

## PLANNING PANEL EXPERT WITNESS REPORT

1. **TITLE:** Aboriginal heritage advice regarding Application to amend Planning Permit No. 120388-1
2. **DATE OF REPORT:** 10th March 2021
3. **ADDRESS OF PROPERTY:** 1381-1395 Bass Highway Grantville
4. **SITE VISIT:** 27th February 2021
5. **REPORT PREPARED FOR:** Dandy Premix Pty Ltd (applicant)
6. **EXPERT WITNESS INSTRUCTION:** Equipe Lawyers (Mr Andrew Natoli)
7. **WITNESS NAME AND ADDRESS:** Nicholas Clark, 30 Steddy Road Lethbridge Victoria 3332.

### 8. QUALIFICATIONS, EXPERIENCE AND AREAS OF EXPERTISE

I am a qualified Aboriginal heritage advisor, and am recognised as such by Aboriginal Victoria, the State Government agency overseeing Aboriginal heritage matters in this State. 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 31 years.

Apart from my qualifications and expertise in Aboriginal archaeology and Aboriginal heritage management, I have tertiary training and practical experience in historical research, geology, geomorphology, soil science, botany and plant physiology. As a result, I am particularly qualified to understand the definitions and underpinnings of relevant aspects of the *Aboriginal Heritage Regulations 2018* that pertain to 'areas of cultural heritage sensitivity' and 'significant ground disturbance'.

### 9. PRIVATE OR BUSINESS RELATIONSHIPS

I have no private or business relationship with any person associated with the applicant (Dandy Premix Pty. Ltd.).

I have previously been engaged by Equipe Lawyers to provide advice on Aboriginal heritage matters in relation to general planning matters and for specific VCAT hearings.

## 10. INSTRUCTIONS THAT DEFINE THE SCOPE OF THIS EXPERT WITNESS REPORT

The instructions given to me by Equipe Lawyers in relation to this matter were provided in an emailed letter dated 4th February 2021.

Those instructions were that I should consider the subject land and surrounding areas and provide advice on:

- the Aboriginal heritage context;
- whether the requirements of the *Aboriginal Heritage Act 2006* and the *Aboriginal Heritage Regulations 2018* have been addressed, including whether a mandatory Cultural Heritage Management Plan is required under the Act or the Regulations for the Proposed Further Development;
- Any issues raised in the objections to the Amendment Application that are within your expertise.
- Any other aboriginal cultural heritage matters that I consider relevant to the assessment of the Proposed Further Development.

These matters have already been addressed in my May 2012 advice (see paragraph 11.1 below) so are not repeated here.

## 11. ADVICE

(Note: in the dot points below, the terms in inverted commas are terms used in the *Aboriginal Heritage Regulations 2018* and have defined meanings in those Regulations).

- 11.1 Prior to the issuing of the current planning permit and Work Authority, I provided advice to the proponent (Mr Garry Cranny) in May 2012 (see Hearing Book 138 - Appendix 9 - *Cultural Heritage Advice.pdf*). That advice was that the proposed quarry would not impact on “registered cultural heritage places” (Aboriginal sites, artefacts etc.) nor on any areas of cultural heritage sensitivity; that there was no requirement for a cultural heritage management plan to be undertaken, nor any requirement for any Aboriginal heritage permits. I advised that to the west of the proposed quarry there were potential areas of cultural heritage sensitivity and also registered cultural heritage places. I advised that the registered cultural heritage places were likely to have been destroyed (in accordance with relevant permits) during widening of Bass Highway sometime after their original registration in 1997<sup>1</sup> and that they were outside the areas to be impacted by the quarry.
- 11.2 The proposed amendment to the existing permit seeks to extend the extraction area of the quarry in an easterly direction and to increase the depth of extraction. There will be no change to the western boundary of the currently approved extraction area - i.e. no change to the boundary nearest to where the registered cultural heritage places were originally recorded.
- 11.3 In preparing my advice in 2013 (which ultimately was considered by Earth Resources Regulation in approving the Work Plan in August 2013)

