



1st December 2023

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Dear Sir

**Planning-related Aboriginal heritage advice for proposed poultry farm on part of 320 Mooleric Road, Ombersly (not including water supply pipeline).**

**1. Background**

On the 6th of October, I wrote to you to provide interim, summary advice in relation to the proposed poultry farm at 320 Mooleric Road, Ombersly. In addition to that letter, this letter of advice recaps the interim advice and provides supplementary information.

**2. Note: this advice does not include a water supply pipeline**

As we have discussed, it would be possible to design this farm so it could operate without externally connected mains water supply. For that reason, you have asked me to provide two separate letters of advice:

- One letter of advice dealing with Aboriginal heritage matters relevant to the proposed poultry farm development on part of 320 Mooleric Road (this letter), and
- a separate letter of advice dealing with Aboriginal heritage matters relevant to a possible water supply pipeline to the property at 320 Mooleric Road. I will provide that letter of advice in relation to a possible pipeline at a later date.

**3. Advice provided**

You have sought my advice on planning related Aboriginal heritage matters in relation to the proposed construction and use of a poultry farm on part of the property at 320 Mooleric Road, Ombersly.

In particular you have asked that I consider whether there may be a statutory requirement for a cultural heritage management plan (CHMP) to be undertaken in relation to this project.

In consideration of this matter I have carried out background research, checked the State Government records of registered cultural heritage places and considered the

implications of the *Aboriginal Heritage Regulations 2018* and the *Aboriginal Heritage Act 2006*.

#### **4. Qualification to provide expert advice**

I am, as described in the legislation, “a suitably qualified heritage advisor pursuant to Section 189 of the *Aboriginal Heritage Act 2006*” and am recognised as such by the Department of Premier and Cabinet. I hold a Bachelors degree (Botany and Geology), Graduate Diploma in Maritime Archaeology and a Graduate Diploma in Humanities (Aboriginal History & Archaeology). I was formerly a staff archaeologist and Site Registrar with the State Government agency Victoria Archaeological Survey (1984-1989) and have been working as a consultant archaeologist/heritage advisor in Victoria for the past 33 years.

Apart from my expertise in archaeology, historical research and heritage management, my tertiary studies and practical experience also include botany, plant physiology, geology, soil science, geomorphology, 19th Century gold mining and early colonial history and technology.

As a result of my qualifications, training and experience, I am particularly qualified to advise on the underpinnings and operation of the *Aboriginal Heritage Act 2006* and the *Aboriginal Heritage Regulations 2018*, on “significant ground disturbance” and on the question of whether or not a cultural heritage management plan is a statutory requirement for this project.

#### **5. Executive summary**

As an expert advisor in Aboriginal cultural heritage matters, it is my unequivocal professional opinion that:

1. As defined in the *Aboriginal Heritage Regulations 2018*, and as confirmed in the VCAT decision in *Big Hill Vineyard Pty Ltd v Greater Bendigo CC [2015] VCAT 397* the “activity area” for a proposed use may be some part of an allotment.
2. There are no registered cultural heritage places (= Aboriginal sites, artefacts etc.) on the proposed activity area; as a consequence, there is no requirement for any Aboriginal heritage permits in relation to the proposed use/activity.
3. Under the *Aboriginal Heritage Regulations 2018* (and as confirmed in the VCAT decision in *Frankston Dandenong Road Pty Ltd v Frankston CC [2019] VCAT 1698* the proposed “activity” (i.e. the proposed construction and use) is not a high impact activity.
4. No part of the proposed activity area is an area of “cultural heritage sensitivity”.
5. As a consequence of points 3 and 4 above, under Regulation 7 of the *Aboriginal Heritage Regulations 2018* there is no requirement for a cultural heritage management plan (CHMP) to be prepared in relation to the proposed poultry farm.

