

DECISION OF THE VICTORIAN ABORIGINAL HERITAGE COUNCIL IN RELATION TO THE SECOND APPLICATION BY THE BUNURONG LAND COUNCIL ABORIGINAL CORPORATION TO BE A REGISTERED ABORIGINAL PARTY

DATE OF DECISION: 1 JULY 2011

Decision

The Victorian Aboriginal Heritage Council (**the Council**) has decided not to register the Bunurong Land Council Aboriginal Corporation (**BLCAC**) as a registered Aboriginal party (**RAP**) under section 151 of the *Aboriginal Heritage Act 2006 (Vic)* (**the Act**). This was the second Application which had been received by the Council from the BLCAC (**the 2010 Application**).

Background relating to the first BLCAC RAP Application

The first BLCAC RAP Application was received on 27 June 2007 (**the 2007 Application**). The 2007 BLCAC Application area was also the subject of a competing RAP Application from the Boonwurrung Foundation Limited (**BWFL**) made on 1 June 2007. On 27 August 2009, Council declined the RAP Applications made by both the BLCAC and the BWFL.

In its written reasons relating to this decision not to register the BLCAC, Council acknowledged that members of the BLCAC are Traditional Owners of Boon wurrung (Bunurong) Country.¹ Council also accepted that members of BWFL may also be Traditional Owners of Boon wurrung (Bunurong) Country and noted that neither the BWFL nor BLCAC was prepared to accept the other group's claim to be Traditional Owners of Boon wurrung (Bunurong) Country.

Given this situation, Council gave consideration to whether it could either appoint two RAPs over the Application Area, or whether the BLCAC should be appointed as the sole RAP in the area.

Council came to the view that it was not appropriate to register two RAPs to represent the Boon wurrung (Bunurong) Country in this case, and expressed concern about appointing two separate organisations from the same Traditional Owner Group.

¹ 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".

Council was of the view that a single, inclusive organisation would be the most appropriate vehicle to be appointed as the RAP.

Council also considered that the BLCAC was not, at that time, the appropriate organisation to solely represent Aboriginal people with traditional or familial links in the Application area. Council expressed the view that, in order to appoint the BLCAC as the sole RAP for Boon wurrung (Bunurong) Country, Council would need to be satisfied that the BLCAC would be able to accommodate within their membership members of BWFL who have traditional links to Country.

At the time of making its decision in August 2009, Council was not satisfied that BLCAC accepted the traditional or familial links of BWFL members, and concluded that the BLCAC was not the appropriate organisation to solely represent Aboriginal people with traditional or familial links in the Application area.

The 2010 Application

The 2010 Application relied largely on identical materials to those submitted by the BLCAC in relation to the 2007 Application. A number of minor amendments and additions had been made to these materials, and a new application form had been completed by the Applicant. The 2010 Application also contained a number of letters and enclosures addressed to Council which had not been previously provided.

RAP Application Area

A map was provided to the Council with the 2010 Application, showing the area over which the BLCAC sought to be appointed as a RAP. The Application area extends eastward from the Werribee River to Wilson's Promontory National Park. It includes parts of central and western Melbourne, all of south-eastern Melbourne, the Mornington Peninsula, and Westernport Bay, Cape Liptrap and Wilsons Promontory National Park.²

The 2010 RAP Application Area is substantially the same as that which was contained in the 2007 RAP Application made by the BLCAC.

Reasons for Decision

Overview

In considering whether to appoint BLCAC as a RAP the Council had regard to all of the matters set out in s 151 of the Act, noting among other things that:

- BLCAC is not a Native Title Holder (s 151(2) of the Act);
- BLCAC is not a Native Title Party (s 151(3)(a) of the Act);
- Members of BLCAC have an unregistered native title claim for the Port Phillip Bay area (VC06/2); and

² The BLCAC amended the eastern boundary of the Application Area in November 2010 to prevent any overlap with the area covered by the Gunaikurnai native title consent determination.

