

DECISION OF THE VICTORIAN ABORIGINAL HERITAGE COUNCIL IN RELATION TO AN APPLICATION BY THE MURRAY VALLEY ABORIGINAL CO-OPERATIVE

DATE OF DECISION: 21 MARCH 2013

Decision

On 21 March 2013 the Victorian Aboriginal Heritage Council (**Council**) made a decision on the Murray Valley Aboriginal Co-operative (**MVAC**) Registered Aboriginal Party (**RAP**) application (application).

Application Area

The application area includes Hattah-Kulkyne National Park and part of the Murray Sunset National Park. The northern boundary includes the Murray River from about Heywood Lake to just south of Colignan and extends westward for about 23 km. From there the western boundary extends southward to the Mallee Highway, then eastward to Ouyen and southward along the Sunraysia Hwy to Speed. The southern boundary is from Speed to Lake Tyrrell. The eastern boundary is a diagonal line from Lake Tyrrell to the Murray River at Heywood Lake.

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 achieve the objectives of the Act, Council gives preference to RAP applicants which are single, inclusive groups and representative of Traditional Owners in the respective application area.

MVAC claims that a significant proportion of its members are Traditional Owners of the area it claims. However MVAC did not name the Traditional Owner groups it represents, nor did it provide a list of members or identify the apical ancestors of the people it represents.

Council wrote to MVAC asking about the traditional links of MVAC members and whether MVAC had consulted widely with descendents of apical ancestors from the Application Area in the development of its RAP application. MVAC did not respond to Council's letter.

While Council accepted that MVAC may include some individuals with traditional and familial links to the application area, Council was unable to establish these links with the information available to it.

Other relevant matters

Historical and contemporary links, expertise in cultural heritage management, governance, capacity and cultural heritage decision making:

MVAC claimed that its members have historical and contemporary links to the application area and expertise and experience in cultural heritage management. MVAC also made some statements about its governance structure, operating and decision making processes, and future resourcing. Where these matters were concerned, MVAC did not provide detailed information or evidence to support the statements made.

Council wrote to MVAC asking for information that would support claims made in the MVAC RAP application, however no further information was provided by MVAC.

Overlapping RAP applications:

Council wrote to MVAC asking whether it had discussed its RAP application with Traditional Owner groups and also native title claimant groups with claims that overlap the MVAC application. MVAC did not respond to Council's letter.

On the information available to Council, it was not clear that MVAC meets the Council's principle to give priority to applications made by groups that represent Traditional Owners and are supported by Traditional Owners of the Country affected. While Council considered that MVAC may include some individuals with traditional and familial links to the Application Area, Council had regard to the competing claims made by Latji Latji Mumthelang Aboriginal Corporation (**LLMAC**), Barengi Gadjin Land Corporation (**BGLC**) and Tati Tati Aboriginal Corporation (**TTAC**) that they represent Aboriginal people with traditional and familial links in the Application Area. The vast majority of the Application Area was covered by the LLMAC and TTAC RAP applications, and Council notes that the ethno-historical record of Traditional Ownership in the north west of Victoria is particularly complex.

Public comments:

Council sought the views of Traditional Owners from the same region as MVAC in response to advertisements placed in local and national newspapers in January 2013.

Comments were received raising concerns about MVAC's representativeness, inclusivity of relevant community members and capacity to provide health and social welfare services and manage cultural heritage and natural resources. The comments were forwarded to MVAC and MVAC was given the opportunity to respond. MVAC did not respond.

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 MVAC is compatible with the Charter.

Summary

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

- It is not possible to confirm whether MVAC represents Traditional Owners who are descendants of ancestors from the MVAC Application Area.
- MVAC did not demonstrate its experience in cultural heritage management and capacity to function as a RAP.
- The Country that can be claimed by MVAC could not be identified due to a lack of evidence and the existence of overlapping RAP applications in the Application Area.

Conclusion

Taking all relevant matters into account, and relying on its own cultural knowledge, Council decided MVAC was not an appropriate organisation to appoint as a RAP for the Application Area.

Denise Lovett #

Chairperson
Denise Lovett
Victorian Aboriginal Heritage Council