8 April 2011

Dear Ross,

RE: ABORIGINAL CULTURAL HERITAGE DUE DILIGENCE
LAND AT WYNDHAM VALE

I respond to your enquiry regarding the property at Wyndham Vale (referred to as the ‘study area’ from this point) and its known and potential Aboriginal cultural heritage values. This brief letter/report outlines the known and potential Aboriginal cultural heritage values, the requirements of the Aboriginal Heritage Act 2006 during the planning process and assesses the risk that the future development may pose to cultural heritage values. The study area in this letter refers to a slightly larger area than the land proposed for residential development, to allow for changes in the planning process.

This letter/report was prepared by Petra Schell (Principal, Ochre Imprints). I am well qualified to comment on these matters as I meet the requirements to be a ‘cultural heritage advisor’ under the Aboriginal Heritage Act 2006, and am a full member of the Australian Association of Consulting Archaeologists Inc.

As part of this assessment I have undertaken:

- a review of the Aboriginal Heritage Act 2006, including the Aboriginal Heritage Regulations 2007;
- a check of the Aboriginal Affairs Victoria (AAV) heritage site and place records;
- a review of the Aboriginal archaeological potential of the property through a brief examination of recent Aboriginal archaeological assessments on comparable landforms and a brief inspection of the property from adjacent roads;
- a review of Registered Aboriginal Parties (RAPs) to determine Aboriginal stakeholders with cultural heritage interests in the study area.
ABORIGINAL CULTURAL HERITAGE

Aboriginal Cultural Heritage Legislation

The Aboriginal Heritage Act 2006 (referred to as 'the Act' from this point) provides blanket protection for Aboriginal cultural heritage. This means that Aboriginal cultural heritage is protected from harm and it is illegal to carry out an activity that can disturb Aboriginal places without the appropriate authorities under the Act (and its associated Aboriginal Heritage Regulations 2007). There are two principal mechanisms under the Act that remove the risk of illegal harm to Aboriginal cultural heritage, namely:

- Cultural Heritage Management Plan (CHMP)
- Cultural Heritage Permit (CHP)

A CHP is relevant only where an Aboriginal place/s is registered in the works area and a CHMP is not a mandatory requirement. As this is not the case for the study area, only CHMP processes are discussed below.

Cultural Heritage Management Plan

A CHMP is a report recommending measures to be taken to protect Aboriginal cultural heritage affected by a development or use of land. It must include recommendations for measures to be taken before, during and after a relevant activity. The underlying philosophy of the CHMP is to minimise harm to Aboriginal places, however it is the document through which provisions can be made to legally harm Aboriginal places. A CHMP must be approved by a Registered Aboriginal Party or where no party exists for the area, the Secretary of the Department of Planning and Community Development, before the activity may commence.¹

A CHMP usually involves a staged investigation of the posed risk by a proposed activity to Aboriginal cultural heritage. The Act and associated Regulations set out the requirements for different levels of investigation:

- Desktop Assessment.
- Standard Assessment (Field Survey).
- Complex Assessment (Subsurface Testing; Controlled Excavation).

The Sponsor (usually the proponent) of a CHMP must ensure that the plan is prepared in accordance with prescribed standards which are outlined in the Act, associated Regulations, and Approved Forms. The CHMP must consider the following matters:

a) Whether the activity will be conducted in a way that avoids harm to Aboriginal cultural heritage.

¹ The Department of Planning and Community Development replaced the Department of Victorian Communities, as referred to in the Aboriginal Heritage Act 2006, in August 2007. It should also be noted that Aboriginal Affairs Victoria carries out the day-to-day administrative functions on behalf of the Secretary.
b) If it does not appear to be possible to conduct the activity in a way that avoids harm to Aboriginal cultural heritage, whether the activity will be conducted in a way that minimises harm to Aboriginal cultural heritage.

c) Any specific measures required for the management of Aboriginal cultural heritage likely to be affected by the activity, both during and after the activity.

d) Any contingency plans required in relation to disputes, delays and other obstacles that may affect the conduct of the activity.

e) Requirements relating to the custody and management of Aboriginal cultural heritage during the course of the activity.

Provisions relating to enforcement of the Act include: cultural heritage audits, protection declarations and stop orders, inspection arrangements and penalties. Maximum penalties are likely to be more than $180,000 for an individual or more than $1 million for a company.

**What Are The Triggers For A CHMP?**

Section 46 of the Act specifies the circumstances in which the preparation of a CHMP is mandatory:

- When required by the Regulations;
- When the Minister directs a CHMP to be prepared for an activity; or
- When an EES is required for an activity.

Clause 6 of the Regulations states that a CHMP is required when:

- All or part of the activity is a high impact activity.

and

- All or part of the activity area is in an area of cultural heritage sensitivity - which has not been subject to significant ground disturbance.

‘High impact activities’ and ‘areas of cultural heritage sensitivity’ are defined in the Regulations. For activities which trigger a CHMP, a statutory authorisation cannot be granted for the activity without an approved CHMP.

**Is The Proposal A High Impact Activity?**

A residential subdivision development in the study area would most likely classify as a high impact activity under r. 46 Subdivision of land.

