

Cultural heritage due diligence assessment for St Kilda Marina, St Kilda, Victoria

FINAL REPORT

Prepared for City of Port Phillip

12 April 2018

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Summary

This report has been commissioned in response to a request by City of Port Phillip for further information relating to potential cultural heritage requirements for the new lease project for St Kilda Marina, St Kilda Victoria (the study area). At the time of report writing, the new lease project is in the infancy stages with planning for the new lease project currently being undertaken. This assessment is to largely determine significant ground disturbance and potential for harming Aboriginal cultural heritage within the study area.

This report provides formal cultural heritage advice on the proposed development. The report examines the requirements of the *Aboriginal Heritage Act 2006* (the Act) and the *Aboriginal Heritage Regulations 2007* (the Regulations), to determine whether a Cultural Heritage Management Plan (CHMP) needs to be undertaken for the study area prior to the proposed works. Additionally, the report explores in depth land use history analysis and review of possibilities for future engagement with the Traditional Owners of the area.

Advice is 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 1995*.

This review was completed by Jocelyn Strickland of Biosis. Jocelyn is a qualified heritage advisor as specified in the requirements of the Act.

The land use analysis indicates that the study area consists of reclaimed land that was formed in the 1960s, specifically for use as a marina. Review of early 19th century maps and historical documents establishes that prior to this, the coastline was adjacent to present day Marine Parade, with an area of wetlands extending to present day Mitford Street. The wetlands were infilled during the 19th century with land from Elwood foreshore.

As the specific activity proposed for the study area has not yet been confirmed (as it is dependent on the details of any future lease agreement), the assessment has focussed on past land use history, whether significant ground disturbance applies as an exemption to a mandatory CHMP under Regulation 22 of the *Aboriginal Heritage Regulations 2007*, and the potential for harming Aboriginal cultural heritage under sections 27 and 28 of the *Aboriginal Heritage Act 2006*.

This report finds that there is no requirement for a mandatory CHMP, unless future activities impact beyond the reclaimed land and into the seabed. This report further identifies that there is no potential for Aboriginal cultural heritage within the reclaimed land stratum, and therefore little benefit to the client in undertaking a voluntary CHMP prior to the proposed works.

There is one historical place listed within the City of Port Phillip Heritage Overlay that is located within the study area: HO187: Beacon, Marine Parade, St Kilda. The beacon is located at the northern tip of the St Kilda Marina and is a visually distinctive structure of significance; a scenic element contributing to the maritime character of the foreshore area. Under the Port Phillip Planning Scheme any demolition, buildings or works within the HO167 will trigger the need for a planning permit.

There are no heritage requirements under the *Heritage Act 1995*, and there is little benefit to the client in undertaking historical heritage investigations.

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1. Introduction

1.1 Location of the study area

The study area is located at St Kilda Marina, St Kilda, Victoria (Crown Land Allotments 90A, 90D & 90E). It is situated eight kilometres to the south of the Melbourne Central Business District. It measures 8.78 hectares (ha) and is a rectangular shaped area of land that is located to the west of Marine Parade and to the north of Elwood Canal (Figure 1).

