

# Hopetoun Park North Residential Growth Area

Re-zoning application - Am C103 to the Moorabool Planning Scheme

Aboriginal cultural heritage preliminary assessment



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**Heritage Advisors:** Janet Cockbill  
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**Date:** 27th August 2023



CLARKEOLOGY

## Executive summary

Clarkeology has been commissioned by Bacchus Marsh Property Group Pty. Ltd. to provide a preliminary assessment of Aboriginal cultural heritage in relation to planning considerations for a proposed re-zoning of part of the land within the future residential growth area known as Hopetoun Park North. The project land is located on the southern side of the Western Freeway 5.5 kilometres east of Bacchus Marsh in the Moorabool LGA.

This assessment was carried out with reference to the *Aboriginal Heritage Act 2006* and the *Aboriginal Heritage Regulations 2018*. It included a review of the environmental context, a review of recorded Aboriginal cultural heritage and preliminary identification of potential areas of cultural heritage sensitivity.

Consultation in relation to the proposed project was held with the Traditional Owners for the project area, represented by the Wurundjeri Woi Wurrung Cultural Heritage Aboriginal Corporation.

### Aboriginal cultural heritage

- There is one registered Aboriginal cultural heritage place within the project area.
- There are areas of cultural heritage sensitivity identified on the activity area associated with the registered Aboriginal cultural heritage place and the edge of the escarpment overlooking Pyrites creek on the western side of the activity area.
- The proposed re-zoning activity will not entail any ground disturbance and therefore will not impact the registered Aboriginal heritage place nor any identified areas of cultural heritage sensitivity.

### Re-zoning application: legislative requirements

- There is no requirement for a cultural heritage management plan (CHMP) in relation to the proposed re-zoning because the activity of re-zoning is not specified as a *high impact activity* under the *Aboriginal Heritage Regulations 2018*.
- There are no other requirements arising from Aboriginal heritage legislation in relation to the proposed re-zoning activity and no statutory impediments from Aboriginal cultural heritage that would prevent planning approvals being granted in relation to the proposed re-zoning.
- The management of identified Aboriginal cultural heritage within the activity area will be addressed as part of the CHMP requirements that will occur as part of the planning process for future development activities. No Aboriginal cultural heritage will be harmed by the current re-zoning activity.

### Future residential development

- Residential subdivision of land is a specified *high impact activity* under the *Aboriginal Heritage Regulations 2018*.
- Under the *Aboriginal Heritage Regulations 2018* the carrying out of a specified *high impact activity* on land which contains a defined *area of cultural heritage sensitivity* triggers the requirement for a CHMP to be approved before permits for that activity can be granted.
- Processes and mechanisms for the protection of Aboriginal cultural heritage are set out in the *Aboriginal Heritage Act 2006* and the *Aboriginal Heritage Regulations 2018* and are the responsibility of the proponent of the relevant activity.
- Protection and management of Aboriginal cultural heritage during any future subdivision and development activities within the project area will be considered in the context of the *Aboriginal Heritage Regulations 2018* and the *Aboriginal Heritage Act 2006* at the planning stage for the specific activity. Future subdivision in areas of cultural heritage sensitivity will require a cultural heritage management plan.

### Disclaimer

This is not legal advice. Any telephone, email or written advice that I provide to you is not to be misconstrued or relied upon as legal advice. Any decisions in relation to the proposed activity should be guided by qualified legal advice, as your organisation ultimately carries the legal risks in relation to potential breaches of the *Aboriginal Heritage Act 2006* and the *Aboriginal Heritage Regulations 2018*.

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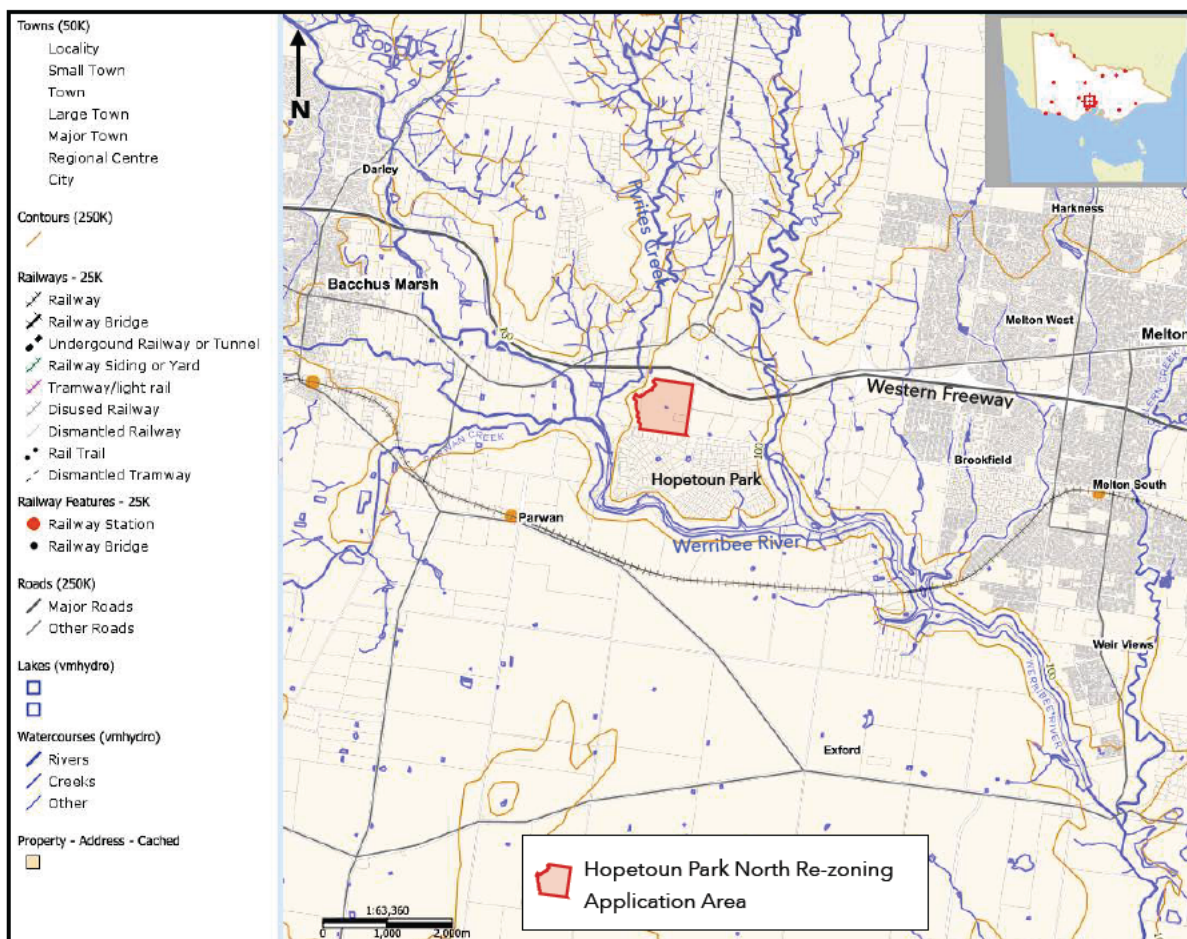
# 1. Introduction

Clarkeology has been commissioned by Bacchus Marsh Property Group Pty. Ltd. to provide a preliminary assessment of Aboriginal cultural heritage in relation to planning considerations for a proposed re-zoning of part of the land within the future residential growth area known as Hopetoun Park North. The main aims of this assessment are:

- identify any *registered cultural heritage places*<sup>1</sup> and any areas of cultural heritage sensitivity present within the project area,
- undertake consultation with the relevant Traditional Owner group in relation to the project,
- identify the planning implications for the current re-zoning activity arising from Aboriginal heritage legislative requirements and Aboriginal heritage protection, and
- identify potential planning requirements that may arise from Aboriginal cultural heritage matters for future residential development.

