

Our Ref: 3228.000

15 October 2015

Shaq Mohanjerani  
Ryan Corner Development Pty Ltd  
Suite 4.03, 68 York Street  
Sydney NSW 2000

**Re: Hawkesdale Wind Farm, Hawkesdale, Victoria – Cultural Heritage Statutory Obligations for Proposed Planning Permit Amendment**

Dear Mr Shaq Mohanjerani,

I am writing in response to your request for an investigation into the cultural heritage statutory obligations regarding a proposed planning permit amendment for the Hawkesdale Wind Farm, Hawkesdale, Victoria (Map 1), with regard to proposed changes in the wind farm layout from the endorsed plans in the planning permit issued by Moyne Shire Council (Permit No 20060221). The relevant changes in the proposed planning amendment, as advised by you, consist of the following:

- Larger and taller turbines;
- A reduction in the number of turbines;
- Micro-siting of turbines within 100m of the endorsed locations;
- A deletion of some access tracks; and
- A change in access track layout to accommodate the reduced number of turbines.

Also, Archaeology At Tardis Pty Ltd (AAT) has been advised by you that there is the following approved Cultural Heritage Management Plan (CHMP) for the Hawkesdale Wind Farm:

Luke Kirkwood 2009. Hawkesdale Wind Farm, Hawkesdale, Victoria. Approved CHMP 10299 prepared by Environmental Resources Management Pty Ltd.

This letter focuses on whether the advised changes included in any planning permit amendment application have any implications in regards to Aboriginal and historic cultural heritage matters within the Hawkesdale Wind Farm activity area. This letter will also review the statutory obligations with reference to CHMP 10299.

This letter makes reference to the *Aboriginal Heritage Act 2006* and *Heritage Act 1995*. It has also included a review of the Victorian Aboriginal Heritage Register (VAHR) and Heritage Victoria's Online Database (HERMES) for previously recorded sites and relevant reports that may have been conducted in the activity area since the granting of the planning permit and which may impact any planning permit amendment application.

The advice contained in this letter, which is based on our interpretation of the *Aboriginal Heritage Act 2006*, the *Aboriginal Heritage Regulations 2007* and the *Heritage Act 1995* is considered to be true and accurate.

### Cultural Heritage Management Plan Triggers

A CHMP must be prepared in circumstances involving *both*:

- 1) Activities to be completed on land within or partially within a legislated area of Aboriginal cultural heritage sensitivity, as described in the *Aboriginal Heritage Regulations 2007* (Part 2, Division 3), *and*;
- 2) Activities considered to be high impact under the *Aboriginal Heritage Regulations 2007* (Part 2, Division 5).

Since there is CHMP 10299 for the activity, the preparation of a mandatory CHMP is not triggered for any planning permit amendment unless the advised changes in the planning permit amendment are not consistent with CHMP 10299.

A CHMP is also required if the Minister directs a CHMP to be prepared (s48, *Aboriginal Heritage Act 2006*) or if an Environmental Effects Statement is required (s49, *Aboriginal Heritage Act 2006*). Neither of these conditions is known to currently exist for any planning permit amendment for the activity.

Furthermore, "The construction of a building or the carrying out of works authorised by an amendment to a statutory authorisation is an exempt activity if (a) there is an approved cultural heritage management plan in relation to the area to be affected by the building or works; and the building or works are not inconsistent with that plan; and the statutory authorisation was granted after the commencement day [of the Regulations]" (r.17(2)(a)(b)(c) *Aboriginal Heritage Regulations 2007*).

This means that if the advised changes to the activity are consistent with approved CHMP 10299, then the preparation of a mandatory CHMP for any planning permit amendment is not required.

## Culturally Sensitive Areas

An examination of the Department of Premier and Cabinet culturally sensitive areas (Map 1) via ACHRIS (Aboriginal Cultural Heritage Register Information System) and the *Aboriginal Heritage Regulations 2007* has revealed that part of the activity area is a legislated area of Aboriginal cultural heritage sensitivity (Map 1).

