

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

DATE OF DECISION: 23 July 2020

1. Decision

Pursuant to section 151(2A) of the *Aboriginal Heritage Act 2006* (**the Act**), the Victorian Aboriginal Heritage Council (**Council**) determined to decline, in part, the application from Bangerang Aboriginal Corporation (**BAC**) for registration as a registered Aboriginal party (**RAP**) (**Decision Area**).

The Decision Area in respect of which BAC's application has been declined is the area over which the Taungurung Land and Waters Council Aboriginal Corporation (**TLWCAC**) has entered into a Recognition and Settlement Agreement with the State of Victoria (**RSA**).

2. Decision Area

The attached map (**Attachment 1**) depicts the Decision Area.

3. Background

A RAP Application was lodged by BAC on **6 April 2020**. Part of BAC's application sought registration over the Decision Area.

On 26 October 2018, TLWCAC signed an RSA under the *Traditional Owner Settlement Act 2010* with the State over an area that includes the Decision Area.

On 1 May 2020, TLWCAC objected to the BAC's application for registration insofar as it was made over the Decision Area, and referred Council to the Recognition and Settlement Agreement.

On 30 April 2020, the National Native Title Council registered TLWCAC's application for an Indigenous Land Use Agreement over the RSA area. This gave formal effect to the RSA.

Section 151(2A)(a) of the *Aboriginal Heritage Act 2006* (**the Act**) provides that, if an applicant for registration is a traditional owner group entity for an area in respect of which the entity has entered into a recognition and settlement agreement, and the area in respect of which the application is made is within the external perimeter of the area described in the agreement, then the Council must register the applicant as the RAP for the area in respect of which the application is made.

4. Reasons for decision

a) Legislation

Section 151(2A)(b) of the Act provides that, if a traditional owner group entity has entered into a recognition and settlement agreement in relation to an area Council must register that traditional owner group entity as the RAP for the area under s 151(2A)(a) of the Act, and no other applicant can be registered for that area, except a registered native title holder.

As noted above, TLWCAC is a traditional owner group entity that entered into an RSA on 30 April 2020 in relation to the Decision Area to which Council must appoint it as a RAP.

BAC is not a registered native title holder.

For these reasons, Council has declined BAC's application over the Decision Area.

b) Charter of Human Rights and Responsibilities

As a result of section 151(2A)(b), Council could not reasonably have acted differently or made a different decision, and s 38(1) of the *Charter of Human Rights and Responsibilities Act 2006 (Charter)* does not apply.

In any event, prior to making the relevant decision, Council gave careful consideration to the distinct cultural rights of Aboriginal persons recognised in section 19(2)(d) of the Charter, and took account of the fact that declining BAC's application over the Decision Area means its ability to protect Aboriginal cultural heritage is affected insofar as BAC will not have the powers and functions that are conferred upon a RAP under the Act.

However, Council noted that the RSA provides a formal mechanism through which Traditional Owners of the Decision Area will be able to exercise their distinct cultural rights protected under the Charter. Council considered that this factor lessens the extent of any limitation to rights contained in section 19 of the Charter caused by the decision to decline BAC, as BAC is able to work together with TLWCAC in seeking to protect cultural heritage within the Decision Area, and there was no less restrictive means reasonably available for Council to fulfil its statutory obligations under the Act.

Conclusion

Council declines BAC's application to be registered as a RAP over the Decision Area.



Bonnie Chew
Acting Chair
Victorian Aboriginal Heritage Council

Attachment 1

