

DECISION OF THE VICTORIAN ABORIGINAL HERITAGE COUNCIL IN RELATION TO AN APPLICATION BY THE BALLARAT AND DISTRICT ABORIGINAL CO-OPERATIVE LTD TO BE A REGISTERED ABORIGINAL PARTY

DATE OF DECISION: 3 December 2009

Decision

The Victorian Aboriginal Heritage Council (Council) has refused the Ballarat and District Aboriginal Co-operative Ltd (BADAC) application to become 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 in respect of the application.

Reasons for Decision

General

In considering whether to appoint BADAC 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 BADAC is not a Native Title Holder (s 151(2) of the Act);
- That BADAC is not a Native Title Party (s 151(3)(a) of the Act);
- That BADAC does not refer to any Native Title agreements (s 151(3)(b) of the Act);
- That BADAC 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
- BADAC's reference to agreements it had in place with Ballarat City Council, Parks Victoria, the Department of Sustainability and Environment, Aboriginal Affairs Victoria and Catchment management authorities.

RAP application area

BADAC applied to be a RAP for areas of the Central Highlands of Victoria generally surrounding Ballarat, stretching from Streatham in the west to Bacchus Marsh, south to Meredith and north almost to Creswick.

Traditional and familial links

BADAC claims to be a representative organisation for all Traditional Owners, among other members, in the Ballarat district area. At the time of its application, BADAC claimed support of traditional families in the area as well as Djab Wurrung and the Dja Dja Wurrung Aboriginal Corporation. BADAC states that it would auspice a Cultural Heritage Committee with representatives of all Traditional Owners and would have clear representation, objectives and functions for all cultural heritage matters.

The Council commissioned research which confirmed that a minority of BADAC members had traditional links to the claimed area. The research confirmed that the majority of BADAC's members are from other Traditional Owner communities and have a historical and contemporary connection to the region. The Council wrote to BADAC noting the outcomes of the research and BADAC did not dispute this conclusion. It was noted that BADAC's membership was open to any Aboriginal person who resides in the Ballarat and Central Highlands region of Victoria.¹

In May 2009, the Council appointed the Wathaurung Aboriginal Corporation (**Wathaurung Corp**), an organisation representing Aboriginal people with traditional and familial links to their claimed RAP area. The area claimed by BADAC overlaps with much of the northern part of Wathaurung Corp's RAP area. Wathaurung Corp was appointed on the basis that it represented the Traditional Owners of the area, the Wadawurrung people. The Council also had received a supporting letter from BADAC for the Wathaurung Corp RAP application.

Taking into account the information available to it, the Council decided that BADAC was not an organisation specifically or primarily representing people with traditional and familial links to the area and on that basis, decided not to appoint BADAC.

Historical and contemporary interest and expertise in cultural heritage management

The Council considered information provided by BADAC regarding its historical and contemporary interest in the area and expertise in cultural heritage management. It noted that BADAC had been involved in cultural heritage in the region for 27 years and was part of the Committee that established the cultural heritage program in the Ballarat and District region.

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

Charter of Human Rights and Responsibilities

The 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 set out under s19 of the Charter. It concluded that this decision is compatible with the Charter.

Conclusion

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



Eleanor A Bourke
Chairperson
Victorian Aboriginal Heritage Council

¹ Rule 6(3) of the Rules of BADAC