

Land Between Nyora-Poowong Road & Glovers Road, Nyora

Cultural Heritage Assessment



A Report to Beveridge Williams & Co Pty Ltd

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Cover plate: Photograph of overflowing dam, facing southeast.

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ABSTRACT

This report presents the results of an archaeological survey of two freehold properties at Nyora. The survey was commissioned by Beveridge Williams & Co. Pty Ltd who is managing a rezoning application for the properties on behalf of their client, Daryl Smith and Jeff Clark. The study documents the results of a field survey, consultation with Aboriginal community representatives and relevant background investigation and summarises historical and archival research.

The principal objectives of the survey were to identify and record any Aboriginal and historical archaeological sites located within the study area, to determine the implications of future development on cultural heritage values and to make appropriate management recommendations for any cultural heritage sites and areas of archaeological sensitivity.

The study area included two blocks of adjoining freehold land of c. 74.99 ha and c. 24.28 ha. The study area is located on undulating plains within the dissected fault blocks of the Strzelecki Ranges. A minor creek runs southwest to northeast through the eastern half of the larger block and there are several drainage lines through study area. The majority of the study area has been cleared for grazing and only a few remnant stands of swamp gum occur within the study area.

The survey did not identify any Aboriginal archaeological sites within the study area and the entire area was identified as having low - moderate potential to contain Aboriginal sites. The effectiveness of the field assessment was limited by > 99.5% grass cover which obscured surface visibility, therefore the assessment has had to place greater emphasis on site predictive models for the region to determine the likelihood of Aboriginal sites occurring and surviving in this region. This predictive modelling suggests that there is low - moderate potential for stone artefact occurrences (surface scatters and isolated artefacts) to be present within the study area.

No historical archaeological sites were recorded during the field survey. This can be seen as a reflection of the predominantly pastoral use of the landscape in the post-contact period, which is unlikely to have resulted in significant archaeological features.

While no Aboriginal cultural heritage sites were recorded during the survey, the area was determined to have potential to contain Aboriginal sites in the form of stone artefact occurrences. In order to manage potential risks to Aboriginal cultural heritage values, monitoring of topsoil disturbance/removal works within the study area by Aboriginal representatives during the implementation of any proposed development, is required. Additional procedural and legislative requirements regarding the unexpected discovery of archaeological material are outlined in this report.

CONTENTS

ABSTRACT	2
1 INTRODUCTION	5
1.1 BACKGROUND.....	5
1.2 STUDY AIMS.....	5
1.3 THE STUDY AREA	6
1.4 CONSULTATION.....	8
1.4.1 <i>Government Consultation</i>	8
1.4.2 <i>Aboriginal Consultation</i>	8
1.5 INDEPENDENT REVIEWS OF REPORTS	9
2 BACKGROUND INFORMATION	11
2.1 ENVIRONMENT	11
2.2 LAND USE HISTORY	11
2.3 IMPLICATIONS	12
3 ABORIGINAL BACKGROUND.....	13
3.1 INTRODUCTION.....	13
3.2 ETHNOHISTORY	13
3.3 PREVIOUS STUDIES.....	15
3.4 REGIONAL SITE DISTRIBUTION.....	17
3.5 ARCHAEOLOGICAL SITES WITHIN THE STUDY AREA	18
3.6 AREAS OF ARCHAEOLOGICAL SENSITIVITY	19
3.7 CONCLUSION.....	20
4 HISTORICAL BACKGROUND	21
4.1 INTRODUCTION.....	21
4.2 HISTORICAL BACKGROUND.....	21
4.3 PREVIOUS ARCHAEOLOGICAL RESEARCH	22
4.4 REGIONAL SITE DISTRIBUTION.....	23
4.5 ARCHAEOLOGICAL SITES WITHIN THE STUDY AREA	23
4.6 AREAS OF ARCHAEOLOGICAL SENSITIVITY	24
4.7 CONCLUSION.....	24
5 MANAGEMENT ISSUES.....	25
5.1 INTRODUCTION.....	25
5.2 WHY PROTECT CULTURAL HERITAGE SITES?	25
5.3 THE LEGISLATIVE FRAMEWORK FOR ABORIGINAL HERITAGE PROTECTION.....	25
5.4 ABORIGINAL VIEWS OF THE DEVELOPMENT.....	26
5.5 MANAGEMENT IMPLICATIONS AND RECOMMENDATIONS.....	26
6 BIBLIOGRAPHY	29

APPENDICES

APPENDIX 1: ACKNOWLEDGEMENT OF SURVEY NOTIFICATIONS	31
APPENDIX 2: SURVEY METHODOLOGY & COVERAGE & AAV PROFORMA	35
APPENDIX 3: LEGISLATIVE REQUIREMENTS.....	39
APPENDIX 4: ADVICE ABOUT THE DISCOVERY OF HUMAN REMAINS.....	43

TABLES

TABLE 1: ABORIGINAL SITES RECORDED WITHIN 8 KM OF THE STUDY AREA. 18
TABLE 2: HISTORIC BUILDING AND STRUCTURES WITHIN A 20 KM RADIUS OF THE STUDY AREA. 23
TABLE 3: SURVEY COVERAGE..... 38

FIGURES

FIGURE 1: LOCATION OF THE STUDY AREA..... 6
FIGURE 2: THE STUDY AREA..... 7

PLATES

PLATE 1: SURFACE VISIBILITY..... 19

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Larry Steele and Alex Korte (Victorian Boonerwung Elders Land Council Aboriginal Corporation), Sonia Murray and Jason Thomas (Bunurong Land Council Aboriginal Corporation), Jeff Clark, Daryl and Sue Smith (landholders), Nicole Stow (Beveridge Williams & Co. Pty Ltd), Andrew Long, Petra Schell and Anna Light (Andrew Long & Associates).

1.

INTRODUCTION

1.1 BACKGROUND

This report presents the results of an archaeological survey of two adjoining freehold properties in Nyora, approximately 90 km south east of Melbourne (Figure 1). The survey was commissioned by Beveridge Williams & Co. Pty Ltd who is managing the rezoning applications (from Rural to either Rural Living or Low Density Residential) for the property on behalf of their clients, Jeff Clark and Daryl Smith.

The principal objectives of the survey were to identify and record any Aboriginal and historical archaeological sites located within the study area, to determine the implications of future development on cultural heritage values and to make appropriate management recommendations for any cultural heritage sites and areas of archaeological sensitivity.

The archaeological field survey and assessment was conducted on 26 September 2003 and the 2 October 2003. The fieldwork was carried out by Ricky Feldman (Andrew Long & Associates) with Jason Thomas (Bunurong Land Council Aboriginal Corporation or BLCAC) and Jeff Clark (landowner) on the 26 September and with Alex Korte (Victorian Boonerwung Elders Land Council Aboriginal Corporation or VBELCAC) on the 2 October 2003.

This investigation has been undertaken in accordance with the *Guidelines for Conducting and Reporting upon Archaeological Surveys in Victoria* (AAV 1997) and the conservation principles of *The Burra Charter* (Marquis-Kyle and Walker 1992).

1.2 STUDY AIMS

The primary aims of the study were designed to comply with existing cultural heritage legislation (Appendix 3) and best archaeological practice. These objectives are summarised as follows:

1. To locate and record both Aboriginal and non-Aboriginal historical archaeological sites within the study area.
2. To define areas of archaeological sensitivity and identify landforms of archaeological potential.
3. To establish the scientific and cultural significance of any archaeological sites, areas and landforms of archaeological potential located, using criteria normally applied to the assessment of cultural heritage resources.
4. To establish the implications which the presence of any archaeological resources may have for the development and/or future management of the study area, and to

develop appropriate management guidelines for both archaeological sites and areas of archaeological potential.

5. To establish the views of Aboriginal people, and of any other groups with a special interest in the archaeology of the study area, on matters such as the significance of recorded sites and on appropriate management procedures.

