

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

DATE OF DECISION: 13 February 2025

1. Decision

The Victorian Aboriginal Heritage Council (**Council**) has determined an application (**the Application**) made by the Barapa Country Aboriginal Corporation (**BCAC**) for registration as a Registered Aboriginal Party (**RAP**) under s 151 of the *Aboriginal Heritage Act 2006* (Vic) (**the Act**).

Council has determined not to register BCAC as a RAP under s 151 of the Act.

In making the decision, Council took into account the following information:

- The application form and attachments submitted by BCAC dated 12 April 2024;
- Representations made by BCAC at meetings with Council on 26 September 2024 and 17 January 2025;
- Further materials provided by BCAC in response to requests made by Council, including:
 - BCAC's updated Rule Book (registered with the Office of the Registrar of Indigenous Corporations (**ORIC**) on 15 January 2025);
 - BCAC's updated membership list (registered with ORIC on 22 January 2025);
 - Draft Human Resources Policy and Procedure Manual, Draft Financial Policy and Procedure Manual, and Draft 2024/25 Annual Plan.
- Submission made by the Land Justice Unit (**LJU**) branch of First Peoples – State Relations within the Department of Premier and Cabinet during the public notification period.

Council also received submissions regarding the Application following the expiry of the public notification period. Council notified BCAC of these late submissions, and sought BCAC's view as to whether these submissions should be considered by Council in the context of the Application. BCAC informed Council that its view was that these submissions should not be considered by Council. In view of this, Council has not considered the late submissions in making its determination.

Council understands that BCAC has engaged with some of the parties who made the late submissions, and to the extent BCAC's engagement with those parties was discussed in Council's meetings with BCAC, Council has taken those representations into consideration.

2. Decision Area

The Application concerned the area described as the 'Application Area' in **Attachment 1 (Application Area)**. Council has made a determination in respect of the area described as follows:

The boundary of the Decision Area begins near Koondrook, on the Murray River to the north, extending along the Murray River to Robertson's Bend to the east of Cohuna, across to Cohuna, extending along the western side of Gow Swamp to Kotta, following the Yorta Yorta Nation Aboriginal Corporations' RAP boundary. The boundary then heads west to Lake Buloke, following the Dja Dja Wurrung Clans Aboriginal Corporations' RAP boundary, continuing north along the Barengi Gadjin Land Council Aboriginal Corporations' RAP boundary before returning east. The northern boundary heads east to Quambatook and then follows a line just south of Kerang and returns to Koondrook (**Decision Area**).

3. Findings and Determinations

In determining the Application, Council considered the below factors and made findings of fact in relation to the Decision Area. Where Council has made a determination, this is set out below.

a) Whether BCAC is a Native Title Party or a Traditional Owner Group Entity (ss 151(2), (2A), (3)(a) and (3)(b) of the Act)

Findings of Fact

BCAC is not a registered native title claimant, a registered native title holder, or a native title party for the area which is the Decision Area.

BCAC is not a Traditional Owner Group Entity and has not entered into a recognition and settlement agreement (**RSA**) with the State of Victoria under the *Traditional Owner Settlement Act 2010* (Vic).

Council has not been made aware of any native title agreement entered into by BCAC, nor any other party, in respect of the Decision Area.

Determination

BCAC is not a registered native title holder for the Decision Area within the meaning of s 151(2) of the Act, has not entered into an RSA in relation to the Decision Area within the meaning of s 152(2A) of the Act, is not a native title party of the Decision Area for the purposes of s 151(3)(a) and has not entered into any native title agreement for the purposes of s 151(3)(b) of the Act.

As such, Council is not required to approve BCAC's RAP Application under ss 151(2) or 151(2A) of the Act and has not taken any factor into account pursuant to ss 151(3)(a) or (b) of the Act.

b) Whether BCAC is a body representing Traditional Owners of the Decision Area (s 151(3)(c) of the Act)

In considering whether BCAC is a body representing Traditional Owners of the Decision Area, Council considered first, Traditional Ownership of the Decision Area, and second, the membership and representation of BCAC.

BCAC's Application was made on the basis that Barapa Barapa Country includes the Decision Area, and that BCAC represents Barapa Barapa Traditional Owners.

i. Traditional Ownership

Council had regard to statements made by BCAC in its Application in support of its claim that Barapa Barapa peoples are the Traditional Owners of the Decision Area. In particular, Council noted BCAC's description of the Barapa Barapa peoples' connection to the Decision Area, including through significant cultural sites and landmarks which relate to Barapa Barapa peoples' creation and dreamtime stories through song lines. Council further noted BCAC's comments regarding the cultural landscapes and Aboriginal artefacts scattered across the Decision Area which tell the history, rituals, and practices of Barapa Barapa Ancestors.