## 1.1 Project location

The land subject to the Hopetoun Park North re-zoning application is located just south of the Western Freeway, on the western side of Hopetoun Park Road, approximately 5.5 kilometres east of Bacchus Marsh (**Map 1**). The project area will be referred to in this report as the 'activity area' in line with the terms used in Victorian Aboriginal heritage legislation<sup>2</sup>. The total activity area is approximately 64 hectares. Further details of the extent of the activity area are set out in Section 2.1 of this report.



**Map 1.** Location of project area. (Map source: GeoVic).

<sup>1</sup> A 'registered cultural heritage place' is defined in the *Aboriginal Heritage Regulations 2018* (Regulation 5) as 'an Aboriginal place recorded in the Register'. The Register is the Victorian Aboriginal Heritage Register.

<sup>2</sup> An 'activity area' is defined in the *Aboriginal Heritage Regulations 2018* (Regulation 5) as 'the area or areas to be used or developed for an activity'.

## 1.2 Project description

Hopetoun Park North is identified in the Moorabool Planning Scheme as a residential growth area of Bacchus Marsh. A planning application for re-zoning of the land from Farming Zone (FZ) to Neighbourhood Residential Zone (NRZ) is being prepared with the aim to facilitate future residential development. The Planning Scheme Amendment being applied for is known as Am C103 to the Moorabool Planning Scheme.

This report has been prepared in relation to the current re-zoning application. Specific plans for future residential subdivision are not yet known. Ultimately however, it is expected that Hopetoun Park North will provide for approximately 400 lots with an average lot size of approximately 900m<sup>2</sup>. The minimum lot size is expected to be 800m<sup>2</sup> with some larger 1,500m<sup>2</sup> lots to be provided around sensitive interfaces such as the southern interface adjoining the existing residential development and the western escarpment. Allotments will be accessed by an internal connector road. Other future uses proposed for land within Hopetoun Park North will be a small retail component (approx. 600m<sup>2</sup> of floor space), a small community room, a kindergarten, conservation areas and both passive and active open space areas. Proposed open space areas include a lineal reserve with a shared pathway along the western boundary of the project area, providing a setback for future development from the top of the adjacent escarpment. A storm water treatment reserve and wetland is proposed for the southwest corner of the project land. An indicative layout for future residential subdivision is shown in Figure 1.

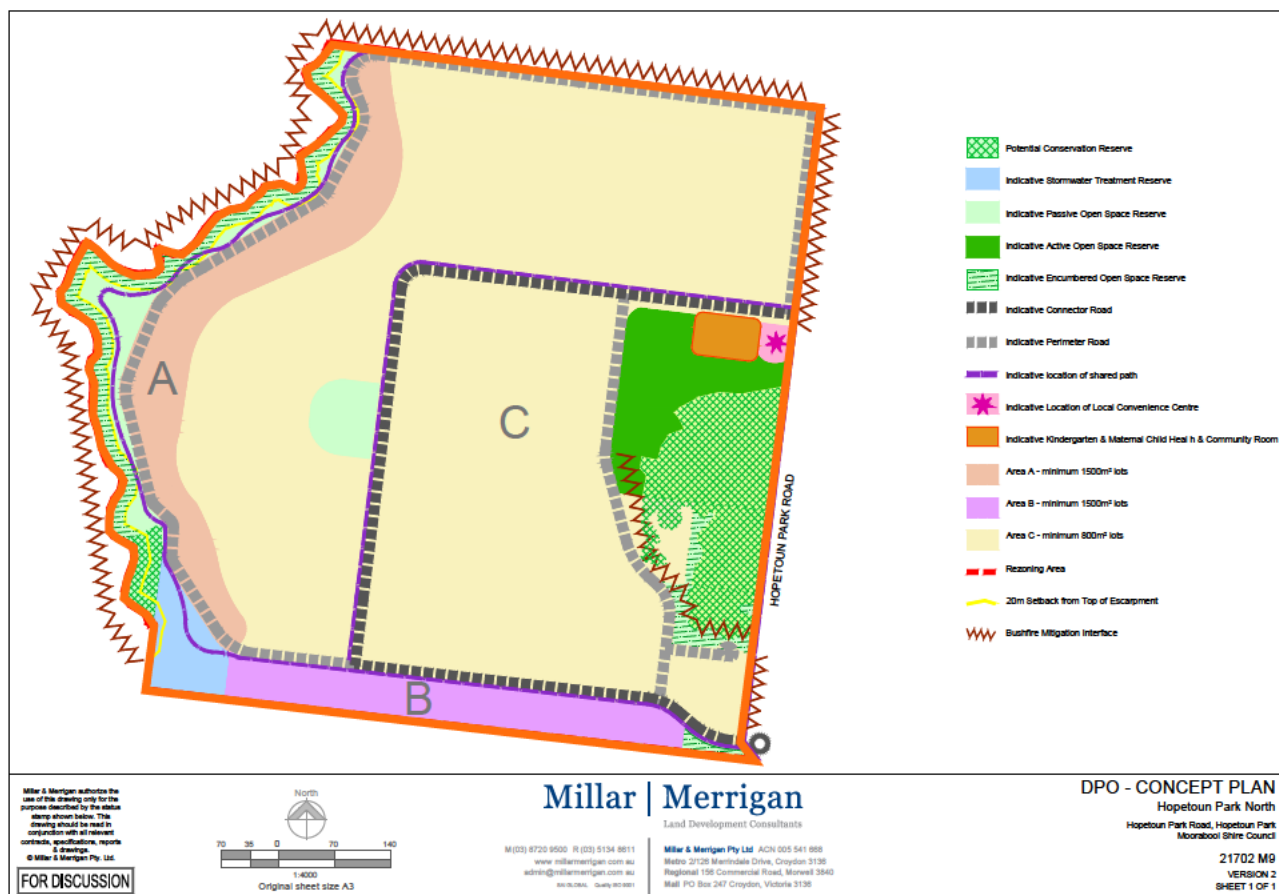


Figure 1: Hopetoun Park North indicative concept plan.

(Source: Bacchus Marsh Property Group, 2023)

## 1.3 Aboriginal heritage legislation

Processes and mechanisms for the assessment, protection and management of Aboriginal cultural heritage are set out in the *Aboriginal Heritage Act 2006* and the *Aboriginal Heritage Regulations 2018* and are the responsibility of the proponent of the relevant activity.