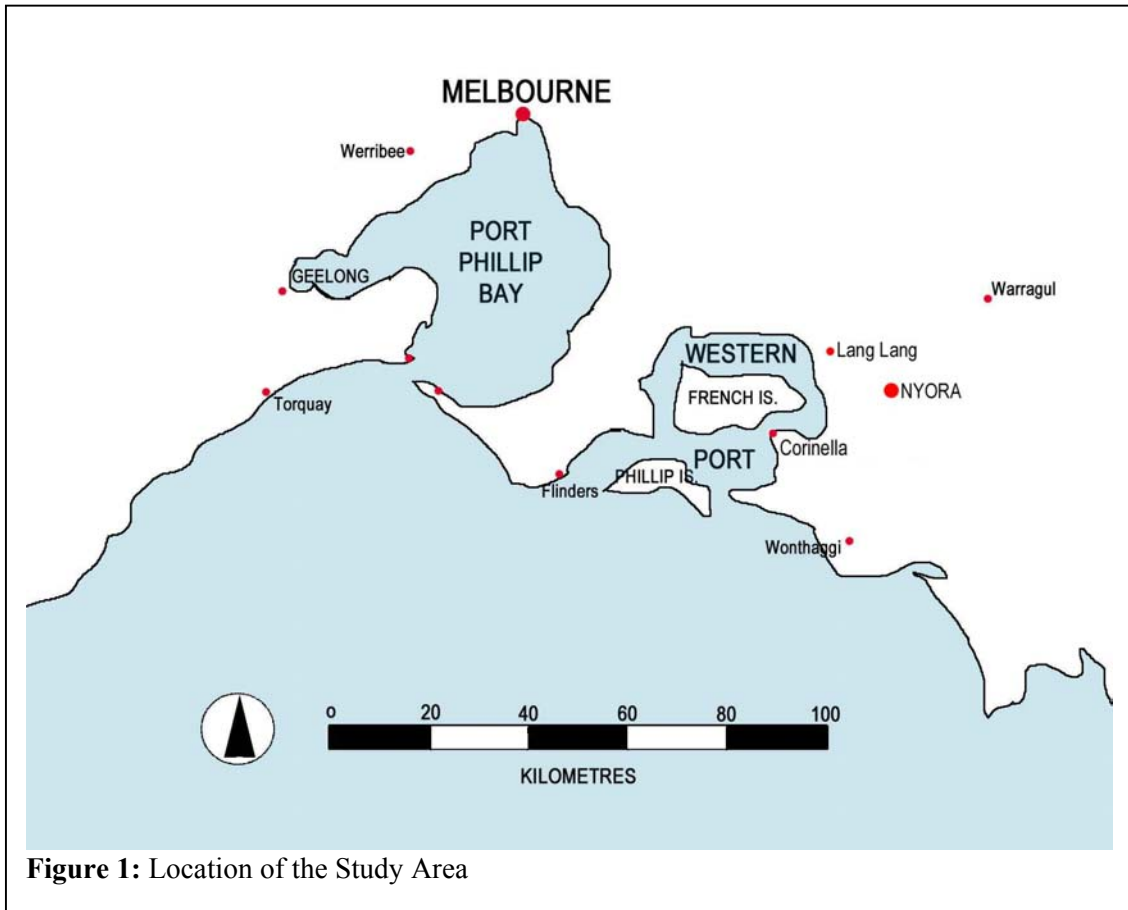


Figure 1: Location of the Study Area

1.3 THE STUDY AREA

The study area included two blocks of adjoining freehold land of c. 74.99 ha and c. 24.28 ha. Block 1 is bound by the Nyora-Poowong Road to the south, Glovers Road to the northeast, residential houses and Block 2 to the west. Block 2 is bound by a disused road to the south, Glovers Road to the north, Block 1 to the east and Yannathan Road to the west (a 4.052 ha property at the northwest corner of Block 2 was previously sub-divided and is not part of the study area) (Figure 2).

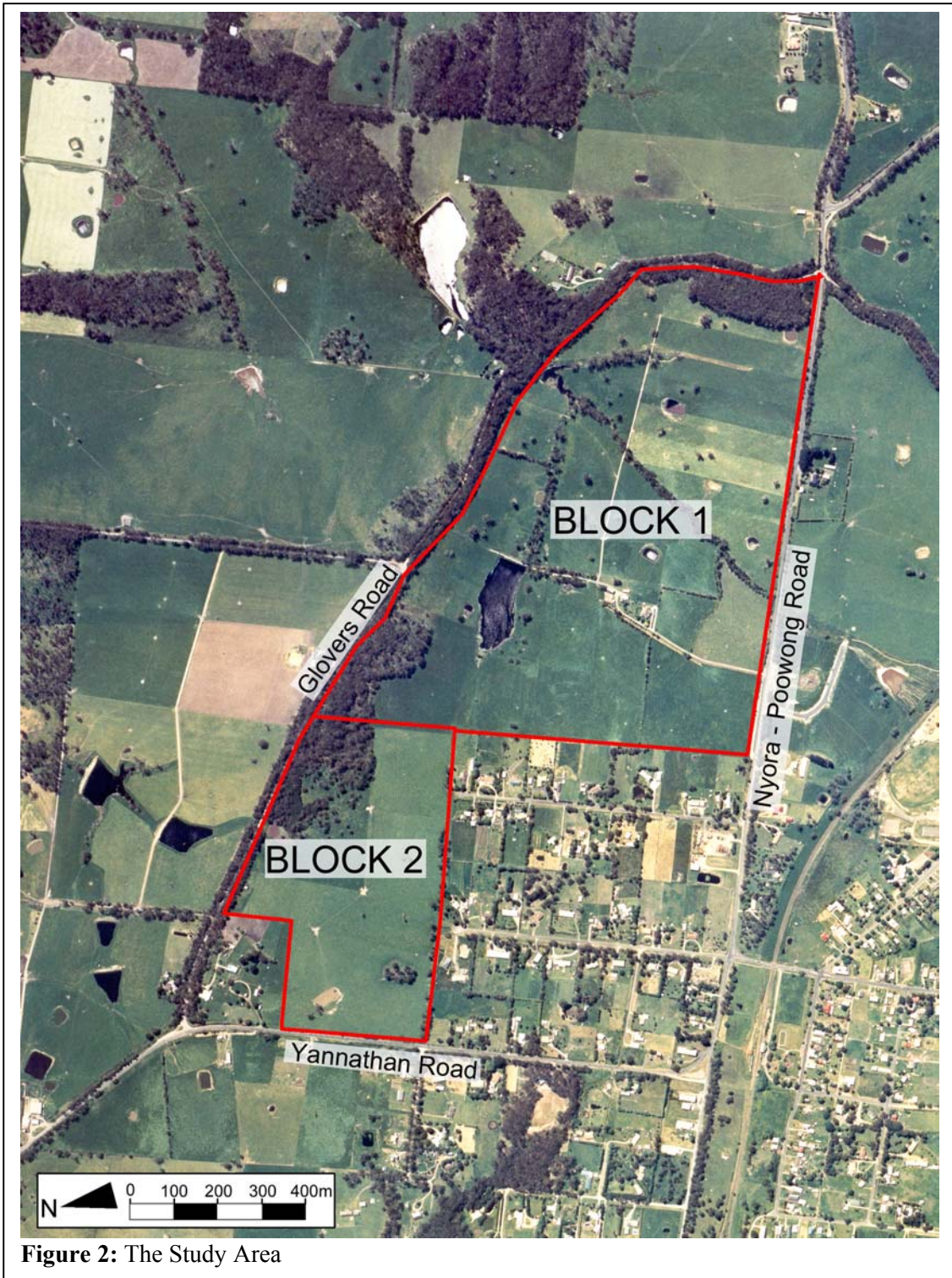


Figure 2: The Study Area

The study area is located on undulating plains with a minor creek running southwest to northeast through the eastern half of Block 1. Several drainage lines run through study area. There are areas of denser vegetation including messmate and tree ferns on the periphery of the study area, adjacent to Grovers Road. The majority of the study area has been cleared for grazing and only a few remnant stands of swamp gum occur within the study area. There is an art deco residential property located in the centre of Block 1 that was built by the Baker family who previously owned the property

extending over the entire study area before dividing the land in two and giving the area known as Block 2 as a wedding gift to their daughter (Jeff Clark *pers. comm.* 26/09/2003).

1.4 CONSULTATION

The primary stakeholders in the results of this study are Beveridge Williams & Co. Pty Ltd, Jeff Clark, Daryl Smith, VBELCAC, BLCAC, Wurundjeri Tribe Land Compensation and Cultural Heritage Council Inc. (WTLCCCHC), Kulin Nation Cultural Heritage Regional Program (KNCHRP), Aboriginal Affairs Victoria (AAV) and Heritage Victoria (HV).

1.4.1 Government Consultation

Prior to the commencement of the field survey the Heritage Services Branch, AAV, and HV, Department of Planning and Infrastructure, were notified of the proposed survey by submission of respective notifications of intent to conduct an archaeological survey (Appendix 1). This is a requirement of the *Archaeological and Aboriginal Relics Preservation Regulations 1992* and *Heritage Act Regulations 1996*.

1.4.2 Aboriginal Consultation

Several Aboriginal organisations provide advice or have interests regarding cultural heritage issues in the study area. Currently, under the terms of the Commonwealth *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*, the WTLCCCHC have legislative responsibilities regarding the protection of Aboriginal sites in the Nyora area.

KNCHRP provide advice regarding cultural heritage and consultation with Aboriginal organisations in the wider Melbourne and Port Phillip region. Note that KNCHRP are a team of Aboriginal Heritage Officers servicing local and regional Aboriginal heritage requirements for AAV, the local Aboriginal community and the wider community.

WTLCCCHC and KNCHRP currently refer most Aboriginal cultural heritage matters in the Nyora area (see Section 5.3) to two Aboriginal organisations, VBELCAC and BLCAC. However, WTLCCCHC retain their legislative responsibilities, specifically with regard to such matters as the issuing of *Consent to Disturb* Aboriginal sites and support for Form C (sub-surface testing) applications.

Larry Steele (VBELCAC) and Sonia Murray (BLCAC) were informed of this assessment and arrangements were made for a field representative to participate in the field survey on separate days.

Aboriginal heritage and cultural issues relating to the development were discussed with Alex Korte (VBELCAC field representative) and Jason Thomas (BLCAC field representatives) during the field assessment and their comments and views are documented in this report (see Section 5.4).

VBELCAC and BLCAC were invited to comment on a draft version of this report (see Section 5.4).

1.5 INDEPENDENT REVIEWS OF REPORTS

It should be noted that archaeological reports relating to Aboriginal places and archaeological sites and the management recommendations contained therein, will be independently reviewed by the Heritage Services Branch of AAV and the relevant Aboriginal community. Although the findings of a consultant's report will be taken into consideration, recommendations by an archaeological consultant for actions in relation to the management of an Aboriginal site should not be taken to imply automatic approval of those actions by AAV or the Aboriginal community.

2.

BACKGROUND INFORMATION

This section discusses the environment of the study area, in which both the natural environment and the effects of post-contact land use practices are reviewed.

2.1 ENVIRONMENT

It is important to understand the environmental context of the study area in order to gain a better understanding of the possible resources available to pre-contact Aboriginal people and European settlers. In addition, this information assists in determining whether natural environmental processes (ie. weathering of land surfaces) will have impacted sites.

