

**99 BENA ROAD, KORUMBURRA:**  
**CULTURAL HERITAGE DUE DILIGENCE ASSESSMENT**

A report to Hill Rise View Pty. Ltd.

by

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## 1. INTRODUCTION

Hill Rise View Pty. Ltd. proposes to subdivide ~19 ha. of land at 99 Bena Road on the western outskirts of Korumburra (Figure 1). The subject land consists of a single parcel (Lot 1, PS321371) zoned General Residential, under the South Gippsland Shire Planning Scheme. Currently, it is vacant farmland, with no built structures.

Indicative development plans are yet to be prepared. However, Hill Rise View Pty. Ltd. proposes to subdivide this land for residential purposes.

### 1.1 Aims of this assessment

As part of the planning process for the proposed development, Hill Rise View Pty. Ltd. asked Heritage Advisor Dr. Tim Stone to identify any Aboriginal or historic cultural heritage constraints that might need to be addressed prior to residential subdivision. Of particular concern is that the proposed subdivision may be subject to the *Aboriginal Heritage Act 2006* and its *Aboriginal Heritage Regulations 2018*. The *Heritage Act 2017*, which protects historic sites, is also relevant.

The following advice is drawn from the *Aboriginal Heritage Act 2006* and its *Aboriginal Heritage Regulations 2018*. I also searched the Victorian Aboriginal Heritage Register (VAHR), a site database kept by Aboriginal Victoria (AV), for any known Aboriginal sites on the subject land and reviewed relevant cultural heritage reports.

Heritage Victoria's site records were similarly checked for historic sites as was the local planning scheme of the South Gippsland Shire.

Finally, I inspected the subject land to determine the nature of the landform and the actual risk to Aboriginal and historic cultural heritage.

## 2. STATUTORY PROTECTION

All Victorian registered and unregistered Aboriginal cultural heritage sites are protected by the State's *Aboriginal Heritage Act 2006* (commenced May 28<sup>th</sup>, 2007). Similarly, all Victorian historical sites are protected by the State *Heritage Act 2017* (commenced November 1<sup>st</sup>, 2017). These Acts prohibit the wilful destruction or disturbance of any cultural heritage site, place or object, whether on private or public land.





Figure 1. Location and extent of 99 Bena Road, Korumburra



The Victorian State Government instrumentalities that administer these Acts are AV and Heritage Victoria. All legislation relevant to the discovery of human remains is subordinate to the *Coroners Act 1985*.

## **2.1 Aboriginal Heritage Act 2006**

The *Aboriginal Heritage Act 2006* and its *Aboriginal Heritage Regulations 2018* are of particular relevance to the proposed development. A core component of this Act is the preparation of Cultural Heritage Management Plans (CHMPs), which will be required under certain circumstances for high impact activities that require statutory authorisation under the Victorian Planning Provisions. CHMPs must meet prescribed standards and be approved by AV before they can be used to support permit applications to local government or other agencies.

The Act also establishes the Aboriginal Heritage Council, which invites Aboriginal groups with cultural heritage interests in particular parts of the State to become Registered Aboriginal Parties (RAPs). The RAP(s) may elect to evaluate a CHMP in place of AV. The RAP for the Korumburra study area is the Bunurong Land Council Aboriginal Corporation based in Frankston.

The regulations can be used to determine if a CHMP is required for planning approval. Section 5 of this report makes such a determination for the proposed residential subdivision. The regulations also detail the standards expected of a CHMP, Cultural Heritage Agreements and fees payable under the Act.

Importantly, penalties for offences under the new Act have increased ten-fold in the case of individuals and twenty-fold in the case of corporations.

## **2.2 Heritage Act 2017**

The *Heritage Act 2017* provides for the protection of significant Victorian historic sites, places and objects which are at least 75 years old. It is possible that significant historic sites are located in the vicinity of the proposed subdivision.