#### **6. Proposed activity and location of the activity area**

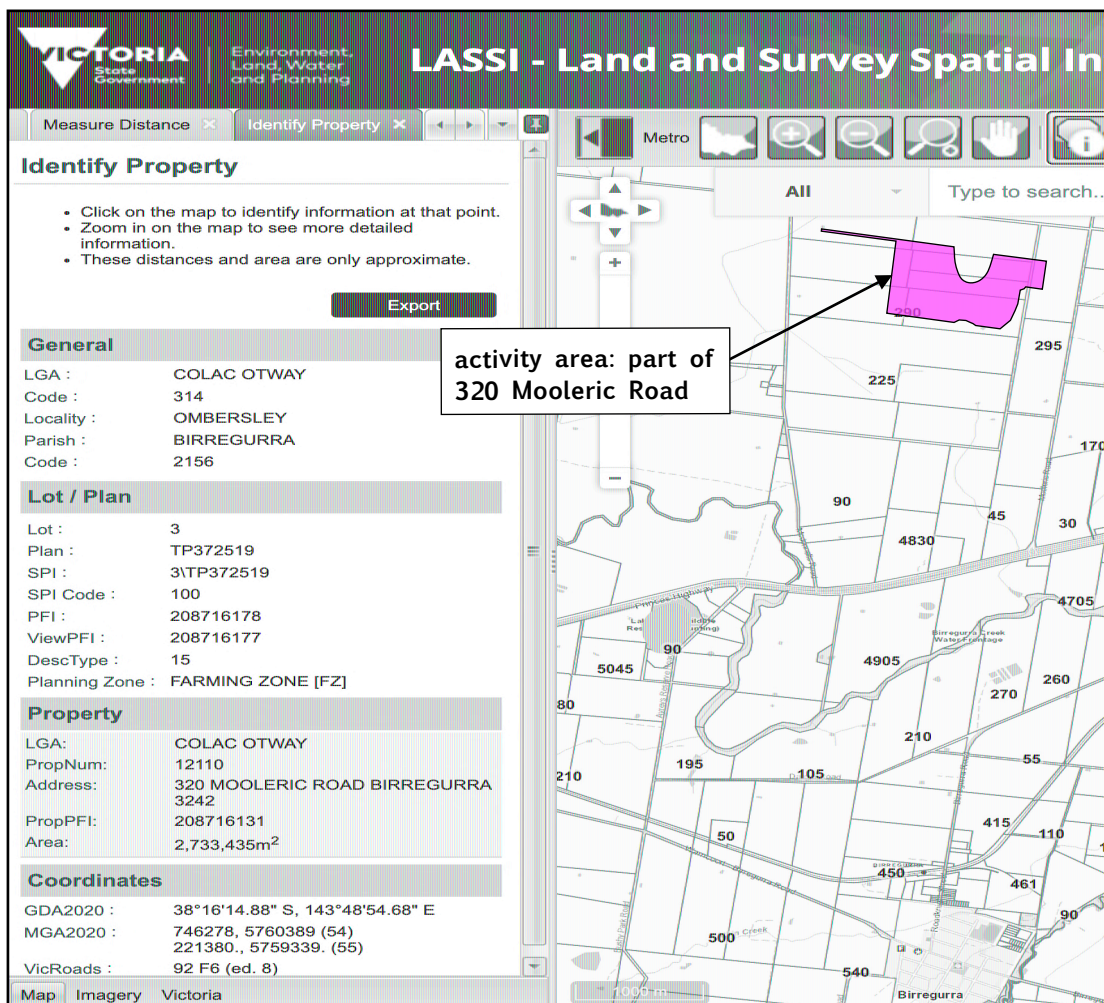
##### Activity

The proposal (called “the activity” under the *Aboriginal Heritage Regulations 2018*) is for a 2 x 12 shed, free-range poultry (broiler) farm.

As shown on Map 1 below, the proposed poultry farm will be located on part of the property at 320 Mooleric Road, Ombersly. This location is approximately 7.6 kilometres north-northeast of Birregurra township and approximately 2.4 kilometres north-northwest of Princes Highway.

As defined in the *Aboriginal Heritage Regulations 2018*<sup>1</sup>, and as confirmed in the VCAT decision in *Big Hill Vineyard Pty Ltd v Greater Bendigo CC [2015] VCAT 397* the “activity area” for a proposed use may be some part of an allotment.

Although on the entire area of 320 Mooleric Road, there are some areas mapped as “areas of cultural heritage sensitivity”<sup>2</sup>, all of the proposed works and uses will be located outside these areas of cultural heritage sensitivity.