Nyora is located in the dissected fault blocks of the Strzelecki Ranges within the South Victorian Uplands. The area is characterised by gentle to moderate hills with finely textured unconsolidated deposits (LCC 1991: Map 9). Nyora is located on the western edge of the Strzelecki Range, which comprises uplifted Cretaceous sandstone, shale and coal. The ranges generally rise to between 180 – 490 asl (LCC 1973: 419). To the west of Nyora the Strzelecki Ranges borders a low-lying coastal plain, comprising Quaternary marine and non-marine sediments. (LCC 1973: Map 3; LCC 1991: 53; Bird 1993: 193).

The average annual rainfall in the region varies with elevation, from 900 mm near the coast to 1,100 mm on the uplands. Sodic duplex soils predominate at lower elevations and a succession of yellow gradational soils and friable brown gradational soils occur at higher elevations within the Strzelecki Ranges. Grey clays are found in low-lying areas, while friable red gradational soils have developed in basalt areas northeast of the study area (the Warragul and Thorpdale districts). Indigenous vegetation has survived in pockets throughout the region and is characterised by blackwood, silver wattle and common cassinia, as well as tree ferns, blanket-leaf, musk daisy bush, hazel pomaderris, southern sassafras and Christmas bush. Remnants of mountain ash, messmate, mountain grey gum and manna gum have also survived in some areas. (LCC 1973: 418-20).

2.2 LAND USE HISTORY

Aboriginal peoples' occupation of the study area extends over thousands of years. This occupation would likely have taken the form of temporary camps used on a seasonal basis and that made use of diverse resources in the area. The landscape was undoubtedly well known to generations of people and it is probable that associations extended to spiritual attachments (see Section 3.2).

The hilly nature and dense forest of the study area proved an obstacle to early European settlement and occupation. Early contact in the area was by squatters, who grazed their stock on the open and less timbered country between the hills and the

southern coast. The overland journey of Count Strzelecki in 1840 from New South Wales to Westernport and the survey of McDonald's Track from Tobin Yallock to Morwell in 1860, were the two most notable events prior to the settling of the area for grazing and agricultural purposes. As a result of the McDonald's Track survey and the discovery of fertile soils, the land was thrown open for selection under the *Lands Act 1869*, which entitled 'selectors' to take up an area of 320 acres at a yearly rental of £1 per acre for a period of 20 years. Selection occurred throughout the 1870s (Gillian 1966: 87), with the majority of vegetation cleared at this time.

Dairying became established in Nyora in the 1870s and played a significant role in the development of the district. Log or slab dairies with bark or shingle roofs were constructed throughout Western Gippsland, including Nyora, in the late 1800s (The Committee 1966: 238-40). The dairy industry led to improvements in roads and services in the district. Beef cattle and mixed farming was also popular in the area, but the dairy industry predominated until today and was formerly practised on Blocks 1 and 2.

2.3 IMPLICATIONS

The study area contains features known to have been a focus of Aboriginal occupation and subsistence in the past, such as the presence of potable water. These features indicate the potential for Aboriginal sites to occur in the study area.

Previous and current land use practices will have impacted the condition of Aboriginal sites. In particular, the ploughing of land surfaces will have disturbed any surface or shallow sub-surface archaeological site material. In addition the clearing of the majority of mature native trees may have destroyed trees scarred by Aboriginal bark extraction practices. However, while these land use practices may have disturbed the context of the sites, it does not mean that cultural material will not occur.

3.

ABORIGINAL BACKGROUND

3.1 INTRODUCTION

This section presents ethnohistorical and archaeological background information relating to the Aboriginal occupation of the study region and discusses the Aboriginal values of the study area. The strategy and methodology employed during the field survey is presented in Appendix 2. Field survey conditions are discussed as a factor in relation to the distribution of archaeological sites in the study area (Section 3.6 & 3.7).

3.2 ETHNOHISTORY

In this section the available ethnohistorical and historical information relating to Aboriginal people in the study region is briefly reviewed. This information can assist in formulating a model of Aboriginal subsistence and occupation patterns in the Nyora area. In conjunction with an analysis of the documented archaeological record of the region (Section 3.4), the ethnohistorical information also assists in the interpretation of archaeological sites in the wider area, and in predicting the potential location of archaeological site types within the immediate study area. For more detailed information on Aboriginal peoples' association with the Westernport region see Gaughwin (1981), Coutts (1983), and Gaughwin & Sullivan (1984).

The study area is located within the traditional language boundaries of the *Bun wurrung* (spelling according to Clark 1990: 363, however numerous variants exist), who were included within the seven Kulin Nation language groups. A language group consisted of independent groups of closely related kin, or 'clans', who were spiritually linked to designated areas of land through their association with topographic features connected to mythic beings or deities. Clan lands were inalienable and clan members had religious responsibilities (e.g. conducting rituals) to ensure 'the perpetuation of species associated with the particular mythic beings associated with that territory' (Berndt 1982, 4).

The closest documented clan to the study area was the *Yallock Balug* clan (meaning river people) who were associated with the Bass River c. 3 km south east of Nyora (Clark 1990, 368). Some observations were made of Aboriginal groups, likely to be *Yallock Balug*, by explorers who entered the Westernport region in the early 1800s. In 1802 Bowen, the first mate on the *Lady Nelson*, briefly met a group of Aboriginal people at Settlement Point (15 km south west of Nyora). Three months later Captain Milius from the *Le Naturaliste* expedition also met an Aboriginal group around Settlement Point, whom he describes in terms of their temperament and body ornamentation. He also describes following the group and an encounter with a 'family who were eating shell fish around a little fire' (Horton & Morris 1983, 21-25).

William Thomas, an Assistant Protector of Aborigines, recorded most of the little documented information regarding the lifestyle of the Aboriginal people in Westernport. He observed clans living a hunter-gatherer lifestyle, moving within their lands to make use of seasonal plant and animal resources, trading opportunities and to meet ritual and kinship obligations. Thomas' accounts indicate that groups of Aboriginal people often headed for or returned from the hills, yet there is little documentation of this, probably because few Europeans accompanied them on travels into the hilly areas. Detailed names of every mountain in the region were recorded, suggesting that the upland area was an integral part of the perceived environment, however no groups were recorded as living permanently in the region (Gaughwin & Sullivan 1984: 88-94). Whilst travelling through Westernport with an Aboriginal group Thomas observed that:

...all are employed; the children in getting gum, knocking down birds etc; the women in digging up roots, killing bandicoots, getting grubs etc; the men in hunting kangaroos, etc, scaling trees for opossums etc. They mostly are at the encampment about an hour before sundown – the women first, who get fire and water, etc. by the time their spouses arrive...In warm weather, while on tramp, they seldom make a miam – they use merely a few boughs to keep off the wind, in wet weather a few sheets of bark make a comfortable house. In one half hour I have seen a neat village begun and finished. (Thomas in Gaughwin & Sullivan 1984: 93-94).

Intertribal relationships varied throughout the region. While the *Bun wurrung* were closely affiliated with *Woi wurrung* groups to the north, they had a long-standing dispute with the *Kurnai* in Gippsland, with many references to periodic raids carried out by both groups. In 1840 a *Bun wurrung* group arrived at Yallock station (15 km north west of the study area) on their way to carry out a reprisal raid in Gippsland. The women, children and old men of the group remained at the station 'hunting and fishing' until the raiding party returned five weeks later (Gunson 1968: 6).

By 1812 sealers were visiting Westernport on a seasonal basis and by 1826 they were permanently settled at Phillip Island exploiting the seal colony at Seal Rocks (Gaughwin & Sullivan 1984: 82). The relationship between local Aboriginal groups and the sealers is not well documented however it has been reported that sealers carried out raids on Aboriginal territory, murdering men and stealing women (Massola 1974: 45).

In 1835 Samuel Anderson settled at Bass, beginning the permanent European settlement of Westernport and Western Gippsland. The Aboriginal people living in the region sought refuge in various stations set up by William Thomas between 1839-1843 around Westernport (Barwick 1998: 31), following the depletion of resources caused by the introduced cattle. Thomas hoped that the stations would encourage Aboriginal people to take up an agricultural lifestyle but spent most of his time unsuccessfully trying to keep Aboriginal people out of Melbourne. Aboriginal people from Westernport were attracted to the township of Melbourne and an 1839 census of Aboriginal people living in and around Melbourne recorded 12 *Bun wurrung* people (Lacic & Wrench 1994: 112-113). In 1847 an influenza epidemic further depleted their population. By 1866 most of the remaining Aboriginal people in the Port Phillip region, including *Bun wurrung*, were removed from their lands to Coranderrk Aboriginal Station (Clark & Heydon 1998).

Some Aboriginal people in the Westernport region were able to live outside of Aboriginal Missions in the later half of the 1800s. Thomas managed to secure 832 acres of land at Mordialloc in 1852 at a location where Aboriginal people had camped

since 1835. Thomas spent years trying to ‘defend the interests of the Bunurong’ who had strong attachments to the Mordialloc Reserve, by preventing its cancellation. Despite his efforts the Mordialloc Reserve was eventually revoked and sold in 1863, with some of the Aboriginal residents moved to Coranderrk Aboriginal Station, and the remainder staying in camps at Mordialloc and Cranbourne where the last of them died in 1877 (Barwick 1998: 35, 52, 66). Ben Brett, a European settler who arrived in Westernport in 1863, reported another Aboriginal camp in the region from around this time period. Brett recalled that three or four Aboriginal people ‘...had a mia-mia at Tooradin, and used to come as far as Red Bluff’ and observed that the group shot ducks and caught eels in the Tooradin Creek which they would then sell (Brett in The Committee 1966: 380).

