

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

DATE OF DECISION: 22 April 2009

Decision

The Victorian Aboriginal Heritage Council ("the Council") registers the Wathaurung Aboriginal Corporation ("Wathaurung Corp") as a registered Aboriginal party ("RAP") over part of its application area. A map showing the area for which Wathaurung Corp has been made a RAP ("the RAP Area") is attached (Attachment 1). The Council is still considering the remaining area for which Wathaurung Corp has sought to be a RAP.

Reasons for Decision

Traditional Links

The Council accepts that Wathaurung Corp is an organisation that represents Aboriginal people with traditional links to the RAP Area. Membership of Wathaurung Corp is open to descendants of a Wadawurrung¹ man, John Robinson (b 1846).

The rules of Wathaurung Corp have recently been amended. The amended rules changed the factors that would be taken into account when deciding on eligibility for membership to Wathaurung Corp. Previously, membership depended only on being able to establish a genealogical connection to John Robinson (b 1846). Wathaurung Corp appear to have now imposed further conditions intended to ensure that members are also accepted as being Wadawurrung according to Wadawurrung tradition.

Council considered that the previous rules were consistent with the claim that Wathaurung Corp was an organisation that represented Wadawurrung people. While the amended rules are more complex than the old ones, Council still accepts these new rules are consistent with the claim that Wathaurung Corp represents Wadawurrung people.

The Council accepts the claim made by Wathaurung Corp that Wadawurrung people have traditional links to the RAP Area. This claim was not disputed by anyone.

The Council is aware that some individuals who consider themselves Wadawurrung might be excluded from membership to Wathaurung Corp. Many of these people are members of Wathaurung Aboriginal Co-operative Ltd (Wathaurung Co-op). Their exclusion would arise because the members of Wathaurung Corp currently do not recognise these people as being Wadawurrung in accordance with Wadawurrung tradition. Members of Wathaurung Co-op have proposed to create a new Aboriginal

¹ The Council uses the word Wadawurrung, as an alternative to Wathaurung, Wathaurong and Waddawurrung. The spelling that the Council uses is also used by Dr Ian Clark.

corporation to represent Wadawurrung people, and to undertake further research regarding the claims made by their members which are currently not accepted by Wathaurung Corp.

The Council does not see its role as imposing on Traditional Owners a decision relating to their own identity. The Council is satisfied that Wathaurung Corp is an inclusive organisation of Wadawurrung people and on this basis, the Council believes that Wathaurung Corp should be appointed as a RAP.

While Council does not anticipate receiving any further research on this matter in the foreseeable future, if such information were provided to Council supporting the traditional links of those members of Wathaurung Co-op which are currently not accepted by Wathaurung Corp, it could be dealt with in future RAP applications.

RAP applications by Wathaurung Co-op and BADAC

RAP applications by Ballarat and District Aboriginal Co-operative Ltd (BADAC) and Wathaurung Co-op overlapped much of the RAP Area. BADAC and Wathaurung Co-op both provided cultural heritage services in the application area under the previous Aboriginal cultural heritage laws.

The memberships of BADAC and Wathaurung Co-op were open to all Aboriginal people living in the relevant area, whether Traditional Owner or not.

BADAC did not claim to be an organisation which represented Aboriginal people with traditional links. Although a number of its members claimed to be Wadawurrung people, BADAC's membership was open to any Aboriginal person who resides in the Ballarat and Central Highlands region of Victoria.²

Similarly, membership of the Wathaurung Co-op is open to any Aboriginal people who resides in the boundaries of the Co-op.³ However its RAP application was made on the basis that it acted on behalf of those members (called the Wathaurung RAP Authorising Group) who claimed to be Traditional Owners and who represented all Wadawurrung people.

The Council encouraged and assisted Wathaurung Corp and Wathaurung Co-op to meet and discuss their respective RAP applications. However, the Council ultimately decided that enough had been done to allow the parties to resolve their disputes themselves and it was appropriate for the Council to now proceed to make a decision.