Depending on the level of significance of a historic site, Heritage Victoria may have it listed on either the Victorian Heritage Register (for sites of State significance) or the Heritage Inventory (usually sites of archaeological significance).

Section 87(1) states:

A person must not knowingly or recklessly remove, relocate or demolish, damage or despoil, develop or alter, or excavate, all or any part of a registered place.

Negligence is no excuse either under Section 88(1). However, it is not an indictable offence under Section 87(4) if the works or activities are:

- (a) carried out in accordance with a Permit issued under this Part; or
- (b) carried out in accordance with section 90; or
- (c) carried out in accordance with Section 91; or
- (d) for which the Heritage Council or the Executive Director has determined that a permit is not required under this Act.

Additionally, Section 123(1) of the Act states:

A person must not, without a consent under section 124, knowingly or negligently deface or damage or otherwise interfere with, or carry out an act likely to endanger

- (a) a site recorded in the Heritage Inventory; or
- (b) an archaeological site which is not recorded in the Heritage Inventory.

However, it is not an offence if the person is acting in accordance with a consent from the Executive Director that authorises the activity.

Penalties for offences against these provisions of the Act are stiff. In the case of an individual person the penalty is \$90,000 or imprisonment for 12 months or both. The penalty for a body corporate is \$180,000.

### **3. PREVIOUS ARCHAEOLOGICAL INVESTIGATIONS**

Previous archaeological studies of the eastern Victorian uplands have demonstrated Aboriginal occupation dating back to the height of the last glacial period some 18,000 years ago. The oldest cultural sequence in the region comes from Cloggs Cave near Buchan (Flood, 1980). The deposit in this cave shows intensive Aboriginal occupation of the site from 17,720±840 years Before Present (ANU 1044) to 8,720±230 years BP (ANU 1011). However, later phases indicate only intermittent occupation. The stone assemblages from the earlier phases are dominated by large, steep-edged scrapers and unifacial pebble tools. Later industries comprise geometric microliths, a few Bondi points, bipolar scaled pieces and small low-angled scrapers.

The majority of Aboriginal sites in southern Victoria have been recorded along the coast. These date from about 6,000 years ago when sea levels stabilised near their present levels following the melting of the glaciers and ice-caps. Excavation of shell midden deposits has shown how shellfish gathering patterns and technology changed over this period (e.g. Coutts *et al*, 1976). These changes are usually interpreted by archaeologists as responses to changing environmental conditions. Some characteristic stone artefacts of the period were burins, backed blades and geometric microliths. The most commonly used raw materials were quartz, silcrete and quartzite.

Coutts (1970) identified two cultural phases from stratified dune sands at Wilsons Promontory dating from 6,500 years ago. The first phase (Yanackie A) saw exploitation of rock platform shellfish such as turbo and variegated limpet and the production of backed blade assemblages dominated by introduced quartzite. The second phase (Yanackie B), beginning 1,000 years ago, saw a change to pipis and the replacement of backed blades with artefacts made from local flint and quartz. The change to pipis may be the result of rock platform erosion and the subsequent growth of sandy shorelines. The abandonment of backed blades 1,000 years ago is consistent with general trends observed elsewhere in mainland Australian sites.

Stratified midden deposits are also known from two small granite caves on Great Glennie Island southwest of Wilsons Promontory (Fullager, 1986). One was excavated revealing six periods of occupation dating back to 1500 years BP. The stone artefacts recovered comprised flint and quartz comparable to the Yanackie B material. The topmost layer contained mid-nineteenth century British colonial material. The faunal assemblage was dominated by seal bones and limpet shell. However, the most recent layer also contained numerous bird and fish bones suggesting that the local Aboriginal economy had expanded and diversified prior to the arrival of Europeans.