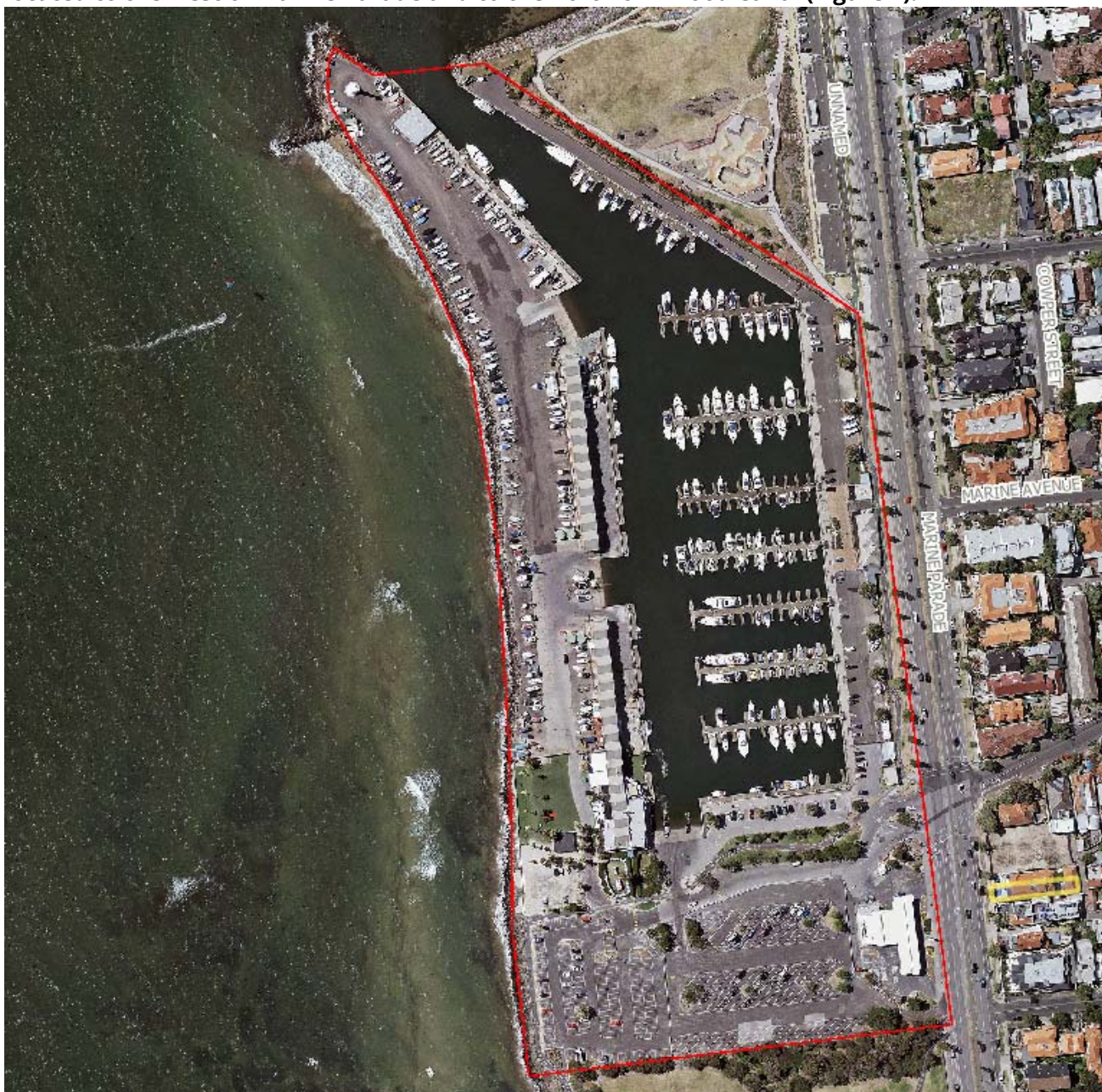


Figure 1

Table 1 Cadastral information for the study area

Address	Marine Parade, Elwood 3184
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Local Government Authority	Port Phillip
Allotment/SPI	<ol style="list-style-type: none"> 1. 90A, 90A\PP3084A 2. 90D, 90D\PP3084C 3. 90E, 90E\PP3084C
Planning Zone	Public Park and Recreation Zone
Coordinates*	321765, 5806429 (55) to 321961, 5805969 (55)
Melways\ VicRoads	2N J11 (ed. 39)\ 78 H8 (ed. 8)

* All geographic coordinates in this CHMP are referenced to the Victorian Government Standard GDA94 MGA (Zone 55).

1.2 Description of the study area

The study area is currently located on Crown land; the City of Port Phillip is the managing authority. The study area is currently being used as a marina that was developed in the late 1960s.

1.3 The activity

The study area is proposed for the securement of a new lease arrangement for St Kilda Marina (Figure 2). While no project has yet been nominated, this assessment serves to inform the City of Port Phillip and the future lessor of any cultural heritage considerations.

1.4 Aboriginal stakeholders

At the time of writing, the Bunurong Land Council Aboriginal Corporation and the Yaluk-Ut Weelam Elders Council Aboriginal Corporation are the RAP applicants 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 Victorian *Aboriginal Heritage Act 2006*, Victorian *Aboriginal Heritage Regulations 2007*, and the Victorian *Heritage Act 1995*, 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 Aboriginal Victoria's (AV) guidelines.