There is only limited information regarding Aboriginal place names in the region with Nyora documented as being an Aboriginal word for ‘Cherry Tree’ (White 1978: 1), with this species known to still occur in Nyora (Jeff Clark *pers. comm.* September 2003).

3.3 PREVIOUS STUDIES

Gaughwin (1981, 1983) undertook a regional archaeological study of the Westernport Catchment, which provides detailed information on the nature and distribution of Aboriginal sites in the region. Several cultural resource management studies have been undertaken of small areas of land closer to Nyora (Clark, Thomson & Tucker 2000; Clark & Thomson 2000; Clark 2001; Lane 2001; Murphy 2001; 2003) and various assessments associated with the proposed Bass Gas pipeline (Rhodes *et al.* 2002; Rhodes 2003) provide additional information on Aboriginal sites in the wider area.

South Gippsland Highway (Clark & Thomson 2000a; 2000b; Clark 2001)

Clark & Thomson carried out archaeological surveys of a 3.3 km and a 9.1 km section of the South Gippsland Highway road reserve between Walkers Road (c. 2 km southeast of Nyora) and Poowong Road, and between Poowong Road in the town of Loch and the town of Bena, respectively (Clark & Thomson 2000a; 2000b). The surveys were conducted on foot.

The surveys identified an isolated stone artefact (AAV 8021-38) and two areas of Aboriginal archaeological sensitivity adjacent to a creek. AAV 8021-38 comprised a single silcrete flake exposed on the side of a roadside ditch. Clark & Thomson (2000a: 5-6) suggested that it is unlikely for any undisturbed, significant archaeological deposits to occur within the study area, as most of the area had been subject to the complete clearance of native vegetation and had been ploughed or otherwise disturbed.

Subsequent to the survey, Clark conducted a sub-surface testing programme of the two areas of Aboriginal archaeological sensitivity. A total of 12 transects and 78 shovel probes were undertaken, however no sub-surface Aboriginal cultural heritage deposits were located.

Westernport Catchment (Gaughwin 1981; 1983)

The archaeological survey of the Westernport Catchment undertaken by Denise Gaughwin provides useful information on the regional distribution of sites. Gaughwin used data on site location, site contents, landforms, and subsistence resources in

conjunction with historical records to develop a subsistence model for the Westernport Catchment.

Gaughwin sample surveyed the three landforms, which made up the catchment: coastal margins, upland hills and coastal plains (1983: 33). The upland hills encompass the study area and her results for this landform are discussed below.

Gaughwin (1983: 95) rated the ground visibility of the upland hills as particularly poor (0 – 1%). Within the upland hills Gaughwin drove along most of the roads, yet was unable to locate any areas with good surface visibility to conduct a systematic survey (1983: 23). Four stone artefact scatters were recorded in ploughed paddocks on sloping ground within the upland hills (1983: 110, 153).

Using the results of her studies Gaughwin proposed that Aboriginal subsistence in the Westernport Catchment was based primarily on the coastal plains, particularly plains adjacent to wetlands. The coastal margins were relatively unimportant in terms of subsistence resources and utilisation and the relative use of the upland hills could not be ascertained due to the lack of data (1983: 158).

Other archaeological assessments have been undertaken in the Nyora area including the Bass Gas Pipeline documented in Rhodes *et al.* (2002). The corridor, which extends between Pakenham and Kilcunda, passes 5 km west of Nyora. The corridor encompassed a wide range of landforms associated with the Southern Victorian Uplands, the South Victorian Coastal Plains and the South Victorian Riverine Plains (Rhodes *et al.* 2002: 9).

The corridor was sample surveyed on foot covering 38% of the Pakenham to Kilcunda section (Rhodes *et al.* 2002: 35). Although the survey was hindered by poor ground surface visibility, 13 Aboriginal sites were identified, comprising eight isolated stone artefacts, one stone artefact scatter, three scarred trees and a shell midden (6 sites occurred within 8 km of Nyora). In addition, numerous areas and landforms of potential sensitivity for Aboriginal sites were identified (Rhodes *et al.* 2002: 38-41).

The Aboriginal sites were predominantly located in hills to the north and south of the Bass River. A scarred tree (AAV 8021-63) and an isolated stone artefact (AAV 8021-46) was located on the lowland plain approximately 6 km west of Nyora, two scarred trees (AVV 8021-56, -57) and two isolated stone artefacts (AAV 8021-58, -59) were identified 5 km south west of Nyora. The stone artefact sites comprised highly diffuse stone artefact scatters or 1-2 isolated stone artefacts, with silcrete, chert, quartz and coastal flint raw material types represented (Rhodes *et al.* 2002: Table 4, 46-47). The majority of Aboriginal sites were situated on dune landforms within the lowland coastal plain with distance to water apparently not a significant factor in site location.

Rhodes (2003) also conducted an excavation and sub-surface testing programme of a proposed gas plant site between Lang Lang and Nyora (c. 6 km north west of Nyora). The area was situated on a late Pleistocene formation of sand dunes and sand sheets known as the Cranbourne Sands, 300-400 m north of a former Tea-tree swamp (2003: 1-2) likely associated with Tobin Yallock swamp. This area lies within the lowland coastal plain. The excavation programme consisted of the manual excavation of one 3 x 1 m trench and three 1 m² test pits. Sub-surface testing using a mechanical auger and shovel test pitting was also undertaken at 5 m intervals along 11, 50 m transects and four 20 m transects.

The excavation and sub-surface testing determined that the soil horizon across the area was comprised of a dark layer of sand with humic content, overlying layers of sand, which changed from dark grey to white with depth. Coffee rock occurred at the base of the white sand at a depth of between 65-121 cm (Rhodes 2003: 10).

One isolated stone artefact was identified during the excavation programme (AAV 8021-89) with an additional two isolated stone artefacts (AAV 8021-91 & 92) located during the augering of transects. All of the stone artefacts were located between 50-86 cm below the ground surface. Two isolated stone artefacts (AAV 8021-88 & 90) were identified on the surface within disturbed contexts in the broader area. The stone artefacts were made from a wide range of raw materials with quartz, crystal quartz, chert and silcrete artefacts represented. Rhodes (2003) determined that it was likely that further diffuse scatters of stone artefact were likely to occur throughout the area. In addition, there was a possibility for Aboriginal burials to be present due to the presence of sand dunes, a locally uncommon formation (Rhodes 2003: 14).

Further Aboriginal site material was uncovered within a prominent east-west dune at the Gas Plant site during construction works. Aboriginal representatives monitoring works during topsoil stripping identified a total of 18 stone artefacts. The location of the artefacts in a late Pleistocene dune highlighted the sensitivity of this landform for containing Aboriginal site material (Jonathan Howell-Meurs *pers. comm.* 2003).

Murphy (2003) carried out an archaeological assessment of a sand extraction site (c. 6 km north west of Nyora). The land was characterised by undulating sand hills with two minor drainage lines dissecting the property. The entire area was surveyed with effective coverage estimated at between 10-15%. A surface scatter (AAV 8021-86) was identified within an area that had been subject to sand quarrying, comprising eight quartzite and quartz stone artefacts (Murphy 2003: 26). In addition, less disturbed sections of a low sand dune ridge in the southern part of the property was identified as an area of low to moderate archaeological potential (Murphy 2003: 31).

3.4 REGIONAL SITE DISTRIBUTION

The Site Register maintained by Aboriginal Affairs Victoria, lists 15 registered Aboriginal sites within 8 km of the study area (Table 1).¹

The majority of the sites were recorded as part of the assessments carried out for the Bass Gas Pipeline (Rhodes *et. al.* 2002; Rhodes 2003), with only three sites (AAV 8021-15, -38 and -86) documented as part of a separate archaeological assessment.

The sites recorded in the region were predominantly isolated stone artefacts or diffuse stone artefact scatters, most were situated in late Pleistocene dunes to the west of Nyora, within the lowland coastal plain and were locations associated with freshwater swamps and creeks or land subject to flooding. Stone artefacts were made from a range of raw materials with chert, greenstone, quartz, quartzite, quartz conglomerate and silcrete represented. Three scarred trees were recorded, also situated close to permanent creeks.

Only two sites (AAV 8021-15 & -38) have been identified within the Strzelecki Ranges in the vicinity of Nyora. AAV 8021-15 is an artefact collection with no details regarding the location of the collected material. AAV 8021-38 was located on a hill

¹ As of 9 September 2003.

slope adjacent to a creek. The existing information demonstrates that the nature of Aboriginal sites in the Strzelecki Ranges near Nyora remain largely unknown, although many Aboriginal sites have been documented on the adjacent coastal plain.