Council also noted comments by BCAC regarding the area of Country included in its Application. BCAC stated that the Decision Area represents a small portion, or the 'core Country', of Barapa Barapa's extent of Country (referred to as 'Part A') and is largely determined by the RAP boundaries of Yorta Yorta Nation Aboriginal Corporation (**YYNAC**), Barengi Gadjin Land Council (**BGLC**), and Dja Dja Wurrung Clans Aboriginal Corporation (**DDWCAC**), as well as the boundaries of the Wamba Wamba Peoples' native title application. BCAC explained that the areas of Barapa Barapa Country not included in the Application (referred to as 'Part B') are subject to competing claims of Traditional Ownership by neighbouring groups, and have been excluded from the Application to ensure that the Application is not subject to these conflicting interests.

Council noted the public submission of LJU in response to the Application during the public notification period. The LJU's submission stated that BCAC's Application Area is subject to overlap with one parcel within the native title determination area of the Wotjobaluk, Jaadwa, Jadawadjali, Wergaia and Jupagulk Peoples (**WJJWJ Peoples**), and a minor overlap with the Wamba Wamba Peoples' native title application area.

Findings of Fact

The LJU's public submission in response to the Application identified small overlaps between the Application Area and existing native title determination and application areas of other Traditional Owners. In response to this submission, BCAC noted that the identified overlaps were the result of unintentional mapping errors and requested that the areas of overlap be excluded from Council's determination.

In regard to the identified overlap between the Application Area and the WJJWJ Peoples' native title determination area, Council found that native title was determined not to exist over this parcel. As such, the extent of this overlap was not excluded from the Decision Area. In regard to the identified overlap with the Wamba Wamba Peoples' native title application area, the extent of this overlap was excluded from the Decision Area.

Noting the resolution of the above identified overlap, Council was not made aware of any other competing claims of Traditional Ownership within the Decision Area.

Taking into account all of the information available to it, Council was satisfied that:

- Barapa Barapa peoples hold connections and responsibilities to the tangible and intangible cultural heritage and Country of the Decision Area.
- The Decision Area represents uncontested Barapa Barapa Country and excludes any areas of Barapa Barapa Country with competing interests from other Traditional Owner groups.

ii. Membership and Representation

Council had regard to materials provided by BCAC in respect of its inclusive representation of the Traditional Owners of the Decision Area, including BCAC's Rule Book and Membership List. Council also had regard to statements made by BCAC in respect of Barapa Barapa Apical Ancestors and BCAC's inclusivity and consultation.

A. Apical Ancestors and Rule Book

Council noted steps taken by BCAC to clarify and confirm the list of Apical Ancestors for the Decision Area, including through a consultation process and a review and compilation of Barapa Barapa Ancestors listed in previous legal processes.

With respect to the consultation process, BCAC stated that it engaged with individual family groups to confirm Apical Ancestors for inclusion in BCAC's Rule Book. BCAC stated that this process led to the identification of a number of Apical Ancestors that are also included in the Wamba Wemba Peoples' native title application, and that BCAC intends to clarify these Ancestors either through research by First Nations Legal & Research Services or by obtaining affidavits to clarify and confirm the connection of the listed Ancestors to Barapa Barapa Country.

BCAC stated that the outcome of the consultation process would result in the confirmation of a definitive list of Barapa Barapa Apical Ancestors to be included in BCAC's Rule Book, as part of its membership eligibility clause.

BCAC further stated that the changes to its Rule Book would then allow for diverse representation of Barapa Barapa peoples at a governance level through Apical Ancestor/family group representations across BCAC's membership and board.

In addition to the above statements, Council noted a list of Barapa Barapa Apical Ancestors included in the Application, namely:

- **Albert Colger:** born 1846. Died 1917.
- **Alice Holmes:** born 1862 in Maudhope or Gunbower. Mother of Isabella Green. Married Jasper Green who was born at Kow Swamp.
- **Alick Campbell:** born 1844 or 1853 in Gannawarra, Kerang or Loddon. Died 1932 in Melbourne.
- **Benjamin Lanky Manton:** born 1853 in Swan Hill. Died 1927, possibly at Lake Tyers.

