

DECISION OF THE VICTORIAN ABORIGINAL HERITAGE COUNCIL IN RELATION TO AN APPLICATION BY BOON WURRUNG FOUNDATION LIMITED TO BE A REGISTERED ABORIGINAL PARTY

DATE OF DECISION: 21 MAY 2015

Decision

The Victorian Aboriginal Heritage Council (**the Council**) has decided not to register the Boon Wurrung Foundation Limited (**BWFL**) as a registered Aboriginal party (**RAP**) under section 151 of the *Aboriginal Heritage Act 2006* (Vic) (**the Act**).

*RAP Application Area*

A map was provided with the BWFL RAP Application (**Application**) showing the area over which BWFL sought to be appointed as a RAP (**Application area**). It includes the coastline from the mouth of the Werribee River to Wilsons Promontory National Park, encompassing most of Port Phillip Bay, Western Port Bay, Cape Liptrap and all of the Mornington Peninsula.

Based on information provided to Council to date, Council is of the understanding that the Boon Wurrung (**Boon wurrung**)<sup>1</sup> is a Kulin group from the coastal country about Port Phillip and Western Port bays. This understanding is supported by historical material that Boon wurrung Country includes the watersheds of the streams flowing south into the sea from the Dandenong Ranges (the Bunyip, Lang Lang, Bass and Tarwin Rivers) as well as the Mornington Peninsula, French and Phillip Islands, Cape Liptrap and Wilsons Promontory.

Council is also aware that parts of Country claimed are disputed, with Wilsons Promontory also identified by some as being Gunai/Kurnai (Gunaikurnai) Country, and the northern edge of Port Phillip Bay (from Werribee River to Mordialloc Creek) identified by some as Country of the Woi wurrung (Wurundjeri) People.

*Reasons for Decision*

*Traditional and Familial Links*

- *Boon wurrung ancestry*

Over recent decades there has been a significant amount of research undertaken by Aboriginal and non Aboriginal people to better understand Boon wurrung ancestors

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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", "Boonerwurrung", "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 a RAP applicant 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".

and their contemporary descendants. In this regard Council recognises with respect the outstanding contribution made by Carolyn Briggs and her family to community awareness and understanding of the Boon wurrung People's identity and culture.

Regarding research into the ethno-historical records, Council has noted work undertaken by Dr Ian Clark, Dr Sue Wesson, Dr Fiona Skyring and Jacqueline D'Arcy. Council is also aware of the criticisms that have been made in relation to this work.

In its considerations, Council reviewed all the information and correspondence received from BWFL and the available research reports. According to this information, it appears that the only known Boon wurrung apical ancestors with living descendants are women who were abducted by sealers in the early 18<sup>th</sup> century. It is recognised that other ancestors may be identified in future but present knowledge is limited to these women. Given the illegal and clandestine nature of these abductions, it is no surprise that the historical record is ambiguous where Boon wurrung ancestry is concerned. Council has noted different researchers use the words supported, asserted, unproven, possible and plausible to describe the likelihood of all of the named ancestors being Boon wurrung ancestors.

Council is aware that five women, collectively, have been identified as being the Boon wurrung ancestors. They are Jane Foster, Margery Munro, Eliza Nowen, Elizabeth Maynard and Louisa Briggs. On the basis of information currently available, Council accepts each of these women as Boon wurrung ancestors and will be unlikely to change this position unless new information comes to light that disproves any or all of these claims.

In considering the Application, Council was informed BWFL recognises four women as Boon wurrung ancestors but does not currently recognise Jane Foster as a Boon wurrung ancestor.

Council acknowledges that it is unusual to name both Louisa Briggs and the more senior ancestor, Margery Munro. Council believes this is necessary in the context of the controversies that have affected and divided contemporary Boon wurrung descendants.

- *BWFL membership and inclusivity*

It is broadly recognised that it is for Traditional Owners themselves to develop their membership rules as part of establishing corporations that make RAP applications on their behalf. These rules may define members' rights and obligations based on a variety of factors and considerations.

While Council recognises this, Council applies decision making principles concerning matters of group membership and inclusivity in its consideration of RAP applications. These principles align with the Act and native title legislation and include the following:

- Council gives priority consideration to applications made by groups who represent Traditional Owners.
- Council wants to ensure that groups recognised under the cultural heritage laws as best as possible reflect those under native title arrangements.

- Council encourages smaller groups to create sustainable RAP structures by working together to create a single RAP or develop co-operative arrangements with other Aboriginal organisations.

The current BWFL Constitution provides that BWFL membership is open to a person who identifies as an Aboriginal person and a descendant of an identified Boon Wurrung apical ancestor, and demonstrates an interest in and knowledge of Boon Wurrung culture and history. Council welcomed this change from an earlier Constitution which did not require BWFL members to be Boon wurrung Traditional Owners. However Council also noted BWFL's membership rules and position about Boon wurrung ancestry currently prevent descendants of Jane Foster from applying for BWFL membership.

The provisions of the Act do not provide a basis on which the Council can give preferential treatment to Traditional Owners living in Victoria. The Act does not disqualify Traditional Owners who no longer live on Country, and if it were to, it would be inconsistent with native title legislation and could bring about a new dispossession.

#### *Sustainable RAP structures and experience in cultural heritage management*

Council is aware of three organisations seeking to represent the Boon wurrung People, the oldest of which is BWFL. Council has received applications from the Bunurong Land and Sea Association Inc and the Bunurong Land Council Aboriginal Corporation. The combined number of members of these organisations is currently 210 and Council has heard from other Boon wurrung People who are not members of any organisation. Council looks forward to a time when Boon wurrung People will be ready to work together to develop a single inclusive and representative organisation so they can look after their priceless heritage for themselves, their children and grandchildren and indeed for all Victorians.

Groups that are guided by Council's principles demonstrate a readiness to accept that:

- questions about boundaries and group composition can sometimes only be resolved if Traditional Owners have difficult and sometimes painful discussions because clear answers are not always available
- discussions between parties with differing views require those parties to listen to opposing views with an open mind and a readiness to shift positions and make reasonable concessions commensurate with the evidence available.

Council gives priority to RAP applications made by Traditional Owner groups that demonstrate they have systems in place to maintain sustainable organisations and the capacity to effectively manage and protect their cultural heritage.

BWFL is known by Council to have had a long history of involvement in cultural heritage management. Council acknowledges and respects accomplishments by Carolyn Briggs and her family to revive and sustain Boon wurrung cultural heritage including the promotion of Boon wurrung identity, language and history; partnerships with stakeholders in cultural heritage management; and protection of Boon wurrung heritage. Council noted an account of BWFL's accomplishments outlined in the Application.

Public comments

Council sought the views of Traditional Owners from the same region as the applicant and from neighbouring areas to inform its decision. Comments were received from a number of individuals and organisations. Some individuals who identified as Bunurong expressed the view that BWFL should not be appointed as a RAP for Boon wurrung Country as BWFL was not inclusive of people who identify as Bunurong.

Charter of Human Rights and Responsibilities

The Council took into account the *Charter of Human Rights and Responsibilities Act 2006 (the Charter)*, in particular the relevant distinct cultural rights of Aboriginal persons in s 19(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 Application area overlapped with RAP Applications from Wurundjeri Tribe Land and Compensation Cultural Heritage Council Inc. 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.

Council is of the view that the exact extent of this area requires discussion with neighbouring RAP Applicants.

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.



Rodney Carter  
Chairperson  
Victorian Aboriginal Heritage Council