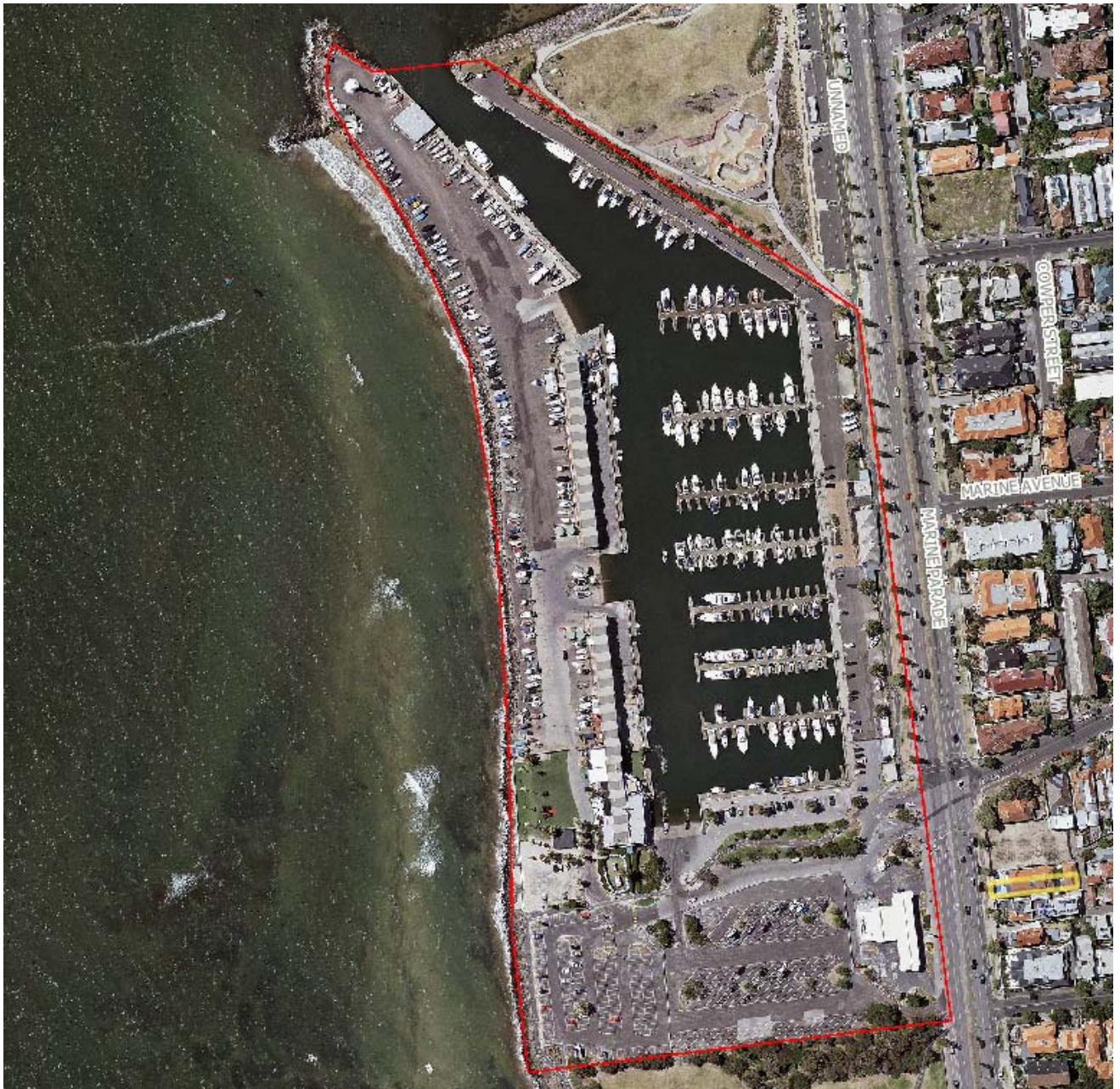


Figure 1 Study area (red) at St Kilda Marina (GeoVic3, 2015)



Figure 2 Plan of the existing activities in the study area (supplied by client)

2. Background Research

2.1 Historical Registers

A search was undertaken on 9 January 2018 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)

There is one historical place listed within the City of Port Phillip Heritage Overlay that is located within the study area: HO187: Beacon, Marine Parade, St Kilda. The beacon is located at the northern tip of the St Kilda Marina and is a visually distinctive structure of significance; a scenic element contributing to the maritime character of the Foreshore area.

2.2 Land Use History

Ethno-historical evidence of Traditional Owners

Below we have listed several references or accounts linking Traditional Owners with the foreshore of the region.

During the 1840s, George Augustus Robinson, Aboriginal Chief Protector, stated that the *Yalukit willan* clan of the *Boon wurrung* occupied the area of land between the head of Port Phillip Bay that included present day Elwood.

A diary entry from Frederick Revan Champman, a New Zealand Supreme Court Justice, documented his arrival in Melbourne in 1854 within his diary. In this he accounts an encounter with Aboriginal people from Gippsland:

I remember our excitement when one day, probably in 1857, two hundred blacks from Gippsland arrived suddenly in Hotham Street, trooping towards Elsternwick. An hour or two later, a solitary gin [female] appeared, and we gave her something to eat. She followed the tracks of the tribe in the dusty road, and when we asked her if she could see her husband's tracks, she pointed them out to us amid hundreds of others, and started away to follow them at a run, pursuing an irregular course such as he had taken when carelessly strolling with the mob. In the evening we followed the blacks, hearing that they were going to hold a corroboree, and found the whole tribe camped at a place where the trees were fairly thick. There were no residences near, save for a house or two along Brighton-road, some distance away. I think the spot must have been somewhere not far from where, in later years, Sir Frederick Sargood built his fine house (Rippon Lea). Here we stayed until midnight, mixing with the blacks, listening to their chants, and watching the strange and grave dances of the corroboree circle (The Prahran Telegraph, 1918).

Further historical documents from European settlers describe a strip of coastline between St Kilda and Brighton where a steep headland of Red Sandstone, later referred to as Red Bluff (present day Point Ormond, approximately 400 metres south of the study area), was occupied by Aboriginal people. Mrs (Dougherty) Huon (1858-1929), resident of Elwood House, Vautier Street, recalled that Aboriginal people were frequent visitors to Red Bluff, where a large bed of cockles was located (Cooper, 1931). This was further corroborated in 1974 when a shell midden was discovered during redevelopment of the road junctions of Barkly, Glenhuntly and Ormond Esplanade (Eidelson, 2006).

