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**DECISION OF THE ABORIGINAL HERITAGE COUNCIL IN RELATION TO AN APPLICATION BY BANGERANG CULTURAL CENTRE CO-OPERATIVE LTD TO BE A REGISTERED ABORIGINAL PARTY**

**DATE OF DECISION: 19 NOVEMBER 2007**

**Decision**

The Aboriginal Heritage Council (the Council) has decided NOT to register the Bangerang Cultural Centre Co-operative (BCC) as a registered Aboriginal party (RAP).

**Reasons for Decision**

**1. Introduction**

The Council received an application (the RAP Application) on 16 April 2007 by BCC for registration as a RAP pursuant to Part 10 of the *Aboriginal Heritage Act 2006* (the Act).

The legal context for this decision is contained in Attachment 1 of these reasons.

**2. Background to the RAP Application**

Under s 150 of the Act, a RAP application must be in the approved form and contain certain information. The RAP Application met these requirements.

**2.1 BCC an incorporated body**

On 3 October 2001, the Shepparton Aboriginal Arts Council Co-operative Ltd registered a change of its name and became registered and incorporated under the name Bangerang Cultural Centre Co-operative Ltd.

A search of the register kept by the Office of the Registrar of Aboriginal and Torres Strait Islander Corporations showed that, as at 27 April 2007, BCC was still registered.

**2.2 The Application Area**

A map was provided to the Council showing the area over which BCC seeks to be a RAP (“the Application Area”). The Application Area covers a significant portion of the northern portion of Victoria, including the towns of Echuca, Shepparton, Murchison, Benalla, Wangaratta and Rutherglen. A map of the Application Area is attached.

### **3. Matters taken into consideration**

#### **3.1 Introduction**

As part of its decision-making process, Council had regard to a number of matters identified in s 151 of the Act. These matters are listed below:

#### **3.2 BCC not a Native Title Holder**

The RAP Application states that BCC is not a registered native title holder for the Application Area.

#### **3.3 BCC not a Native Title Party**

The Rap Application states that BCC is not a native title party for any of the Application Area.

#### **3.4 Native Title Agreements**

The Council has not been provided with details of any signed native title agreement involving BCC or any other native title party.

#### **3.5 Traditional and Family Links**

Pursuant to s 7 of the Act, a person has traditional or familial links to an area if:

- (a) the person is an Aboriginal person with particular knowledge about traditions, observances, customs or beliefs associated with the area; and*
- (b) the person:*
  - (i) has responsibility under Aboriginal tradition for significant Aboriginal places located in, or significant Aboriginal objects originating from, the area; or*
  - (ii) is a member of a family or clan group that is recognised as having responsibility under Aboriginal tradition for significant Aboriginal places located in, or significant Aboriginal objects originating from the area.*

The RAP Application states that BCC represents Aboriginal people with Traditional or familial links and provides information supporting this.

BCC stated that a number of Aboriginal groups recognise these links as well as ‘Native Title Unit Services’<sup>1</sup>.

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<sup>1</sup> Presumably Native Title Services Victoria, the Native Title Representative Body for Victoria.

A list of family groups that represent Bangerang is provided. BCC also provide a family tree which indicates that the family groups are descendants of one of the children of Kitty Atkinson/Cooper.

Council accept that members of BCC can demonstrate traditional links to the Application Area, although it also noted that the rules of BCC do not restrict membership to include only Traditional Owners.

### *3.6 Historical and Contemporary Links/Expertise in Cultural Heritage Management*

The application states BCC also represents people with historical links. This interest is described by BCC as 'Bangerang being the traditional owner group within the described area'.

BCC states that it has extensive experience in working with Federal, State, local government together with wider community through cultural heritage programs and natural resource assessment. It provides a list of this experience including:

- being awarded the Victorian Landcare Award 2005 (Indigenous Category);
- being involved extensively in liaison with private and government natural resource managers over the past three decades. Including Parks Victoria, DSE, Goulburn Murray Water, Land Care movement, private landowners, VicRoads and VicRail.
- Conducting extensive education programs in schools and the wider community groups and individuals on cultural heritage information, including site identification, traditional food and medical sources, pre-European habitation of specific land parcels and waterways.

The Council believes that BCC has the ability to undertake cultural heritage responsibilities. The broad support received by BCC from developers, land managers and the wider community was noted by the Council.

### *3.7 Grants of Land*

BCC states that it does not hold any grant of land in fee simple granted under specific powers in a State or Commonwealth Act. The Council is not aware of any such grants being made in the Application Area.

### *3.8 Land and Resource Management Agreements*

BCC states that it has not entered into an agreement with the state or other party in relation to land and natural resource management in the Application Area.

### *3.9 Other relevant considerations*

#### Public Comments

Notice of the BCC Application was published in the Koori Mail in May 2007.

A number of letters of support for the BCC RAP Application were received by the Council. Objections were also received from Yorta Yorta Nations Aboriginal Corporation (YYNAC), the Yorta Yorta Joint Body, Taungurung Clans Aboriginal

Corporation and Mr Gary Murray, Co-Chair, Dhudhuroa Native Title Group. BCC was advised of these comments and given an opportunity to respond to the objections.

#### Expert Advice

In July 2007, Dr Ian Clark addressed the Council regarding the relationship between Yorta Yorta and Bangerang peoples to the area for which there are competing RAP claims. BCC was advised of the substance of what Dr Clark stated to the Council and given an opportunity to comment on this.