Gaughwin's (1981) investigation of the Western Port Catchment identified salient features of the wider regional archaeological record. She located a total of 264 Aboriginal sites, mostly in sand dunes behind rock platforms and bay head beaches. Cliff-top occupation was also recorded. Most of the sites were shell middens (dominated by limpets), with associations of stone artefacts. Some 10 % of the stone artefacts were finished tools such as flakes, scrapers and blades. Marine chert and quartz was the most frequently used raw material, with beach cobbles a common source. Comparatively few sites were located in the Western Port hinterland.

Gaughwin and Sullivan (1984) attempted to develop a predictive model of Aboriginal site location but were constrained in the West Gippsland hinterland by poor ground surface visibility. Most of the sites that they were able to locate were found in ploughed paddocks,

with no real site pattern discernible to them. However, Gaughwin and Sullivan (1984) concluded that sites in the upland hills:

*are most likely to occur on flat areas of ridges and hill tops. It is probable that the density of sites will not be high in this landform. These sites will contain stone artefacts, but other remains are not likely.*

Stone (2010) concluded that open campsites represented by stone artefact scatters and isolated stone artefacts are the types of Aboriginal site most likely to be encountered in the South Gippsland hinterland. These sites are most frequently located on gentle slopes adjacent to rivers and creeks. They also occur on ridgelines and hill tops close to water. Scarred trees are also a feature of the regional archaeological record and may occur anywhere in the landscape where there are old growth trees.

More recent archaeological investigations closer to Korumburra confirm this pattern of Aboriginal occupation. The densest concentrations of open campsites are on raised landforms within 200 m of permanent or ephemeral water courses. Low Density Artefact Distributions (LDADs) or ‘background scatters’ may also be encountered anywhere in the landscape. This type of Aboriginal place is defined by AV as an ‘occurrence of stone artefacts at densities of up to 10 in an area of approximately 10 m x 10 m’.

Stone quarries are another type of Aboriginal site that may be encountered in South and West Gippsland. These are the places where Aboriginal people obtained raw material for stone tool making and distribution to other groups. Silcrete quarries have been recorded recently on the eastern outskirts of Warragul (Mathews, 2016). Other site types such as rockshelters and axe-head grinding grooves are unlikely to be present in the vicinity of Korumburra because suitable geological formations are lacking.

### **3.1 Aboriginal sites in the vicinity of the subject land**

According to the VAHR, no Aboriginal sites have been located previously on the subject land. The closest known Aboriginal site is a LDAD comprising 22 stone artefacts in a paddock on the north side of Bena Road opposite the subject land (VAHR 8021-0409). The LDAD was recorded by Young and Barker (2016) who describe the site landform as a low, elevated rise between two ephemeral watercourses. The artefacts were scattered across the broad crest of this rise, which has a very gentle slope.

Young and Barker (2016) reflected that their subsurface testing uncovered very few artefacts relative to the number of test excavation squares (n = 147), with only two yielding more than one artefact. They wrote:



*It is possible that this location was not a favourable location to camp. This may have been due to the low volume of water, or ephemeral nature of, the unnamed waterways in the Activity Area in prehistory (Young and Barker, 2016).*

Young and Barker (2016) further stated that their complex assessment demonstrated that the area they investigated is of low archaeological sensitivity for Aboriginal cultural heritage and concluded the following:

*It is therefore considered that the results support the theory that unnamed ephemeral waterways in the Activity Area were not a favourable location for Aboriginal campsites (Young and Barker, 2016).*

### **3.2 Historic sites in the vicinity of the subject land**

Heritage Victoria's Heritage Register and Heritage Inventory do not list any historic sites in the vicinity of the subject land either. Furthermore, no part of this land is covered by any heritage overlays of the South Gippsland Shire.

## **4. FIELD INSPECTION**

I inspected 99 Bena Road, Korumburra on 17 October, 2019. The purpose of my inspection was to determine the nature of the landform and whether the property has any Aboriginal or historic cultural heritage potential.

