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17th July 2014

Mr Ross Closter
St Leonards Property Holdings
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Dear Sir

ABORIGINAL HERITAGE ADVICE IN RELATION TO PROPOSED REZONING, DEVELOPMENT PLAN APPLICATION AND SUBSEQUENT SUBDIVISION AT 22-40 LEVIENS ROAD ST. LEONARDS

You have sought my advice on Aboriginal heritage matters in relation to the property at 22-40 Levens Road St. Leonards, specifically in relation to:

- proposed rezoning
- a 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:

- the proposed rezoning
- a 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

22-40 Leviens Road is a rectangular parcel of land of approximately 19 hectares which is within the St. Leonards Growth Area 2, on the south side of Leviens Road. It lies adjacent and immediately to the west of the existing residential housing area.

The land is currently used 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.

On the property at 22-40 Leviens Road, the land has been cleared and regularly cultivated for 100+ years. As a result of clearing and agricultural disturbance, it is likely that any Aboriginal heritage material such as sites or artefacts which may once have been on the property, would have been significantly reduced/dispersed/damaged by the historical disturbance. It is unlikely that significant Aboriginal heritage material would have survived.

Aboriginal heritage potential

Prior to visiting the property, I examined the Victorian Government mapping of areas where Aboriginal sites are located and of areas of Aboriginal cultural heritage sensitivity. I also held discussions with the author of a major archaeological investigation which was undertaken south of Bluff Road to obtain their view on the types of areas where Aboriginal sites or artefacts may occur in the locality.

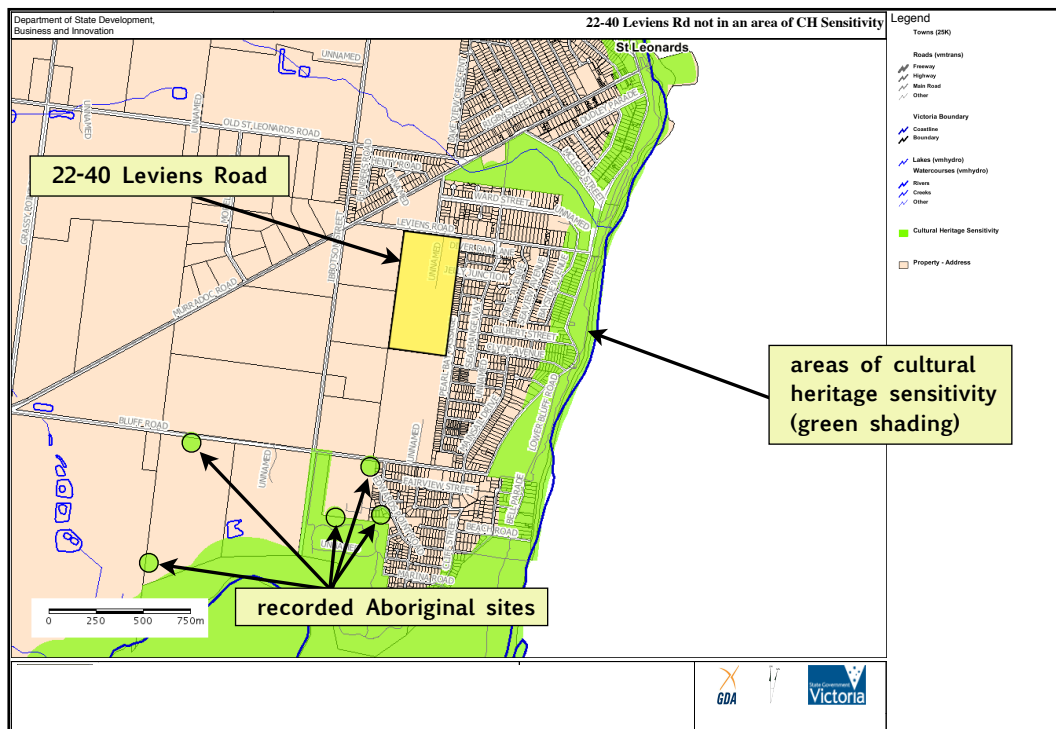
Due to the the abundance of resources, there was nothing in particular which would have concentrated or focussed Aboriginal activity - other than the availability of water in the summer months. Consequently, one would expect that the broadly dispersed Aboriginal land use patterns would have resulted in low density, small sized Aboriginal occupation and resource utilisation sites. There would be potential for larger sites or more densely distributed sites around watercourses or swampy areas, or at shell gathering sites along the shoreline. The survival of such sites across the St Leonards area today will be largely dependent on the history of ground disturbance

such as clearing, cultivation, eradication of pest plants (particularly gorse), pest animals (mainly rabbits) and soil removal.

In attempting to predict the distribution of previously unrecorded Aboriginal sites in the St. Leonards area, there are essentially three landforms that need to be considered. These are:

- 1) Flatter, higher areas formed on soils of clay, sandy clay, gravels and carbonate/ferruginous nodules. These were areas which were traversed by Aboriginal people but were not preferentially occupied. Very few Aboriginal sites are recorded on this formation.
- 2) Undulating areas of silicious sands with some fall towards the Port Phillip shore. These are areas with some Aboriginal sites.
- 3) Shoreline, esturine and stream-side areas of sand and silt: these are areas where shorelines have advanced seaward during the past 5000 years. The highest densities of known Aboriginal sites in the St. Leonards area occur on this formation - mainly in association with streams or swampy areas. However, even in the areas where known sites are most dense, site densities are less than 1 site per 10 hectares.

The property at 22-40 Leviens Road is located on landform described in point 1) above. I consider this to be the landform which is the least likely to have been occupied by Aboriginal people in the past.



