

Cultural heritage due diligence assessment for  
an industrial facility at 70 Ordish Road,  
Dandenong South, Victoria

FINAL REPORT

Prepared for SMEC

18 October 2019

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## Summary

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This report has been commissioned in response to a request by SMEC for further information relating to potential cultural heritage requirements for the construction of an industrial facility at 70 Ordish Road, Dandenong, Victoria (the study area).

This report provides formal cultural heritage advice on the proposed development. The report examines the requirements of the Victorian *Aboriginal Heritage Act 2006* (the Act) and the *Aboriginal Heritage Regulations 2018* (the Regulations), to determine whether a Cultural Heritage Management Plan (CHMP) needs to be undertaken for the study area prior to the proposed works.

Advice is also offered as to measures available to minimise the potential likelihood of infringement of the Act and Regulations.

Assessment is also undertaken of historical heritage liabilities under the Victorian *Heritage Act 2017*.

This review was completed by Kym Oataway and Taylor Fitzgerald of Biosis. Kym and Taylor are qualified heritage advisors as specified in the requirements of the Act.

This report finds that there is no requirement for a mandatory CHMP. This report further identifies that there is no potential for Aboriginal cultural heritage within the study area, and therefore little benefit to the client in undertaking [in order to mitigate risk to the project] a voluntary CHMP prior to the proposed works.

There are no heritage requirements under the *Heritage Act 2017*, and there is little benefit to the client in undertaking historical heritage investigations.

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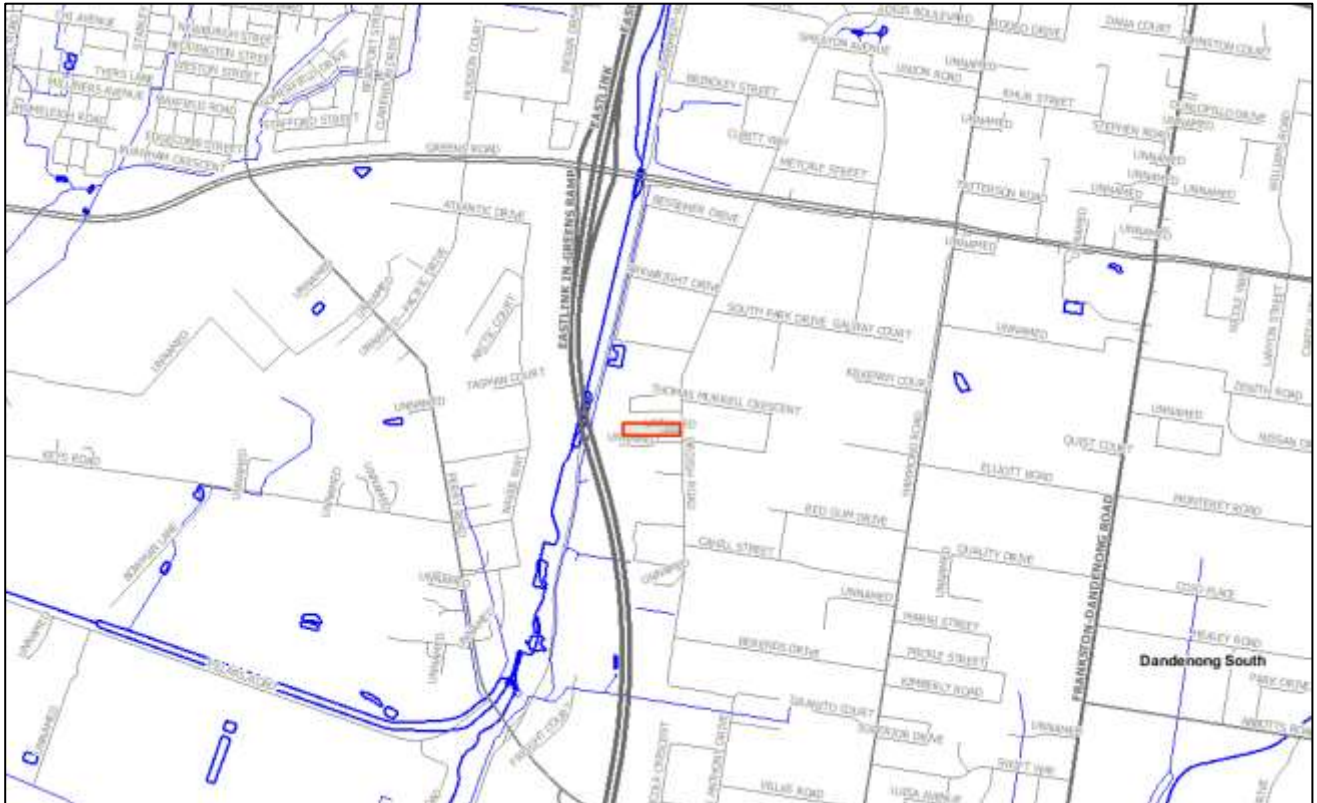
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# 1. Introduction