Joseph Gellibrand, a member of the Port Phillip Association, surveyed the east coast of Port Phillip Bay in 1836. Here it was noted that huts and a well were utilised by Aboriginal people. Gellibrand also followed an Aboriginal track that extended along the coastline (Gellibrand as cited in (Bride, 1969)). Several rock wells have been located in the vicinity of Black Rock/Red Bluff. Six native wells called *Mullum mullum* were located within the Red Bluff area that was also known to be a location where Aboriginal people fished and camped (Gunson N. , 1968, p. 10). Assistant Protector William Thomas, stated that:

There are four blocks of land already disposed of...three of the four are a serious loss to the Aborigines viz that block by the Coast by the Red Bluff, that block by Mt Martha and the splendid swamp by the Yarra; all favourable fishing places, the latter (Bolin) supported the Yarra blacks from its abounding in eels one month in the year (Thomas PRO, Petition to the Governor, 22 June 1841) (Gaughwin, 1981, p. 52).

Roadworks undertaken in the 1970s at Robinson Reserve near the junction of Glenhuntly Road and Barkly Street revealed an Aboriginal midden that contained two stone axes and other stone tools. St Kilda was known as *Euro Yroke* or grinding stone area as the red sandstone in the St Kilda area was used to sharpen stone axe blades (Eidelson, 2006).

A Dreamtime story tells of how *Bunjil* placed sacred rocks in the St Kilda area in order to stop the approach of the sea during the great flood. Eidelson speculated that the sacred rocks could include the bluff at Point Ormond (Eidelson, 2006).

Several ethno historic references indicate that the Point Ormond area was occupied by Aboriginal people. The nearby wetlands, such as those of Elwood Swamp would have been utilised by Aboriginal people as a rich abundance of flora and fauna resources.

The wider relevance of the Bay and Point Ormond to the Aboriginal people

As the site is a key part of the Port Phillip Bay foreshore, we were asked to consider the wider relevance of the bay to the Aboriginal peoples who lived in the area.

In the creation stories of the Wathaurong, Wurundjeri and Bunurong people who lived around the coast of Port Phillip Bay, the creation ancestor *Bunjil* was responsible for its formation. In the stories of the Bunurong people, one of their creation ancestors, Lohan, departed from a group of rocks near present-day Port Melbourne on a journey which created all of the country between the mouth of the Yarra River and Wilson's Promontory (Rhodes, 2003, p. iv).

Archaeological evidence from Tasmania and the Bass Strait islands confirms stories transmitted by Aboriginal people from generation to generation for thousands of years of a time when Aboriginal people lived on the now-submerged floor of Port Phillip, before the rise of sea levels during the terminal Pleistocene to mid-Holocene (c. 15,000 – 5,000 years ago). Two early European settlers, Georgiana McCrae and William Hull, recorded oral history in the 1840s in which Bunurong people described crossing the bay before it was flooded, and the flooding of the bay itself. They described Hobson's Bay as a kangaroo hunting ground, and the flowing of the Yarra River through the Heads before the sea broke through (Gunson N. , 1983, p. 2).

The importance of Port Phillip Bay to the Aboriginal peoples who lived along its shores was first recognised by archaeologist Aldo Massola, who embarked upon a series of investigations around the bay in the 1950s. The territory of the Bunurong people extended from the Werribee River in the east as far as Cape Liptrap in the west, and incorporated Williamstown, St Kilda, the eastern environs of Port Phillip Bay and all of Westernport Bay. It also extended inland as far as the Dandenong Ranges and the Upper Latrobe Valley, but Massola describes them as being essentially a coastal people (Massola 1959, p. 180). He based this conclusion on the almost continuous line of middens he found along the cliffs and sand dunes of Port Phillip Bay, Westernport Bay and Bass Strait containing the fragmentary remains of meals eaten in the same place over an extended period of time.

When they were initially identified many of these middens contained implements, including bone points possibly used for extracting seafood from their shells, as barbs on fish spears, and gorge hooks for fishing (Massola, 1959, p. 180). These bone points were also used as awls to make possum skin cloaks which were laced together with sinews. Massola notes that several very fine bone awls were recovered at Point Ormond, indicating that this singular and prominent geographic feature of the Elwood area was well-used by Aboriginal people. It is a natural lookout encompassing all of Hobson's Bay, and the discovery of an extensive shell midden by archaeologists in 1974 revealed that Point Ormond was utilised as a site for communal, social gatherings by the Bunurong people (Phillip, n.d.).

The bay environment provided them with a wealth of resources. At least 29 plants are known to have been native to the coastal area of Port Phillip in 1803, many of which were of economic value to the Bunurong people (Presland, 1983, p. 10). Shellfish was gathered from the rock platform and the sandy shore, shallow water fish and rays were speared; waterfowl were trapped or caught in nets.

