

DECISION OF THE VICTORIAN ABORIGINAL HERITAGE COUNCIL IN RELATION TO AN APPLICATION BY BUNURONG LAND AND SEA ASSOCIATION INCORPORATED TO BE A REGISTERED ABORIGINAL PARTY

DATE OF DECISION: 21 MAY 2015

Decision

The Victorian Aboriginal Heritage Council (**the Council**) has decided not to register the Bunurong Land and Sea Association Inc. (**BLASAI**) as a registered Aboriginal party (**RAP**) under section 151 of the *Aboriginal Heritage Act 2006* (Vic) (**the Act**).

RAP Application Area

A map was provided with the BLASAI RAP Application (**Application**) showing the area over which BLASAI sought to be appointed as a RAP (**Application area**). It includes the coastline from the mouth of the Werribee River to Wilsons Promontory National Park, encompassing most of Port Phillip Bay, Western Port Bay, Cape Liptrap and all of the Mornington Peninsula.

Based on information provided to Council to date, Council is of the understanding that the Bunurong (**Boon wurrung**)¹ is a Kulin group from the coastal country about Port Phillip and Western Port bays. This understanding is supported by historical material that Boon wurrung Country includes the watersheds of the streams flowing south into the sea from the Dandenong Ranges (the Bunyip, Lang Lang, Bass and Tarwin Rivers) as well as the Mornington Peninsula, French and Phillip Islands, Cape Liptrap and Wilsons Promontory.

Council is also aware that parts of Country claimed are disputed, with Wilsons Promontory also identified by some as being Gunai/Kurnai (Gunaikurnai) Country, and the northern edge of Port Phillip Bay (from Werribee River to Mordialloc Creek) identified by some as Country of the Woi wurrung (Wurundjeri) People.

¹ The Council notes there are over 60 different spellings of this Aboriginal group found in the literature, including "Bunurong", "Boonerwung", "Bunwurrung" etc. The Council has used the spelling "Boon wurrung" because it is consistent with the spelling used by the Victorian Aboriginal Corporation for Languages to assist users with correct pronunciation. The use of this spelling is unrelated to the fact that a RAP applicant is called the Boon Wurrung Foundation Ltd, and it is not intended to show any preference for this Aboriginal organisation over any other. In using Boon wurrung, the Council also notes the alternative "Bunurong".

Reasons for Decision

Traditional and Familial Links

- *Boon wurrung ancestry*

Over recent decades there has been a significant amount of research undertaken by Aboriginal and non Aboriginal people to better understand Boon wurrung ancestors and their contemporary descendants. Council has noted work undertaken by Dr Ian Clark, Dr Sue Wesson, Dr Fiona Skyring and Jacqueline D'Arcy. Council is also aware of the criticisms that have been made in relation to this work.

In its considerations, Council reviewed all the information and correspondence received from BLASAI and the available research reports. According to this information, it appears that the only known Boon wurrung apical ancestors with living descendants are women who were abducted by sealers in the early 18th century. It is recognised that other ancestors may be identified in future but present knowledge is limited to these women. Given the illegal and clandestine nature of these abductions, it is no surprise that the historical record is ambiguous where Boon wurrung ancestry is concerned. Council has noted different researchers use the words supported, asserted, unproven, possible and plausible to describe the likelihood of all of the named ancestors being Boon wurrung ancestors.

Council is aware that five women, collectively, have been identified as being Boon wurrung ancestors. They are Jane Foster, Margery Munro, Eliza Nowen, Elizabeth Maynard and Louisa Briggs. On the basis of information currently available Council accepts each of these women as Boon wurrung ancestors and will be unlikely to change this position unless new information comes to light that disproves any or all of these claims.

In considering the Application, Council was informed BLASAI recognises four women as Boon wurrung apical ancestors. BLASAI confirmed it is prepared to accept the possibility that Louisa Briggs is a Bunurong woman but did not currently recognise Louisa Briggs as a Bunurong apical ancestor. BLASAI also stated it would be for BLASAI members who are descendants of Marjory Munro to determine the acceptability of a membership application from someone claiming descent through Marjory Munro.

Council acknowledges it is unusual to name both Louisa Briggs and the more senior ancestor, Margery Munro. Council believes this is necessary in the context of the controversies that have affected and divided contemporary Boon wurrung descendants.