## 1.1 Location of the study area

The study area is located at 70 Ordish Road, Dandenong South, Victoria (1\TP20205351). It is situated approximately 38 kilometres south east of the Melbourne city centre. It measures 12,860 square metres, and is a rectangular-shaped lot of land which fronts Ordish Road to the east and Dandenong Creek to the West (Figure 1).



**Figure 1 Study area (red) at 70 Ordish Road, Dandenong South (GeoVic3, 2018)**

## 1.2 Description of the study area

The study area currently consists of a commercial warehouse occupied by a sandblasting business. The study area includes a concreted driveway and car parks in the eastern section with an open air storage space for sand and trucks in the western section of the study area. The land is cleared of vegetation other than small areas of uneven grass cover and pockets of small shrubs along its southern extent.

## 1.3 The activity

The study area is proposed for the construction of an industrial facility. The proposed development will impact the entire study area to some extent.

## **1.4 Aboriginal stakeholders**

At the time of writing, the Yaluk-Ut Weelam and Bunurong Land Council Aboriginal Corporation are applicants to Registered Aboriginal Party (RAP) status for the study area. It is not within the remit of this report to undertake consultation with these or other local Traditional Owner groups.

## **1.5 Aboriginal and historical heritage**

The assessment provides information on the archaeological and cultural heritage values of the study area to provide advice with regards to the *Aboriginal Heritage Act 2006*, *Aboriginal Heritage Regulations 2018*, and the *Heritage Act 2017*, specifically the statutory and non-statutory obligations under these Acts.

It must be emphasised, however, that the report is not intended to meet the requirements of a formal assessment under the Aboriginal Victoria (AV) guidelines.

## 2. Historical heritage - investigation

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### 2.1 Historical places and reports

A search was undertaken on 30 January 2019 of recorded historical (non-Aboriginal) cultural heritage records in the vicinity of the study area. The search was undertaken via the Heritage Victoria HERMES online database (HERMES, 2015) which includes the following sources

- Victorian Heritage Register and Inventory
- National Heritage List and Commonwealth Heritage List (Australian Government Department of Environment and Water Resources)
- Local Council Heritage Overlays and/or Planning Schemes
- Register of the National Estate (Australian Heritage Council)
- National Trust Register (National Trust Victoria)

No historical places or features currently lie within the study area.

### 2.2 Historical heritage – mandatory requirements

There are no requirements for a historical heritage assessment prior to the proposed activity.

### 2.3 Historical heritage – voluntary requirements

The Aboriginal heritage investigation section of this report (Section 3.4.3) has reviewed past land use history of the study area. Aerial imagery dating from the 1960s shows no historic buildings or structures and as such there is no indication that historic heritage may have been located within the study area.



