

# CLARKEOLOGY

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Dear Sir

## **ABORIGINAL HERITAGE ADVICE IN RELATION TO PROPOSED REZONING AND FUTURE DEVELOPMENT PLAN APPLICATION AND FUTURE SUBDIVISION AT 152-200 BLUFF ROAD ST. LEONARDS**

You have sought my advice on Aboriginal heritage matters in relation to the property at 152-200 Bluff Road St. Leonards, specifically in relation to:

- proposed rezoning
- a future development plan application
- future subdivision

In considering these matters, I have carried out background research, examined the State Government mapping of Aboriginal sites and areas of cultural heritage sensitivity and considered the possible implications of the *Aboriginal Heritage Act 2006* and the *Aboriginal Heritage Regulations 2007*.

The summary of my findings is that there are no impediments from Aboriginal heritage legislation, nor requirement for a cultural heritage management plan for:

- proposed rezoning
- a future development plan application
- future subdivision.

Further, no Aboriginal heritage permits are required in relation to any of these matters.

### **Qualification to provide expert advice**

I am a qualified Aboriginal heritage advisor, and am recognised as such by Aboriginal Affairs Victoria, the State Government agency overseeing Aboriginal heritage matters in this State. I hold a Bachelors degree (Botany and Geology), Graduate Diploma in Maritime Archaeology and a Graduate Diploma in Humanities (Aboriginal Archaeology). Formerly a staff archaeologist and

Site Registrar with the State Government agency Victoria Archaeological Survey in (1984-1989), I have been working as a consultant archaeologist and heritage advisor in Victoria for the past 24 years.

### **Location and current use**

152-200 Bluff Road is a rectangular parcel of land of approximately 19 hectares which is within the St. Leonards Growth Area 2, on the north side of Bluff Road. It lies adjacent to, and immediately to the west of the existing residential housing area.

The land is currently used for cropping and grazing although at times it has been completely cultivated for cropping.

### **Land use history relating to Aboriginal heritage**

In the past, Aboriginal people made seasonal use of the Port Phillip coast, and moved across the Bellarine Peninsula along the waterways or via the lakes and marshes which provided abundant food resources. Stone raw materials for tool making were less easy to find, but marine chert was available along the Bass Straight coast. The Port Phillip coast and relatively well-watered hinterland provided an abundance of food plants and animals in the past.

In areas such as St. Leonards, where resources were abundant, Aboriginal occupation sites tended to be small and widely dispersed, as there were a variety of places where Aboriginal people could camp, live and obtain necessary resources.

152-200 Bluff Road was cleared in the early years of European settlement and has been regularly cultivated for 100+ years. As described in the section below, Gorse removal in the 1980s caused large scale disturbance along the southern portion of the property.

As a result of disturbance from original vegetation clearing, cultivation and Gorse removal, it is very unlikely that any undisturbed/undiscovered/undamaged Aboriginal heritage material such as sites or artefacts would be present on the property today.

### **Gorse removal has caused significant ground disturbance.**

Gorse (introduced by the early European settlers for hedge-row plantings) is a significant invasive pest plant in the Bellarine generally and has been a particular problem in the St Leonards locality for the past 50 years or so. During this time, low agricultural produce unit prices, a decline in the availability of a casual farm-labour force and less intensive farming/poorer farm management associated with subdivision and smaller allotment size has resulted in spectacular infestations of Gorse over wide areas.

On the 26th June 2014, I interviewed share-farmer Graham Brown who has been farming the property at 152-200 Bluff Road for the past 25 years (though has lived in the area all his life) in relation to past landuse, farm practice and disturbance matters on the property. According to Graham Brown, the property became neglected and run-down in the 1970s, and the entire southern section of this property and the adjacent property to the

west became “absolutely covered” with Gorse thickets which extended “at least 100 yards” northward into the property from the southern boundary. Just prior to Graham Brown taking over the farming on the property about 25 years ago, the Gorse was bulldozed out and the ground was deep ripped to remove roots and suckers. The Gorse debris was heaped up to dry and later burned. He said that once the Gorse had been removed, the southern boundary area was re-ripped and planted with a plantation of mixed Eucalypts, with new fencing being installed on either side of the plantation.



Photo taken at the southeast corner of 152-200 Bluff Road (facing west) showing a re-emerging Gorse problem along the southern boundary and in a thicket further into the paddock. The tree plantation which was established in an area of deep-ripped ground on the southern boundary in the 1980s is marked by the yellow arrow.