The Bunurong people used coastal tracks to travel seasonally through their country, moving gradually around the bay in small groups during the summer months, travelling towards Nine Mile Beach in Mordialloc, Mount Eliza (*Berringwallin*), Mount Martha (*Nungallin*), Arthur's Seat (*Wongho*), Point Nepean (*Mon Mare*), Cape Schanck (*Tunnahan*) and Sandy Point (*Yellodunwho*). They then visited the inlets before turning inland in the winter months, returning via Mahoon (the Western Port plains) to Dandenong (Sullivan 1981, p. 29). Many of their tracks led to fresh water wells at Beaumaris (Ellender, 1994, p. 30) and there are contemporary descriptions of the bark hut villages they erected at camps located on creeks and rivers within five kilometres of the bay, giving them access to both coastal and inland resources (Sullivan, 1981, p. 30). Periodically they gathered in larger groups for ceremonial purposes; one such gathering was observed in the coastal area near Carrum Swamp (Gunson N. , 1983, p. 2).

The bay was both a provider of sustenance and a spiritual home to the Aboriginal peoples who lived along its shores, expressed after death through burials situated on the high ridges of coastal dunes, facing towards the bay.

Post-European Settlement

Following post-European settlement to Victoria, the rich pasture land within and around St Kilda was used from grazing imported livestock (Eidelson, 2006). In 1836, Archibald McLaurin and his brother had a lease to graze sheep from Caulfield to Point Ormond that, at the time, was known as Red Bluff. In 1839, Captain Benjamin Baxter was granted a lease of land to graze cattle from Point Ormond to Port Melbourne. The first building known within the historical record was Baxter's stockman's hut that is commemorated by a plaque in Alfred Street (ibid).

Elwood and the Point Ormond area was one of the first quarantine stations, St Kilda's first cemetery, and the etymological origin of Glen Huntley Road (originally known as Typhus Road) and suburb (Eidelson, 2006).

Upon arrival to Australia in 1840, the immigrant carrying ship, *Glen Huntley*, was found to be a plague ship. Governor La Trobe instructed that the ship be sent to Point Ormond, then considered to be remote from Melbourne (ibid). Two camps were set up: one for the sick emigrants, and one for those free of fever. The dead were buried at the crown of the bluff and repatriated in 1898 within the St Kilda cemetery. The healthy emigrants were released from quarantine on 1 June 1840 and the remainder on 13 June of the same year. The quarantine station was closed in the 1850s (ibid).

Roads and tracks from St Kilda to Elwood were largely determined by the topography of the area. The most direct route from St Kilda to Elwood was via a track up High Street. However, the steep climb was not favoured by many travellers. Many used the lower track that diverted at St Kilda Junction to the west side of the hill. Early maps show that there was a track present at modern day Fitzroy Street, with a swamp (present day Albert Park Lake) to the north and a hill to the south near the corner of Esplanade and Fitzroy. The track then forked into two roads, one leading to Upper Road (present day Esplanade) and the Lower Road (present day Jacka Boulevard) (ibid).

The Crimea War heightened a sense of invasions in Victoria during the 1850s. As a result, three rifle butts were established between Elwood and St Kilda in 1859. A voluntary military regiment was established in Point Ormond in the 1860s. Fortifications were built to the north of Point Ormond that used earthworks, gabions and sandbags in which a battery was established (Eidelson, 2006). A map of the military exercise in St Kilda (1862) shows the location of the fortifications as well as the present study area (Figure 3). This figure importantly shows that the wetlands and adjacent shore line extended as far east as Milford Street (present day Mitford Street). In 1862 the military manoeuvre at Point Ormond consisted of 1800 militia and troops as well as 20,000 onlookers (Figure 4).