- **David Taylor:** born 1852 in Pental Island. Died 1929 in Deniliquin, buried Moonacullah.
- **Ernest McGee:** born 1876 in Chowa Station, Moulamein.
- **Emma Curr:** born circa 1853 in Kelly's Station, Bendigo Creek. Died 1886 at about age 33 in Barham Station, NSW.
- **George Allen:** born 1882 in Deniliquin.
- **Hannah Boyd:** born 1860.
- **Jasper Green:** born in Kow Swamp. Married to Alice Holmes.
- **Johanna Gardiner:** born 1851 in Kerang. Died 1921 in Moonacullah.
- **John Galway:** born 1866. Married Sissy Edgar in Moama.
- **Tro-Bullock, Wananee, and their son John Terrick:** born circa 1835 or 1843 at Terrick Terrick. Died 1921 in Coranderrk.
- **Koombra aka Alexander Campbell:** born 1853. Died 1921.
- **Louisa Frost:** born 1858 in Mathoura. Married Aaron Atkinson. Died 1893.
- **Peggy Kerr:** related Ancestor Leonard Kerr, born 1854 in Mt Hope or Loddon. Leonard's mother unknown on marriage certificate circa 1875.
- **Phinnimore/Finemore Jackson:** born 1869 in Mt Hope. Lived at Cummeragunja and Coranderrk. Died 1938.
- **Sarah Ingram:** born 1851 in Nicause/Neimur near Moulamein. Died 1961, buried Moonacullah.
- **William 'Billy' Murray:** born circa 1872 or 1874 in Conargo or Deniliquin.

Council noted proposed amendments to BCAC's Rule Book, as set out above, and sought to confirm with BCAC that these proposed amendments had been given effect through formal governance processes. On the 27 November 2024, BCAC provided Council with its updated Rule Book, including the aforementioned proposed amendments. In its correspondence, BCAC confirmed that the updated Rule Book had been endorsed by BCAC members at a recent annual general meeting, and that BCAC was in the process of updating the Rule Book with ORIC.

BCAC's updated Rule Book was registered by a Delegate of the Registrar of Aboriginal and Torres Strait Islander Corporations (**the Registrar**) on 15 January 2025. The Rule Book states that a member of BCAC must be at least 18 years of age and a Barapa Barapa Person. A Barapa Barapa Person is defined in Schedule 1 of the Rule Book to mean an Aboriginal Person who is a descendant of the list of Apical Ancestors included in the Application.

Findings of Fact

Council was satisfied that BCAC has made changes to its Rule Book to include the above list of Apical Ancestors as part of its membership criteria. Council was further satisfied that these changes will allow BCAC to take additional steps towards improving its overarching governance structures, including through transitioning to a family group model of representation across its board and membership.

However, Council found that four of the Apical Ancestors listed in the Wamba Wamba Peoples' native title application are also listed in BCAC's Rule Book: (1) Ernest McGee; (2) George Allen; (3) David Taylor; and (4) Koombra aka Alexander Campbell. Council therefore

concluded that these Apical Ancestors have also been identified as Wamba Wemba Ancestors, and that some of the descendants of these Apical Ancestors assert Traditional Ownership as Wamba Wemba people. Council also understands that Alick Campbell and Koombra aka Alexander Campbell are likely the same person. Furthermore, Council is aware of differing views as to the ancestry of Peggy Kerr and Sarah Ingram.

Whilst BCAC intended to clarify the identity of these Ancestors as Barapa Barapa through further research, this was not provided to Council. BCAC also intended to provide affidavits confirming the connection of these Ancestors to Barapa Barapa Country. It is not clear whether these affidavits were to be provided by BCAC, or by the descendants of the named Apical Ancestors. No affidavits were provided and, as such, Council did not consider whether this form of evidence would be sufficient to substantiate ancestry. In sum, Council was unable to be satisfied that BCAC's Apical Ancestor list was developed through appropriate research or consultation with the family groups descending from each of the listed Apical Ancestors.

B. Inclusivity and Consultation

Council considered BCAC's statement that it comprehensively represents Barapa Barapa Traditional Owners and that this is demonstrated by its membership list and consultation with the wider Barapa Barapa community.

