

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

DATE OF DECISION: 29 April 2010

Decision

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

The Council took into account all the information provided to it in respect of the application.

Reasons for Decision

RAP application area

The area over which MAC sought to be a RAP (**Application Area**) included much of the North West corner of Victoria from the junction of the Victoria-South Australia border and the Mallee Highway north to the Victoria-New South Wales border. The application area included Mildura, Ouyen and all of the Murray Sunset National Park.

General

The Council considered the matters set out under s 151 of the Act, including (among other things):

- That MAC is not a Native Title Holder (s 151(2) of the Act);
- That MAC is not a Native Title Party (s 151(3)(a) of the Act);
- That MAC does not refer to any Native Title agreements (s 151(3)(b) of the Act);
- That MAC does not have any grant of land in fee simple made by the State or the Commonwealth (s 151(3)(e) of the Act); and
- MAC'S reference to a Memorandum of Understanding between MAC and Melbourne Parks and Waterways Trading as Parks Victoria over Lindsay Island.

Traditional links

The Council noted MAC's claims to have members who are Traditional Owners of the area and to have the support of Traditional Owners. However, the Council formed the view that MAC was not specifically established to represent all the Traditional Owners of the application area collectively. In that regard, the Council noted that membership of MAC is open to adult Aboriginal persons residing in the Sunraysia District of Victoria and also New South Wales and any other location determined by the Committee.

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

The Council considered information provided by MAC regarding its historical and contemporary interest in the application area and expertise in cultural heritage management. It noted that MAC and its predecessor organisations 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 MAC has an historical and contemporary interest in the application area as well as expertise in managing and protecting Aboriginal cultural heritage.

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 MAC is compatible with the Charter.

Other matters

The Council noted that there is no RAP for the area over which MAC had applied. 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 MAC as a RAP.



Mick Harding
Deputy Chairperson
Victorian Aboriginal Heritage Council