Site No	Field Name	Site type	Site Context	Site Contents
AAV 8021-15	Loch 1	Artefact Collection	Riverbank on hills near temporary creeks	S (G/Q/S)
AAV 8021-38	Loch SGH 1	Isolated Artefact	Hill slope close to temporary creeks	S (S)
AAV 8021-46	BassGas 22	Isolated Artefact	Dune on lowland plain close to permanent creeks	S (QT)
AAV 8021-56	BassGas 18	Scarred Tree	Gully close to permanent creeks	Bark removal scar
AAV 8021-57	BassGas 17	Scarred Tree	Gully close to permanent creeks	Bark removal scar
AAV 8021-58	BassGas 16	Isolated Artefact	Dune on hills and ridges close to permanent creeks	S (Q/S)
AAV 8021-59	BassGas 15	Isolated Artefact	Dune on hills and ridges close to permanent creeks	S (S)
AAV 8021-63	BassGas 21	Scarred Tree	Dune on lowland plain close to permanent creeks	Bark removal scar
AAV 8021-86	RSS SSI	Artefact Scatter	Dune on undulating land close to temporary creeks	S (QT)
AAV 8021-88	Balloke 1	Isolated Artefact	Dune on lowland plain close to temporary freshwater swamps, land subject to flooding	S (S)
AAV 8021-89	Balloke 2	Isolated Artefact	Dune on lowland plain close to temporary freshwater swamps, land subject to flooding	S (Q)
AAV 8021-90	Balloke 3	Isolated Artefact	Dune on lowland plain close to temporary freshwater swamps, land subject to flooding	S (S)
AAV 8021-91	Balloke 4	Isolated Artefact	Dune on lowland plain close to temporary freshwater swamps, land subject to flooding	S (Q)
AAV 8021-92	Balloke 5	Isolated Artefact	Dune on lowland plain close to temporary freshwater swamps, land subject to flooding	S (C)
AAV 8021-97	BassGas 1	Artefact Scatter	Dune on lowland plain close to permanent creeks, drains and freshwater swamps	S (Q/QT/QC)

Key: Site Contents: S = Stone (C = Chert, G = Greenstone, Q = Quartz, QT = Quartzite, QC = Quartz Conglomerate, S = Silcrete).

Table 1: Aboriginal sites recorded within 8 km of the study area.

3.5 ARCHAEOLOGICAL SITES WITHIN THE STUDY AREA

There were no previously registered Aboriginal archaeological sites within the study area, and no Aboriginal sites were located during the field survey. Ground surface visibility was very poor (<0.5%) due to thick grass cover at the time of the field survey (Plate 1). Small erosion exposures associated with dam construction and vehicle tracks provided some minimal surface exposures, which were examined for cultural material.



Plate 1: Surface Visibility

As a result of the survey strategy 2% coverage of the study area was achieved, with effective coverage of <0.5%, due to the level of ground cover. It is considered that this provides a full assessment of obtrusive sites types (i.e. scarred trees) in the transects examined and an insufficient assessment of surface sites (e.g. stone artefact occurrences). It should be noted that the field team inspected all areas of visibility in the study area (see Appendix 2 for further information on survey coverage).

Scars on two messmate trees were identified during the field assessment, however the scarring was determined to be of non-cultural origin. The dry face of the scars was unweathered and the overgrowth was only slight, suggesting that the scars are comparatively modern. Furthermore, it appears that the scars were not made in one discrete action, rather the scars are more consistent with a continuous process involving impact or abrasion damage, consistent with paddock trees across Victoria. Jeff Clark (*per. comm.* September 2003) believes that the trees are probably not more than 70 years old. It is on this basis that the scars were considered to be of incidental or natural origin.

3.6 AREAS OF ARCHAEOLOGICAL SENSITIVITY

It is the responsibility of the proponent to prevent disturbance to as yet undocumented Aboriginal archaeological sites, as well as registered sites and places. Archaeological sites frequently consist of buried deposits of material, which are not visible on the ground surface due to a range of factors, including sedimentation, vegetation cover and surface disturbance. It is usually not possible to identify every archaeological site within a given area due to these factors, or simply because of the size of the study area. Consequently, most heritage impact assessments rely on effective predictive modelling based on a combination of survey results, community consultation and background research, to define areas of archaeological sensitivity.

An area of Aboriginal archaeological sensitivity potentially contains Aboriginal cultural materials. Areas of archaeological sensitivity are rated from low to high, depending on the relative probability that archaeological deposits will be present. However, it should be stressed that even if there is a low probability of cultural material occurring in an area, it is nevertheless a possibility.

The entire study area was assessed to have a *low - moderate* Aboriginal archaeological sensitivity due to the presence of landforms known to have been

associated with Aboriginal sites within the wider area. While the widespread clearance of native vegetation and the heavily modified nature of the ground surface have likely resulted in the destruction of some Aboriginal site types (i.e. scarred trees), Aboriginal stone artefact occurrences can survive intensive land use practices, albeit in a disturbed context. It is probable that any archaeological material present in this zone will take the form of stone artefact occurrences.

3.7 CONCLUSION

Comparison of the results of the background research (including regional Aboriginal occupation patterns and Aboriginal site distribution) and the field survey suggest that there is *low - moderate* potential that stone artefact occurrences (surface scatters and isolated artefacts) exist within the study area.

4.

HISTORICAL BACKGROUND

4.1 INTRODUCTION

This section presents background information relating to the non-Aboriginal occupation of the study area and discusses the historical values of the area. The strategy and methodology employed during the field survey is presented in Appendix 2. Field survey conditions are discussed as a factor in relation to the local distribution of archaeological sites, and the existing use of the study area (Section 2.3).

4.2 HISTORICAL BACKGROUND

European settlers first discovered Westernport when Surgeon George Bass travelled west from Port Jackson, arriving at Westernport on 5 January 1798 (Bowden in Gliddon 1963: 150-153). His discovery was celebrated as it located a useful harbour in southern New South Wales (as it was known at the time). After Bass returned to Port Jackson, Lieutenant James Grant was sent south in 1801 aboard the *Lady Nelson* to further explore and record the area. His mapping of the bay showed that French Island (so named by a French scientific expedition in 1800) was, in fact, an island rather than a head of the mainland as previously thought (Bowden in Gliddon 1963: 150-153).

Another expedition was sent south to Westernport in 1804 to find an appropriate location for settlement, this time led by Robbins. This was something that the Governor of New South Wales was particularly eager to initiate, as there was some concern that the French had their eyes on the region for more than just scientific purposes. The expedition reported low swampy land with low soil quality and very few large trees and concluded that none of the area was appropriate for settlement (Bowden in Gliddon 1963: 155).

Sealers and whalers had been visiting Westernport since 1798. Sealers, along with escaped convicts and Aboriginal 'wives' (women often taken by force from Tasmania) set up unofficial settlements on Phillip Island, using it as their Westernport base until they exhausted the seal population by 1840 (by 1860 only 100 seals remained on Seal Rocks) (Edgecombe 1989: 13-15).

Apart from the overland journey of Count Strzelecki in 1840 from New South Wales to Westernport, the earliest European involvement in the study area was in 1862, when G.T. McDonald completed the construction of what became known as McDonald's Track, a seven-foot wide track designed as a stock route, which ran from Tobin Yallock to Morwell, a distance of over 100 km (Gunson 1968: 102). McDonald entered Lang Lang East (the eastern portion of the Parish of Lang Lang, renamed Nyora in 1886) from the northwest, coming down from Lang Lang. McDonald described the land as comprising low sandy ridges, moderately timbered (White 1978: 36). The track provided access to settlers passing through the area on their way to Gippsland and after 1874 was the main road used by selectors entering the district

(White 1978: 3). The dairy industry was established in Nyora in the 1870s and played a significant role in the development of the district.

Connolly took out the license for Ovens Run in 1861, encompassing the current study area. The run was largely speculative as the land was not well suited for running cattle and three years later it was declared forfeited having been gazetted for non-payment of fees (Hartnell 1974: 11). By the end of the 1860s the land was thrown open for selection under the *Lands Act 1869*. Mary Ellen Patullo, an early pioneer, describes how her father selected 300 acres of land at Lang Lang East in 1877. She describes the land as hilly and heavily timbered with the scrub so dense that the sun could only be seen when directly overhead. She recounts that it took her father several years to clear enough land to plant maize, mangolds, turnips and other crops to use as cattle fodder (Gunson 1968: 112).

In 1886 Nyora was given its name from the Aboriginal word meaning ‘Cherry Tree’, by the railway authorities that established a station in Nyora as part of the Great Southern Railway extension. The proclamation of a new township in the Parish of Lang Lang East was officially made on the 23 December 1886. In 1887, John Lardner (assistant surveyor for the Land Department) surveyed an allotment of land formerly held by Henry Nurse, who surrendered his license and the land reverted back to the Crown. This allotment became the township of Nyora in 1887. The first series of land sales in Nyora were held that year at which demand was great, some lots purchased by speculators, others by trades people and those wanting to open businesses (White 1978: 1).

4.3 PREVIOUS ARCHAEOLOGICAL RESEARCH

No previous archaeological investigations have been undertaken within the study area and there has been very little systematic historical archaeological fieldwork conducted near the study area.

South Gippsland Highway (Amorosi & Clark 2002)

Amorosi & Clark conducted a cultural heritage assessment of potential road project sites along the South Gippsland Highway between Bena and Korumburra. The study area included 3.7 km of the South Gippsland Highway with a width of between 50 to 100 m on either side of the highway. Ground surface visibility was extremely low during the assessment.

Four historical sites east of the township of Bena (c. 10 km southeast of Nyora) were recorded, including Blake’s Homestead (H8021-14), the former Whitelaw Railway Station (H8021-15), Whitelaw Quarry (H8021-16) and the former Main South Road Gatehouse (H8021-17). These sites comprised of:

- Blake’s Homestead (H8021-14) was a wooden weatherboard house built around a double brick single room building using handmade bricks from the Whitelaw Quarry situated 250 m east of the house site. The house was built by Mr Blake, an early land owner in the late nineteenth century.
- The former Whitelaw Railway Station (H8021-15) site consists of an earth mound approximately 10 x 40 m and a 2 x 2 m corrugated iron and wood shed on its eastern end. Similarly to Nyora, the township of Whitelaw was planned around the Railway Station on the Great Southern Railway line, however the township never developed to the extent that Nyora did.

- The Whitelaw Quarry (H8021-16) was worked in the late nineteenth century as a source of material for brick making. All bricks were hand made, on site.
- The former Main South Road Gatehouse (H8021-17) consists of a levelled and fenced small allotment with exotic plantings of poplar and fruit trees, a concrete footing and a stone retaining wall bordering the railway line of the Great Southern Railway.