Under the *Aboriginal Heritage Act 2006* the main heritage protection and management mechanism applicable for land development activities is the preparation and implementation of a 'cultural heritage management plan' (s.42).

The preparation of a cultural heritage management plan (CHMP) involves a detailed assessment of the area to be developed, termed the 'activity area', in terms of the presence, nature and context of any Aboriginal cultural heritage that may be present. The CHMP report sets out the assessment undertaken, the results of the assessment and any applicable conditions for the protection and/or management of Aboriginal cultural heritage identified in the assessment. CHMPs are undertaken in consultation with Traditional Owner groups and/or Registered Aboriginal Parties (RAPs) who are involved in the preparation, evaluation and approval or rejection of CHMPs for their prescribed area.

For development activities, the possible statutory requirement for a CHMP is generally dealt with under r.7 of the *Aboriginal Heritage Regulations 2018*<sup>3</sup>. This Regulation specifies that a cultural heritage management plan is required for an activity if:

1. all or part of the activity area for the activity is an *area of cultural heritage sensitivity*<sup>4</sup>, and
2. all or part of the activity is a *high impact activity*<sup>5</sup>.

These criteria are addressed in relation to the currently proposed development in Section 6 of this report.

There is a second mechanism provided by the *Aboriginal Heritage Act 2006* for protection and management of identified Aboriginal cultural heritage. This involves the application for a 'cultural heritage permit' to disturb or harm Aboriginal cultural heritage (s.36). However, a cultural heritage permit must not be granted for an activity which requires a CHMP (s.37(2)). Where a CHMP is required for a specific activity, this is the appropriate mechanism for addressing cultural heritage management. A CHMP addresses not only known Aboriginal cultural heritage on the subject land but also the potential that currently unidentified Aboriginal cultural heritage may be present.

Under the *Aboriginal Heritage Act 2006* it is an offence to carry out an activity that causes, or is likely to cause, harm to Aboriginal cultural heritage without complying with the relevant requirements. This is the case whether or not the Aboriginal cultural heritage is a registered cultural heritage place and whether or not the Aboriginal cultural heritage was known to be present or not.

#### **1.4 Registered Aboriginal Party**

The Traditional Owners for the project area are represented by the Wurundjeri Woi Wurrung Cultural Heritage Aboriginal Corporation (WWCHAC). As the Registered Aboriginal Party (RAP) under the *Aboriginal Heritage Act 2006* the WWCHAC are responsible for the land where the activity area is located.

Consultation with the WWCHAC was sought and a meeting was subsequently held on 13th April 2023 to discuss the project and Aboriginal heritage values within the project area. Outcomes of the meeting are presented in Section 5.

#### **1.5 Heritage advisors**

Janet Cockbill is a qualified Heritage Advisor pursuant to Section 189 of the *Aboriginal Heritage Act 2006*. Janet has a BA (Hons.) in Archaeology (Latrobe University 2000) and a BAppSc. (RMIT, 1988). Janet has been working as a consultant Heritage Advisor in Victoria for the past 22 years.

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<sup>3</sup> Other circumstances that require mandatory CHMPs are set out in s.46 of the *Aboriginal Heritage Act 2006*.

<sup>4</sup> Defined in the *Aboriginal Heritage Regulations 2018* (r.5) as "(a) an area specified as an area of cultural heritage sensitivity in Division 3 of Part 2; or (b) if Division 4 of Part 2 applies, an area specified as an area of cultural heritage sensitivity in that Division".

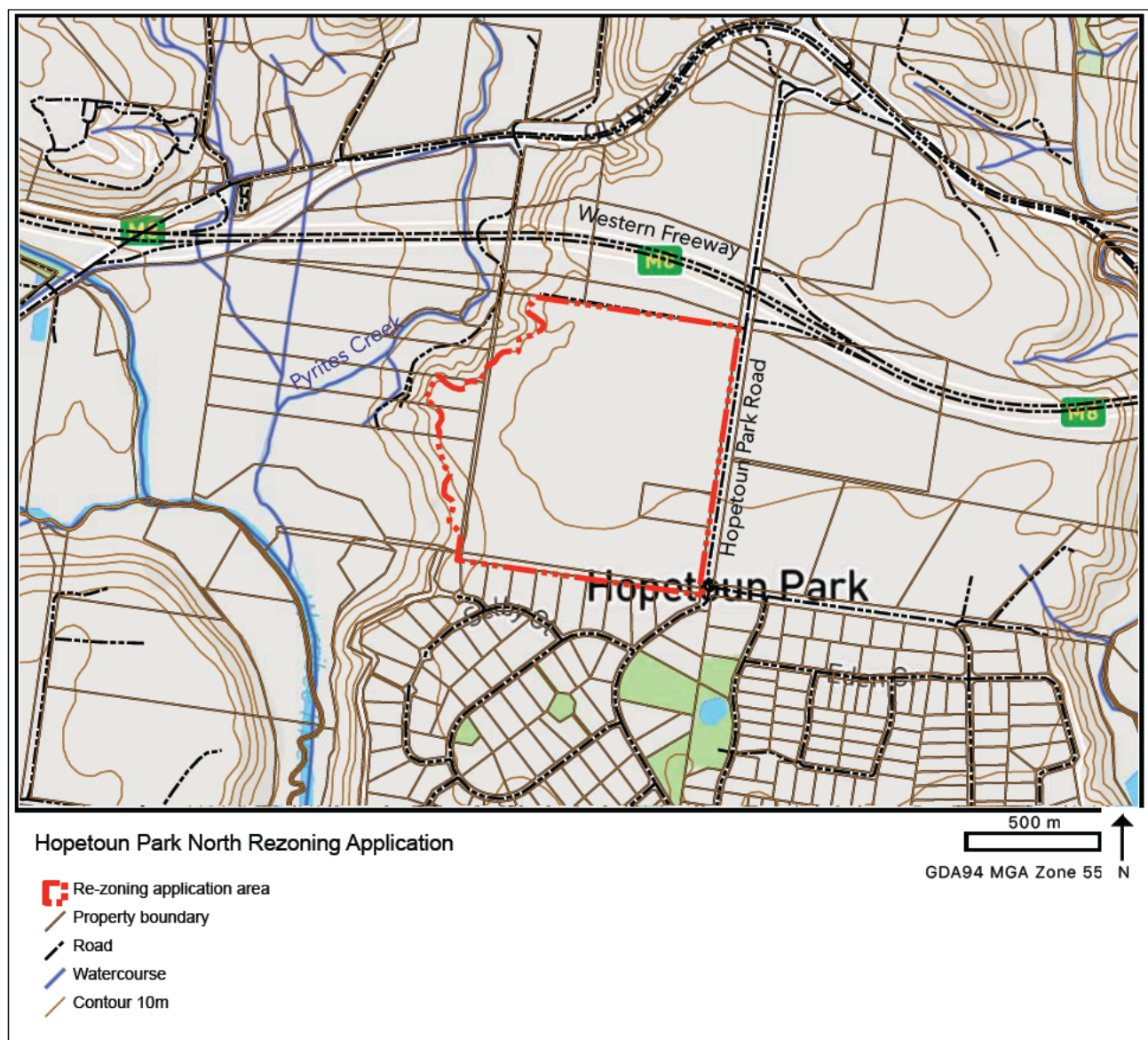
<sup>5</sup> Defined in the *Aboriginal Heritage Regulations 2018* (r.5) as "an activity specified as a high impact activity in Division 5 of Part 2".