## High Impact Activities

The Hawkesdale Wind Farm is a high impact activity under the regulations to the *Aboriginal Heritage Act 2006* (Regulation 43(1)(b)(xxvi): land used to generate electricity, including a wind farm energy facility).

## Aboriginal Cultural Heritage Register and Information System (ACHRIS)

A search of the ACHRIS database has revealed that there are **no** registered Aboriginal heritage places within the activity area or within 50m of its boundaries. Part of the activity area is an area of cultural heritage sensitivity (Map 1). The activity area has not been subject to any relevant cultural heritage assessment since the granting of the planning permit and the approval of CHMP 10299.

ACHRIS shows there is approved CHMP (10299) for the Hawkesdale Wind Farm:

Luke Kirkwood 2009. Hawkesdale Wind Farm, Hawkesdale, Victoria. Approved CHMP 10299 prepared by Environmental Resources Management Pty Ltd.

Citing a previous assessment by Griffin (2006) for the wind farm, the desktop assessment predicted that there was an area of low to moderate sensitivity along Austins Creek. The standard and complex assessment found no Aboriginal cultural heritage in the activity area. No impact to the legislated area of sensitivity along Austins Creek was proposed by the wind farm development. Austins Creek was to be traversed by an existing track across the property. Substantive recommendations included cultural heritage awareness training and the adoption of a Contingency Plan in the event of the discovery of unexpected Aboriginal cultural heritage during the conduct of the activity. The recommendations placed no restriction on any changes to the wind farm layout. This means that the advised changes for the proposed planning amendment are consistent with CHMP 10299.

## Statutory Obligations under the *Aboriginal Heritage Act 2006*

The above checks demonstrate that, under conditions of the *Aboriginal Heritage Act 2006*, the advised changes for the proposed planning permit amendment for the Hawkesdale Wind Farm, Hawkesdale, Victoria does *not* require the preparation of a mandatory CHMP because the advised changes to the activity are consistent with CHMP 10299 (r.17(2)(a)(b)(c) *Aboriginal Heritage Regulations 2007*).

## Statutory Obligations under the *Heritage Act 1995*

All historic sites are protected under the *Heritage Act 1995* which states that appropriate Consents or Permits must be obtained before any historic site is disturbed and that all historic sites must be reported to the Executive Director of the Heritage Council. Any archaeological site older than 50 years is considered to have potential archaeological value under the *Heritage Act 1995*. A search of Heritage Victoria's Online Database (HERMES) (Map 2) has revealed that there are no previously recorded historical sites within the activity area.

There is **no** Moyne Council Planning Scheme Heritage Overlays applicable to the activity area (accessed 17 September 2015).

The above checks shows there are no Consents or Permits for historic heritage required for the proposed planning permit amendment.

## Cultural Heritage Impacts of Advised Changes to the Activity

There are no known impacts by the advised changes to the activity to any registered Aboriginal or historic heritage places.

Any unexpected impacts to Aboriginal cultural heritage will be managed by the Contingency Plans in CHMP 10299.

## Summary

This investigation has reviewed the statutory obligations associated with both the *Aboriginal Heritage Act 2006* and the Victorian *Heritage Act 1995*.

- The advised changes for the proposed planning permit amendment for the Hawkesdale Wind Farm, Hawksdale, Victoria will *not* require the preparation of new CHMP because the advised changes are consistent with CHMP 10299 (r.17(2)(a)(b)(c) *Aboriginal Heritage Regulations 2007*).
- There are no Consents or Permits for historic heritage required for the proposed planning permit amendment.

Since wind farm projects are highly sensitive developments in the public sphere, we recommend that this letter is reviewed by your legal representative.