## 3. Aboriginal cultural heritage - investigation

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### 3.1 Criteria

The following section examines in turn the three applicable criteria as to whether a CHMP needs to be undertaken at the study area. These are:

- Is the study area an area of cultural heritage sensitivity?
- Are the proposed works a high impact activity?
- Has there been significant ground disturbance to the study area?

### 3.2 Is the study area an area of cultural heritage sensitivity?

The following information and databases were reviewed on 30 January 2019:

- Victorian Aboriginal Heritage Register (ACHRIS, 2018)
- Aerial imagery
- Geological and geomorphological databases and mapping (GeoVic3, 2018)
- Victorian Register of Geographic Names (VICNAMES, 2018).

The study area is within an area of cultural heritage sensitivity under Regulation 26 and Regulation 34:

#### 26 Waterways

- (1) Subject to regulation (2), a waterway or land within 200 metres of a waterway is an area of cultural heritage sensitivity.
- (2) If part of a waterway or part of the land within 200 metres of a waterway has been subject to significant ground disturbance, that part is not an area of cultural heritage sensitivity.

#### 34 Koo Wee Rup Plain

- (1) Subject to subregulation (2), the Koo Wee Rup Plain is an area of cultural heritage sensitivity.
- (2) If part of the Koo Wee Rup Plain has been subject to significant ground disturbance, that part is not an area of cultural heritage sensitivity.
- (3) In this regulation, Koo Wee Rup Plain means an area identified as "Qg" and "Qm1" in the Surface Geology of Victoria 1:250 000 map book.

The study area is entirely within the area of cultural heritage sensitivity associated with the Koo Wee Rup Plain, and partially within the area of cultural heritage sensitivity associated with Dandenong Creek, which is located to the west of the property. This is illustrated in Figure 2 below.



**Figure 2 Study area (red) in an area of cultural heritage sensitivity (green) (GeoVic3, 2018)**

Under Regulation 26, waterways listed on the Victorian Geographic Names Register are surrounded by a 200 metre area of cultural heritage sensitivity. The study area is partially within 200 metres of Dandenong Creek.

Section 3.4 below investigates whether or not these areas of cultural heritage sensitivity have undergone significant ground disturbance in relation to Clause 2 of Regulation 26 and 34. Following the below discussion, it can be concluded that the areas of cultural heritage sensitivity covering the study area have been removed through significant ground disturbance.

### 3.3 Are the proposed works a high impact activity?

Yes, the proposed works for the construction of an industrial facility are a high impact activity as defined in Regulation 46 (1)(a)(b)(xxix):

#### 46 Buildings and works for specified uses

- (1) The construction of a building or the construction or carrying out of works on land is a high impact activity if the construction of the building or the construction or carrying out of the works –
  - (a) Would result in significant ground disturbance; and
  - (b) Is for, or associated with, the use of the land for any one or more of the following purposes –
    - (xxix) a warehouse

### 3.4 Has there been significant ground disturbance to the study area?

Yes, the study area has undergone significant ground disturbance (SGD) to all of its surfaces.

Clause (2) of Regulation 26 and 34 stipulates that an area of cultural heritage sensitivity where SGD has taken place is no longer an area of cultural heritage sensitivity and is therefore exempt from a mandatory CHMP. In the Regulations, SGD is defined as:

#### 4 Definitions

In these Regulations—

**significant ground disturbance** means disturbance of—

- the topsoil or surface rock layer of the ground; or
- a waterway—

by machinery in the course of grading, excavating, digging, dredging or deep ripping, but does not include ploughing other than deep ripping.

It is important to note that under this regulation, SGD is not chiefly defined by the extent or depth of any disturbance, but rather by the mechanical means through which it has been caused. The application of the significant ground disturbance exception is also unaffected by the relative likelihood of archaeological remains being preserved in the study area. Such likelihood of preservation may affect the advisability of a voluntary CHMP, but does not bear on the criteria for a mandatory CHMP.

The study area can be shown to have undergone SGD through mechanical excavation, as described in Section 3.4.2 and 3.4.3.