Three other historical sites are listed on the Heritage Inventory between Almurta and Glen Forbes (c. 15 km southwest of Nyora), including the Almurta Rail Bridge (H8021-9), the Glen Forbes Rail Bridge (H8021-10) and the Glen Forbes Rail Station (H8021-11). All of these sites reflect the predominantly pastoral use of the land and the associated transportational requirements.

4.4 REGIONAL SITE DISTRIBUTION

The Victorian Heritage Inventory (VHI), the Victorian Heritage Register (VHR), the Register of the National Estate (RNE), the Register of the National Trust (RNT) were examined to determine the location of registered historical sites and structures within a 20 km radius of the study area. A total of nine sites are listed on these databases (refer to Table 2), however no sites have been documented within the current study area.

<i>Broader Region</i>	<i>Register</i>
<i>Almurta Rail Bridge</i>	<i>VHI H8021-9</i>
<i>Glen Forbes Rail Bridge</i>	<i>VHI H8021-10</i>
<i>Glen Forbes Rail Station</i>	<i>VHI H8021-11</i>
<i>Blake's Homestead</i>	<i>VHI H8021-14</i>
<i>Former Whitelaw Railway Station</i>	<i>VHI H8021-15</i>
<i>Whitelaw Brick Quarry</i>	<i>VHI H8021-16</i>
<i>Former Main South Road Gatehouse</i>	<i>VHI H8021-17</i>
<i>Notched Log Cottage, Nyora – Poowong Road, Poowong</i>	<i>VHR H1987</i>
	<i>RNE Place ID 4832</i>
	<i>RNT File No. B1837</i>
<i>Bay View Farm, Jetty Lane, Lang Lang</i>	<i>RNE Place ID 15457</i>

Table 2: Historic buildings and structures within a 20 km radius of the study area.

The registered historical sites listed in Table 2 are associated with early pastoral occupation, the development of transport and communications, and local industry (ie. quarrying).

4.5 ARCHAEOLOGICAL SITES WITHIN THE STUDY AREA

No historical sites were recorded within the study area during the field survey. This is likely to be a reflection of the predominantly pastoral use of the land, an activity which does not generally involve built structures other than fencing.

An art deco residential building in the central section of Block 1 was constructed in the 1920s by the Baker family (Jeff Clark *pers. comm.* September 2003). A drainage line located to the north of the house contained a collection of dumped Northcote bricks. However, the age and origin of the original structure is unknown.

4.6 AREAS OF ARCHAEOLOGICAL SENSITIVITY

On the basis of background research and the field assessment no zones of historical archaeological sensitivity were identified.

4.7 CONCLUSION

The lack of physical evidence of historical archaeological sites in the study area is likely to be a reflection of the predominantly pastoral use of the landscape in the post-contact period, an activity which does not generally involve built structures other than fencing. The ground survey of the study area and the background study indicates that the historical archaeological potential of the study area is low.

5.

MANAGEMENT ISSUES

5.1 INTRODUCTION

This section details legislative requirements, documents the views of Aboriginal groups who have interests in the management of cultural heritage sites in the study area. Management recommendations are provided on proceeding with the planned residential development in a manner that fulfils cultural heritage legislative obligations and ensures Aboriginal cultural heritage values are appropriately managed.

5.2 WHY PROTECT CULTURAL HERITAGE SITES?

Cultural heritage sites are the physical manifestation of human occupation and utilisation of the landscape, normally relating to cultural groups, processes and activities in the past. The term 'site' is somewhat arbitrary, being used to define limits or foci of activity for interpretational or management purposes. In fact they are elements of a wider cultural landscape, which are representative of activities practised in the past. Given the degree of disturbance through landscape clearance, intensive modern farming techniques, urban development and natural erosion, evidence of both earlier Aboriginal activities and early colonial settlement comprises an increasingly diminishing component of the wider cultural landscape.

5.3 THE LEGISLATIVE FRAMEWORK FOR ABORIGINAL AND HISTORICAL HERITAGE PROTECTION

In the State of Victoria, *all* archaeological sites are protected under law, making it an offence to disturb a site without first gaining a formal consent or a permit from the relevant body.

This section should be considered a *summary* only. Further details of statutory regulations relating to Aboriginal and historical cultural heritage sites in Victoria are outlined in Appendix 3.

The relevant acts relating to Aboriginal sites in Victoria are as follows:

- *All* Aboriginal heritage sites are protected under the State *Aboriginal and Archaeological Relics Preservation Act 1972* and the Commonwealth *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*. The Commonwealth Act also makes provision for the protection of Aboriginal 'places'.

Aboriginal Affairs Victoria administers both acts in Victoria, though applications for *Consent to Disturb* a site must be made to the relevant Aboriginal community organisation as specified in the Commonwealth Act. In the case of the Nyora study area, the specified Aboriginal community is the WTLCCHC. However, other Aboriginal organisations have interests in the study area (refer to Section 1.4.2).

- Non-Aboriginal heritage sites and places are protected under the Victorian *Heritage Act 1995*.

Heritage Victoria administers this act through the maintenance of two lists: the Victorian Heritage Register, which contains cultural heritage places (sites, buildings, gardens, shipwrecks etc.) and objects that have been assessed as being of State significance; and the Victorian Heritage Inventory, which is the list of known historical archaeological sites and places in Victoria, regardless of significance. Different sections of the Act and the accompanying regulations relate to each list.²

Disturbance of a site without the appropriate *Consent to Disturb* can lead to prosecution and a fine. It is the responsibility of the land manager to ensure that any planned works do not pose a risk to cultural heritage values, whether previously known (as in the case of a registered or listed item) or undocumented, possibly through a lack of previous investigation. It is generally best industry practice to engage an appropriately qualified heritage consultant to investigate and resolve specific issues relating to a proposed development through a heritage impact assessment and management plan.

5.4 ABORIGINAL VIEWS OF THE DEVELOPMENT

Aboriginal cultural heritage issues relating to the development were discussed with Jason Thomas (BLCAC) and Alex Korte (VBELCAC) at the time of the field survey. The issues raised are provided below:

Bunurong Land Council Aboriginal Corporation

- In discussions after the survey, Jason Thomas recommended that monitoring of topsoil removal in the study area was an appropriate measure to manage potential risks to Aboriginal cultural heritage values.
- A draft copy of the report was sent to BLCAC for comments on the 22 October 2003. No comment was received by 14 November 2003. BLCAC may provide a response at a later date. If Andrew Long & Associates receive a response from BLCAC it will be forwarded to all relevant parties. Note that at this stage BLCAC are not able to provide community support/approval for this assessment.

Victorian Boonerwung Elders Land Council Aboriginal Corporation

- In discussions after the survey, Alex Korte raised his concern at the lack of ground surface visibility during the survey and considered that the monitoring of topsoil removal in the study area was required.
- VBELCAC support the results and recommendations provided in this report.

5.5 MANAGEMENT IMPLICATIONS AND RECOMMENDATIONS

The development of a Rural Living or Low Density Residential zone on the study area has the potential to impact on potential subsurface cultural heritage materials. The

² Heritage Victoria has introduced a sub-category of the Heritage Inventory, which lists items of heritage fabric that do not receive protection under the Act. These primarily consist of 'non-archaeological' historical elements of the modern landscape, such as bridges, windbreaks, fences and other structures which remain a part of contemporary fabric (Jeremy Smith pers. comm., 2000).

study area was identified to have *low - moderate* potential to contain Aboriginal sites, specifically stone artefact occurrences likely to be located in shallow surface deposits (i.e. within the topsoil).

The following recommendations have been formulated in response to the results of the background study, field survey, the nature of the proposed development and discussions with Aboriginal community members.

Recommendation 1: Monitoring/Inspection of Topsoil Removal

- a) While no Aboriginal sites were recorded during the survey there is potential for Aboriginal cultural material to be present. As such, VBELCAC and BLCAC request that monitoring of topsoil disturbance/removal be undertaken by Aboriginal monitors. Aboriginal Affairs Victoria should be contacted prior to topsoil disturbance/removal to provide contact details of relevant Aboriginal organisations.
- b) If any Aboriginal archaeological remains are identified by Aboriginal monitors, a suitably qualified archaeologist must be immediately notified of the presence of cultural material so as to arrange for an assessment of the cultural material and to work with the relevant Aboriginal representatives to establish management strategies.
- c) The potential for Aboriginal cultural material to be present in the study area should be determined within the initial phase of the monitoring process. In the result that this potential is low, an inspection process should be implemented for the remainder of the construction phase involving regular inspections of the construction works during the removal of topsoil.
- d) If Aboriginal site material is uncovered a brief report of the site management process including full documentation of salvaged Aboriginal site material must be completed and lodged with the relevant stakeholders.

Recommendation 2: Protocols for Managing Cultural Material

If any cultural heritage material is located on the property, during development or otherwise, contact: Aboriginal Affairs Victoria (9637 8035) in the case of Aboriginal cultural material and Heritage Victoria (9655 6519) in the case of historical cultural material. Advice regarding the discovery of human remains is provided in Appendix 4.

6.

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APPENDIX 1

ACKNOWLEDGEMENT

OF

SURVEY NOTIFICATION



Department for Victorian Communities

Aboriginal Affairs Victoria

04 September 2003

Ricky Feldman
95 George St
FITZROY VIC 3065

Level 10
8 Nicholson Street
East Melbourne, Victoria 3002
PO Box 515
Telephone: (03) 9637 8088
Facsimile: (03) 9637 8024
www.vic.gov.au

IH/04/0001
Project no:2707

Dear Ricky

PROPOSED SITE SURVEY: LAND AT NYORA-POOWONG ROAD AND GLOVERS ROAD

Thank you for providing Aboriginal Affairs Victoria (AAV) with notice of your intended survey.