The subject land is part of the Western Strzelecki Foothills rising more than 200 m above sea level. Geologically, it is composed of Wonthaggi Formation sedimentary rocks of Early Cretaceous to Early Tertiary age. Differential weathering of these rocks since uplift later in the Tertiary has steadily eroded the subject land leaving behind a prominent E-W trending ridgeline, with broad, steep-sided ridge slopes. Figure 2 shows the steepness of the ridge slopes. A creek cuts the SW corner of the property.

Terrain factors and historic land use history determine that the Aboriginal cultural heritage potential of the subject land is very low. More than half of the property is too steep-sided for Aboriginal campsites including the land beside the drainage line in the SW corner, which would have been a very unreliable water source, in any case (Plate 1). The ridge crest of the prominent ridgeline may have been occupied but again distance from potable water suggests that the potential here is also low (Plate 2).

Caves, rockshelters, stone quarries and axe-head grinding grooves are definitely not present on the subject land because no rock outcrop is present.

Furthermore, almost all of the original native vegetation has been removed, which precludes scarred or carved trees.

No historic archaeological sites were located on the property during the course of the inspection and the potential for these is also low.

The inspection was *preliminary* only and in no way constitutes a formal archaeological survey. For Aboriginal sites, this would require participation of the relevant Aboriginal stakeholders under the *Aboriginal Heritage Act 2006*.

