

DECISION OF THE VICTORIAN ABORIGINAL HERITAGE COUNCIL IN RELATION TO AN APPLICATION BY THE MUNGABAREENA ABORIGINAL CORPORATION TO BE A REGISTERED ABORIGINAL PARTY

DATE OF DECISION: 3 DECEMBER 2010

Decision

The Victorian Aboriginal Heritage Council (**Council**) has decided not to register the Mungabareena Aboriginal Corporation (**Mungabareena**) as a Registered Aboriginal party (**RAP**) under section 151 of the *Aboriginal Heritage Act 2006* (Vic) (**Act**).

Reasons for Decision

RAP Application area

The application area was located in North Eastern Victoria stretching from Murray River / NSW border south to Omeo and west to Great Alpine Road. The area included the townships of Wodonga, Mount Beauty, Mitta Mitta and Corryong.

General

In considering whether to appoint Mungabareena as a RAP, the Council had regard to all of the matters set out under s 151 of the Act, including (among other things):

- That Mungabareena is not a Native Title Holder (s 151(2) of the Act);
- That Mungabareena is not a Native Title Party (s 151(3)(a) of the Act);
- That Mungabareena does not refer to any Native Title agreements (s 151(3)(b) of the Act);
- That Mungabareena does not have any grant of land in fee simple made by the State or the Commonwealth (s 151(3)(e) of the Act).

Traditional and familial links

Mungabareena's original application did not rely on traditional and familial links.

In December 2009, Mungabareena asserted that its application relied on traditional and familial links to the area. The Traditional Owners claiming these links were represented through the cultural heritage working group. In an email received on 10 September 2010, the Chairperson of Mungabareena advised that the cultural heritage working group was being disbanded.

Council noted Mungabareena's claims to have members who are Traditional Owners of the area and to have the support of Traditional Owners. Council noted that membership of Mungabareena is open to adult Aboriginal persons residing in the North East Region of Victoria and Southern East Region of NSW.

Taking into account the information available to it, the Council decided that Mungabareena was not an organisation specifically or primarily representing people with traditional and familial links to the area. On this basis the Council decided not to appoint Mungabareena as a RAP.

Historical and contemporary interest and demonstrated expertise in managing and protecting Aboriginal cultural heritage

The Council considered information provided by Mungabareena regarding its historical and contemporary interest in the application area and its expertise in cultural heritage management. It noted that Mungabareena had been involved in managing Aboriginal cultural heritage in the application area for a number of years, including as an Aboriginal community under the previous cultural heritage laws.

The Council accepted that Mungabareena has a historical and contemporary interest in the application area as well as expertise in managing and protecting Aboriginal cultural heritage.

However, the Council decided not to appoint Mungabareena on this basis alone.

Charter of Human Rights and Responsibilities

The Council gave careful consideration to the *Charter of Human Rights and Responsibilities Act 2006 (Vic) (Charter)*, in particular the relevant distinct cultural rights of Aboriginal persons set out under s19 of the Charter. The Council formed the view that a decision not to register Mungabareena is compatible with the Charter.

Other matters

The Council noted that:

- there is no RAP for the area over which Mungabareena had applied;
- there are two other RAP applications by organisations claiming to represent Traditional Owners.

The Council considered the mechanisms available under the Act for the continued protection of Aboriginal cultural heritage where an organisation is not registered as a RAP. Where there is no other organisation with RAP responsibilities, responsibility lies with the Secretary of the Department of Planning and Community Development.

The Council noted that in exercising his or her functions under the Act, the Secretary will do so in accordance with the provisions and objectives of the Act, and in compliance with obligations required to be observed under the Charter, among other considerations.

Conclusion

Taking all of these matters into account, and relying on its own cultural knowledge, the Council decided not to register Mungabareena as a RAP.



Jim Berg
Chairperson
Victorian Aboriginal Heritage Council