**Map 1. Location map showing activity area - which is part of 320 Mooleric Road (purple shaded polygon). Map source: LASSI website**

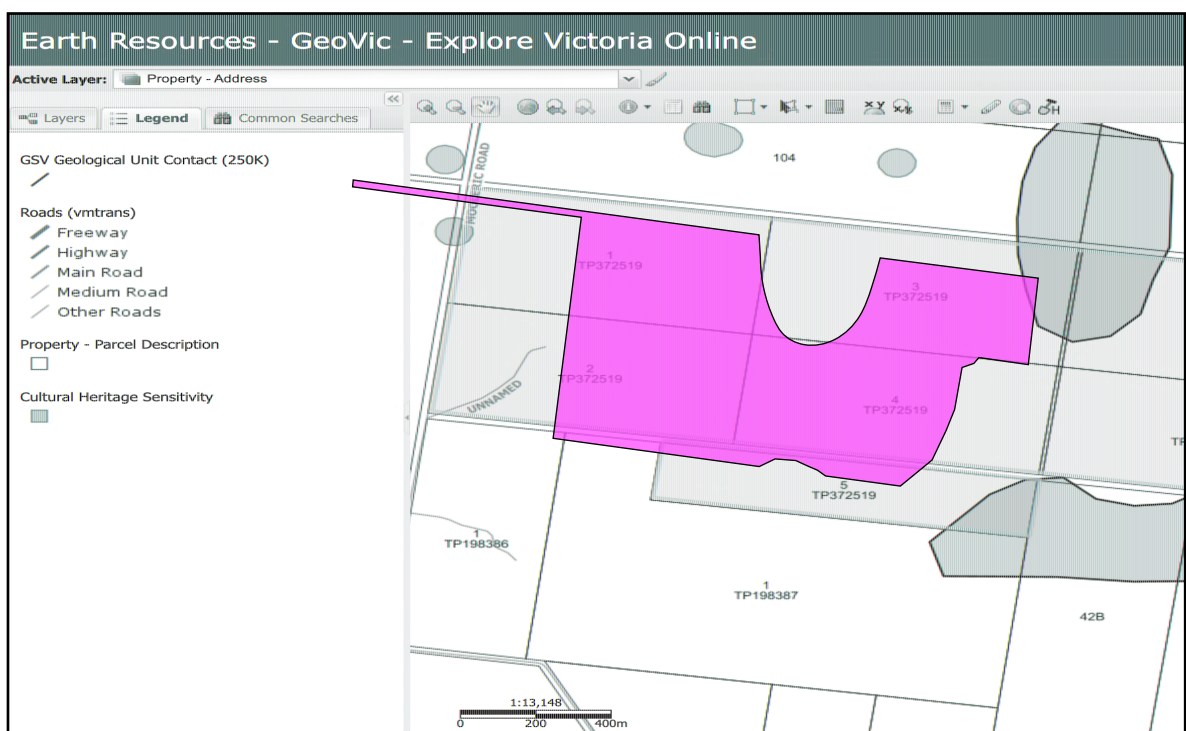
1 According to Regulation 5 (Definitions) “activity area means the area or areas to be used or developed for an activity”.

2 Mapped as areas of cultural heritage sensitivity under the *Aboriginal Heritage Regulations 2018*

## 7. *Aboriginal Heritage Regulations 2018* and mapped areas of cultural heritage sensitivity

The *Aboriginal Heritage Regulations 2018* lists a number of criteria to define areas on the basis of geography or geology, that may be areas of cultural heritage sensitivity. Under the Regulations, swamp deposits known as Koo Wee Rup Plain deposits (designated *Qm1* on geological mapping) may be areas of cultural heritage sensitivity (Reg. 34 (1)). Additionally, registered cultural heritage places (i.e. Aboriginal sites, artefacts etc.) and areas within 50 metres of those registered places may also be areas of cultural heritage sensitivity (Reg. 25 (1)).

As shown on Map 2 below, there are areas mapped as areas of cultural heritage sensitivity on the property at 320 Mooleric Road. However the activity area (being part of 320 Mooleric Road) does not include any areas of cultural heritage sensitivity.