Nicholas Clark is a qualified Heritage Advisor pursuant to Section 189 of the *Aboriginal Heritage Act 2006*. He has a Bachelor of Arts (Botany and Geology) (Australian National University 1981), a Grad. Dip. in Maritime Archaeology (Curtin University of Technology 1982) and a Grad.Dip. in Humanities (La Trobe University 1997). Nicholas was formerly a staff archaeologist and Site Registrar with the State Government agency Victoria Archaeological Survey (1984-1989) and has worked as a consultant archaeologist/Heritage Advisor for the past 33 years.

## 2. Extent and nature of the activity area

### 2.1 Extent of the activity area

The majority of the activity area is encompassed by the property known as 124 Hopetoun Park Road. The boundaries of the activity area are formed to the north and south by the 124 Hopetoun Park Road property boundaries, to the east by Hopetoun Park Road and to the west by a combination of the top of the escarpment above Pyrites Creek and the western 124 Hopetoun Park Road property boundary (**Map 2**). The northwest corner of the activity area is approximately 150 metres from the Pyrites Creek alignment. Future development will be further from the creek due to the development setback from the top of escarpment (**Figure 1**). Cadastral details for the properties within the activity area are set out in **Table 1**.



Map 2. Extent of re-zoning application activity area.

Property	Allotment	Parish	LGA	SPI
124 Hopetoun Park Road	Lot 2 PS604556	Merrimu	Moorabool	2\PS604556
124 Hopetoun Park Road (unmade government road at western property boundary)	Lot 2 TP604721	Merrimu	Moorabool	2\TP604721
124 Hopetoun Park Road (unmade government road at southern property boundary)	Lot 3 TP604721	Merrimu	Moorabool	3\TP604721
150 Hopetoun Park Road	Lot 1 PS604556	Merrimu	Moorabool	1\PS604556
62 Cowans Road (part)	Part of Lot 1 TP681605	Merrimu	Moorabool	1\TP681605
62 Cowans Road (part)	Part of Lot 1 TP749719	Merrimu	Moorabool	1\TP749719
62 Cowans Road (part)	Part of Lot 1 TP414231	Merrimu	Moorabool	1\TP414231
62 Cowans Road (part)	Lot 6A Sec. 15	Merrimu	Moorabool	6A~15\PP3095

**Table 1: Cadastral descriptions of land within the activity area.**

## 2.2 Nature of the activity area

The activity area consists of cleared rural properties with a small area of replanted trees adjacent to the eastern boundary. Features present on the activity area currently include two rural residences, associated farm sheds, two dams, internal and boundary fencing and vehicle access tracks (**Photograph 1**). A large horse training track previously constructed on the northern half of the activity area has since been dismantled. The majority of the activity area is flat, with a slight overall fall towards the west and the southwest corner where the stormwater treatment reserve is proposed.

## 3. Environmental context

### 3.1 Geology and geomorphology

The surface geology of the activity area is largely comprised of Neogene – Pleistocene period Darley Gravels. This unit of gravel, sand and silt overlies earlier basalt lava flows of the Newer Volcanics unit. The basalt outcrops beneath the Darley Gravel on the incised escarpment to the west of the activity area. Beneath the basalt as you go down the escarpment are the non-marine sands, silts, clays and gravels of the Werribee Formation. The youngest geological unit is the Quaternary period alluvium of the alluvial plains which extend west from the base of the escarpment (**Map 3, Table 2**).

The activity area is located at the southern extent of the Western Uplands geomorphological unit within a unit of hills, valley slopes and plains (GMU 2.1.2, **Map 4, Table 3**). In terms of landform, the activity area is situated on an elevated plain that extends east from the escarpment above the Pyrites Creek alluvial plain. The activity area does not extend down the escarpment, nor into the adjacent alluvial plain.

The activity area is located in a region that would have provided abundant raw material for the manufacture of Aboriginal stone artefacts. Both fine and coarse grained silcrete is the predominant stone found in archaeological assemblages in the area, with minor components of other stone including quartz, quartzite and basalt. All of these materials occur in the the region as either surface rock outcrops, exposures in the escarpments or as cobbles in the waterways or on the alluvial plains. Silcrete is generally formed when silica, dissolved in hot alkaline ground water associated with basalt lava flows, penetrates into sediments such as silt, sand or loam, and then solidifies, cementing the sediment particles in a fine groundmass. Creeks and rivers creating incised valleys cut down through the overlying basalt and the silcrete is then exposed on the valley side or eroded to end up as cobbles in the waterways and plains below.



### 3.2 Vegetation and hydrology

The pre-1750 vegetation of the activity area has been categorised as an open eucalypt woodland and grassland with a sparse understory of shrubs and a species rich grassy and herbaceous ground layer (EVC number 653<sup>6</sup>). However this region was cleared following European occupation for agricultural purposes and has since been used for both cropping and grazing activities. It is unlikely any of the original vegetation remains. The original vegetation of the adjacent escarpment in the northwest corner is categorised as Eucalypt woodland or non-Eucalypt shrubland (EVC number 895<sup>7</sup>). While the escarpment would not have been cultivated, it is likely to have been impacted by clearing, stock grazing and increased erosion associated with European land clearing and farming practices.

In terms of hydrology, there are no creeks or un-named drainage lines within the activity area. Surface drainage flows generally south west or west. A previous geotechnical report for the activity area noted that subsurface drainage exits the escarpment in several locations adjacent to the activity area, with one such spot located in a steep gully to the northeast of the activity area (Burke 2023:18). This has caused localised erosion in several areas. To the west of the activity area, Pyrites Creek flows southwest across the alluvial plains to join the Werribee River approximately 500 metres to the west of the southwestern corner of the activity area. There are no alluvial plains or alluvial terraces within the activity area.

### 3.3 European impact on the activity area

The activity area would have been cleared for agricultural purposes early in the period of European occupation. A 1949 aerial image shows the activity as cleared farmland, partly cultivated, with trees planted around a house, several farm buildings and a small dam on the eastern side of the activity area fronting Hopetoun Park Road (**Photograph 2**). The escarpment on the western side is noticeably devoid of nearly all trees or shrubs. Increased erosion associated with land clearing and European farming practises is likely to have impacted the activity area. The white patches on the escarpment that are visible on the aerial images indicate areas of focalised erosion.

A 1990 aerial image shows further growth of trees adjacent to the house, some regrowth on the escarpment to the west of the activity area and construction of a dam in the centre of the activity area (**Photograph 3**). This image also shows the former quarry that abutted the activity area to the north. According to the previous geotechnical report this was a sand and gravel quarry. The report noted that the depth of the Darley Gravel unit visible on the escarpment adjacent to the activity area was much thinner than it was at Anthonys Cutting just to the north of the activity area. It was therefore considered "likely that historical extraction of the Darley Gravel has reduced the thickness on site to negligible amounts" (Burke 2023:8). It is likely that increased erosion associated with European farming practises on fully cleared land has also contributed to the loss of the surface soils.