- *BLASAI membership and inclusivity*

It is broadly recognised that it is for Traditional Owners themselves to develop their membership rules as part of establishing corporations that make RAP applications on their behalf. These rules may define members' rights and obligations based on a variety of factors and considerations.

While Council recognises this, Council applies decision making principles concerning matters of group membership and inclusivity in its consideration of RAP applications. These principles align with the Act and native title legislation and include the following:

- Council gives priority consideration to applications made by groups who represent Traditional Owners.
- Council wants to ensure that groups recognised under the cultural heritage laws as best as possible reflect those under native title arrangements.
- Council encourages smaller groups to create sustainable RAP structures by working together to create a single RAP or develop co-operative arrangements with other Aboriginal organisations.

The current BLASAI Rule Book states that a BLASAI member is a person who is a Bunurong person and must be known to the Committee members as a Bunurong person. BLASAI holds the view that membership applicants who can provide proof of connection to Bunurong Country/apical ancestors are eligible to become BLASAI members. As Louisa Briggs is not currently recognised by BLASAI as a named ancestor, BLASAI could not confirm that descendance from Louisa Briggs would be an acceptable basis for a BLASAI membership application.

Council received a list of 101 members from BLASAI. The list identified apical ancestors for 91 members. Council accepts that members of the BLASAI are Traditional Owners of Boon wurrung Country.

Sustainable RAP structures and experience in cultural heritage management

Council is aware of three organisations seeking to represent the Boon wurrung People - Boon Wurrung Foundation Limited, BLASAI and the Bunurong Land Council Aboriginal Corporation (BLCAC). The combined number of members of these organisations is currently 210 and Council has heard from other Boon wurrung People who are not members of any organisation. Council looks forward to a time when Boon wurrung People will be ready to work together to develop a single inclusive and representative organisation so they can look after their priceless heritage for themselves, their children and grandchildren and indeed for all Victorians.

Groups that are guided by Council's principles demonstrate a readiness to accept that:

- questions about boundaries and group composition can sometimes only be resolved if Traditional Owners have difficult and sometimes painful discussions because clear answers are not always available
- discussions between parties with differing views require those parties to listen to opposing views with an open mind and a readiness to shift positions and make reasonable concessions commensurate with the evidence available.

Council gives priority to RAP applications made by Traditional Owner groups that demonstrate they have systems in place to maintain sustainable organisations and the capacity to effectively manage and protect their cultural heritage.

The Application provided a very detailed and comprehensive explanation of BLASAI's organisational structure, governance, operational guidelines as well as the cultural heritage management skills of key staff. Council acknowledged the documents provided were of a high standard and noted BLASAI's commit to strengthening consultation processes with members following feedback received from the Council.

Public comments

Council sought the views of Traditional Owners from the same region as the applicant and from neighbouring areas to inform its decision. Comments received included criticisms of the conduct of some of the founding members of BLASAI while they were the directors of BLCAC.

Council considered the outcome of proceedings in the Federal Court against individuals that included disqualification orders and pecuniary penalties against four individuals. Council acknowledged the immediate actions taken by the BLASAI executive as a result of the Federal Court's judgement.

Another objection made to the registration of BLASAI as a RAP was that its membership includes a large number of long term residents of Western Australia, some Tasmanians and its contact details include a Western Australian postal address.

The provisions of the Act do not provide a basis on which the Council can give preferential treatment to Traditional Owners living in Victoria. The Act does not disqualify Traditional Owners who no longer live on Country, and if it were to, it would be inconsistent with native title legislation and could bring about a new dispossession.

Charter of Human Rights and Responsibilities

The Council took into account the *Charter of Human Rights and Responsibilities Act 2006 (the Charter)*, in particular the relevant distinct cultural rights of Aboriginal persons in s 19(2)(d) of the Charter. It has formed the view that a decision not to register BLASAI is compatible with the Charter.

Neighbouring Traditional Owner groups

Parts of the Application area overlapped with RAP Applications from Wurundjeri Tribe Land and Compensation Cultural Heritage Council Inc. and Gunaikurnai Land and Waters Aboriginal Corporation. The Council did not consider the areas of overlap in detail and has not formed a view about the applications for these areas.

Council is of the view that the exact extent of this area requires discussion with neighbouring RAP Applicants.

Conclusion

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



Rodney Carter
Chairperson
Victorian Aboriginal Heritage Council