Please note that, under the terms of section 22(5)(b) of the *Archaeological and Aboriginal Relics Preservation Act 1972* and associated regulations, you are required to provide this office with:

- completed AAV record forms for any sites found during the survey; and
- two copies of any resultant project report (one of which may be provided in electronic format).

Please ensure that the project number shown at the top of this letter is quoted in any correspondence with AAV relating to this survey. The project number should also be added to any record forms resulting from the survey (in the "Reference in literature or report" space provided).

Blank record forms, and copies of the document *Guidelines for Conducting and Reporting upon Archaeological Surveys in Victoria*, are available on request.

Under the terms of the Commonwealth *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*, specified local Aboriginal organisations hold responsibility for cultural heritage matters within their particular community boundaries. It is recommended that you contact the relevant organisation as soon as possible, to discuss your intended survey.

Further, if your survey includes Crown land (other than Crown land where native title has been extinguished), you are advised to consult with any parties who hold native title interests in the area. Advice on identifying and contacting groups with native title interests can be obtained from the National Native Title Tribunal (phone: 1800 640 501).

Information on Aboriginal community interests relating to your project area may also be obtained by contacting the Co-ordinator / Director / Manager for the relevant Regional Aboriginal Cultural Heritage Program (RACHP). The AAV web site at <http://www.dvc.vic.gov.au/aav.htm> includes maps and contact lists relating to local Aboriginal communities and the RACHP.

Please contact me on (ph) 03 9637 8180 if any further information is required.

Yours sincerely

BINDI THOMAS
Heritage Information Officer

Copy: Regional Cultural Heritage Program





Heritage
VICTORIA

Ref: HER/1999/000180 8

4 September, 2003

Ricky Feldman
Andrew Long & Associates
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Melbourne 3000
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www.heritage.vic.gov.au
www.doi.vic.gov.au/heritage/

Dear Ricky,

RE: PROPOSED SURVEY

“LAND AT NYORA-POOWONG & GLOVERS ROADS, NYORA”

Thank you for forwarding the completed Notification of Survey Form, advising of your intent to conduct a survey for historical archaeological sites in the above area.

Should your survey reveal previously unrecorded sites I will be able to provide you with the appropriate Heritage Inventory numbers on receipt of completed Archaeology Site Record Forms.

Please quote project number **1919** in all following correspondence that relates to this survey. The final report will be lodged as report number **1919**. Please note that you are required to provide this office with two copies (one bound and one unbound) of any resulting report(s).

Should you have any queries or require any further assistance please call Jeremy Smith, Senior Archaeologist, on (03) 9655 9764.

Yours sincerely,

A handwritten signature in cursive script, appearing to read 'Ray Tonkin'.

pp. **RAY TONKIN**
EXECUTIVE DIRECTOR

APPENDIX 2

SURVEY METHODOLOGY AND COVERAGE
&
AAV PROFORMA

The field survey strategy was dictated by the surface condition within the study area. Due to the size of the study area and the size of the field crew a full survey coverage could not have been achieved. The assessment was undertaken by opportunistic pedestrian sampling, examining all surface exposures. Ground visibility was very low (<0.5%) as a result of ground cover, particularly surface vegetation, which obscured visibility.

As a result of the survey strategy 10% coverage of the study area was achieved, with effective coverage of <0.5%. It is considered that this provides a full assessment of obtrusive sites types (i.e. scarred trees), however it is not considered to provide a reasonable assessment of surface sites (such as stone artefact occurrences). It should be noted that the field team inspected all areas of visibility in the study area.

AAV SURVEY PROFORMA

Author/Consultant: Ricky Feldman (Andrew Long & Associates)			
Report/Survey Name: Cultural Heritage Assessment			
AAV Report Number: 2707		Survey Date: 26/09/2003 02/10/2003	
Survey Area Number:		Weather Conditions: overcast (26/09/2003) showers (02/10/2003)	
Survey Spacing (m): -	No. of People: 3	% Area Surveyed: 5%	
Visibility %: <0.5%			

Survey Design	Survey Type	Survey Method	Survey Sample
<input checked="" type="checkbox"/> Opportunistic <input type="checkbox"/> Random <input type="checkbox"/> Systematic <input type="checkbox"/> Stratified <input type="checkbox"/> Other	<input checked="" type="checkbox"/> Surface <input type="checkbox"/> Sub-surface <input type="checkbox"/> Other	<input checked="" type="checkbox"/> Pedestrian <input type="checkbox"/> Vehicle	<input type="checkbox"/> Area <input checked="" type="checkbox"/> Transect <input type="checkbox"/> Locality <input type="checkbox"/> Haphazard <input type="checkbox"/> Other

DISTURBANCE

LANDFORM

- Logged
- Levelled
- Trenched
- Ploughed
- Grazed
- Heavy Machinery
- Track
- Road Reserve
- Fire Break
- Burned
- Deflated
- Burrowing
- Gully Erosion
- Sheet Erosion
- Alluvial Erosion
- Wave Action
- Alluvial Deposition
- Aeolian Deposition
- General Erosion
- General Aggradation

- Dune
- Plain
- Lunette
- Flood Plain
- Hill (Gentle/Moderate)
- Steep Hill/Mountain
- Undulating Slopes
- Other

Vegetation

- Closed Forest
- Open Forest
- Open Woodland
- Scrub
- Heath
- Wetland/Swamp
- Grassland/Pasture/Alpine Meadow
- Agricultural Pasture
- Barren/Unvegetated
- Other

INTRODUCTION

The survey methodology adopted for the identification, definition and recording of pre-contact sites on the archaeological survey of the study area was substantially based on the methodology employed for the large scale systematic regional Aboriginal site survey of the Southern Uplands area in Victoria (Long 1996), and a systematic survey of historical sites and places in Victoria and southern New South Wales (Heritage Consulting Australia 1995).

The field survey strategy was dictated by a need to systematically sample all landforms within the study area. Due to the large size of the study area full survey coverage was not possible, and due to poor surface visibility in most areas full survey coverage would not have provided additional information. Instead the survey strategy aimed at inspecting all areas of exposed ground. Fortunately vehicle tracks and areas surrounding dams provided reasonable surface visibility.

DESCRIPTION OF SURVEY COVERAGE

Thick pasture grasses obscured visibility in most areas. Vehicle tracks and areas surrounding dams provided the only surface visibility throughout the study area. Adjacent to Glovers Road was dense stands of trees and tree ferns. Heavy rain had preceded the survey and the ground was very wet. A reduction in the numbers of cattle on the properties resulted in long grass cover, further hindering visibility.

An analysis of the survey results indicates that 2% coverage of the study area was achieved with an effective coverage of 11% of the surveyed area. It is considered that this provides a full assessment of obtrusive sites types (i.e. scarred trees) and a very

limited assessment of surface sites. It should be noted that the field team inspected all areas of visibility in the study area.

#	Exposure Type	Background Effect	Dimensions (L x W m)	Coverage (~m ²)	% Vis	Effective Coverage (~m ²)
1	SVT	L	360 x 2	720	90	648
2	TP	L	210 x 2	420	5	21
3	TP	L	110 x 2	220	0	0
4	TP	L	150 x 2	300	0	0
5	TP	L	150 x 2	300	0	0
6	SVT	L	150 x 2	300	90	270
7	TP	L	210 x 2	420	0	0
8	OW	L	230 x 2	460	5	23
9	TP	L	90 x 2	180	0	0
10	TP/DE	L	280 x 2	560	5	28
11	TP/DE	L	240 x 2	480	5	24
12	TP	L	350 x 2	700	0	0
13	TP/DE	L	530 x 2	1,060	5	53
14	SVT	L	330 x 2	660	90	594
15	TP	L	470 x 2	940	1	9.4
16	MVT/OW	L	890 x 3	2,670	5	133.5
17	TP/DE	L	490 x 4	1,960	5	98
18	TP/DE	L	230 x 4	920	0	0
19	TP	L	690 x 4	2,760	0	0
20	TP	L	210 x 2	420	0	0
21	TP	L	570 x 2	1,140	0	0
22	TP	L	130 x 2	260	0	0
23	TP	L	270 x 2	540	0	0
TOTAL				18,390 (c. 1.8 ha)		1,901.90 (c. 0.2 ha)

Key:

1. Exposure Type: **DE** = Dam Excavation; **MVT** = Vehicle Track; **SVT** = Surfaced Vehicle Track; **TP** = Thick Pastures; **OW** = Open Woodland.
2. Background Effect: **L** = Low, **M** = Medium, **H** = High.
3. Survey Coverage refers to the physical area examined by foot survey and is used for assessing the distribution of obtrusive site types, such as scarred trees, burnt mounds and other surface topographic features.
4. Effective survey coverage refers specifically to the area of ground surface visibility examined by foot survey, and is used for assessing the distribution of unobtrusive site types, such as artefact scatters and vertical exposures of cultural material.

Table 3: Survey coverage

APPENDIX 3

LEGISLATIVE REQUIREMENTS

INTRODUCTION

This section provides information regarding the current State and Commonwealth legislation governing the management of pre- and post-contact Aboriginal sites and places. Any plans to develop land which has the potential to disturb an Aboriginal site or place, whether currently registered or not, will need to fulfill the terms and conditions of this legislation.