BCAC did not provide a current membership list as part of its Application, leading Council to seek clarification from BCAC as to whether its membership list, published on ORIC on 29 September 2021, was up-to-date. In response, BCAC provided Council with an informal membership list in the form of a spreadsheet on 23 September 2024, which it stated was being submitted to ORIC. BCAC's updated membership list was published with ORIC on 22 January 2025.

In respect to consultation, BCAC stated that it has undertaken formal consultation with the Barapa Barapa community through outreach efforts, including direct one-on-one engagement and open meetings to ensure that BCAC is as inclusive and representative as possible. BCAC acknowledged that there is a significant level of pain and division within the Barapa Barapa community that has occurred due to numerous attempts to establish representative bodies through formal recognition processes.

BCAC also stated that it engaged in consultation and outreach activities to confirm community support prior to submitting its Application. In particular, BCAC held an open group meeting of Barapa Barapa Traditional Owners on Country on 6 April 2024. However, BCAC also stated that a significant number of family groups and individuals were unable to attend the meeting and, further, that of those who were present, several expressed concerns regarding the Application and Application Area.

Noting these outcomes, BCAC further stated that it had reached out to family groups and individuals following the meeting to ascertain their views on the Application. BCAC stated that the results of this process indicated a high level of support for the Application and also interest in new memberships of BCAC.

On 26 September 2024, Council met with BCAC's Chairperson to discuss the progress of the Application. During this discussion, Council was made aware of BCAC's views on an internal conflict within the Barapa Barapa community. BCAC's Chairperson acknowledged to Council the division within the community and informed Council that some Barapa Barapa Traditional Owners disagree with the extent of Barapa Barapa Country included in the Application Area.

With respect to this, BCAC's Chairperson advised Council that BCAC's decision to submit a RAP Application over 'core Country' (being 'Part A' discussed above under 'Traditional Ownership') was not supported by the entire Barapa Barapa community, and that some members supported a 'whole of Country' approach (encompassing 'Part A' and 'Part B'). BCAC's Chairperson indicated that BCAC has previously engaged with Barapa Barapa Traditional Owners with dissenting views on the Application, and has faced difficulties in achieving open communication and reaching positive outcomes regarding these issues. BCAC's Chairperson further stated a willingness to meet with those Barapa Barapa Traditional Owners to discuss issues regarding the Application and resolve the divergence of opinions relating to the Application Area within the Barapa Barapa community.

In a further meeting with representatives of BCAC on 17 January 2025, Council again raised these matters and noted several comments in response. In particular, Council noted that BCAC's membership is open to the descendants of all Barapa Barapa Apical Ancestors (as embedded in BCAC's Rule Book), that BCAC has made continued attempts to reach out to those Barapa Barapa Traditional Owners unsupportive of the Application, and that BCAC remains willing to meet to work through and resolve these issues. However, Council also noted that BCAC continues to face significant barriers in forming a governance structure which ensures that it represents all Barapa Barapa Traditional Owners, and that it continues to aim to improve its cohesive representation and find ways to bring all members of the Barapa Barapa community under its corporate umbrella.

Findings of Fact

Based on the information provided by BCAC in its Application and during further meetings with Council, Council found that the Application is not supported by all Barapa Barapa Traditional Owners.

Determination

Council was satisfied that Barapa Barapa peoples are Traditional Owners of the Decision Area. Council was also satisfied that BCAC is an organisation which represents Barapa Barapa Traditional Owners. In reaching this view, Council particularly noted the cultural ties of Barapa Barapa peoples to the Country of the Decision Area and that the Barapa Barapa peoples' Traditional Ownership over the Decision Area is not contested or subject to competing interest by other Traditional Owner groups.

However, one of Council's key considerations when determining to register an applicant as a RAP is whether an applicant is inclusive and representative of all Traditional Owners of the area subject to the application. In Council's view, an inclusive and representative applicant is

a body which represents all Traditional Owners of the area which is the subject of the application.

Council is not satisfied that BCAC is sufficiently representative of all Traditional Owners within the Decision Area.

Council acknowledges efforts taken by BCAC to become a representative organisation, including through amendments to its Rule Book and consultation with the Barapa Barapa community in relation to the list of Barapa Barapa Apical Ancestors, the RAP Application, and membership of BCAC. In light of these steps taken, Council considers that BCAC is on the right course to improve its governance structures and to represent all Barapa Barapa Traditional Owners. Council encourages BCAC to continue these efforts, noting that family group representation and conciliation is an important next step in ensuring that BCAC is representative of all Barapa Barapa Traditional Owners.

