

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

DATE OF DECISION: 8 December 2011

Decision

The Victorian Aboriginal Heritage Council (**Council**) has decided not to register the Barapa Barapa Nation Aboriginal Corporation (**BBNAC**) as a registered Aboriginal party (**RAP**) under the *Aboriginal Heritage Act 2006 (Act)*.

Reasons for Decision

Part 10 of the Act requires Council to consider a number of matters in making a decision. Council considered the application in light of these matters.

In making its decision, Council considered all the information provided by the BBNAC.

Council decided not to appoint BBNAC for reasons outlined below.

Land based agreements/titles

In considering the application, Council noted that:

- BBNAC is not a Native Title Holder or a Native Title Party for the RAP application area;
- BBNAC has not entered in to any native title agreement;
- BBNAC does not have any grant of land in fee simple made by the State or the Commonwealth;
- BBNAC has not entered into land and natural resource management agreements with the State, but did establish an agreement with Grampians Mallee Water Corporation in 2008/09, concerning the Wimmera Mallee Pipeline Project, which was noted by Council.

Council also noted that through the Murray Lower Darling Rivers Indigenous Nation (MLDRIN) Body Corporate, the BBNAC is a signatory to a Memorandum of Understanding with Non Governmental Environmental Organisations.

Council noted that while the BBNAC is not a native title party, the BBNAC claims to represent Barapa Barapa people that are party to the Wamba Wamba Barapa Barapa Wadi Wadi (WWBBWW) native title claim (NTC). Council also noted that almost half of the area claimed in the BBNAC RAP application (north-west section) was included in the WWBBWW NTC. Relevant to the BBNAC's reference to its involvement in the WWBBWW NTC was an objection to the BBNAC RAP application by the WWBBWW NTC group, and this was noted by Council.

RAP application area

A map was provided to Council showing the area over which the BBNAC was seeking to be a RAP. The application area lay south-east of Swan Hill. The boundary followed the Murray River from the confluence of the Murray and Loddon Rivers to a point approximately 15km north-west of Echuca. From there it extended directly south to just west of Elmore and then west along the Elmore-Raywood Rd to Bendigo-Tennyson Rd. From Bendigo-Tennyson Rd it extended north-west to Quambatook and then north-east to the Murray River.

Traditional and Familial links

In accordance with the Act, Council accords priority to groups with traditional or familial links to a particular application area to give appropriate status and rights to Traditional Owner groups in cultural heritage management and protection. To best achieve the goals of the Act, Council prefers to appoint RAPs which are single, inclusive groups and representative of Traditional Owners in the respective application area.

Council sought to clarify the basis of BBNAC's claims that it represented Barapa Barapa Traditional Owners, and that its application was supported by Barapa Barapa Traditional Owners in general. Council found that these claims were not made out, taking into account the comments received from the WWBBWW NTC group, and the evidence provided by BBNAC.

Council considered the BBNAC rules book which states that:

- membership of the BBNAC is open to adult Aboriginal Barapa Barapa Peoples, and
- a Governing Committee member must not be a member of another Aboriginal Traditional Owner based governing body that does not represent the Barapa Barapa peoples' interests, rights and aspirations for cultural and natural heritage management.

Council noted a list of Barapa Barapa ancestors that its members are descended from.

Council reviewed a range of information presented by the BBNAC, sourced from a number of historical references, which provided evidence of the identity, status, social organisation and territory of traditional Barapa Barapa clans, and the relationship between traditional Barapa Barapa people and other traditional groups.

Council sought additional information from the BBNAC that could more directly support the BBNAC's claims of Barapa Barapa ancestry or descendency, such as genealogies, family trees or statements from Aboriginal people or organisations that recognise the traditional or familial links of BBNAC members. Such information was not made available to Council.

Council sought evidence of consultation about the BBNAC RAP application between the BBNAC and descendents of Barapa Barapa apical ancestors that were not BBNAC members. This evidence was not made available to Council.

Council sought to confirm with the BBNAC whether the list of apical ancestors included in its RAP application represented a complete list of apical ancestors relevant to the application area. The evidence presented to Council did not satisfy this consideration.

Council accepted the BBNAC includes some Traditional Owners and also noted its membership rules could potentially allow it represent the Traditional Owner group in an inclusive manner.

However, evidence available to Council did not support BBNAC's claims that it currently represented Barapa Barapa peoples. The objection the Council received from the WWBBWW NTC group to BBNAC being registered was a relevant consideration for Council in forming this view.

Other matters

Expertise in cultural heritage management - The BBNAC RAP application provided evidence of the BBNAC's expertise in cultural heritage management which was noted by Council.

Charter of Human Rights and Responsibilities - 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. Council formed the view that a decision not to register the BBNAC is compatible with the Charter.

Conclusion

Taking all of these matters into account, and relying on its own cultural knowledge, Council decided BBANC was not an appropriate organisation to appoint as a RAP for the area included in its RAP application.



Mick Harding
Acting Chairperson
Victorian Aboriginal Heritage Council