Since 1990 a second residence has been built to the south of the existing one. A large horse training track was constructed in the northern half of the activity area, along with a small dam within the track at the southern end and an adjacent shed (**Photograph 1**). The training track, shed and dam were removed prior to 2022 and the land reverted to agricultural uses.

These past European activities will have impacted the Aboriginal cultural heritage that was present on the activity area prior to European occupation. The result of such impact in erosional landforms with shallow soils is that Aboriginal stone artefacts are the most likely type of Aboriginal heritage material to remain, albeit in disturbed contexts. A history of ploughing and stock trampling does not remove stone artefacts but it can damage them and also re-distribute them both vertically and horizontally. Construction and demolition of the various built or constructed features on the activity area will also have caused significant impact.

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<sup>6</sup> Pre-1750s Ecological Vegetation Classes (EVCs) are available from the Visualising Victoria's Biodiversity website at [https://www.vvb.org.au/vvb\\_map.php#](https://www.vvb.org.au/vvb_map.php#)

<sup>7</sup> Pre-1750s Ecological Vegetation Classes (EVCs) are available from the Visualising Victoria's Biodiversity website at [https://www.vvb.org.au/vvb\\_map.php#](https://www.vvb.org.au/vvb_map.php#)



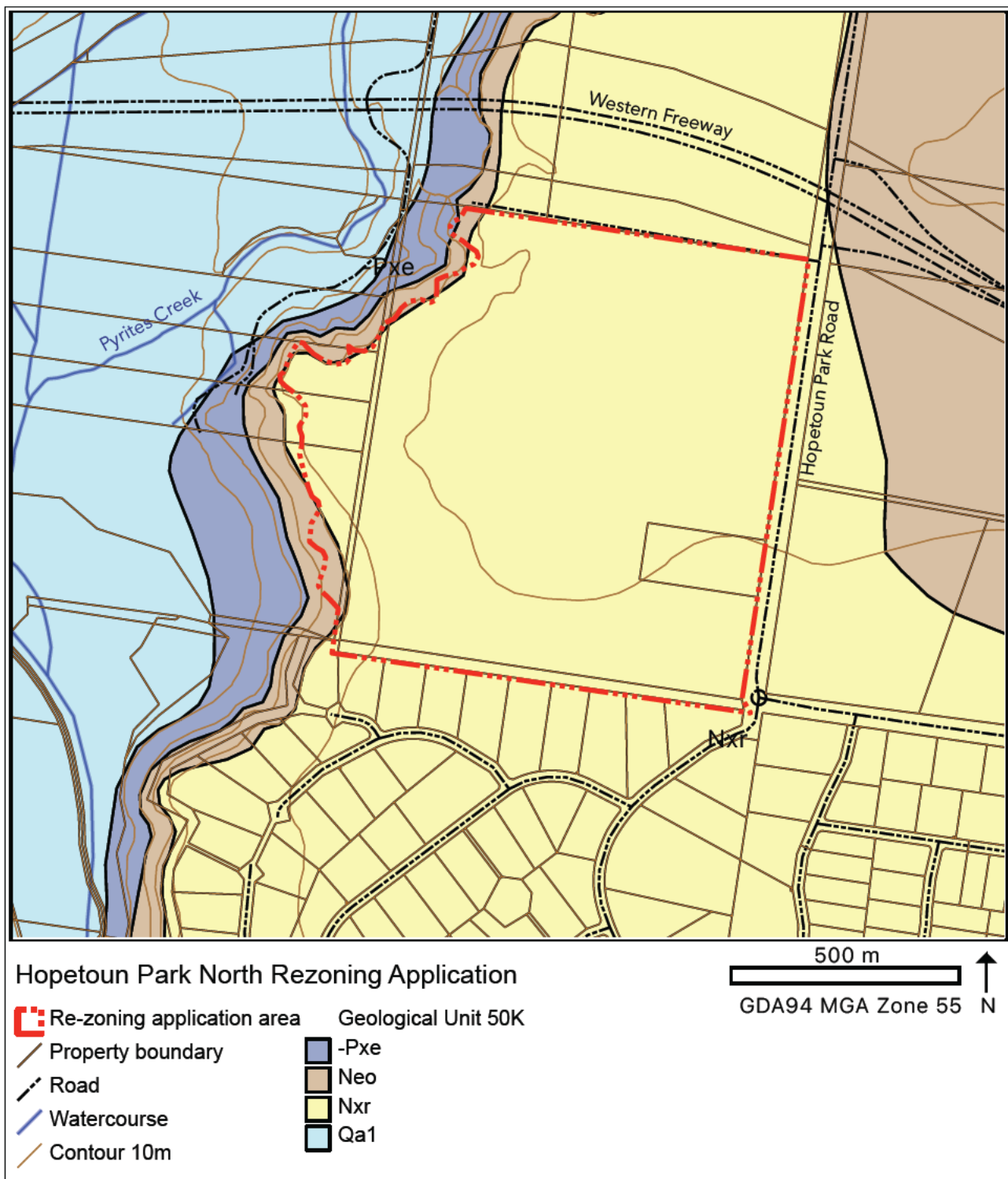
# Hopetoun Park North Rezoning Application

- - - Re-zoning application area
- Property boundary
- - - Road
- Watercourse
- Contour 10m

500 m  
GDA94 MGA Zone 55



Photograph 1: Aerial view of the activity area.