On 22 April 2009, Wathaurung Co-op advised that it was withdrawing its RAP application and that a new RAP application would shortly be made by Wadda Wurrung Aboriginal Corporation. We understand that this new application would be over the area previously claimed in the Wathaurung Co-op RAP application, but also extended to include the Wathaurung Corp RAP Application Area.

² Rule 6(3) of the Rules of BADAC.

³ Rule 8(2) of the Rules of Wathaurung Co-op.

Overlapping RAP Applications by neighbouring organisations

RAP applications have also been made by other Aboriginal organisation claiming to represent Aboriginal people with traditional links to areas in the vicinity of the Wathaurung Corp RAP application. A list of these other RAP applications is as follows:

- Dja Dja Wurrung Clans Aboriginal Corporation (Dja Dja Wurrung) and Jaara Jaara Loddon Aboriginal Corporation (Jaara Jaara) to the north;
- Framlingham Aboriginal Trust (Framlingham) and Martang Pty Ltd (Martang) to the west;
- Boon Wurrung Foundation Ltd (Boon Wurrung) and Bunurong Land Council Aboriginal Corporation (Bunurong) to the east; and
- Kuuyang Maar Aboriginal Corporation to the south;

Originally, there was a small overlap between the Wathaurung Corp RAP application and the RAP applications by Dja Dja Wurrung and Jaara Jaara. However, Wathaurung Corp agreed to amend its application by reducing its application area to remove this overlap, and make a separate RAP application over the reduced area.

The Framlingham application overlapped with an area in the west of the Wathaurung Corp RAP application area. Framlingham objected to the Wathaurung Corp application, in relation to the area of overlap with its own RAP application. The Council decided to defer a decision in relation to this area of overlap. This is consistent with Council's practice of encouraging neighbouring RAP applicants to try to resolve disputes themselves. If these discussions do not lead to a resolution of the overlapping RAP claims, then it will be up to the Council to determine which, if any, organisation/s should be appointed as RAP over this area.

None of the other organisations had any overlap with the Wathaurung application area and none of them objected to the Wathaurung Corp RAP Application.

The Council notes that as there are no current native title proceedings over the area for which Wathaurung Corp has been appointed, this decision is not inconsistent with Council's principle that groups recognised as RAPs as best as possible reflect those recognised under native title arrangements. Native Title Services Victoria was provided with an opportunity to advise Council of any views it had in relation to the appointment of RAPs in this area, and did not express any view as to which if any organisation should be given RAP status.

Capacity of Wathaurung Corp

The Council notes that BADAC and Wathaurong Co-op are acknowledged as having delivered cultural heritage services in the area for a long period of time. The Council takes the view that if an organisation which represents Aboriginal people with traditional links is inclusive and broadly representative of the group and wishes to be a RAP, it should not be disadvantaged from achieving this merely because it does not have the track record of other RAP applicants for that area. This position is important because the previous laws usually gave cultural heritage responsibilities to

non-Traditional Owner organisations. The important thing is that Wathaurung Corp can satisfy the Council that it will be able to carry out the functions of a RAP.

The Council has decided that it is satisfied that Wathaurung Corp has the capacity to carry out the functions of a RAP. In reaching this view, it took into account the fact that Wathaurung Corp has been involved in cultural heritage management and protection in recent years.

The Council was also provided with a draft strategic plan and a draft Field Manual of Wathaurung Corp Field Representatives. Neither of these documents provided the Council with specific details regarding how Wathaurung Corp would carry out its responsibilities as a RAP.

The Council sought the views of AAV in relation to this matter and was not provided with any information that suggested that AAV believed Wathaurung Corp might not have capacity to carry out the functions of a RAP.

Conclusion

Having regard to these matters, and relying on its own cultural knowledge, Council took the view that Wathaurung Corp should be registered for the RAP Area. The remainder of the Wathaurung Corp RAP application will be considered by Council at a later date.

Eleanor A Bourke
Chairperson
Victorian Aboriginal Heritage Council