

**STATEMENT OF REASONS FOR THE DECISION OF THE VICTORIAN ABORIGINAL HERITAGE COUNCIL  
IN RELATION TO AN APPLICATION BY BANGERANG ABORIGINAL CORPORATION**

**DATE OF DECISION: 14 JULY 2016**

**Decision**

The Victorian Aboriginal Heritage Council (**Council**) declined the application of Bangerang Aboriginal Corporation (**BAC**) to be registered as a Registered Aboriginal Party (**RAP**).

**Application Area**

The RAP application related to an area in the north west of Victoria, bound by the Murray River in the north, and extending west to Echuca, north of Euroa in the south and just west of Beechworth in the east. It includes the towns of Shepparton, Benalla, Wangaratta and Rutherglen (**Application Area**). Yorta Yorta Nations Aboriginal Corporation (**YYNAC**) is currently registered as a RAP over the whole of the Application Area. The Application area also overlapped with an area for which Taungurung Clans Aboriginal Corporation (**TCAC**) has applied to be a RAP.

**Findings of Fact and Evidence**

Council has made the following findings of fact, based on the evidence and other material detailed. Council has interpreted the historical record in light of the fact that the knowledge and the voices of Traditional Owners are usually absent from this record and, even when included, often misunderstood.

*Native title*

BAC is not a registered native title holder for the Application Area. There is no registered native title holder for the Application Area. No native title agreement exists in relation to the Application Area. In 1998, the Federal Court determined that native title did not exist in relation to the Decision Area, which overlaps with the Application Area. This determination was made in relation to the native title case brought by the Members of the Yorta Yorta Aboriginal Community. The Federal Court's 1998 determination was upheld by the Full Federal Court and then the High Court of Australia in 2002. As a consequence of these decisions, a registered native title holder does not exist in relation to the Application Area.

*Recognition and settlement agreement*

BAC's application was not made on the basis that it has a recognition and settlement agreement within the meaning of s 151(2A) of the *Aboriginal Heritage Act 2006* (**AH Act**). As such, Council finds that BAC is not a traditional owner group entity who has entered into a recognition and settlement agreement in relation to the Application Area.

YYNAC provided Council with a notice titled 'Notice of the Recognition of the Traditional Owner Group for the Area Comprising the Barmah National Park', published in the Victorian Government Gazette on 26 October 2016.. YYNAC stated its view is that the effect of this notice of recognition is that YYNAC is a 'traditional owner group entity' for the purposes of s 151(2A) of the AH Act.

However, Council finds that this notice of recognition does not mean that YYNAC is a 'traditional owner group entity' for the purposes of s 151(2A) of the AH Act.

*Representation - traditional and familial links*

BAC's application was made on the basis that it represented the Bangerang people, and that the Bangerang people have traditional and familial links to the Application Area. YYNAC advised Council, amongst other things, that it represents all YYNAC clan groups within the YYNAC structure, including the Bangerang Clan group. BAC was provided an opportunity to respond to YYNAC's position, and advised Council that Bangerang is not one of the clan groups that make up Yorta Yorta Nation, but is itself a language group that is made up of many clans.

In assessing this part of BAC's application, Council had regard to BAC's application, subsequent correspondence, and materials in support submitted by BAC. Council also had regard to a 2015 draft report summarising the historical materials relevant to Yorta Yorta and Bangerang (titled The Yorta Yorta and The Bangerang: an analysis of historical materials). The draft report was provided to BAC and to YYNAC for comment. The responses of BAC and YYNAC to the report were generally consistent with their positions in respect of BAC's application for registration as a RAP, and were taken into account by Council.

On the basis of BAC's application, the historical record and BAC's response to that record, Council finds that BAC's traditional and familial links to the Application Area are identified through apical ancestors and family groups that, with one possible exception, YYNAC also represents. Although it is difficult to determine exact numbers, it appears some of the same people are in fact members of both organisations and many more are eligible to be members of both organisations. Council notes that each of the contemporary descendants will reach their own understandings about identity in this place, as Traditional Owners do in other places.

Council has therefore formed the view that BAC is a body that represents Aboriginal people with traditional and familial links to the Application Area.

*Representation - historical or contemporary interest*

BAC relied on its traditional links as the basis for its historical and contemporary links to the Application Area.

In considering this part of BAC's application, Council had regard to the same information and evidence considered in relation to BAC's traditional and familial links to the Application Area. Council has also had regard to BAC's application, which details Bangerang peoples' involvement in cultural heritage management in the Application Area, and elsewhere.

Council finds that BAC is a body that represents Aboriginal people and has a historical and contemporary interest in Aboriginal cultural heritage relating to the Application Area, and demonstrated expertise in managing and protecting Aboriginal cultural heritage in the Application Area.