#### 3.4.2 Evidence from previous reports

A total of 19 archaeological assessments have occurred within 500 metres of the current study area Table 1.

**Table 1 Archaeological Assessments within 500 metres of the study area.**

Assessment Type	Quantity
Survey	8
CHMP Complex Assessment	6
Desktop or Paper or Due Diligence	4
Salvage Excavation	1

While no previous CHMPs or survey reports have taken place within the study area (and therefore cannot demonstrate SGD within the study area) nearby surveys and CHMPs will be summarised as similar land use patterns in the region may indicate the typical disturbance and the extent of these disturbances in the study area.

**Rae and Kennedy** (2013) completed a CHMP for the industrial subdivision of 259 Perry Road, Keysborough, located on the western side of Dandenong Creek, approximately 450 metres west of the current study area. The study area consists of a flat, low lying floodplain with two small sandy rises in a paddock, west of Dandenong Creek. The sandy rises were considered to have potential for archaeological deposits although the Standard Assessment noted heavy disturbance by past land use practices. A Complex Assessment was completed to test these observed disturbances and determine the presence of Aboriginal cultural heritage. A total of 14 trenches were excavated and disturbances were noted as a result of bioturbation and landscape modifications as well as large areas of fill and inclusion of modern materials including road base. A total of 18 stone artefacts of quartz, quartzite and silcrete were identified and these artefacts were registered as a low density artefact distribution (LDAD) (VAHR 7921-1450). Artefacts were located between 100 and 850 millimetres in a silty, medium grained, loose, sand context which also contained disturbance due to roots and modern material (glass fragments) down to 300 millimetres. No additional Aboriginal cultural heritage material was identified during the complex assessment and disturbance in the Activity Area was generally considered to be high. The CHMP concluded that it is was not feasible to avoid or minimise harm to VAHR 7921-1450 as levelling and grading needed to occur over the entire activity area. It was recommended that artefacts be reburied within 12 months of the completion of works or within 5 years from approval of the CHMP, and that all contractors and consultants attend a cultural heritage induction.

**Day** (2012) completed a CHMP (10641) for the proposed industrial subdivision at 253-257 Perry Road, Keysborough, approximately 250 metres west of the study area on the western side of Dandenong Creek. The desktop assessment concluded that as the Activity Area had low potential for Aboriginal cultural heritage as it was located within the Dandenong Swamp, would not have been an ideal location for Aboriginal occupation and, later, would have been substantially modified to allow for artificial drainage. A Standard Assessment was conducted and noted poor ground surface visibility. However, two silcrete artefacts were identified in a shallow sand pit and registered as VAHR 7921-1361. Due to the results of the Standard Assessment, a Complex Assessment followed and included four 1x1 metre test pits and 82 0.5x0.5 shovel test pits. A total of 116 artefacts were identified and four places, including one scarred tree: VAHR 7921-1360, -1361, -1362, -1363. Artefacts were commonly of silcrete material and identified in surface and subsurface contexts, at depths of 320 to 840 millimetres. Disturbance was noted in some upper soil profiles to a depth of 140 millimetres.

**Murphy** (2005) completed a Cultural Heritage Assessment survey of properties at 59-87 Ordish Road, across the road from the current study area. Murphy identifies that the study area contains no potential for in situ Aboriginal cultural heritage as, since the 1990s, the study area has been used by the council for dumping night soil and, later for hard waste material. The use of this land for dumping has built up deposits more than a metre above the natural soil deposits. The cultural heritage assessment identified the following European activities as having impacted the archaeology within the study area:

- Initial clearing
- Long term grazing
- Repeated ploughing
- Possible sand removal
- Use as a rubbish/fill dump site
- Current remediation process

The survey contained no evidence of Aboriginal occupation and concluded that due to previous land use and current soil activities (remediation of dumped soil) would have destroyed any archaeological sites that may have once existed in the study area. Murphy states that no areas of archaeological potential exist within the study area and no further investigation is required prior to redevelopment of the study area.