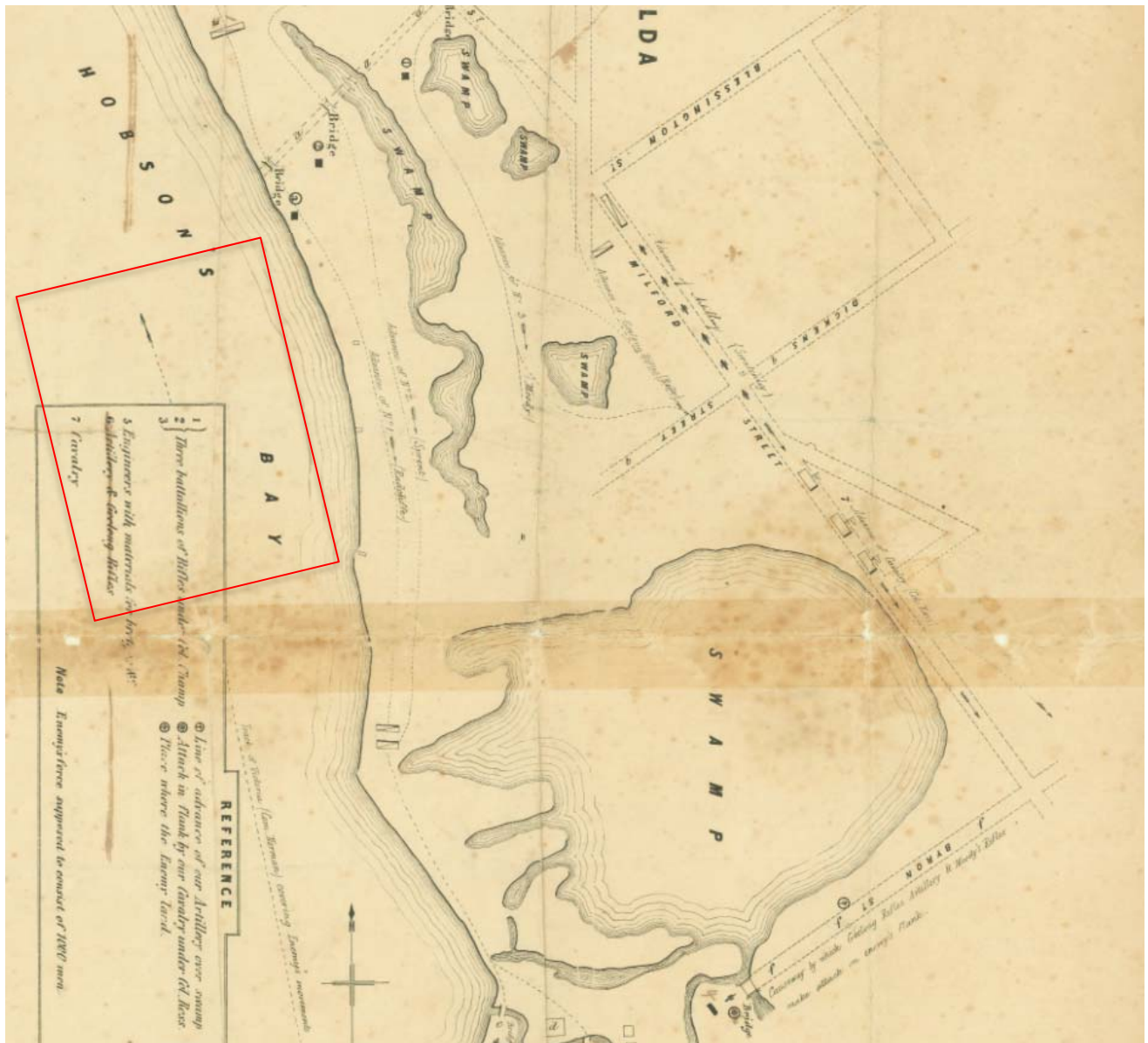


Figure 3 Map of a military exercise in the St Kilda area (Army Victoria, 1862)