**Is The Activity In An Area of Cultural Heritage Sensitivity?**

A check of the mapped areas of Cultural Heritage Sensitivity revealed that the study area is partially encompassed by an area of Cultural Heritage Sensitivity. This comprises land within 200 m of Werribee River, registered Aboriginal places and land within 50 m of registered Aboriginal places. (see Figure 1). This relates to r.22 and r.23 of the Act.
Aboriginal Stakeholder Groups

Wathaurung Aboriginal Corporation (WAC) has been appointed as a Registered Aboriginal Party for an area that encompasses the study area. WAC have not been consulted about this advice.
Registered Aboriginal Places

A search of the Victorian Aboriginal Heritage Register (VAHR) was undertaken on 4 April 2011. This determined that five Aboriginal places were registered within the study area and a further Aboriginal place occurs within 50 m of the study area. The distribution of these Aboriginal places are shown in Figure 2.

Figure 2: Aboriginal places in the study area.

The Aboriginal places comprise:
• VAHR 7822-0201 is a scarred tree.

• VAHR 7822-0202 is a scatter of stone artefacts exposed over a 15 x 5 m area on a track.

• VAHR 7822-0203 is a surface scatter and subsurface deposit of >66 stone artefacts located over a 200 x 30 m area. The subsurface stone artefacts were identified at c. 200 mm.

• VAHR 7822-2364 is a scatter of six stone artefacts exposed over a 14 x 8 m area in a road reserve.

• VAHR 7822-2720 is a single stone artefact.

• VAHR 7822-2740 comprises four stone artefacts identified over a 20 x 5 m area in c.200 mm deep subsurface context.

Aboriginal Archaeological Potential

Sources of information used to predict the archaeological potential of the property, and their limitations, include:

• 'The Western Region: Melbourne Metropolitan Area, An Archaeological Survey. Victoria Archaeological Survey Occasional Report No.27.' A report by Du Cros in 1989. This archaeological survey encompassed parts of the Werribee River corridor in the study area and resulted in the documentation of VAHR 7822-0201, 0202 and 0203. Based on the results of the field survey the report made predictive statements regarding the character of Aboriginal places over a large area. The large size of the study area and the lack of subsurface investigation mean these statements have limited value for the specific study area.

• 'GasNet Brooklyn-Lara Gas Pipeline Project: Archaeological Subsurface Testing Program'. A report by Mathews, Feldman and Chandler 2007. This archaeological subsurface testing program undertook numerous shovel test pits in proximity to VAHR 7822-0203 in the study area. The test pits were commonly excavated to 250 mm and resulted in the rerecording of VAHR 7822-0203. This subsurface testing program was preceded by an archaeological field survey of a linear alignment that dissect the study area. This survey (Howell-Meurs & Chandler 2006) did not identify any cultural heritage in the study area, a result partially attributed to lack of surface visibility.

• The distribution of registered Aboriginal places in the study area and information provided on VAHR cards for these places. A large number of Aboriginal places to the south east of the study area were also referred to for comparative information.

• Reports relating to the recording of VAHR 7822-2740, 2720 (CHMP 11272 - Regional Rail Project by Andrew Long & Associates), VAHR 7822-2364 (CHMP 10718 - Road
Upgrade? by Biosis), and numerous Aboriginal places south east of the study area (CHMP 10964 - Residential Subdivision by ACHM) have not been finalised. CHMPs 11272 and 10964 in particular would provide comparative information for the study area.

- verbal discussions with Andrew Long & Associates staff regarding interim field results for that component of CHMP 11272 that lies in the study area.

Based on the above the following predictive statements are made about the archaeological potential of the study area:

- the banks of Werribee River and adjacent escarpment have very high archaeological potential with high densities of stone artefacts expected to occur in surface and subsurface deposits. Freshwater shell and other organic remains may also occur in subsurface deposits. Subsurface cultural heritage has the potential to occur in very deep deposits (c. >3 m) immediately adjacent to the Werribee River, and in shallow soil horizons (c. 300 mm) on the adjacent escarpment.

- Stone artefacts on the surface and in shallow subsurface soils will occur throughout the remainder of the study area. These will generally comprise a low density scatter of stone artefacts on all landforms represented, as has been recorded on a property to the south east of the study area. However, some locations are predicted to contain slightly increased densities of stone artefacts, namely: the base, sides and crests of escarpments and rises, and rises adjacent to drainage features.

- further scarred tree's are unlikely to occur in the study area due to the widespread clearing of mature native vegetation, however scarred tree's may have survived in the immediate creek corridor.

The predictive statements made regarding Aboriginal cultural heritage in the study area are visually represented in Figure 3. These predictive statements can only be verified by field investigation.
Figure 3: Archaeological Potential of the Study Area.
CONCLUSIONS

PSP Processes

A review of 'PSP Heritage Notes' does not clearly state GAA's expectations regarding the need for CHMPs or other forms of cultural heritage assessments at a Precinct Structure Plan (PSP) level. If a PSP is being prepared for the study area the GAA should be contacted regarding what approach they require at a PSP level (i.e. a cultural heritage assessment versus a CHMP). The GAA's advice should be used to guide an approach to managing Aboriginal cultural heritage at a PSP stage.

Planning Permit Applications

Through this review I have formed the opinion that residential development of the study area will trigger the need for a CHMP for those planning permit applications that contain areas of Cultural Heritage Sensitivity as mapped in Figure 1.

Given the potential for Aboriginal cultural heritage to occur outside of these area's of Cultural Heritage Sensitivity consideration should be given to formulating a risk management approach to address the management of Aboriginal cultural heritage for planning permit applications where a mandatory CHMP is not required. Such an approach may involve a combination of cultural heritage surveys, voluntary CHMPs, CHPs and contingencies.

If you require any further information or have any questions regarding this matter, please do not hesitate to contact me.

Yours sincerely,

Petra Schell
Principal,
ochre imprints