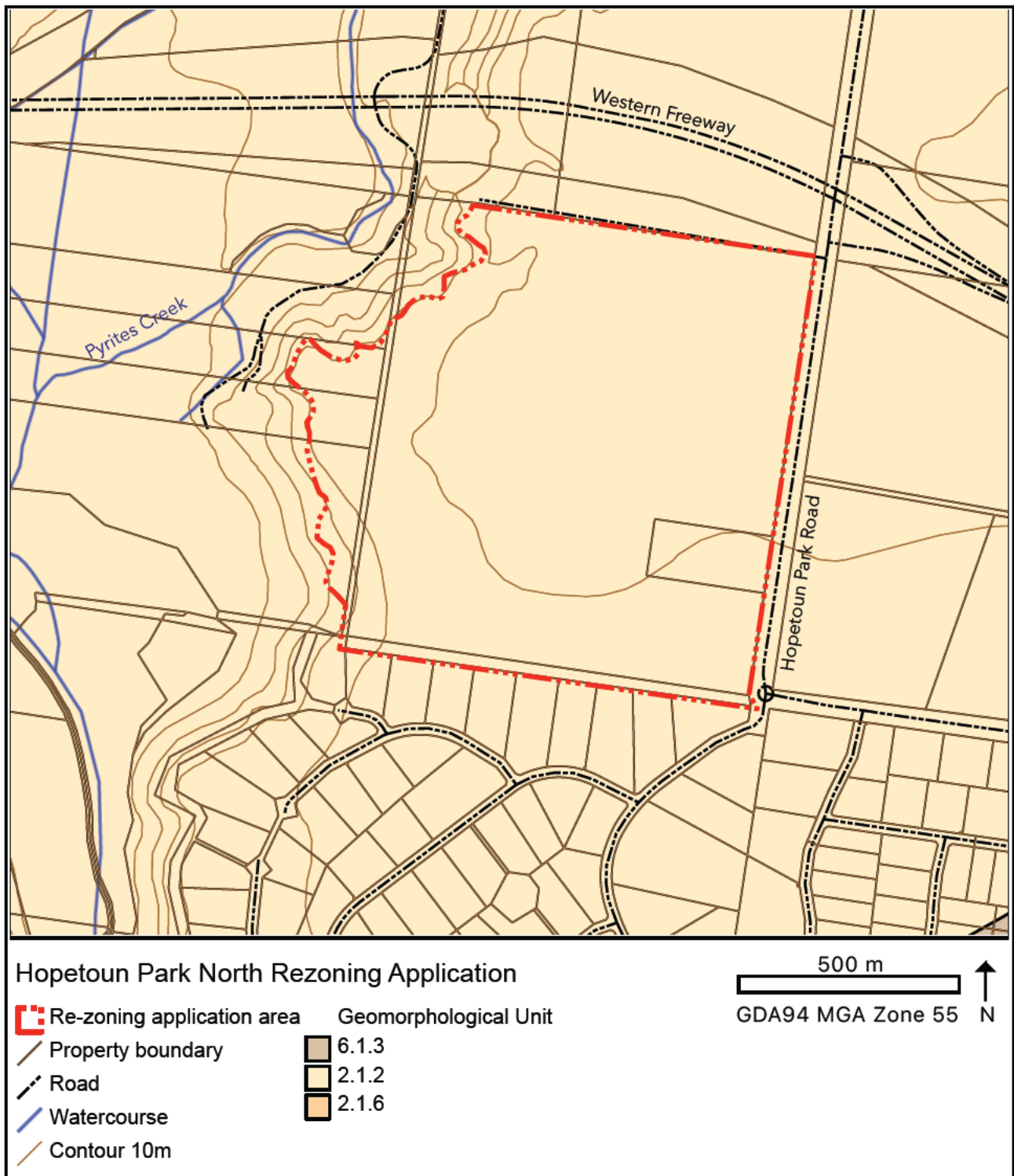


Map 3: Geology of the activity area.  
 (Data source: Data Vic, Victorian State Government.)

Geological Unit 50K		
-Pxe	Werribee Formation	Eocene to Miocene period sand, silt, clay, gravel
Neo	Newer Volcanic Group - basalt flows	Miocene to Holocene alkali and theolitic basalt; tuff, scoria, alluvium
Nxr	Darley Gravel	Neogene to Pleistocene period gravel, sand, silt with quartz and ironstone
Qa1	Alluvium	Pleistocene to Holocene alluvial floodplain and terraces, silt, sand and gravel

Table 2: Geology of the activity area.





**Map 4: Geomorphology of the activity area.**  
(Data source: Data Vic, Victorian State Government.)

Geomorphological Unit	
2.1.2	Western Uplands (WU): Dissected Uplands: hills, valley slopes and plains on non-granitic Palaeozoic rocks (Daylesford, Maryborough, Bendigo)

**Table 3: Geomorphology of the activity area.**



Photograph 2: 1949 aerial image of the activity area.  
(Image source: Landata, Victorian State Government land, title and property information.)



Photograph 3: 1990 aerial image of the activity area.  
(Image source: Landata, Victorian State Government land, title and property information.)



#### 4 Aboriginal cultural heritage

#### 4.1 Registered cultural heritage places

[REDACTED]

[REDACTED]

[illegible]

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[REDACTED]



proposed realignment of the Western Freeway (Vines 1994). The area surveyed was a transect in the paddock adjacent to Hopetoun Park Road between the dam and the northern property boundary. No Aboriginal cultural heritage was identified. There is no other record on the VAHR of any previous, pending or in preparation archaeological investigations of the activity area.

The 1994 investigation by Vines also surveyed land immediately to the north of the activity area on the same landform, where he recorded an isolated stone artefact and four surface scatters. This area and the sites recorded by Vines were later subject to further investigation during preparation of a CHMP for a new section of the Western Freeway (Howes et al. 2009). As a result of the CHMP four of the previously recorded sites were re-recorded as a single large artefact scatter (VAHR 7722-0661). Subsurface investigation found very shallow, hard soils, a very minor sub-surface component to the artefact assemblage and high levels of disturbance associated with gravelled vehicle access areas for the former European quarry which formed the western boundary of the site extent (Howes et al. 2009:60). Whilst not *in situ*, the artefact material was considered to be a result of repeated occupations over time. The edge of the escarpment overlooking Pyrites Creek was considered to be a favoured place for a range of activities (Howes et al. 2011:24). Whilst these sites are at some distance from a waterway, Vines noted that there was some evidence for the presence of natural soaks in their vicinity (1994:55). Archaeological salvage of sites that would be destroyed by the new road was subsequently carried out (Howes et al. 2011) and artefacts were later reburied at the locality.

The results of the above investigations are generally consistent with the previously developed Aboriginal site prediction model for the region in general (Vines 1994:20,73 Howes et al. 2009:30) which indicates that:

- Aboriginal cultural heritage is more likely to be located on river flats, terraces or near edges of escarpments within 100 metres of a permanent waterway, near edges of escarpments overlooking a major valley, on plains landforms near swamps, soaks or small creeks or between two watercourses.
- River plains and terraces are more likely to have a wider range of site types, including artefact scatters, scarred trees, burials and middens; they are also more likely to have significant subsurface components.
- Stone source sites may be present on escarpments above waterways.
- Aboriginal cultural heritage on edges of escarpments or elevated plains landforms are most likely to be in the form of low to moderate densities of stone artefacts in surface or shallow subsurface contexts.
- Stone artefacts are most likely to be made from silcrete, both coarse grained and fine grained, or quartz, with minor components of other stone such as quartzite, basalt, flint, chert, crystal quartz, trachyte and sandstone.

#### **4.3 Aboriginal heritage implications for the activity area**

The following general comments are based on the previous archaeological investigations, recorded Aboriginal cultural heritage in the area and the Aboriginal site prediction model as discussed above.

- Past Aboriginal use of the region in which the activity area is located is well documented.
- Within the activity area, it is considered that Aboriginal cultural heritage is most likely to occur on the western side of the activity area on land on or near the edge of the escarpment above Pyrites Creek.
- Any Aboriginal cultural heritage present is most likely to be in the form of stone artefact material with a predominance of silcrete.
- Any Aboriginal cultural heritage present is likely to be in surface or shallow subsurface contexts and have been subject to disturbance from European farming activities including ploughing and cultivation.
- There are no alluvial plains or terraces, waterways or un-named drainage lines within the activity area.

## 5. Traditional Owner consultation

The Traditional Owners for the activity area are represented by the Wurundjeri Woi Wurrung Cultural Heritage Aboriginal Corporation (WWCHAC). Consultation with the WWCHAC was sought, with the result that a meeting was held on 13th April 2023 to discuss the project and Aboriginal heritage values within the activity area.