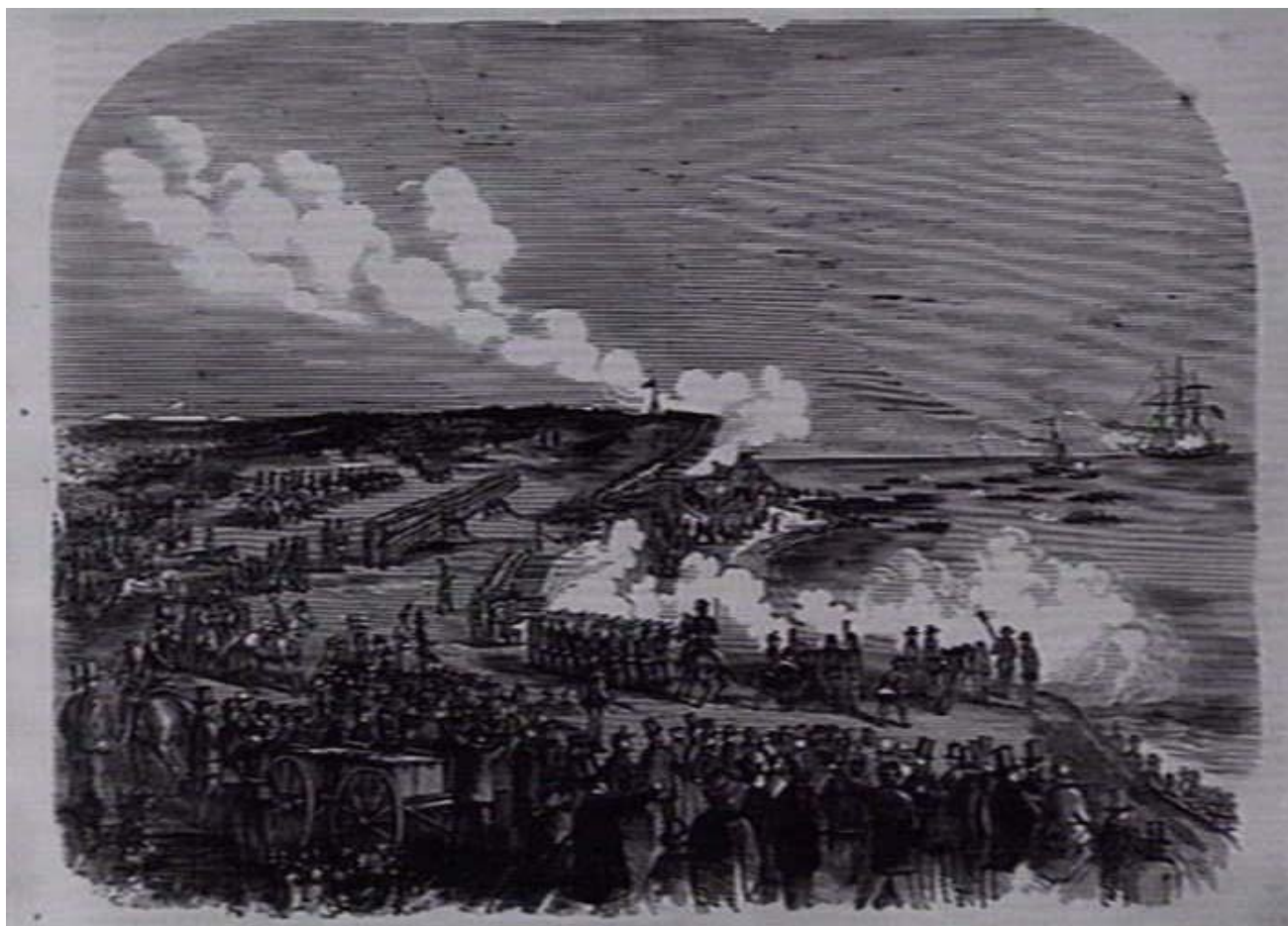


Figure 4 Volunteer land and sea fight at Point Ormond (Somerton, 1862)

Figure 3 also shows the location of Elwood's Southern Swamp. Elwood Canal originated as Elster Creek, a natural watercourse that terminated in a 108-160 acre wetland, depending on rainfall, located near the beach and between Dickens Street, Mitford Street, Glenhuntly Road and the beach (refer to Figure 3) (Eidelson, 2006; Heritage Alliance, 2004). Further wetlands were located around the present day Elsternwick Golf Course to the Gardenvale railway Station and the Western Swamp was located at the southern end of Albert Park Lake (Reeves & Wixted, 2005).

Following post European settlement to the area, the wetland was looked on as an impediment to development (Eidelson, 2006). The Southern Swamp was withheld from sale, leasing and licensing with the exception of mining. However, no mining activity is known to have occurred within the area (Reeves & Wixted, 2005).

Europeans used the swamp as waste disposal (Eidelson, 2006). By 1860 the foul conditions of the swamp became a matter of local debate, with St Kilda Council removing the nearby abattoir and night soil depot. In 1870, neighbouring Brighton cut a drain through the swamp. In order to prevent flooding in Elwood, the drain had to be continued to the Bay that entered the sea approximately 150 metres to the north of the canal's present mouth. By 1888 the odour from the swamp was described as an *intolerable nuisance* (ibid). Following this, 60 men were employed to construct a 1.2 kilometre concrete canal from Glenhuntly Road to Elwood beach. Mooring rings were provided on the canal for tying up boats and bridges were constructed over the newly formed roads made possible by draining the land, Marine Parade, Barkly, Addison and Ruskins Streets as well as Broadway (Illustrated Australian News and Musical Times, 1889).

An additional 134 acres of swamp was drained on crown land. Initial stages of the swamp drainage was undertaken by engineer George Higgins. Higgins employed a von Schmidt suction dredge (Plate 1) to undertake the works that could pump around 50,000 gallons of water an hour (Reeves & Wixted, 2005). Once the swamp was drained, the dredge was used for reclamation work. The initial draining of the swamp led to the discovery of ironstone beneath the swamp's waters. A 1981 article notes:

When the contractor tendered for the work three years ago he put bores down all over the swamp, and was satisfied that the work of reclamation could be accomplished inside of three years. Some little time ago, however, a discovery was made that completely upset the contractor's calculations. Instead of only having to lift mud out of the swamp it was found that in several places the swamp was rich in the possession of a particularly obstinate form of ironstone (Geelong Advertiser, 1891).

Removing the ironstone took an additional seven months. This also shows that not only were the waters and underlying mud of the swamp removed by the dredge, but the underlying exposed natural swamp deposits as well. Following the completion of the removal of the swamp, the large void had to be infilled in preparation for construction. Newspapers articles state that the infill material came from Elwood foreshore:

The contractor for filling up the Elwood Swamp recently carried out a series of borings on the fore shore of the Bay at Elwood, and ascertained that splendid sand and good clay, admirably suited for filling up, could be obtained here. With the aid of the von Schmidt machine and suitable pipes he [Higgins] will pump water charged with sand and clay on to the land to be filled up. The machine will place it on the land and spread it, and the water will be run back by means of 'shoots' into the Bay (Illustrated Australian News and Musical Times, 1889).

The swamp was reported as completely filled by 1905 (Eidelson, 2006).