The ground across the southern-most 100+ metres of 152-200 Bluff Road has been heavily disturbed by the bulldozing and deep ripping to remove Gorse, and the southern fence-line has been further disturbed by deep ripping to establish the tree plantation. This disturbance constitutes ‘significant ground disturbance’ as defined in the *Aboriginal Heritage Regulations 2007*.



Gorse remains a serious pest plant, even in today's era of effective herbicides and powerful machinery: this panoramic view of a neglected property in the northwest section of the St. Leonards Growth Area 2 shows a Gorse infestation of approximately 30,000 square metres (3 Ha).

#### **Previously recorded Aboriginal sites: no Aboriginal heritage permits required**

On your behalf, I have examined the Victorian Government records of previous archaeological surveys and recorded Aboriginal sites in the St. Leonards area. In association with subdivision work and coastal management, there has been almost 120 hectares of previous archaeological surveys, resulting in the recording of 11 Aboriginal sites. Thus the demonstrable site density in the region is low: approximately 1 site per 11 hectares of area surveyed. The recorded Aboriginal sites are all stone artefact sites, some of which also have shell midden material. The surface sites have all been disturbed (rabbits, clearing, agriculture Gorse removal etc.) and thus to some extent, have diminished heritage significance.

The nearest recorded Aboriginal site is a small stone artefact scatter located on the south side of Bluff Road, opposite the the southwest corner of 152-200 Bluff Road. This site is recorded on the Victorian Aboriginal Heritage Register as VAHR No. 7821-0797-0001. It is located approximately 48 metres south of the southern boundary of 152-200 Bluff Road and will not be harmed by any future works on 152-200 Bluff Road.

Any future rezoning, development plan application or future subdivision will have no impact on recorded Aboriginal sites, so there is no requirement for any Aboriginal heritage permits.

#### **Areas of cultural heritage sensitivity and misleading Government mapping**

The *Aboriginal Heritage Regulations 2007* specifies 17 types of geographical or administrative features on areas of land in Victoria where Aboriginal sites are considered more likely to occur. Such features include areas within 50 metres of a recorded Aboriginal site, areas within 200 metres of the coast, areas within 200 metres of a Park, areas of sand dunes, etc. These areas are designated as areas of cultural heritage sensitivity. However, for all of these types of areas (see Regulations 22 to 38), an area cannot be an area

of cultural heritage sensitivity if it has been subject to ‘significant ground disturbance’, which is defined in the Regulations as:

“disturbance of the topsoil or surface rock layer by machinery in the course of grading, excavating, digging dredging or deep ripping, but does not include ploughing other than deep ripping”.

Thus, significant ground disturbance effectively ‘erases’ areas of cultural heritage sensitivity.

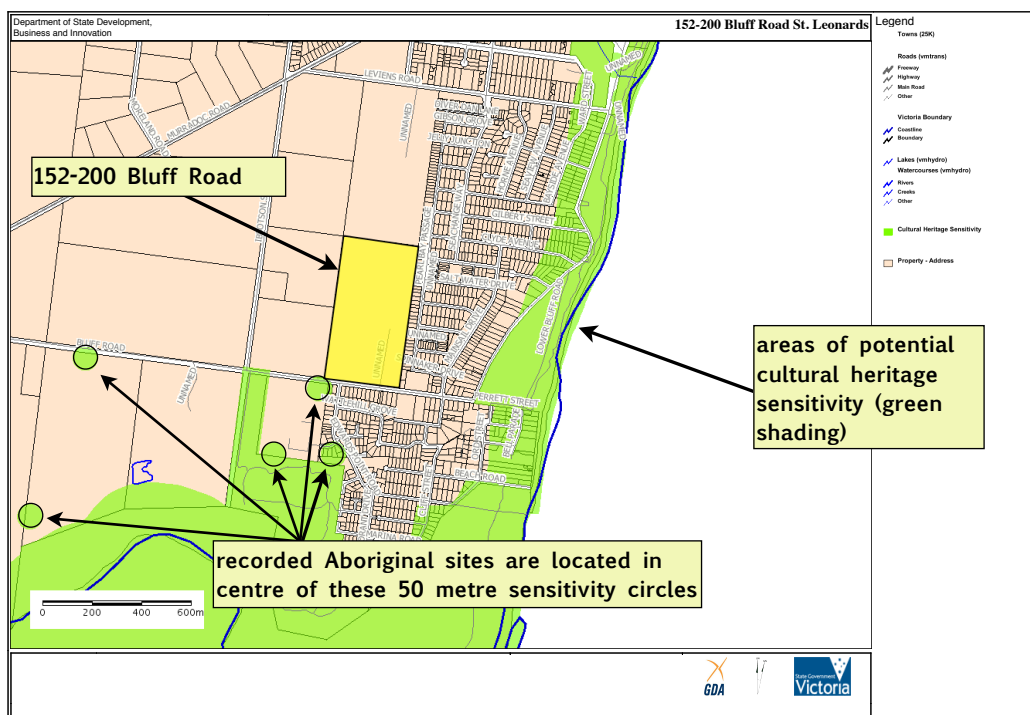
The Victorian Government provides indicative mapping of areas of cultural heritage sensitivity through the Department of State Development and Business Innovation’s *GeoVic* website and the Department of Premier and Cabinet’s *Aboriginal Affairs Victoria ACHRIS* website and elsewhere.