Victoria has both State and Commonwealth legislation providing protection for Aboriginal cultural heritage. The interrelationship between the Commonwealth and State legislation is complex and largely untested in court. Where there is a conflict, the Commonwealth legislation takes precedence over the State legislation. How the legislation may be interpreted in any given situation to do with Aboriginal values (i.e. methods for determining the presence of Aboriginal sites/places and the response to this discovery) can depend on a range of factors. These will generally include:

- The nature and context of Aboriginal cultural heritage values.
- The nature of any risks to the integrity of Aboriginal cultural heritage values.
- The views of the Aboriginal community stakeholders.
- The interpretation of the legislative framework, which is enforced by Aboriginal Affairs Victoria, both by government and the legal community.

In addition to the local Aboriginal communities specified in the Aboriginal cultural heritage legislation (see below), many other Aboriginal groups and organisations, including native title claimants, also have interests in cultural heritage in Victoria.

The following information has been compiled from information provided by Aboriginal Affairs Victoria (Source: Aboriginal Cultural Heritage Legislation & Consents to Disturb Information Sheets; Guidelines for Conducting and Reporting Upon Archaeological Surveys in Victoria). Depending on the nature of the development and the Aboriginal cultural heritage issues involved specialist legal advice may be required.

ABORIGINAL CULTURAL HERITAGE LEGISLATION

Archaeological and Aboriginal Relics Preservation Act 1972 (Victoria)

Except for human remains interred after the year 1834, this Act provides ‘blanket’ or automatic protection for all Aboriginal ‘relics’ (including individual archaeological sites, artefacts and human remains) relating to the Aboriginal occupation of Victoria, both before and after European settlement.

Powers and responsibilities under the State Act are assigned to the Minister for Aboriginal Affairs, and administered by Aboriginal Affairs Victoria (AAV).

Under this Act it is an offence to damage or interfere with a relic. Any person who finds a site, burial or artefact must report the discovery to AAV.

The Act also established administrative procedures for archaeological investigations such as:

- Notification of intent to conduct an archaeological survey (Form D) be lodged with the Heritage Services Branch of Aboriginal Affairs Victoria prior to conducting an archaeological survey which does not have the potential to disturb Aboriginal archaeological sites.
- Consent from the Heritage Services Branch of Aboriginal Affairs Victoria be obtained *before* archaeological fieldwork involving disturbance to an Aboriginal site (i.e. excavation, subsurface testing) is carried out (Form C). Aboriginal Affairs Victoria will not usually issue consents for archaeological fieldwork involving disturbance to an Aboriginal site without prior written permission from the relevant Aboriginal community.

- Information on all Aboriginal sites and/or places identified during an archaeological assessment must be provided to AAV in the form of completed site record cards and associated documentation.

The Act requires the keeping of a register of identified Aboriginal ‘relics’. This register is maintained by AAV.

The Act prohibits the sale of Aboriginal artefacts without a permit (excluding items made for commercial purposes). It also restricts the possession, control or display of Aboriginal skeletal remains.

Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Commonwealth)

In 1987, the Commonwealth *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* was amended to provide specific protection for Aboriginal cultural heritage in Victoria. These amendments form Part IIA of the Commonwealth Act. Part IIA operates separately from the rest of the Commonwealth Act and is administered by AAV. It operates in conjunction with the State legislation.

While the State Act provides legal protection for the physical evidence of past Aboriginal occupation, the Commonwealth Act is based on a much broader definition of Aboriginal heritage. The Act deals with the protection of Aboriginal ‘cultural property’, which can include any places, objects and folklore that are ‘of particular significance to Aboriginals in accordance with Aboriginal tradition’. This Act may apply to contemporary Aboriginal cultural property as well as ancient and historical places.

Part IIA grants significant decision making powers to local Aboriginal communities listed in a Schedule to the Act.

Part IIA provides for the appointment of inspectors to assist in the enforcement of the Act. It also establishes procedures for emergency, temporary and on-going declarations of preservation to further protect endangered or especially significant cultural heritage places.

FURTHER INFORMATION

What are the Powers of Local Aboriginal Communities Listed in the Schedule of the Commonwealth Act?

The Schedule of the Commonwealth Act lists over 20 local Aboriginal communities, most of which hold decision-making responsibilities within a defined community area. A map showing these community areas is available on AAV’s website.

A local Aboriginal community listed in the Schedule can grant or refuse consent to interfere with an Aboriginal place situated within its community area.

In addition, any local Aboriginal community can:

- Request emergency declarations to protect cultural heritage places and objects at risk.
- Advise the Minister of Aboriginal Affairs on appointment of inspectors.
- Enter into agreements with anyone who owns or controls Aboriginal cultural property.
- Determine action to be taken in relation to the discovery of Aboriginal remains.

Local Aboriginal communities can also make direct recommendations to the Minister for Aboriginal Affairs relating to cultural property in Victoria and on the operation of Part IIA.

What does a Consent to Disturb Involve?

Under Section 21U of the Commonwealth Act, a local Aboriginal community can grant or refuse consent to ‘deface, damage, otherwise interfere with or do any act likely to endanger’ an Aboriginal place or object within its community area. In circumstances where an Aboriginal site or place is determined to be at risk a ‘Consent to Disturb’ may be required.

Any such application should be made in writing to the relevant local Aboriginal community stipulating the reasons for the consent. Consents may be issued subject to terms and conditions. Examples of such conditions have included requirements for monitoring during disturbance, salvage excavation and/or payment of an administration fee. These requirements need to be fulfilled for the Consent to be valid.

If a local Aboriginal community does not grant or refuse consent within 30 days, or if the project affects an area for which there is no functioning local Aboriginal community, the applicant may apply to the Minister for Aboriginal Affairs for consent.

The granting of 'consent to disturb' in relation to an Aboriginal place or object on Crown land needs to ensure compliance with the Commonwealth *Native Title Act 1993*.

What is the Role of an Inspector?

Under Part IIA of the Commonwealth Act, the Minister for Aboriginal Affairs may appoint inspectors to help enforce the legislation.

Inspectors are mainly based within Aboriginal community organisations, and are located throughout Victoria. Each inspector is issued with an identity card signed by the Minister for Aboriginal Affairs.

The main powers of inspectors are to make emergency declarations of preservation and to assist police in the execution of warrants to secure endangered Aboriginal objects.

What is an Emergency Declaration of Preservation?

Under Part IIA of the Commonwealth Act an inspector, a magistrate acting on an application from a local Aboriginal community, or the Minister for Aboriginal Affairs can make an emergency declaration to protect a cultural heritage place or object that is believed to be under threat of injury or desecration.

An emergency declaration can remain in force for up to 44 days, and can specify how the place or object is to be managed during that time.

The Act also provides for temporary and on-going declarations of preservation.

What are the Penalties for Damaging Aboriginal Cultural Heritage?

Penalties for offences under the State Act include fines of up to \$1,000 or imprisonment for three months, or both.

Penalties for offences under the Commonwealth Act includes fines of up to \$10,000 or imprisonment for 5 years, or both (for a person); and fines of up to \$50,000 for a body corporate.

For More Information Contact:

Aboriginal Affairs Victoria

PO Box 515

East Melbourne VIC 3002

Ph: 03 9637 8088

Fax: 03 9637 8024

Website: www.nre.vic.gov/aav

APPENDIX 4

ADVICE ABOUT THE DISCOVERY OF HUMAN REMAINS

ADVICE ABOUT THE DISCOVERY OF HUMAN REMAINS:

Treatment of Any Suspected Aboriginal Remains Discovered in the Course of Development Work

1. Legal Requirements

The *Coroner's Act* 1985 requires anyone who discovers the remains of a 'person whose identity is unknown' to report the discovery directly to the State Coroner's Office or to Victoria Police. A person who fails to report the discovery of such remains is liable to a \$10,000 fine. The *Coroner's Act*, of course, does not differentiate between treatment of Aboriginal and non-Aboriginal remains. The majority of burials found during development work are therefore likely to be subject to this reporting requirement.

In addition, Part IIA of the *Aboriginal and Torres Strait Islander Heritage Protection Act* 1984 requires anyone who discovers suspected Aboriginal remains in Victoria to report the discovery to the responsible Minister. The Director, Aboriginal Affairs Victoria, holds delegated authority to receive and investigate such reports.

It should be noted that the *Aboriginal and Torres Strait Islander Heritage Protection Act* 1984 is subordinate to the *Coroner's Act* 1985 regarding the discovery of human remains. In the first instance, therefore, the location at which the remains are found should be treated as a possible crime scene, and the developer and/or contractor should not make any assumptions about the age or ethnicity of the burial.

Victoria Police Standing Orders require that an archaeologist from the Heritage Services Branch, Aboriginal Affairs Victoria, should be in attendance when suspected Aboriginal remains have been reported (Police Headquarters and the State Coroner's Office hold after-hours contact numbers for Heritage Services Branch staff). In cases where it is believed that the remains are Aboriginal, the Police will now usually invite representatives of the local Aboriginal community to be present when the remains are being assessed. This is because Aboriginal people usually have particular concerns about the treatment of Aboriginal burials and associated materials.

2. Aboriginal Affairs Victoria - Suggested Procedure to be Followed if Suspected Human Remains are Discovered

- * If suspected human remains are discovered during development, work in the area must cease and the Police or State Coroner's Office must be informed of the discovery without delay. The State Coroner's Office can be contacted at any time on (03) 9684 4444.
- * If there are reasonable grounds to suspect that the remains are Aboriginal, the discovery should also be reported to Aboriginal Affairs Victoria on ph. (03) 9637 8000. Aboriginal Affairs Victoria will ensure that the local Aboriginal community is informed about the circumstances of the discovery.
- * Do not touch or otherwise interfere with the remains, other than to safeguard them from further disturbance.
- Do not contact the media.