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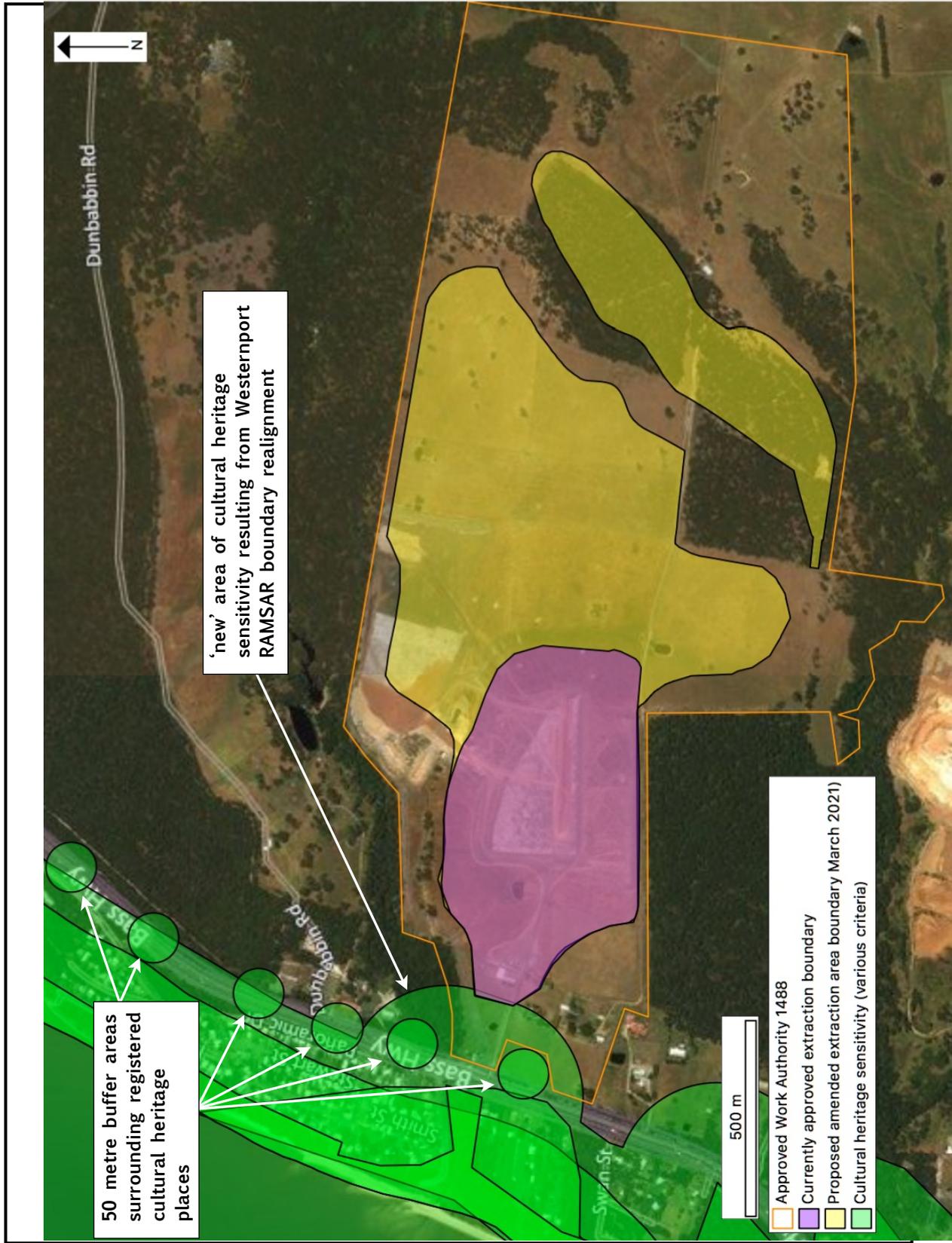
1 The original location of these (destroyed) registered cultural heritage places are indicated on the map on page 4 of this document.

I considered the lists of “areas of cultural heritage sensitivity” contained in the 2007 iteration of the *Aboriginal Heritage Regulations* and shown on the indicative State Government mapping available at that time. One of the potential areas of cultural heritage sensitivity at that time was the area within 200 metres of the Westernport RAMSAR wetland (r.26 in the *Aboriginal Heritage Regulations 2007* S.R. 41/2007). At that time, the Western Port Ramsar wetland boundary was described by the State Government’s RAMSAR100 spatial data set (Department of Conservation and Natural Resources 1995). This dataset and the State Government mapping produced from it, showed that there were no parts of the Western Port Ramsar wetland within 200 metres of the proposed activity area for the quarry - and as such, no associated areas of cultural heritage sensitivity. I included a copy of the relevant State Government mapping on page 2 of my 2013 advice.

- 11.4 In late 2013 (after the Work Plan had been approved) the boundary of the Western Port Ramsar wetland and the dataset for mapping that boundary were amended to become the RAMSAR25 spatial dataset<sup>2</sup>. Despite my efforts, I have been unable to obtain an historical copy of the original RAMSAR100 dataset or the associated boundary description, however it appears that an additional section of Crown Allotment 96B was added to the amended dataset. This parcel straddles Deep Creek on the southern side of Deep Creek Street, and extends to the western edge of Bass Highway.
- 11.5 As a consequence, a ‘new’ area of potential cultural heritage sensitivity was created, extending 200 metres from the eastern boundary of Crown Allotment 96B. This area of cultural heritage sensitivity now extends approximately 12 metres into the currently approved extraction area on the western margin of the quarry.
- 11.6 I am instructed that the changes proposed in the Amendment Application do not change the extent of the existing approved extraction area on the western side of the quarry in this 12 metre area of overlap.
- 11.7 Whether or not the ‘new’ area of cultural heritage sensitivity has any relevance in relation to the proposed Amendment Application is a question beyond my expertise, being a legal/planning law question. However, for the avoidance of doubt in relation to the potential requirement for a cultural heritage management plan (CHMP), it would be prudent for the proponent to move the western boundary of extraction area in an easterly direction by a sufficient distance to avoid any ground disturbance within this ‘new’ area of cultural heritage sensitivity.