Unfortunately this mapping is misleading, in that it does not take into account the fact that significant ground disturbance ‘erases’ areas of cultural heritage sensitivity. As a result, disturbed areas such as roads, areas where Gorse was removed, areas where there has been housing construction, etc. are misleadingly shown as areas of cultural heritage sensitivity.

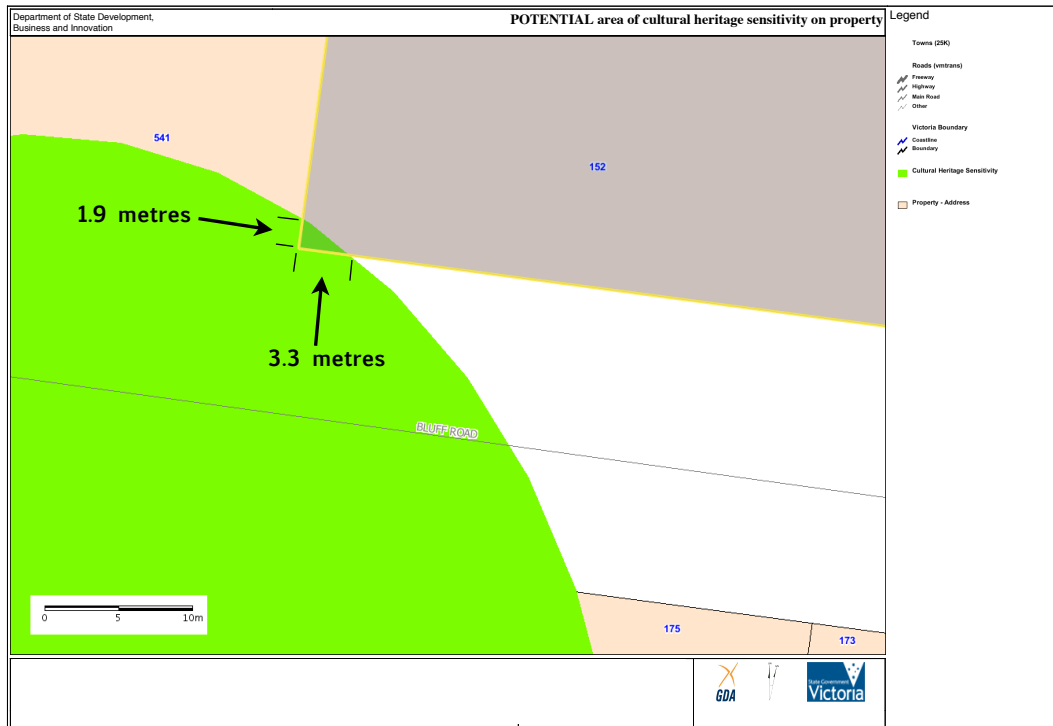
It is important to note that areas of cultural heritage sensitivity are established by the Regulations, not by the mapping.

### Proximity of recorded Aboriginal sites

There are no recorded Aboriginal sites on the property, although there are small numbers of sites located to the northeast and southwest. The nearest recorded Aboriginal site is located approximately 48 metres to the southwest of the southern boundary of 152-200 Bluff Road.



Map from the Department of State Development, Business and Innovation’s *GeoVic* website showing the property at 152-200 Bluff Road St. Leonards (yellow polygon, arrowed) in relation to the green shaded areas of *potential* cultural heritage sensitivity and the closest recorded Aboriginal sites. There are no recorded Aboriginal sites on the property; there is a small area of *potential* cultural heritage sensitivity on the southwest corner of the property (see enlargement on following page) but this has been erased by significant ground disturbance.