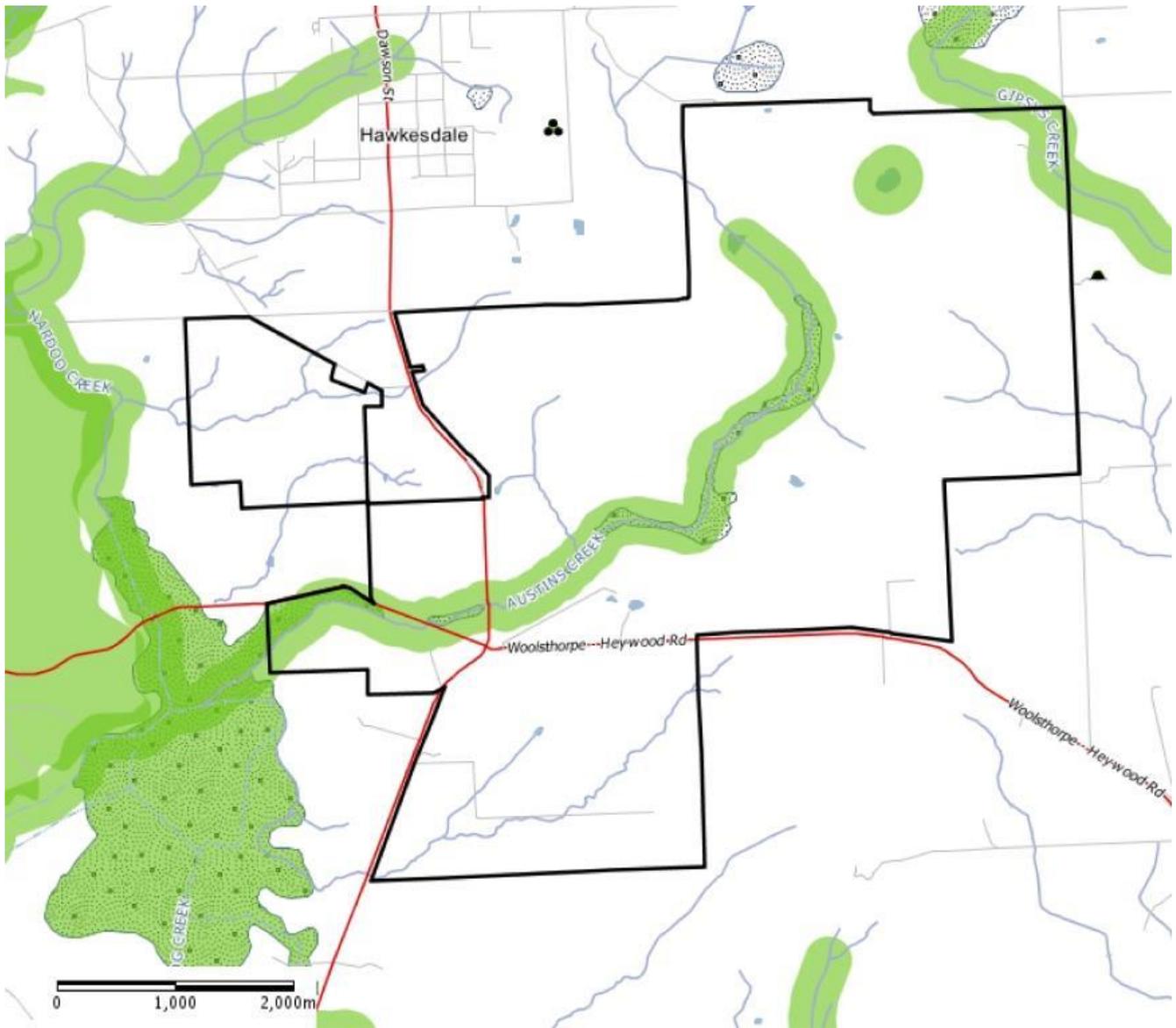
We hope the above assists with the clarification of your cultural heritage statutory obligations in relation to the proposed planning permit amendment for the above-mentioned project.

Yours sincerely,



Tom Rymer

Project Archaeologist



**Map 1** Map of Activity Area within Legislated Area of Cultural Heritage Sensitivity (green) (ACHRIS) (activity area shown with solid black line)

