

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

DATE OF DECISION: 27 AUGUST 2009

Decision

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

In making this decision the Council took into account all the information provided to it in respect of this application.

Reasons for Decision

Overview

In considering whether to appoint BLCAC as a RAP the Council had regard to all of the matters set out in s151 of the Act, noting among other things that:

- BLCAC is not a Native Title Holder (s 151(2) of the Act)
- BLCAC is not a Native Title Party (s 151(3)(a) of the Act) and
- Members of BLCAC have an unregistered native title claim for the Port Phillip Bay area (VC06/2).

The Council also considered the traditional and familial links claimed by members of BLCAC (s 151(3)(c) of the Act). BLCAC did not claim historical and contemporary interest in the Aboriginal cultural heritage of the area (s 151(3)(d) of the Act).

The Council acknowledges that members of BLCAC are Traditional Owners of Boon wurrung (Bunurong)¹ country. However, for the reasons set out here the Council decided not to register BLCAC as a RAP.

¹ The Council notes there are over 60 different spellings of this Aboriginal group found in the literature, including “Bunurong”, “Boonerwring”, “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”.

Traditional and familial links

Boon wurrung (Bunurong) are a Kulin group from the east of Port Phillip Bay, Western Port, Cape Liptrap and surrounding areas. The only known Boon wurrung (Bunurong) apical ancestors with living descendents are believed to be women who were abducted by sealers in the early 18th century. Because of this history of disruption, the historical record linking current day people with Boon wurrung (Bunurong) ancestors is in some places incomplete or contradictory.

Whilst some uncertainty remains, the Council decided based on the material before it that it was willing to accept that members of BLCAC are Traditional Owners of Boon wurrung (Bunurong) country.

The Council also had before it a competing RAP application from Boon Wurrung Foundation Ltd (BWFL), whose members also claim to be Boon wurrung (Bunurong) people. It is accepted that members of BWFL may also be Traditional Owners of Boon wurrung (Bunurong) country.

The Council noted, however, that there is a long running dispute between BLCAC and BWFL, and that neither is accepting of the other's claim to be Traditional Owners of Boon Wurrung (Bunurong) country.

Both BWFL and BLCAC made their applications to become a RAP on the basis they are organisations that represent people with traditional or familial links to the area. On this basis the Council considered:

- whether BLCAC should be appointed as the sole RAP for uncontested Boon wurrung (Bunurong) country; and
- in the alternative, whether BLCAC and BWFL should both be appointed as RAPs over uncontested Boon wurrung (Bunurong) country.

Whether BLCAC should be appointed as the sole RAP

The rules of BLCAC (as at February 2007) state that membership of the Land Council is 'open to all adult Bunurong [sic] people'. 'Bunurong people' is defined in its rules to mean Aboriginal persons of Bunurong descent who identify as Bunurong and are accepted by the Committee (a group greater than or equal to five family representatives) as Bunurong people.

The Council accepted that BLCAC does have members with traditional or familial links to country. However, it decided that if it was to appoint BLCAC as the sole RAP for Boon wurrung (Bunurong) country wished to be satisfied that BLCAC would be able to accommodate within their membership members of BWFL who have traditional links to country. BLCAC indicated that if any member of Boon Wurrung Foundation can prove to the Committee that he or she is of Bunurong descent (even if he or she refers to himself or herself as Boonwurrung) and the Committee accepts the proof, then they would be welcome to be members of BLCAC. However, the Council took into account correspondence from BLCAC that indicated that BLCAC did not accept the traditional or familial links of BWFL members.

Therefore, BLCAC is not the appropriate organisation to solely represent Aboriginal people with traditional or familial links in their application area.

Concerns were raised with the Council by BWFL in relation to the residence of members of BLCAC. However it was unnecessary for the Council to consider this matter as the Council reached its decision on other grounds.

Consideration of appointing two RAPs

The Council notes that the Act allows for more than one body to be a RAP under particular circumstances (s153(1)), although the Act does not compel the Council to do so. The Council considered the possibility of registering BLCAC in the event that BWFL was also registered for the same area.

BLCAC informed the Council that, in their view, BLCAC and BWFL worked effectively with each other and they do not envisage any conflicts arising from the appointment of both BWFL and BLCAC as RAPs for the same area. However, given the history of dispute between the two organisations, including their failure to recognise each other as Traditional Owners, there is doubt about the proper functioning of the Act if two RAPs were appointed.

Furthermore, the Council was concerned in this case about appointing two organisations from the same Traditional Owner group. The Council expressed the view that appointing a single inclusive organisation as a RAP, rather than two non-inclusive organisations, would give best effect to Council's principle of aligning with native title arrangements. It was also of the view that, in the context of the existing dispute between the parties, appointing two RAPs was unlikely to resolve the conflict within the Traditional Owner group.

The Council decided that it was not appropriate to appoint two RAPs to represent Boon wurrung (Bunurong) Traditional Owners in this case.

Protection of Aboriginal cultural heritage in the application area

An issue was raised with Council as to whether decisions to decline one or both of the applications from BWFL and BLCAC would impact on the protection of Aboriginal cultural heritage in the application area. The Council noted that, while it is preferable to have a RAP appropriately representing Traditional Owners, no such organisation was available at this time. The Act makes provision for its continued operation where there is no organisation with RAP responsibilities. The Council therefore formed the view that the Act allows for heritage to be protected if BWFL were not registered.

Taking into account that the Council recognises that members of BLCAC are Traditional Owners, the Council would expect that BLCAC would continue to be consulted for the purposes of cultural heritage management and protection.

Charter of Human Rights and Responsibilities

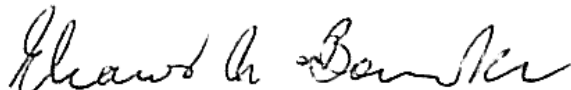
The Council gave careful consideration to the *Charter of Human Rights and Responsibilities Act 2006 (the Charter)*, in particular the relevant distinct cultural rights of Aboriginal persons in s19(2)(a) and s19(2)(d) of the Charter. It has formed the view that a decision not to register BLCAC is compatible with the Charter.

Neighbouring Traditional Owner groups

Parts of the BLCAC RAP application area overlapped with RAP applications from Wurundjeri Tribe Land and Compensation Cultural Heritage Council Inc., Wandoon Estate Aboriginal Corporation 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.

Conclusion

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



Eleanor A Bourke
Chairperson
Victorian Aboriginal Heritage Council