### ***Consultation meeting - 13th April 2023, WWCHAC offices, Abbotsford***

Participants:

- Ron Jones, Wurundjeri Elder
- Allan Wandin, Wurundjeri Elder
- Bobby Mullins, Wurundjeri Elder
- Wendy Morrison, Wurundjeri Heritage Manager
- Rebecca Zeidon, Wurundjeri Heritage Advisor
- Ross Closter, Bacchus Marsh Property Group P/L, Proponent
- Anthony Closter, Bacchus Marsh Property Group P/L, Proponent
- Janet Cockbill, Clarkeology Heritage Advisor
- Nicholas Clark, Clarkeology Heritage Advisor

Details:

- The proposed activity was described and background information in relation to the environmental context and known Aboriginal cultural heritage in the area was presented and discussed. The Proponents noted that the current permit application to Council is for re-zoning of the land. A concept plan for future residential subdivision was discussed, noting that planning work in relation to the subdivision layout was still in progress. The Wurundjeri Elders noted the Aboriginal cultural sensitivity of the escarpments and the terraces associated with the waterways in this area. The proponents advised that proposed plans include a lineal reserve along the top of the escarpment that has a minimum setback of 20m from the escarpment. Other specific topics discussed included: the route to be taken by the retarding water pipeline, the current and recent land use of the activity area and the presence and nature of registered cultural heritage places outside the activity area to the north.

Outcomes:

- The Wurundjeri participants were satisfied with the meeting discussions. It was agreed that the escarpment, top of the escarpment and any alluvial terraces in the activity area were of greater sensitivity for Aboriginal cultural heritage. It was considered appropriate that the design of any CHMP for residential development be considered when more specific development plans are known. A copy of the geotechnical report that had been carried out for the re-zoning activity was requested by Allan Wandin (and subsequently supplied by email on 26th April 2023).

## 6 Aboriginal Heritage Regulations 2018: re-zoning application

### 6.1 High impact activities

For the purpose of Aboriginal heritage legislation, certain development activities are specified as *high impact activities*. Such activities have the potential to require CHMPs prior to statutory approvals for the activity being granted. *High impact activities* are specified in r.46-58 inclusive of the *Aboriginal Heritage Regulations 2018*.

The currently proposed activity is the re-zoning of the area of land shown in **Map 2**. The re-zoning of land is not specified as a *high impact activity* under the *Aboriginal Heritage Regulations 2018*.

While there is a view to future residential subdivision, plans are still being developed and subdivision does not form part of the currently proposed activity or permit application.

In relation to future residential development however, it should be noted that under the *Aboriginal Heritage Regulations 2018* the subdivision of land into 3 or more lots, of which at least three are less than 8 hectares, is

specified as a *high impact activity* (r. 49(1)). In relation to other potential future development activities, the full list of activities that are specified as a *high impact activity* can be found in Regulations 46 to 58 of the *Aboriginal Heritage Regulations 2018*. The carrying out of any of these activities in an *area of cultural heritage sensitivity* (see section below) may trigger the requirement for a CHMP. Accordingly, future development activities should be considered in the context of the *Aboriginal Heritage Regulations 2018* at the planning stage for the specific activity.

## 6.2 Areas of cultural heritage sensitivity

The *Aboriginal Heritage Regulations 2018* specify a number of criteria to define areas that may be an *area of cultural heritage sensitivity*. These areas are specifically defined in Regulations 25 to 41 inclusive but are essentially areas where Aboriginal heritage material is considered more likely to occur. Of relevance to the current proposal, the defined areas of cultural heritage sensitivity within the activity area include a registered cultural heritage place (r.25), an area within 50 metres of a registered cultural heritage place (r.25) and areas within 200 metres of a named waterway (r.26) being Pyrites Creek. The *Aboriginal Heritage Regulations 2018* also state that any such area that has been subject to *significant ground disturbance*<sup>8</sup>, with the exception of a registered cultural heritage place, is no longer an *area of cultural heritage sensitivity*.

The State Government agency First Peoples-State Relations (formerly Aboriginal Victoria) provides mapping data indicating areas of cultural heritage sensitivity to various on-line mapping systems, such as the ACHRIS<sup>9</sup> website, and the spatial data is available from Data Vic. Areas of cultural heritage sensitivity are represented on these maps by areas of green shading. These areas represent potential, rather than actual, areas of sensitivity because they do not reflect the impact of *significant ground disturbance* as specified by the *Aboriginal Heritage Regulations 2018*. Five of the eight allotments within the activity area have areas defined by the *Aboriginal Heritage Regulations 2018* as potential areas of cultural heritage sensitivity. These areas are shown on **Map 7** and listed by property and allotment in **Table 5**.

