

**DECISION OF THE VICTORIAN ABORIGINAL HERITAGE COUNCIL IN RELATION TO AN APPLICATION BY BOON WURRUNG FOUNDATION LTD 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 Boon Wurrung Foundation Ltd. (**BWFL**) as a registered Aboriginal party (**RAP**) under the *Aboriginal Heritage Act 2006* (Vic) (**the Act**).

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

**Reasons for Decision**

**Overview**

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

- BWFL is not a Native Title Holder (s 151(2) of the Act)
- BWFL is not a Native Title Party (s 151(3)(a) of the Act)
- Carolyn Briggs of the BWFL has signed an Indigenous Land Use Agreement (ILUA) on behalf of Boon wurrung people for the Blairgowrie Safe Boat Harbour (s 151(3)(b) of the Act) and
- Carolyn Briggs of the BWFL is signatory to an unregistered native title claim for Wilson's Promontory (VC97/2), within the application area.

The Council also considered the traditional and familial links claimed by members of BWFL (s151(3)(c) of the Act), and historical and contemporary interest and demonstrated expertise in managing and protecting cultural heritage (s 151(3)(d) of the Act).

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

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<sup>1</sup> 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 the RAP applicant in this matter 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 BWFL are Traditional Owners of Boon wurrung (Bunurong) country.

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

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

#### *Whether BWFL should be appointed as the sole RAP*

In its RAP application, BWFL explained that it had established a Cultural Heritage Management Committee to manage RAP business. Membership of this Committee is open to adult Indigenous people who can demonstrate either a traditional link or a historical connection to Boon wurrung (Bunurong) country. BWFL membership includes Aboriginal people who have a traditional connection to Boon wurrung (Bunurong) country, and members who identify as having an historical connection to Boon wurrung (Bunurong) country.

The Council accepted that BWFL has members with traditional or familial links to country. However, it decided that if it was to appoint BWFL as the sole RAP for Boon wurrung (Bunurong) country it wished to be satisfied that BWFL would include in their membership members of BLCAC who also have traditional links to country. BWFL indicated to the Council that they would accept members of BLCAC for membership of BWFL. However, the Council also took into account other correspondence with BWFL which strongly suggested that BWFL did not accept the traditional links of BLCAC members. The Council formed the view that members of BLCAC were unlikely to be afforded status within BWFL as people with traditional or familial links to Boon wurrung (Bunurong) country.

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

*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 BWFL in the event that BLCAC 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 the failure to recognise each other as Traditional Owners, there is doubt about the proper functioning of the Act if two RAPs were appointed.

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.

***Historical and contemporary interest and demonstrated expertise in managing and protecting cultural heritage***

BWFL also made its application on the basis that they represent people with historical and contemporary interest in the Aboriginal cultural heritage of their application area. The Council decided not to appoint BWFL on this basis.

***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 the BWFL are Traditional Owners, the Council would expect that BWFL would continue to be consulted for the purposes of cultural heritage management and protection.

***Charter of Human Rights and Responsibilities***

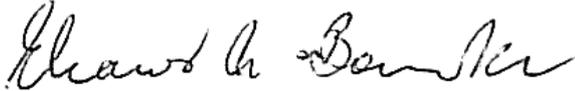
The Council gave careful consideration to the *Charter of Human Rights and Responsibilities Act 2006 (the Charter)*, in particular the relevant distinct cultural rights of Aboriginal persons in s19(2)(a) and s19(2)(d) of the Charter. It has formed the view that a decision not to register BWFL is compatible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

***Neighbouring traditional owner groups***

Parts of the BWFL 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 BWFL as a RAP.



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**Eleanor A Bourke**  
**Chairperson**  
**Victorian Aboriginal Heritage Council**