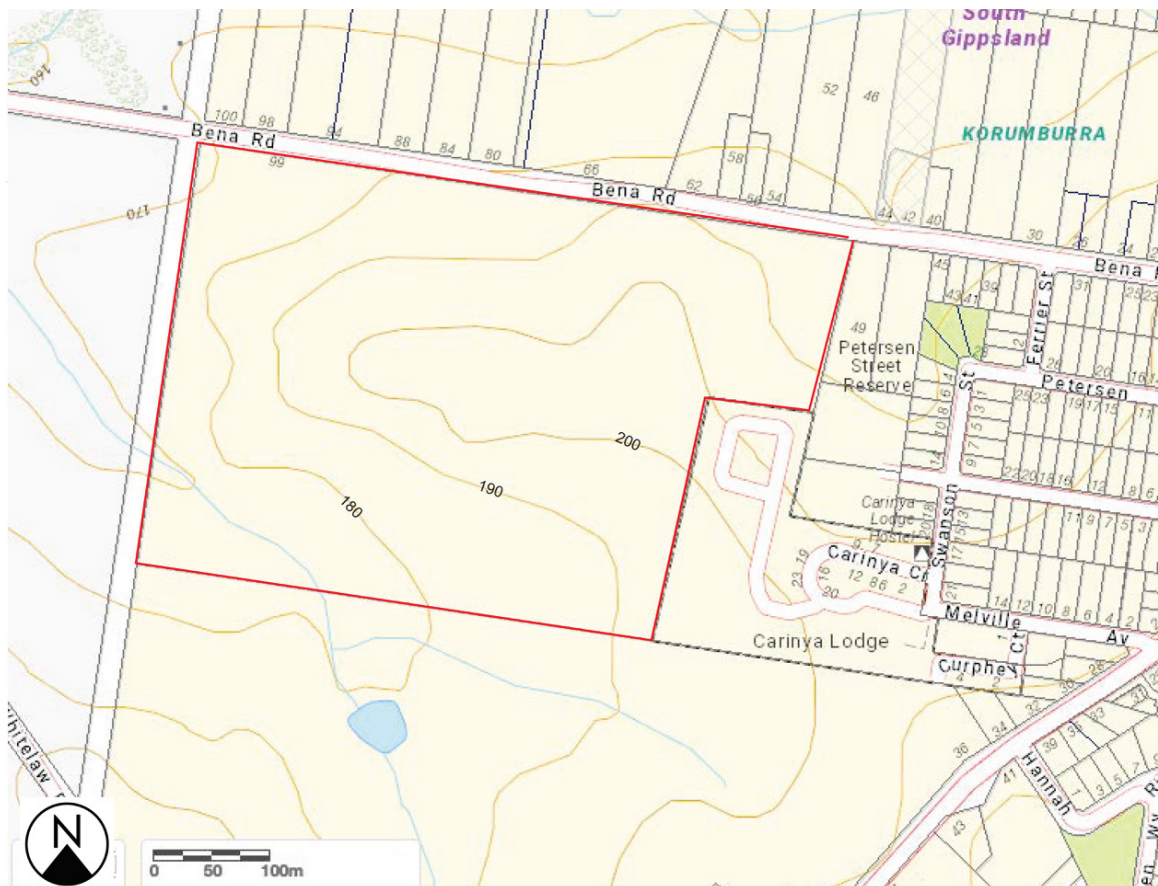


Figure 2. Contour map of subject site and surrounds.





Plate 1. Steep-sided creek valley in SW corner of subject land. View to south west.



Plate 2. Crest of prominent ridgeline. View to west.

## 5. ABORIGINAL HERITAGE REGULATIONS 2018

The *Aboriginal Heritage Regulations 2018* that accompany the *Aboriginal Heritage Act 2006* are particularly relevant and stringent. Under regulation 7, a CHMP is required for a proposed activity, if:

- (a) all or part of the activity area for the activity is an area of cultural heritage sensitivity; and
- (b) all or part of the activity is a high impact activity.

According to regulation 26(1), any land within 200 m of a waterway (not subject to significant ground disturbance) is an area of cultural heritage sensitivity. Moreover, land (not subject to significant ground disturbance) within 50 metres of a registered cultural heritage place is an area of cultural heritage sensitivity.

AV planning maps show that no part of 99 Bena Road, Korumburra is located in an area of cultural heritage sensitivity. The closest waterway that does create an area of cultural heritage sensitivity is Coalition Creek located more than 1.5 km to the east. The closest registered Aboriginal place is more than 200 m away.

The second prerequisite (b) is met for the proposed subdivision under regulation 49:

- (1) The subdivision of land into 3 or more lots is a high impact activity if –
  - (a) the planning scheme that applies to the activity area in which the land to be subdivided is located provides that at least 3 of the lots may be used for a dwelling or may be used for a dwelling subject to the grant of a permit; and
  - (b) the area of each of at least 3 of the lots is less than 8 hectares.

However, because the first prerequisite (a) under regulation 7 is NOT met, **a CHMP under Section 46 of the *Aboriginal Heritage Act 2006* is not required prior to subdivision.** The simple reason is that no part of the subject land is located in an area of cultural heritage sensitivity.

## 6. HISTORIC HERITAGE OBLIGATIONS

The background review and field inspection demonstrate that the potential for significant historical archaeological items at 99 Bena Road, Korumburra is very low. Accordingly, there is no requirement for detailed historical assessment.



## 7. MANAGEMENT OPTIONS

Based on the results of this assessment, Hill Rise View Pty. Ltd. has the following options:

- Hill Rise View Pty. Ltd. may apply to subdivide 99 Bena Road, Korumburra for the purposes of residential and other development without having to undertake any further Aboriginal or historic cultural heritage investigation. A CHMP is not required (or mandatory) prior to subdivision or development because no part of the subject land is currently located in an area of cultural heritage sensitivity.
- Hill Rise View Pty. Ltd. has the option of undertaking a *voluntary* CHMP for the subject land, which may be of benefit in case of any unexpected archaeological discoveries. Hill Rise View Pty. Ltd. should allow 4-5 months for any CHMP to be completed.
- In the event that items of Aboriginal or historic cultural heritage are uncovered during the course of development, all work must cease and Hill Rise View Pty. Ltd., or its contractors, must contact the Heritage Advisor (mob: 0429496607), the Heritage Services Branch of Aboriginal Victoria or Heritage Victoria for advice. It is an offence under the relevant cultural heritage legislation to disturb or destroy relics without written authorization.

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