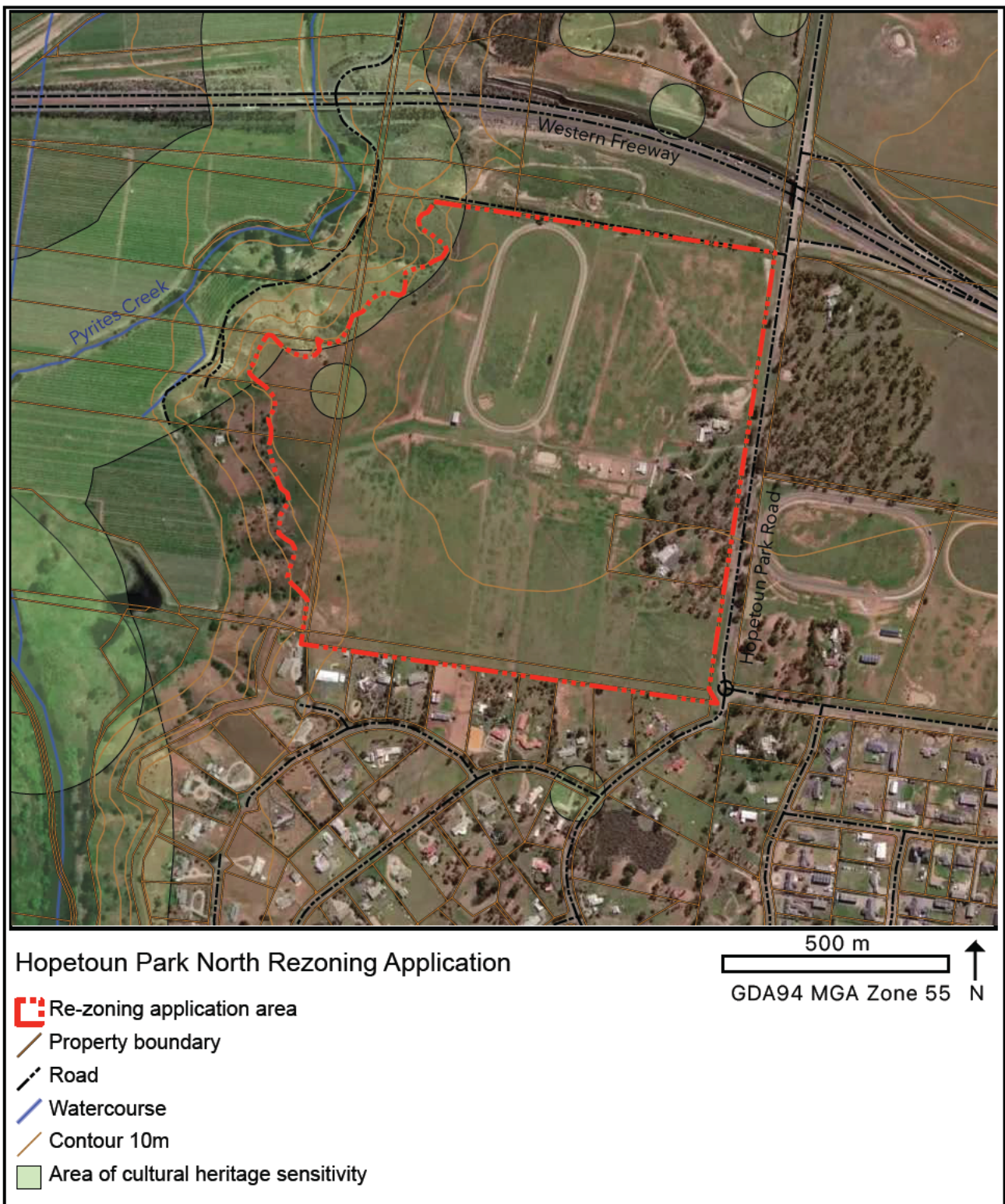
Property	Allotment	Areas of cultural heritage sensitivity
124 Hopetoun Park Road	Lot 2 PS604556	Land within 50 metres of a registered cultural heritage place (r.25). Land within 200 metres of Pyrites Creek (r.26).
124 Hopetoun Park Road (unmade government road at western property boundary)	Lot 2 TP604721	Land within 50 metres of a registered cultural heritage place (r.25). Land within 200 metres of Pyrites Creek (r.26).
124 Hopetoun Park Road (unmade government road at southern property boundary)	Lot 3 TP604721	None
150 Hopetoun Park Road	Lot 1 PS604556	None
62 Cowans Road (part)	Part of Lot 1 TP681605	Land within 200 metres of Pyrites Creek (r.26).
62 Cowans Road (part)	Part of Lot 1 TP749719	One registered cultural heritage place (r.25). Land within 50 metres of a registered cultural heritage place (r.25). Land within 200 metres of Pyrites Creek (r.26).
62 Cowans Road (part)	Part of Lot 1 TP414231	Land within 50 metres of a registered cultural heritage place (r.25).
62 Cowans Road (part)	Lot 6A Sec. 15	None

**Table 5: Areas of cultural heritage sensitivity by allotment.**

<sup>8</sup> *Significant ground disturbance* is specifically defined in Regulation 5 as meaning disturbance of the topsoil or surface rock layer by machinery in the course of grading, excavating, digging, dredging or deep ripping, but it does not include ploughing other than deep ripping.

<sup>9</sup> The Aboriginal Cultural Heritage Register and Information System (ACHRIS) is the mapping tool of the VAHR.





Map 7: Areas of cultural heritage sensitivity on the activity area.  
(Map data source: Data Vic, Victorian State Government.)

### 6.3 Cultural heritage management plans

For development activities, the possible statutory requirement for a CHMP is generally dealt with under r.7 of the *Aboriginal Heritage Regulations 2018*<sup>10</sup>. Under this Regulation there are two triggers, both of which must be activated, for there to be a requirement for a CHMP to be prepared and approved prior to seeking statutory approvals. The two triggers are:

1. that all or part of the activity is a *high impact activity*, and
2. that all or part of the activity area for the activity is an area defined by the *Aboriginal Heritage Regulations 2018* as being an *area of cultural heritage sensitivity*.

Note: other than the actual location or 'extent' of a registered cultural heritage place, an area that has been subject to *significant ground disturbance* is not an *area of cultural heritage significance*.

As set out in Sections 6.1 and 6.2 above in relation to the currently proposed activity:

1. The re-zoning of land is not specified by the *Aboriginal Heritage Regulations 2018* as a *high impact activity*, and
2. Part of the activity area for the re-zoning activity is an *area of cultural heritage sensitivity*.

***As only one of the two required triggers is activated, there is no statutory requirement for a cultural heritage management plan to be prepared in relation to the currently proposed re-zoning activity.***

### 6.4 Impact on Aboriginal cultural heritage

The current activity is the re-zoning of land. There will be no impact from this activity on the registered cultural heritage place VAHR 7722-1099 or any other Aboriginal cultural heritage that may be present within the activity area.

## 7. Future development

The comments in Section 7.1 and 7.2 below are based on current legislation and on Aboriginal cultural heritage place registrations current as at the date of this report. They are general in nature.

### 7.1 *Aboriginal Heritage Regulations 2018*: residential subdivision

Under the *Aboriginal Heritage Regulations 2018* a residential subdivision into three or more lots, where each of at least 3 of the lots is less than 8 hectares, is a *high impact activity* (r.49).

Accordingly, under the *Aboriginal Heritage Regulations 2018*, future residential subdivision within the Hopetoun Park North growth area will require a CHMP if any part of the land included in any particular subdivision application has a defined *area of cultural heritage sensitivity*. Allotments within the current re-zoning application area which have a defined *area of cultural heritage sensitivity* are listed in **Table 5** above.

In the interests of clarity for future planning, it is noted that a subdivision permit application which includes any allotment with an *area of cultural heritage sensitivity* will trigger the requirement for a CHMP for the entire area encompassed by the permit application, regardless of the fact that some of the individual allotments do not have an *area of cultural heritage sensitivity*.

### 7.2 Protection and management of Aboriginal cultural heritage

Protection and management of Aboriginal cultural heritage within the area of re-zoning should be considered by proponents of future development activities at the planning stage for the specific activity as required by the *Aboriginal Heritage Regulations 2018* and the *Aboriginal Heritage Act 2006*. Where a CHMP is required for a specific

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<sup>10</sup> Other circumstances that require a mandatory CHMPs are set out in s.46 of the *Aboriginal Heritage Act 2006*. They do not apply to the current development activity.

activity, this is the appropriate mechanism under Aboriginal heritage legislation for addressing the management of Aboriginal cultural heritage.

## 8. Conclusion

A preliminary assessment of Aboriginal cultural heritage was undertaken to inform planning considerations for a proposed re-zoning activity. This entailed a review of the relevant Aboriginal heritage legislative requirements, a review of the environmental and Aboriginal cultural heritage contexts, and consultation with the relevant Traditional Owner organisation, the Wurundjeri Woi Wurrung Cultural Heritage Aboriginal Corporation. The summary points are as follows:

- The proposed re-zoning activity will not impact Aboriginal cultural heritage.
- The proposed re-zoning activity will not impact any areas of cultural heritage sensitivity.
- There is no requirement for a CHMP in relation to the proposed re-zoning activity.
- There are no other requirements arising from Aboriginal heritage legislation in relation to the proposed re-zoning activity.
- In relation to future development activities, it would be appropriate to address the management of Aboriginal cultural heritage within the proposed re-zoning area as part of the CHMP process during the planning stage for the specific development activity.

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