Map from the Department of State Development, Business and Innovation's Geovic website showing the property at 22-40 Leviens Road St. Leonards (yellow polygon, arrowed) in relation to the green shaded areas of cultural heritage sensitivity and the closest recorded Aboriginal sites. The property is not in an area of cultural heritage sensitivity, nor are there any recorded Aboriginal sites on the property.

Proximity of known 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 500 metres to the southwest of the southern boundary of 22-40 Levens Road¹.

No Aboriginal heritage permits required

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

Aboriginal Heritage Regulations 2007 as they apply to the rezoning application, development plan application and 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:

- a) that the proposed works are defined as a high impact activity and
- b) 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** activated by proposed subdivision, but not by rezoning or a development plan application.

Considering the second trigger above, areas within 200 metres of the coast have the potential to be areas of cultural heritage sensitivity unless those areas have been subject to significant ground disturbance. 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 the map on the previous page shows, there are no areas of cultural heritage sensitivity on the property at 22-40 Levens Road, St. Leonards.

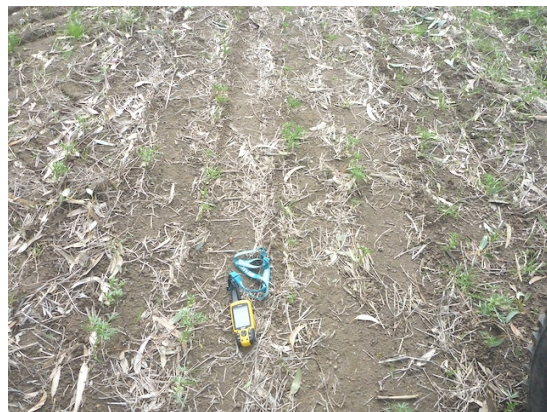
The second trigger **is not** activated.

¹ The nearest site, a stone artefact scatter recorded on the south side of Bluff Road is recorded on the Victorian Aboriginal Heritage Register as VAHR No. 7821-0797-0001.

The rezoning application and 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 or a future subdivision on the land at 22-40 Leviens Road, St. Leonards.

Due diligence inspection

On the 26th of June 2014 I visited the property at 22-40 Leviens Road. I walked 9.02 kilometres of traverses across the property, visually examining a 5 metre strip as I progressed. The property had been recently cultivated and sown to crop, so ground surface visibility was excellent: at least 50% of bare ground was visible. I thus examined 4.5 hectares of ground, with effective survey coverage (i.e. the amount of bare ground actually observed) being 2.25 hectares. In the centre and north of the property, tree removal and machinery work had disturbed and ‘churned’ the upper soil layers in large areas, so I was also able to examine sub-surface soils.



Photos taken in the northeast corner of the property showing the excellent ground surface visibility during the inspection.



Areas of freshly ‘churned’ ground allowing inspection of subsurface soils. These areas were exhaustively examined.

Inspection results

Despite good survey conditions and an extensive examination of all areas of the property, I did not observe any Aboriginal heritage material such as sites or artefacts. I did not find any stone material on the property that would have been suitable for Aboriginal tool making, nor did I find any shell material that may have been an indication of Aboriginal shell middens. None of the trees on the property were sufficiently old to have Aboriginal bark removal scars².

I did observe carbonate and ferruginised sandstone nodules and occasional lenses of iron-rich 'buckshot' gravels: these were a good indication that subsurface materials had been exposed on the surface, either by historical vegetation removal, rabbits, cultivation or more recent machinery work. The soils were sandy loam soils, which is consistent with the geological mapping of the area. I am confident therefore that this area conforms to the description of landform 1) described on page 3 of this letter.

Conclusions

In terms of Aboriginal heritage, this is a low-risk landform. Considering:

- the distribution of recorded Aboriginal sites
- landform-based site predictions drawn from the known archaeological data, and
- my field observations

there is no evidence of Aboriginal heritage materials (sites or artefacts) being present and/or to have survived on the property at 22-40 Levens Road St. Leonards.

Disclaimer

The field inspection that I have carried out on your instructions was not exhaustive. It was an archaeological sampling survey conducted over a 6 hour period that examined areas of the surface of the property and it did not involve any soil excavation or sieving. The purpose of the inspection was to obtain sufficient data on which to base the risk assessment contained in this letter of advice.

It is possible that deep excavation or removal of topsoil in the future may expose unforeseen landform features and possibly reveal archaeological materials. Your civil contractors should be encouraged to contact me if they have any questions or if they encounter materials that they suspect may be of Aboriginal origin.

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,

² As Aboriginal occupation of traditional land and Aboriginal cultural activity on the land had effectively ceased in the region by 1870, a genuine Aboriginal scarred tree would need have been large enough to remove bark from (i.e. 20 to 40 years old) 144 years ago. Eucalypts that are 160+ years old are large, conspicuous and relatively rare on the Bellarine Peninsula.

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 the proposed applications for rezoning, development plan or future subdivision of 22-40 Leviens Road from being approved.
2. In relation to Aboriginal heritage, no permits are required.
3. There is no requirement for a CHMP in relation the proposed rezoning, because a rezoning application 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 will be 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.
6. As none of the three proposals (rezoning, development plan application and 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. Should civil contractors working on the property at 22-40 Leviens Road encounter any material that they are concerned about (for example, glassy stone fragments, stone artefacts, shell midden material, charcoal deposits, bone etc.) they should contact me to discuss the material they have encountered. There is a legal requirement to report the discovery of suspected Aboriginal heritage material to the appropriate authorities, and I will be able to assist in this process.
8. 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 Office³ (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)

³ 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.

- 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.

Yours faithfully
Nicholas Clark