Map showing a 'zoomed-in' view of the GeoVic map from the previous page which shows a 50 metre radius circle of *potential* cultural heritage sensitivity (from recorded Aboriginal site south of Bluff Road) extending across Bluff Road and onto the southwest corner of 152-200 Bluff Road. This potential area of cultural heritage sensitivity has been 'erased' on both the road (road construction) and on the southern portion of 152-200 Bluff Road (Gorse removal and deep ripping for tree plantation).

### **Aboriginal Heritage Regulations 2007 as they apply to the rezoning application and any future development plan application or future subdivision**

Under the Regulations, there are two triggers, which if activated, require an Aboriginal Cultural Heritage Management Plan to be prepared and approved prior to statutory authorisations being granted. These triggers are:

- that the proposed works are defined as a high impact activity and
- that the proposed works are in a designated area of *cultural heritage sensitivity* which has not been subject to *significant ground disturbance*.

Under the *Aboriginal Heritage Regulations 2007*, in relation to the first of the two triggers above:

- rezoning **is not** a high impact activity
- a development plan application **is not** a high impact activity
- a multi-lot subdivision **is** a high impact activity

The first trigger **is not** activated by proposed rezoning or by a future development plan application, but would be activated by future subdivision.

Considering the second trigger above, areas within 50 metres of a recorded Aboriginal place (site) have the potential to be areas of cultural heritage

sensitivity unless those areas have been subject to significant ground disturbance.

As is discussed on pages 2 to 5, the small potential area of cultural heritage sensitivity on the southwest corner of 152-200 Bluff Road, St. Leonards has been erased by significant ground disturbance (Gorse removal and deep ripping for establishment of the tree plantation on the southern boundary).

The second trigger **is not** activated.

The rezoning application and any future the development plan application do not activate either of the two required triggers; future subdivision will activate only one of the two required triggers.

Thus there is no statutory requirement for an Aboriginal cultural heritage management plan to be prepared prior to statutory approvals being granted in relation to a rezoning application, a development plan application nor a future subdivision of the land at 152-200 Bluff Road, St. Leonards.

### **Role of the Registered Aboriginal Party**

There is no statutory role for the Registered Aboriginal Party (the Wathaurung Aboriginal Corporation) in relation to the proposed rezoning, development plan application or future subdivision, as none of these matters trigger a requirement for an Aboriginal cultural heritage management plan to be prepared.

### **Comments/Recommendations**

1. On the basis of an examination of the Victorian Aboriginal Heritage Register and consideration of the implications of the *Aboriginal Heritage Regulations 2007*, it is clear that there are no statutory impediments from Aboriginal cultural heritage that would prevent an application for rezoning, a future development plan application or future subdivision of 152-200 Bluff Road from being approved.
2. In relation to Aboriginal heritage, no permits are required.
3. There is no requirement for a CHMP in relation a rezoning application, because rezoning is not a a high impact activity under the *Aboriginal Heritage Regulations 2007*.
4. There is no requirement for a CHMP in relation to a development plan application because a development plan application is not a a high impact activity under the *Aboriginal Heritage Regulations 2007*.
5. There is no requirement for a CHMP in relation to a future subdivision under the *Aboriginal Heritage Regulations 2007*, because there are no areas of cultural heritage sensitivity on the property: the small area shown on the map on page 6 as a potential area of cultural heritage sensitivity has been 'erased' by significant ground disturbance.

6. As neither a rezoning application, a development plan application nor a future subdivision trigger the requirement for a cultural heritage management plan, the Registered Aboriginal Party for the area has no statutory role in relation to this project.
7. In relation to the extremely unlikely scenario that human remains are located during later works, the excavation/construction contractors, their agents or subcontractors involved in this project should be made aware of their legal obligation to report the discovery of human remains to the State Coroner's Office<sup>1</sup> (03-9684-4444), and of the appropriate procedures to be followed in such circumstances. These include:
  - that work should cease in the vicinity of where the remains were observed and machinery be moved well clear (leave a 10-15 metre buffer)
  - that the remains should be safeguarded from further disturbance
  - that the project archaeologist should be notified without delay (Nicholas Clark 0418-548-559)
  - that the police or Coroners Office (03-9684-4444) should be notified of the discovery without delay.

If you require further information in relation to this or other matters, please contact me any time on (0418) 548-559 or email to [clarkeology@bigpond.com](mailto:clarkeology@bigpond.com).

Yours faithfully

*Nicholas Clark*

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<sup>1</sup> The majority of human remains found in Victoria are associated with crime scenes – which is why there is mandatory reporting to the Police or the Coroner. In a very small proportion of cases, the human remains are from Aboriginal burials.