those attending put their hand up. When asked if any are opposed, no one puts their hand up.*

# NTA & Regulations

- Authorising Applicant (s.251B)
- Authorising ILUA (s.251A)
- Authorising 'native title decisions' (PBC Reg 8)
- Authorising action by representative body (s.203BC (2))

# CATSI Act & Rule Books

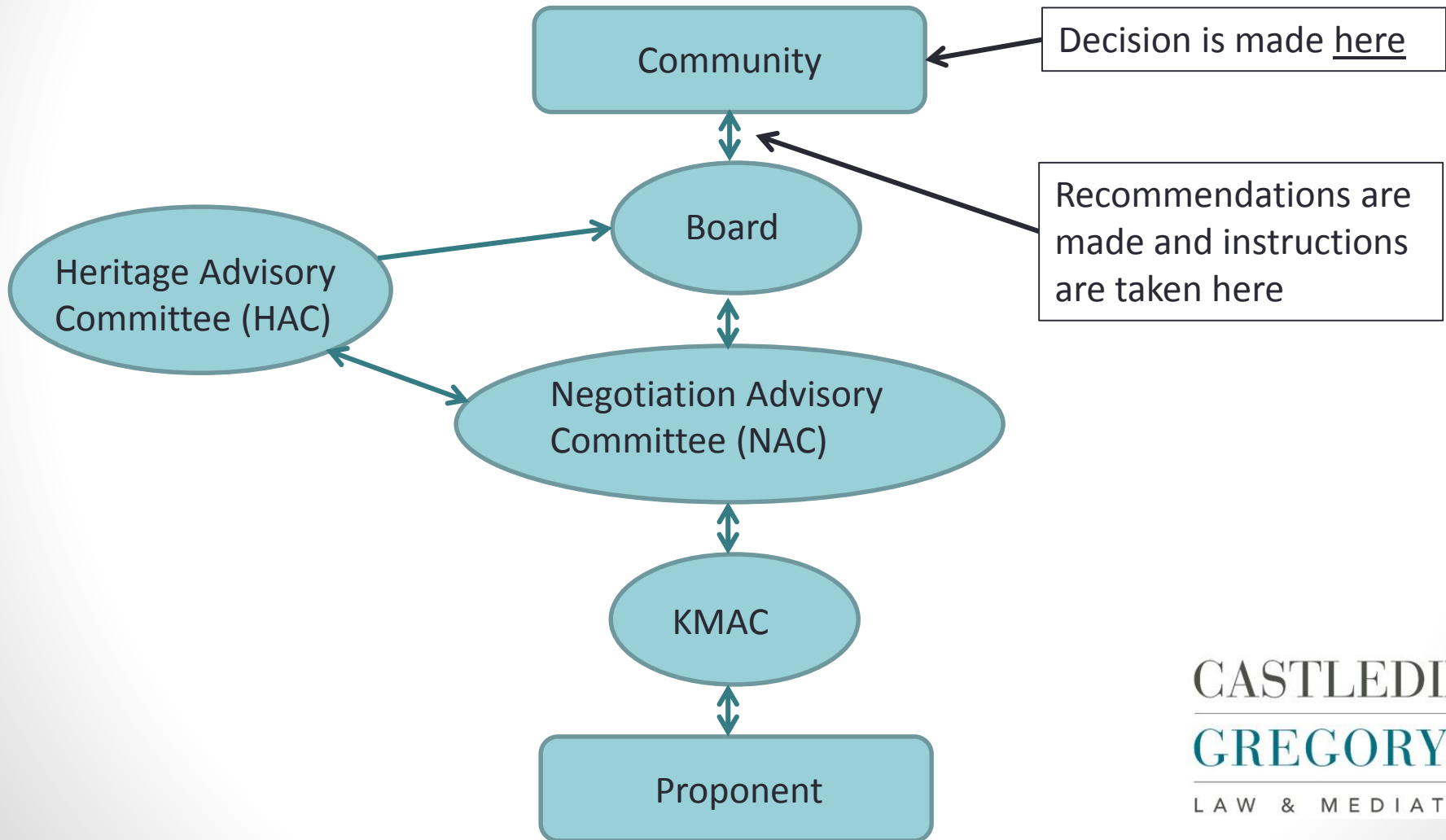
- Act through a Board
- Quorum requirements
- ‘One vote, one value’
- Show of hands or poll
- Combined native title/CATSI Act decisions

# Proposed Law Reform

- Connection to Country Review (2015)
- Traditional decision-making optional (not mandatory)
- A process to change a process?

# KMAC Example

## High Impact Decision Making Flow Chart





## ROLES AND RESPONSIBILITIES IN KMAC'S HIGHER IMPACT NT DECISION MAKING PROCESS

Stakeholder	Role	Responsibility
Community (NTH)	Decide on terms of agreement and provide instruction to PBC.	Act in the best interest of current and future generations
KMAC Board/Directors	Balance economic, social and cultural interests of NTHs in Higher Impact negotiations. Receive advice from NAC and HAC. Consult with, make recommendations to and receive instructions from NTHs regarding high impact agreements.	Ensure compliance with statutory requirements. Accept HAC advice as cultural custodians. Uphold NTHs rights by listening to concerns and ensuring understanding about the consequences of NT decisions. Seek NTH instruction and act accordingly.
Heritage Advisory Committee (HAC)	Provide advice to Board and management on matters relating to cultural governance (the KM way of being) and custodianship of country (protection of land, water and significant sites). Via representatives, contribute to negotiation process.	Cultural governance – providing advice that protects and preserves KM's country and customs.
KMAC Management	Manage the PBC compliance framework. Facilitate the information gathering and advisory process. Liaise with advisers and proponents. Agreement administration.	Sound advice regarding the risks/opportunities associated with future acts. Effective provision and management of information. Inclusive and transparent communication.
Negotiation Advisory Committee (NAC) <ul style="list-style-type: none"> <li>• Board Rep</li> <li>• HAC Rep</li> <li>• Management Rep</li> <li>• Community Reps</li> <li>• Legal and Commercial advisers</li> </ul>	Gathers and provides sound advice to inform and influence successful negotiations with proponents. Enters discussion with proponents to negotiate heritage and commercial inclusions in agreements that best represent the interests of the KM People. Takes direction from and provides advice to the Board on negotiation terms and conditions.	Diligent input on the social, economic and cultural interests of KM. Highlight risks and opportunities.

# Conclusion

- Current regime too onerous
- Proposed law reform may make things worse!
- No 'one size fits all'
- Design a structure that works for you