### 3.4.3 Land Use History

Aerials from 1968 (Figure 3) show the study area as cleared land with no signs of infrastructure or other alteration to the land. Ordish Road is established and Dandenong Creek is visible, yet the surrounds feature little other than major roads, paddocks, sporadic vegetation and very few houses. The study area was most likely used for agricultural purposes. A small drainage line is visible parallel to Dandenong Creek, at the western boundary of the study area.



**Figure 3 1968 aerial of study area (red) (State Government of Victoria, 1968)**

The Western Port Foreshores aerial photograph project from December 1977 shows the study area on Run 2, Frame 177 (Figure 4). The aerial shows that the study area and its surrounds undergoing subdivision with the study area property lot being defined among other small divisions to the north and south. The study area has evidence of disturbance across most of the property, with significant ground disturbance associated with the construction of roads and structures, occurring in the eastern section of the property lot.



**Figure 4 1977 aerial of study area (red) (State Government of Victoria, 1977)**

More recent aerial images from 2009 (Figure 5), 2010 (Figure 6) and 2017 (Figure 7) show the recent disturbances to the study area. Figure 5 shows that the large warehouse which currently occupies the land has been constructed which would have occurred sometime since 1977 and significantly disturbed the land on which it was built. The aerial image also shows the cemented carpark and driveway at the eastern end of the property which would have included the grading and scraping of the land to ensure cement was poured over a level surface. A path way is evident at the back of the property with some overgrown vegetation and discarded rubbish.

Figure 6 shows little change to the establish structures within the study area but does show a noticeable difference to the western end of the property which appears to have been completely cleared of the overgrown vegetation and grass which would have involved the removal of the topsoil with machinery and is thus considered significant ground disturbance.

Figure 7, the most recent aerial from 2017, again shows little change to the establish structures within the study area yet shows the use of the western end of the study area for the storage of various construction materials and multiple trucks for the transportation of these goods.





Figure 5 2009 aerial image, study area in yellow (GeoVic3, 2018).



Figure 6 2010 aerial image, study area in yellow (GeoVic3, 2018).





**Figure 7 2017 aerial image, study area in yellow (GeoVic3, 2018)**

### **Dial Before Your Dig**

A Dial Before You Dig enquiry was lodged on 30 January 2019 for a detailed investigation of underground services present in the study area. It was found that only the north east corner is affected by Telstra and NBN underground cables.



## 4. Aboriginal cultural heritage – conclusions

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The proposed activity is a high impact activity and the study area is within an area of cultural heritage sensitivity. However, the study area can be shown to a level of high certainty to have been subject to significant ground disturbance (SGD). This was the result of previous earthmoving activities as identified in aerial photography.

The evidence provided above indicates that the study area has been subject to SGD at a level of certainty better than the balance of probabilities. The forms of evidence reached in making this determination and the degree of confidence with which it has been made are both in full accord with the criteria of relevant legislation and legal precedents as to the interpretation of this legislation.

In brief, the area of cultural heritage sensitivity at the study area satisfies the evidentiary hierarchy of the Mainstay VCAT Decision (Mainstay Australia Pty Vs Mornington Peninsula SC & Ors, 2009) at two levels. These are levels two and four:

2. 'Publicly available records': The archaeological report and aerial images provided here are available to the public either through a Cultural Heritage Advisor, or directly through application to the Office of Aboriginal Affairs Victoria. They clearly illustrate that the study area was subject to major mechanical soil disturbance.
  
4. 'Expert advice or opinion': Aerial imaging of the study area has been inspected by qualified Cultural Heritage Advisors experienced in detecting the effects of significant ground disturbance on soils from aerial photography and the study area has been found to have been disturbed.