**Map 2.** Map showing the location of the activity area (purple polygon) in relation to mapped areas of cultural heritage sensitivity (green shading). The small circular green shaded areas are 50 metre cultural heritage sensitivity buffers surrounding registered cultural heritage places; the two larger green areas enclose areas of Koo Wee Rup Swamp deposits (designated *Qm1* on geology mapping).

Map source: Victorian Government's Geovic website.

## 6. Registered Aboriginal heritage

On your behalf I have examined the available mapping of Aboriginal heritage for the locality. Although there are registered cultural heritage places (Aboriginal sites, artefacts etc.) in the locality, there are no registered cultural heritage places on the proposed activity area. As a consequence, no registered Aboriginal heritage will be impacted by the proposed activity.

As there are no registered cultural heritage places that will be impacted by the proposed activity, there is currently no requirement for any permits in relation to Aboriginal heritage.

## 7. Are the proposed works a high impact activity under the *Aboriginal Heritage Regulations 2018*?

High impact activities are listed in the *Aboriginal Heritage Regulations 2018*. Under the Regulations, and as confirmed in the VCAT decision in *Frankston Dandenong Road Pty Ltd v Frankston CC [2019] VCAT 1698*, the proposed "activity" (i.e. the proposed construction and use of a poultry farm) is not a high impact activity.

## 8. *Aboriginal Heritage Regulations 2018* as they apply to the proposed activity

Unless directly required by the Minister, or unless an Environmental Effects Statement is required<sup>3</sup>, the possible statutory requirement for a CHMP is dealt with under Regulation 7 of the *Aboriginal Heritage Regulations 2018*. Under this Regulation there are two triggers, both of which must be activated, for there to be a statutory requirement for a cultural heritage management plan to be prepared and approved prior to statutory approvals being granted. The two triggers are:

- that the proposed activity is listed in the Regulations as a *high impact activity* and
- that the proposed activity is in an area defined by the Regulations as being an *area of cultural heritage sensitivity* where there has not been *significant ground disturbance*.

In relation to the two potential triggers:

- High impact activity? The proposed use as a poultry farm is not listed in the Regulations as a high impact activity.

The first of the two potential CHMP triggers **is not activated**.

- Areas of cultural heritage sensitivity? The proposed activity area is part of 320 Mooleric Road. As shown on Map 2, page 4, no part of the activity area is an area of cultural heritage sensitivity.

The second of the two potential CHMP triggers **is not activated**.

### Conclusion

As neither of the two required triggers are activated, there is no statutory requirement under Regulation 7 of the *Aboriginal Heritage Regulations 2018* for a cultural heritage management plan to be prepared in relation to the proposed constructions and use of part of 320 Mooleric Road as a poultry farm.

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3 Under S. 48 and 49 of the *Aboriginal Heritage Act 2006*: neither of these apply in this case.

## 9. Concluding remarks

- There are no registered cultural heritage places on the activity area, so there is no requirement for any permits to harm Aboriginal heritage.
- The proposed construction and use of part of 320 Mooleric Road, Ombersly for a poultry farm is not a high impact activity and no part of the activity area is an area of cultural heritage sensitivity. As a consequence, there is no requirement for a cultural heritage management plan (CHMP) to be carried out under Regulation 7 of the *Aboriginal Heritage Regulations 2018*.
- There are statutory requirements under *Aboriginal Heritage Act 2006* to report the discovery of Aboriginal heritage materials to the Secretary of the Department of Premier and Cabinet. Should suspected Aboriginal heritage materials of any kind be discovered during ground disturbing works, contact the heritage advisor (Nicholas Clark, phone 0418-548-559) or First Peoples-State Relations (Department of Premier and Cabinet) directly. In relation to the extremely unlikely scenario that human remains are located during works, there is a legal obligation to report the discovery to the State Coroner's Office<sup>4</sup> (Coronial Admissions and Enquiries on 1300-309-519) or to the nearest local Police station.

If you require any further information or assistance, please contact me anytime on 0418-548-559 or email to [clarkeology@bigpond.com](mailto:clarkeology@bigpond.com)

Yours faithfully

*Nicholas Clark*

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