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2 See *Western Port Ramsar site boundary description technical report*. Department of Primary Industries 2013)



Map showing Work Authority boundary, current and proposed amended extraction area boundary and mapped areas of cultural heritage sensitivity

- 11.8 If the western boundary of extraction area is moved in an easterly direction by a sufficient distance to avoid any ground disturbance within the current area of cultural heritage sensitivity, then I would be satisfied that there would be no requirement for a CHMP to be undertaken under Regulation 7 of the *Aboriginal Heritage Regulations 2018*. This is because, although the activity is a high impact activity (Regulation 51 and 53) no part of the activity area for the quarry would be an area of cultural heritage sensitivity.
- 11.9 On the 2nd of March 2021, I accessed the data held in the *Victorian Aboriginal Heritage Register* (Aboriginal Victoria, Department of Premier and Cabinet) to recheck the number and location of registered cultural heritage places in the vicinity of 1381-1395 Bass Highway Grantville. I can confirm that on that date, there were no registered cultural heritage places on the proposed Amendment Application area. There is consequently no requirement for any Aboriginal Heritage permits under the *Aboriginal Heritage Act 2006* in relation to registered cultural heritage places.
- 11.10 In summary, if the extraction area boundary is altered as suggested in paragraph 11.8 then I am satisfied that there will be no requirement for a CHMP under Regulation 7. As described in 11.9 there is also no requirement for any Aboriginal Heritage permits in relation to registered cultural heritage places.
- 11.11 This advice contains an appendix with provisional contingency plans to deal with the possible discovery of Aboriginal material; the contingency plans address practical matters as well as legal obligations of the proponent under the *Aboriginal Heritage Act 2006*.

## **12. DECLARATION**

I have made all the inquiries that I believe are desirable and appropriate and no matters of significance which I regard as relevant have to my knowledge been withheld from the Panel.

*Nicholas Clark*

## APPENDIX - PROVISIONAL CONTINGENCY PLANS

### 1. Discovery of suspected Aboriginal cultural heritage (other than human remains)

- a) If suspected Aboriginal cultural heritage (sites, artefacts etc.) is discovered, all mobile ground disturbing machinery should be moved at least 10 metres from the discovery. All ground disturbing activity within 10 metres of the discovery should cease.
- b) Care should be taken to avoid disturbance of the suspected Aboriginal cultural heritage.
- c) Temporary fencing/safety webbing should be erected to create a 10-metre buffer zone around the location, with signage clearly identifying the location as a 'No-Go- Zone'.
- d) Work may continue outside of the buffer zone.
- e) The site supervisor should contact the heritage advisor to obtain initial advice and to confirm contingency procedures: the heritage advisor will normally make the necessary notifications. If the heritage advisor cannot be contacted within 4 hours, the site supervisor should contact Aboriginal Victoria to report the discovery to comply with the statutory requirements for reporting such discoveries under s. 24 of the *Aboriginal Heritage Act 2006*. On advice from Aboriginal Victoria and the heritage advisor, other statutory and practical requirements in relation to such material will be met as required.

### 2. Discovery of suspected human remains

- a) If suspected human remains are discovered, move all mobile ground disturbing machinery out of the area and cease all ground disturbing activity within 50 metres of the discovery.
- b) The remains should be left in place and protected from harm or damage.
- c) The site supervisor should contact the heritage advisor to obtain initial advice and to confirm contingency procedures: the heritage advisor will make the necessary notifications. If the heritage advisor cannot be contacted within 1 hour, contact the *Coronial Admissions and Enquiries hotline* on 1300 888 544 to ensure the statutory requirement to notify the Coroner's Office and Victoria Police is done in a timely manner.
- d) If it is confirmed that the remains are Aboriginal Ancestral Remains, then the person responsible for the activity must report their existence to the Victorian Aboriginal Heritage Council (VAHC) in accordance with section 17 of the *Aboriginal Heritage Act 2006*.
- e) The Victorian Aboriginal Heritage Council will determine the appropriate course of action regarding the Aboriginal Ancestral Remains in accordance with section 18(2)(b) of the Act.
- f) Do not contact the media.
- g) Do not take any photographs of the remains unless expressly requested to do so by the heritage advisor, Coroner's Office, Victoria Police, or Aboriginal Victoria for the purpose of making an initial assessment of the remains.
- h) Do not circulate any information via social media.  
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