Council accepts that BAC represents members whose identity is Bangerang.

*Grant of fee simple*

There has been no grant of land in fee simple made by the State or Commonwealth to an Aboriginal body. BAC did not rely on any grant of fee simple in support of its application.

*Land and natural resource management*

BAC has not entered into an agreement with the State in relation to land and natural resource management in the Application Area. While BAC did make reference to its members comprehensive history of engagement with the community in matters associated with land management, BAC did not rely on any land and natural resource management agreement (within the meaning of s 151(3)(f)), in the Application Area, in support of its application.

### *Findings relating to parties to the Application Area*

YYNAC is currently registered as a RAP over the whole of the Application Area. The Application area also overlapped with an area for which TCAC has applied to be a RAP.

BAC described its application as an application for 'dual RAP status'. BAC claimed that BAC and YYNAC could work together in the manner required by the AH Act and provided information in support of this claim, including: a proposal it had formulated for how BAC and YYNAC could work together as dual RAPs over the Application Area; examples of steps taken by BAC to attempt to engage with YYNAC; and examples of BAC and YYNAC working together in various forums. These claims were made in BAC's application and in subsequent correspondence submitted in support of its application.

On the other hand, BAC acknowledged a history of disagreement between Bangerang and Yorta Yorta, stretching back to 1996. Further, BAC did not provide any evidence that BAC's formulated proposal for working together with YYNAC in the Application Area had been agreed to, at this time, by YYNAC.

Council finds that BAC has taken steps to attempt to address the complex issues underlying their history of disagreement with YYNAC, and has demonstrated some examples of working successfully with YYNAC. Nonetheless, Council finds that those matters do not establish that YYNAC and BAC have resolved their differences at this point in time. Council also finds, critically, that BAC and YYNAC do not have agreed policies and procedures for operation as joint RAPs, either in accordance with BAC's formulated proposal, or otherwise.

### **Reasons for the decision.**

The following steps have been taken in the decision making process.

#### *Legislation*

In deciding BAC's application, Council has taken account of all matters it is required to consider under s 151 of the AH Act.

BAC is not a registered native title holder within the meaning of s 151(2) of the AH Act, nor has it entered into a recognition and settlement agreement in relation to the Application Area, within the meaning of s 152(2A) of the AH Act. As such, Council is not obliged to grant BAC's application under ss 151(2) or 151(2A) of the AH Act.

Council has considered the matters set out in s 151(3), and concludes that BAC has not established any of the factors set out in ss 151(3)(a), s 151(3)(b), s 151(3)(e) and s 151(3)(f).

Council has considered, under ss 151(3)(c) and 151(3)(d), the question of whether BAC is a body that represents Aboriginal people with traditional or familial links to the Application Area (that is, Traditional Owners), and/or has historical or contemporary interest in Aboriginal cultural heritage relating to the Application Area and expertise managing and protecting such heritage. It is satisfied the circumstances in ss 151(3)(c) and 151(3)(d) exist.

Council has considered the prior registration of YYNAC as RAP. This consideration means it is necessary to consider s 153 of the AH Act.

Section 153 of the AH Act states:

Subject to section 151(2), more than one body may be a registered Aboriginal party for a particular area if the Council is satisfied that having more than one registered Aboriginal party for the area-

- a) will not unduly hinder the ability of any of the registered Aboriginal parties 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 this Act.

Council is not satisfied that appointing BAC over the Application Area will not (a) unduly hinder the ability of either RAP to exercise their powers and carry out their functions; or (b) otherwise hinder the effective operation of the Act.

This is because, having reviewed BAC's application, and documents and correspondence submitted by BAC in support of its application, Council finds that:

(1) BAC has not provided detail of processes or procedures agreed between BAC and YYNAC, that show how BAC and YYNAC would exercise the powers and carry out the functions of RAPs over the Application Area; and

(2) the history of disagreement between BAC and YYNAC, as set out by BAC, remains unresolved at this time.

As such, at this time, Council cannot be satisfied of the requirements of s 153.

#### *Policy*

Council applied its policies as contained in its 'Fact Sheet for RAP applicants on registration of multiple RAPs for a single area' and 'General Principles - RAP Decision Making'.

Policy is to accord appropriate status to Traditional Owners including a preference to appoint Traditional Owner bodies corporate as RAPs.

Policy is to appoint RAPs that are single, inclusive groups and representative of Traditional Owners in the relevant application area.

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

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 in s19(2)(d) of the Charter. Council formed the view that the decision to decline to register BAC is compatible with the Charter.

Council has also taken all matters detailed above into account, and declines BAC's application to be registered as a RAP over the Application Area.



Jennifer Beer

**Victorian Aboriginal Heritage Council**