#### YYNAC Application

The Council was also required to consider a RAP application by YYNAC which overlapped in large part with the BCC Application Area. BCC objected to the RAP application by YYNAC. In July and August 2007, the Council attempted to arrange mediation between YYNAC and BCC to address their competing RAP Applications. However, YYNAC did not attend this preliminary meeting and their response to this proposed meeting demonstrated to Council that YYNAC was not prepared to participate in any alternative dispute resolution process.

On 24 September 2007, the Council registered YYNAC as a RAP. Council prepared detailed reasons for this decision and provided a copy of these reasons to BCC and was also provided with an opportunity to provide further information now that YYNAC was registered. Further information was provided by on behalf of BCC which addressed the question of the appropriateness of BCC as a second RAP over the Application Area.

#### **4. Discussion**

Council sees its task in determining RAP applications to be to determine (having regard to all relevant considerations) whether a RAP applicant will be capable of carrying out the functions of a RAP for a particular area in a manner which best achieves the objects of the Act.

As set out in the reasons for decision relating to the YYNAC:

*A critical aspect of the Council decision was assessing the competing RAP applications of the YYNAC and BCC. Council took the view that both BCC and YYNAC have the ability to consider and advise on applications for cultural heritage permits; to evaluate cultural heritage management plans; to enter into cultural heritage agreements and to apply for interim and ongoing protection declarations.*

*However, Council took the view that YYNAC represents a wider group of traditional owners than BCC, and that the membership of YYNAC was intended to include all traditional owners of the area that was the subject of the Yorta Yorta native title claim. Accordingly, the Council believed that YYNAC is well placed to carry out the functions of a RAP as set out in s 148 of the Act.*

*Council wishes to emphasise that it is not saying that the members of BCC are not traditional owners of the Bangerang Application Area. On the contrary,*

*Council believes that, as traditional owners of the area, members of BCC are entitled to participate in YYNAC, along with other traditional owners of that area. Nor is Council making any decision about whether the traditional owners of the area should be known as Bangerang or Yorta Yorta.*

The Council understands that the group of Traditional Owners who are members of BCC are all descendants of one apical ancestor. YYNAC do not dispute that the descendants of this ancestor are Traditional Owners, but say that the Traditional Owner group for the area is wider than that. This wider group is incorporated into the membership of YYNAC.

In registering YYNAC, the Council accepted that the Traditional Owner group for the area was wider than the group represented by BCC. Having made this decision, Council do not believe that it would be appropriate to appoint a second RAP for the Application area where the second RAP would be part of the Traditional Owner group represented by the first RAP.

In arriving at this decision, the Council relied on their own cultural knowledge which reinforced the importance of a Traditional Owner group working in a united way, in the interests of their community and to avoid becoming divided. This factor did not support registering BCC as a second RAP for the Application Area.

Council also noted that, because of its conclusion that BCC should not be registered, it was not necessary to consider in detail whether more than one RAP should be registered over the Application Area.

## **5. Conclusion**

On the basis of the above information, the Council has decided not to register BCC as a registered Aboriginal party.

The Council hopes its decision will form the basis for both groups to come back together into a co-operative way.

## ***Attachment 1: Legal context of the decision made by the Council***

The Act, which came into operation on 28 May 2007, replaced Part IIA of the Commonwealth *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (the Old Cultural Heritage Laws) as providing the regulatory framework for protecting Aboriginal cultural heritage in Victoria.

The objectives of the Act are listed in s 3 of the Act and include:

- (a) to recognise, protect and conserve Aboriginal cultural heritage in Victoria in ways that are based on respect for Aboriginal knowledge and cultural and traditional practices;*
- (b) to recognise Aboriginal people as the primary guardians, keepers and knowledge holders of Aboriginal cultural heritage; and*
- (c) to accord appropriate status to Aboriginal people with traditional or familial links with Aboriginal cultural heritage in protecting that heritage.*

Part 9 of the Act creates the Council. The Council consists of 11 members appointed by the Minister. Each member is required to be an Aboriginal person with traditional or familial links to an area in Victoria; be resident in Victoria; and have relevant experience or knowledge of Aboriginal cultural heritage in Victoria. The Council is the only one of its kind in Australia.

Under s 132(2) of the Act, the Council is given the function of receiving and determining applications for registration of Aboriginal parties under Part 10 of the Act.

Part 10 of the Act provides for the creation of RAPs. RAPs play an important role under the Act for the protection of Aboriginal cultural heritage. The functions of RAPs are set out in s 148 of the Act and include:

- (a) to act as a primary source of advice and knowledge for the Minister, Secretary and Council on matters relating to Aboriginal places located in or Aboriginal objects originating from the area for which the party is registered.*

Part 10 of the Act also sets out the procedure for the creation of RAPs. Under s 150 of the Act, an application for registration as a RAP must be made to the Council. Section 151 of the Act sets out the considerations which the Council needs to take into account when deciding a RAP application.

Section 153 of the Act allows the Council to register more than one RAP for a particular area, but only if the Council is satisfied that this:

- (a) will not unduly hinder the ability of any of the RAPs for the area to exercise their powers and carry out their functions under this Act; and*
- (b) will not otherwise hinder the effective operation of the Act.*

Under s 151(1) of the Act, the Council is required to determine RAP applications within 120 days of receiving the application.