- BLCAC did not seek to rely on a historical or contemporary interest in the Aboriginal cultural heritage of the area (s 151(3)(d) of the Act).

Traditional and Familial Links

Council continues to acknowledge and accept that members of the BLCAC are Traditional Owners of Boon wurrung (Bunurong) Country. Council's view in relation to the traditional links of BLCAC members has not changed since its decision in relation to the 2007 BLCAC RAP Application.

The BLCAC Rules provide that membership is open to any Aboriginal person who is a Bunurong Person, and who is at least 18 years of age. 'Bunurong People' is defined in the rules to mean an Aboriginal person of Bunurong descent who identify as Bunurong and are accepted by the directors as Bunurong people.³

In making its decision in relation to the 2007 Application, Council indicated that it would be unable to accept the BLCAC as the sole RAP for the Boon wurrung (Bunurong) Country, unless it was satisfied that the BLCAC could accommodate within its membership members of BWFL who have traditional links to Country.

The 2010 BLCAC Application sought to address the concerns which had been raised by the Council in relation to BLCAC's ability to accommodate members of BWFL with traditional links to Country. The 2010 Application made reference to steps taken by the BLCAC to extend an offer of membership to limited members of the BWFL. These steps did not involve any change to the formal membership rules for the BLCAC.

Council has had careful regard to the steps which have been taken by the BLCAC. Council also wrote to the BLCAC on two occasions to clarify its understanding of the rules relating to BLCAC membership, and the steps which had been taken by the BLCAC to extend membership to limited members of the BWFL.

Taking into consideration the additional information which has been provided to Council, Council is not satisfied that the BLCAC is the appropriate organisation to solely represent Aboriginal people with traditional or familial links in the Application area.

The cultural significance of inclusive Traditional Owner organisations

One of the objectives of the Act is 'to accord appropriate status to Aboriginal people with traditional or familial links with Aboriginal cultural heritage in protecting that heritage'. This objective is particularly relevant to Council's role of deciding RAP applications. Council believes that this objective highlights the need for Council members, who all have traditional and familial links to Country in Victoria, to draw on their cultural knowledge when making decisions.

The Council therefore wishes to emphasise that it acknowledges and accepts that members of the BLCAC are Traditional Owners of Boon wurrung (Bunurong) Country,

³ A copy of the new BLCAC Rule Book, registered on 15 June 2009, was provided with the 2010 Application, however the rules of the BLCAC relating to membership in this new rule book have not altered substantially since the 2007 Application.

and respects the significance of their role in protecting Aboriginal Cultural Heritage in Victoria.

However, Council also places importance on the ability of groups to represent all persons having traditional and familial links in an Application area. The importance Council places upon inclusive Traditional Owner groups is located in its understanding of traditional laws and customs and appreciation of the need for shared involvement in country by all Traditional Owners.

Council does not wish to diminish or undermine the traditional and familial links to Country which it accepts are held by members of the BLCAC, and which it considers are also held by some members of the BWFL. However, Council remains of the view that the most appropriate vehicle to protect and promote Aboriginal cultural heritage in the Application area is a single, inclusive organisation.

Protection of Aboriginal cultural heritage in the Application area

As had been the case with the 2007 Application, an issue was raised with Council as to whether the decision to decline the 2010 Application from BLCAC would impact on the protection of Aboriginal cultural heritage in the Application area.

The Council continues to note that, while it is preferable to have a RAP appropriately representing Traditional Owners, no such organisation is 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 BLCAC were not registered.

Taking into account that the Council has recognised that members of the BLCAC are Traditional Owners, the Council continues to expect that the BLCAC be consulted for the purposes of cultural heritage management and protection.

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 BLCAC is compatible with the Charter.

Neighbouring Traditional Owner groups

Parts of the BLCAC RAP 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 accepts that the Traditional Country of the Boon wurrung (Bunurong) people covers an area around Port Phillip Bay. 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 BLCAC as a RAP.

Denise Lovett

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