However, on the information before it, Council considered that the evidence does not support the view that BCAC is currently a body which cohesively represents all Barapa Barapa Traditional Owners. Council found that there are members of the Barapa Barapa community who do not support the Application and do not feel willing to engage with BCAC or to actively participate in its membership.

c) Whether BCAC is a body representing Aboriginal people that has a historical and contemporary interest and demonstrated expertise in managing and protecting Aboriginal cultural heritage in the Decision Area (s 151(3)(d) of the Act)

Council noted that BCAC asserted a historical and contemporary connection to the Country of the Decision Area. In a statement in support of this connection, BCAC referred to 'identified ancestor' historical and anthropological reports detailing the experience of early explorers and written histories of travellers and new residents to the Decision Area from the mid-1800s onwards. BCAC did not provide copies of these reports in its Application.

BCAC also asserted the demonstrated expertise of Barapa Barapa peoples in managing and protecting Aboriginal cultural heritage in the Decision Area, and provided reference to a range of matters asserting Barapa Barapa peoples' involvement in cultural heritage **(CH)** management and land care projects.

BCAC further asserted that Barapa Barapa Traditional Owners have been consulted consistently for the last 25 years in relation to their traditional and cultural knowledge of the Decision Area. BCAC noted that such consultation has occurred directly through Barapa Barapa Traditional Owners and related groups including Barapa Water for Country, Barapa Land and Water **(BLW)**, Barapa Barapa Nations Aboriginal Corporation, and the Barapa Land Care group. BCAC also cited recent examples of its involvement in CH management, including support for CHMP assessments related to Parks Victoria's Murray River adventure trails, involvement in site planning for a RES windfarm development, ongoing discussions with VicGrid and AusNet around the appropriate representation of Barapa Barapa values in planning for large scale infrastructure projects. BCAC also noted that a number of its members have completed the Certificate IV in CH management.

Findings of fact

Council took into account information provided by BCAC in relation to its historical and contemporary links and expertise in managing and protecting Aboriginal cultural heritage in the Decision Area. Council noted the various examples provided by the Application and acknowledged the Barapa Barapa peoples' extensive history of involvement in CH management over a period of decades. However, Council further noted that the Application did not provide specific details of BCAC's direct involvement in these activities nor of BCAC's directors' or members' direct expertise in CH management.

Determination

While Council acknowledged that Barapa Barapa Traditional Owners have a long history of involvement in CH management, Council concluded that BCAC itself has not demonstrated expertise in managing and protecting Aboriginal cultural heritage in the Decision Area. This is on the basis that the involvement, experience, and expertise of BCAC and its members in CH management was not demonstrated in the Application materials.

d) Grant of Land in Fee Simple (s 151(3)(e) of the Act

Findings of fact

A search of relevant registers, and information from BCAC, did not disclose any grants of land made in fee simple to BCAC or other Aboriginal body under a specific power in a State or Commonwealth Act in the Decision Area.

Determination

Council determined that for the purposes of s 151(3)(e) of the Act, there has been no relevant grant of land in fee simple to BCAC or any other Aboriginal body by the State or Commonwealth in the Decision Area.

e) Land and Natural Resource Management Agreements (s 151(3)(f) of the Act)

Findings of fact

BCAC has not entered into an agreement with the State in relation to land and natural resource management within the Decision Area, and BCAC did not rely on any such agreement in support of its Application.

Determination

Council determined that for the purposes of s 151(3)(f) of the Act, there has been no relevant land and natural resource management agreements entered into by BCAC with the State.

f) Other Relevant Matters (s 151(3)(g) of the Act)

i. Corporate Governance, Organisational Capacity, Cultural Heritage Decision Making

In determining BCAC's Application, Council took into account whether BCAC is organisationally sustainable and capable of carrying out the statutory obligations of a RAP under the Act.

Pursuant to the Application materials and discussions with BCAC, Council understands that there are three Barapa Barapa organisations delivering, or seeking to deliver, cultural heritage services in the Decision Area: BCAC, Barapa Land and Water (**BLW**), and Barapa Ltd. Council is also aware of two other unincorporated groups seeking to represent Barapa Barapa Traditional Owner rights and interests in the Decision Area, with intentions to incorporate and pursue formal recognition in their own right. Council noted that there is a level of crossover between these organisations in terms of leadership, membership, purpose, and services.