Beyond this, the study area fits criteria of contextual and expert evidence as defined in the Azzure Decision (Azzure Investment Group vs Mornington Peninsula SC, 2009) . It has been demolished, cleared and levelled in an era when mechanical demolition, clearance and restitution of surfaces were normal practice (Annear, 2005).

It is therefore determined to a degree of certainty well beyond the balance of probabilities that the study area at 70 Ordish Road, Dandenong South, is exempt from a mandatory CHMP. Little to no benefit can be seen in undertaking a voluntary CHMP given the highly disturbed nature of the study area and the findings of a previous voluntary CHMP opposite the current study area.

## 5. Aboriginal cultural heritage - mandatory requirements

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### **Requirement for mandatory CHMP**

There is no requirement that a mandatory CHMP be undertaken before council issuing statutory approval for the proposed buildings and works.

## 6. Aboriginal cultural heritage – risk assessment & recommendations

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### 6.1 Risk assessment and options for voluntary heritage management measures

The study area has been shown to be exempt from the requirements for a mandatory CHMP. Nevertheless there are risks of infringing the *Aboriginal Heritage Act 2006*, associated with any ground disturbing activity, even where a CHMP has been undertaken and more so where a CHMP has not been undertaken.

Under sections 27 and 28 of the Act it is deemed illegal to knowingly or negligently harm, or to commit an act likely to harm Aboriginal cultural heritage. This section briefly assesses the likelihood of such harm occurring at the study area in the course of proposed works.

There are three primary points to be considered in assessing such risk:

- Is it likely that there remains *in situ* Aboriginal cultural heritage material in the study area?
- Is it likely that any such material will be knowingly or negligently harmed during the proposed works?
- What measures can be taken to reduce any such potential harm?

### 6.2 Is it likely that there exists Aboriginal cultural heritage material in the study area?

No, it is unlikely that Aboriginal cultural heritage material exists in the study area following the extensive disturbance which has occurred following the construction of the existing industrial facility. In addition, the study area is located on low lying floodplain which have been found to contain low to no potential for Aboriginal cultural material on the western bank of the Dandenong Creek.

### 6.3 Is it likely that any such material will be knowingly or negligently harmed during the proposed works?

No, the study area has no potential for Aboriginal cultural heritage and the entire study area appears to have been subject to significant ground disturbance (SGD), it could not be considered that any harm to Aboriginal cultural heritage resulting from the proposed activity could be considered knowing or negligent.

### 6.4 What measures can be taken to reduce any such potential harm?

The client may exercise measures to further reduce the risk of causing harm to potential Aboriginal cultural heritage material within the study area. These potentially include the undertaking of a voluntary CHMP which would serve to better define the presence or absence of Aboriginal cultural heritage material within the study area and would provide formally recognised heritage management recommendations for the study area. This would avoid the risk of substantial interruption to works which would be entailed in the initiation of a mandatory CHMP, were Aboriginal cultural heritage material identified within the study area in the course of works.

Given the low level of potential for Aboriginal cultural heritage within the study area, there would be little benefit to the client in undertaking a voluntary CHMP.

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The following section sets out a series of management measures and recommendations developed in accordance with the requirements of the *Aboriginal Heritage Act 2006* and *Aboriginal Heritage Regulations 2018*. The recommendations reflect the results of the risk assessment provided in Section 6, and include the recommendations of the mandatory compliance investigation (Section 5).

## 7. Recommendations

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### **Recommendation 1. Requirement for a mandatory CHMP**

There is no requirement that a mandatory CHMP need be undertaken before council issuing statutory approval for the proposed buildings and works.

### **Recommendation 2. Requirement for a voluntary CHMP**

There is no recommendation that a voluntary CHMP be undertaken before council issuing statutory approval for the proposed buildings and works.

### **Disclaimer**

This report provides expert opinion on the requirements for heritage management in the study area. It is authored by qualified heritage professionals with considerable experience working with heritage legislation, but who are not legal practitioners. The client is advised to seek qualified legal advice prior to acting on the recommendations contained in this report.

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