- BCAC was incorporated under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) (**CATSI Act**) in January 2020 and was established for the purpose of representing Barapa Barapa people and pursuing RAP status over its 'core Country' and, in the future, adjacent areas of Country described as 'Part B'.
- BLW is an unincorporated association that is registered as a not-for-profit organisation.
- Barapa Ltd is an unlisted public company limited by guarantee that is also registered as a not-for-profit organisation.

In a statement relating to organisational sustainability and capacity, BCAC noted its partnership with BLW and stated that BLW's support is integral to BCAC establishing and developing a capacity to manage and deliver RAP responsibilities. BCAC further stated that BLW has operated as a 'supporting organisation' to BCAC and has held the organisational capacity to deliver CH management functions on the ground, by way of BLW's staff, institutional knowledge and expertise, and established third party agreements.

BCAC further described its intention to undergo a 'transition strategy' (the **Transition Strategy**) wherein BCAC will develop a formal partnership and governance connection with BLW. BCAC stated that the Transition Strategy will involve BLW becoming incorporated under the CATSI Act as 'Barapa Aboriginal Corporation' (**Barapa AC**), and thereafter transitioning to an entity fully controlled by BCAC, should BCAC be registered as a RAP. BCAC stated that the proposed governance changes and Transition Strategy would ensure that BCAC possesses established corporate capacity and the capabilities to manage and govern a RAP and meet RAP obligations. BCAC further provided details with respect to BLW's financial capacity as evidence of BCAC's intended future capacity to fulfil RAP obligations.

BCAC also noted that it is currently supported by the third identified Barapa Barapa organisation, Barapa Ltd, which it described as a 'transition entity towards Barapa AC'. BCAC noted that Barapa Ltd delivers programs across water, fire, land, and CH management, and provides support to ensure that Barapa Barapa peoples are appropriately employed, insured, and managed.

BCAC's Application did not include any further information or materials in relation to BCAC's organisational sustainability, such as policies and procedural documents of BCAC.

Findings of fact

The relationship between the three Barapa Barapa organisations referred to above is unclear to Council. Council noted that the Application materials referred to BLW's capacity and the Transition Strategy as evidence of BCAC's own capacity. Council sought further information from BCAC in this regard and, in particular, further clarity regarding the relationship between BCAC and BLW and the extent to which BCAC's intended RAP capacity is reliant on BLW. In conversations with Council on this point, BCAC has suggested a clear delineation between the two entities and has urged Council to recommend that third parties consult with BCAC on its own terms in relation to CH management projects.

Council also sought further clarification as to the relationship between Barapa Ltd and BCAC, but did not receive a response from BCAC.

Council also noted that the Application did not provide any evidence in respect of BCAC's governance, cultural heritage decision-making, and organisational capacity as an independent organisation. In particular, Council noted that the Application did not include an operational plan, policies or procedures relating to corporate governance, evidence of decision-making structures relating to CH management, or evidence of the skills and experience of those involved in BCAC's governance. Council sought further information from BCAC in this regard, and in response, BCAC supplied Council with Draft Human Resources and Draft Financial Policy and Procedure manuals, and a Draft 2024/2025 Annual Plan (**Annual Plan**).

Council found that the draft policy and procedure documents provided by BCAC demonstrated that BCAC has taken steps towards developing its corporate governance and the operational processes required to meet RAP obligations.

In regard to the Annual Plan, Council noted BCAC's comments that this was designed to assist and guide BCAC through the initial stages of establishment as an independent and clearly separate body from BLW. The Annual Plan sets out BCAC's strategy to build RAP capacity by developing a policy platform and procedures to support RAP functions, engagement of external support with qualified heritage advisors, and consultation and support from other RAPs to ensure that BCAC's policies and procedures are effective. The Annual Plan also sets out BCAC's intentions to engage in numerous partnerships, seek funding opportunities, formalise existing relationships, and seek ongoing grants for CH management projects. The Annual Plan includes an assessment of potential risks faced by BCAC and strategies to manage and mitigate these risks, and a budget overview for the financial year.

BCAC did not provide any further information in relation to its corporate governance, including information regarding its directors' experience or decision-making processes in relation to CH management.

Determination

Council has determined that BCAC has not demonstrated sufficient capacity in relation to corporate governance, organisational capacity, and cultural heritage decision-making pursuant to s 151(3)(g) of the Act. On the basis of the information considered in respect of the Application, Council was not satisfied that BCAC possesses the organisational capacity or governance structure to carry out RAP functions within the Decision Area.

It is Council's view that the materials included in the Application and its conversations with BCAC did not provide Council with sufficient clarity regarding BCAC's governance structure. Although BCAC's partnership with BLW and the proposed Transition Strategy described in the Application may provide BCAC with organisational support and capacity, Council could not be certain as to the extent of the relationship between the two entities. Moreover, the relationship between the two entities appeared to shift and evolve over the course of Council's consideration of the Application. Pursuant to Council's conversations with BCAC on these matters, the relationship between the Barapa Barapa organisations is not clear to Council and to external stakeholders who are seeking to engage with Barapa Barapa Traditional Owners in relation to CH management projects occurring within the Decision Area. Council considers that the operating environment needs to be clarified, in practical terms, and clearly articulated and demonstrated if BCAC wishes to pursue a future RAP application.

Council also reached the view that the policy and procedure documents provided by BCAC indicate that BCAC is in the early stages of developing its organisational capacity, and that it has not demonstrated that it presently possesses the organisational sustainability required to carry out RAP obligations within the Decision Area.

ii. Views of Neighbouring Parties

In its Application, BCAC stated that other Aboriginal groups recognise it as a body representing the Traditional Owners of the Decision Area, namely Wamba Wemba Aboriginal Corporation, DDWCAC, YYNAC, and Southern West Yiradyuri Clans Land, Water and Sky Country Aboriginal Corporation. Council sought from BCAC further information to demonstrate these groups' support for BCAC. BCAC did not provide any further evidence of support, but noted to Council that its Chairperson is engaged in an ongoing process of reaching out to neighbouring RAPs and intends to meet with them in the future.

In a statement regarding consultation with neighbouring Traditional Owner Groups, BCAC stated that the Decision Area was deliberately chosen to avoid overlap with existing RAPs and areas contested by other groups, and as such, that BCAC had not needed to engage in consultation regarding boundaries.

Findings of fact

Council did not receive any submissions from neighbouring Traditional Owner groups during the public notification period.

BCAC did not provide any documentary evidence of recognition of neighbouring Traditional

Owner groups for its Application, either in its Application materials or in response to a request by Council for evidence supporting BCAC's contentions in this regard. BCAC did not provide Council with any updates or evidence to support its asserted ongoing outreach or consultation efforts with neighbouring RAPs.

Determination

Council has determined that it has not been provided with sufficient evidence to be satisfied that neighbouring Traditional Owner groups support the Application.

4. Additional Matters

a) Policy

Council applied its policy as contained in its 'General Principles – RAP Decision Making'.

It is Council's policy to accord appropriate status to Traditional Owners, including a preference to appoint Traditional Owner body corporates as RAPs.

It is also Council's policy to appoint RAPs that are single, inclusive groups and representative of Traditional Owners in the relevant Decision Area.

b) Charter of Human Rights and Responsibilities

Prior to making its decision, Council gave careful consideration to the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (**Charter**), having particular regard to the distinct cultural rights of Aboriginal persons recognised by s 19(2)(d) of the Charter.

Council formed the view that its decision not to register BCAC as a RAP in relation to the Decision Area is consistent with its obligations under the Charter.

In deciding not to register BCAC as a RAP in relation to the Decision Area, Council took account of the fact that BCAC will not be able to manage and protect the Aboriginal cultural heritage in the Decision Area if it is not registered as a RAP. However, Council noted that there are other mechanisms in the Act which ensure the protection of cultural heritage in the Decision Area (including the obligations of various entities to consult with relevant Aboriginal persons in relation to Aboriginal cultural heritage and Aboriginal Ancestral Remains in the Decision Area).

Council considered the factors set out in s 151(3) of the Act, and particularly the factors contained in ss 151(3)(c) and (g), when read with the purposes of the Act (including two of the 'main purposes' being 'to empower Traditional Owners as protectors of their cultural heritage...' and 'to provide for the protection of Aboriginal cultural heritage...'). Council reached the view that any limitation on Barapa Barapa peoples' rights is justified by the importance of ensuring that the body is representative all Traditional Owners and has the organisational capacity to carry out RAP obligations prior to appointment as a RAP. In this

regard, Council has not identified a less restrictive means available to achieve this purpose, other than declining BCAC's Application in relation to the Decision Area.

Conclusion

Council has determined not to register BCAC as a RAP over the Decision Area.



Russell Mullett
Chairperson
Victorian Aboriginal Heritage Council