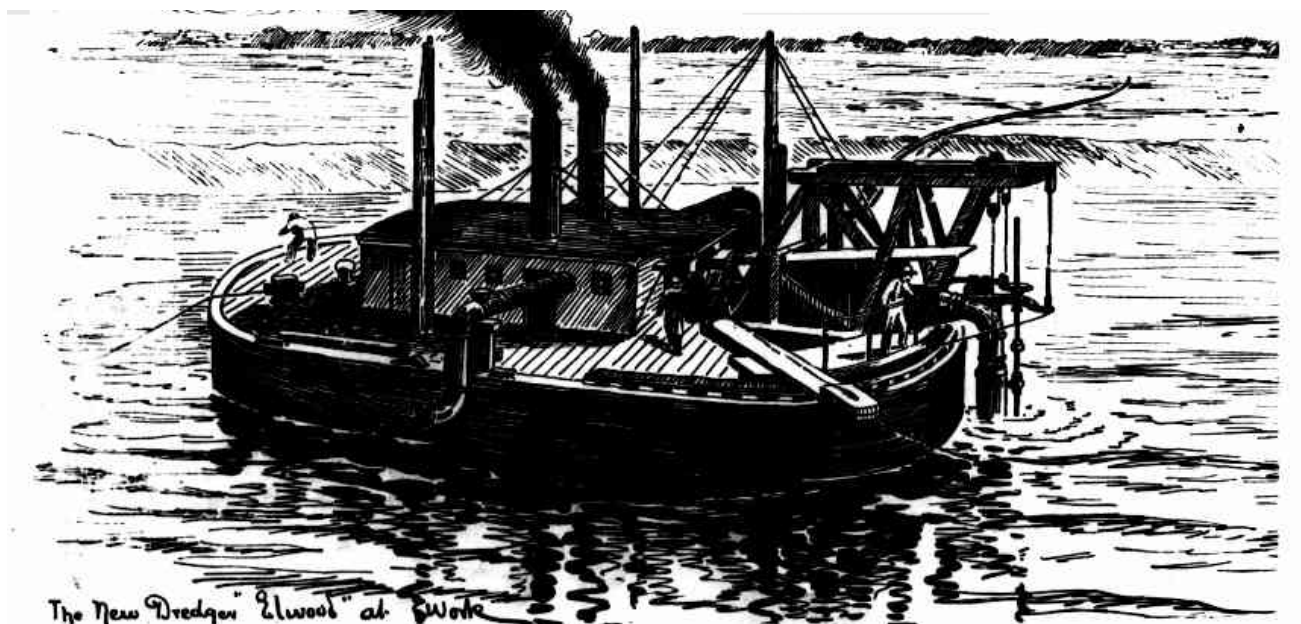


Plate 1 The von Schmidt Dredge *Elwood* (Illustrated Australian News and Musical Times, 1889)

An early map of the land within St Kilda shows that the area of the foreshore from the high water mark to the west of present day Spenser Street (within the locality of the study area) was reserved for plantation, possibly to counter effect the endemic tree felling noted within the area (Figure 5). This also shows the layout of the area prior to the reclamation of the foreshore area.



Figure 5 Town lands (of) St Kilda parish of South Melbourne (Department of Lands and Survey, 1869). Approximate location of study area in red.

In 1887, the Mayor of St Kilda asked the government for a military road on the foreshore from Point Ormond to Port Melbourne in order to enable the military to move artillery from battery to battery (Eidelson, 2006). This road would become present day Beaconsfield Parade and Marine Parade. This project sped up the reclamation of the marshlands within and around Elwood. Spoil from the bluff at Point Ormond was used as the filler material. Marine Parade was extended in 1904 with the construction material being obtained by cutting out 2.4 metres of the bluff (ibid).

The first sales of residential land allotments within the former swampland occurred in January 1908. The land between marine Parade and Broadway was sold in 1914. The land upstream of Broadway was not sold until the 1920s (ibid).

By 1960 improvements to the canal and to the land around the canal were being made. Two new bridges were constructed off of marine parade that was made possible by reclaiming 45 acres of land from the sea. Twenty five acres of land was reserved for recreation purposes and the remaining 20 was reserved for the construction of a marina (ibid).

An excerpt from Anne Coleman's *St Kilda: The Show Goes On* describes the construction of the St Kilda Marina:

Another substantial portion of the foreshore was alienated from the public and leased to private interests when the Marina was constructed. The City Engineer, Maurice Moran, convinced Councillors that land reclaimed from the sea opposite Marine Parade should be leased to a private enterprise to develop wet and dry pens to store boats, rather than for the establishment of a recreation area and plantations as originally proposed in the 1950s.

The concept of a Marina was American and the St Kilda version was modelled on the floating dock system at Long Beach, California. The St Kilda Land Act (1965) authorised the venture, and the State Government finally approved the tender of the only applicant to develop the twenty acre site in 1968, granting a lease until 2019. The first stage was opened in 1969 and provided the only facilities of its type in Australia: concrete sea walls surrounded wet pens for about two hundred boats, and dry storage was provided in triple tiered racks for another two hundred smaller craft which were retrieved by fork lift. A recreation area was developed by Council on the remaining twenty five acres of the original forty five which had been reclaimed (Longmire, 1989).

In 1961 the project was first proposed by City Engineer M.O. Moran, following his overseas study tour (Southern Cross, 1968). Stage 1 of the marina construction project began in 1966 and consisted of the land reclamation and creation of the boat harbor with three ramps and roadways (Built Heritage Pty Ltd, 2017) (Plate 2- Plate 3).



Plate 2 **Beginnings of land reclamation for the St Kilda Marina (client provided, no date)**

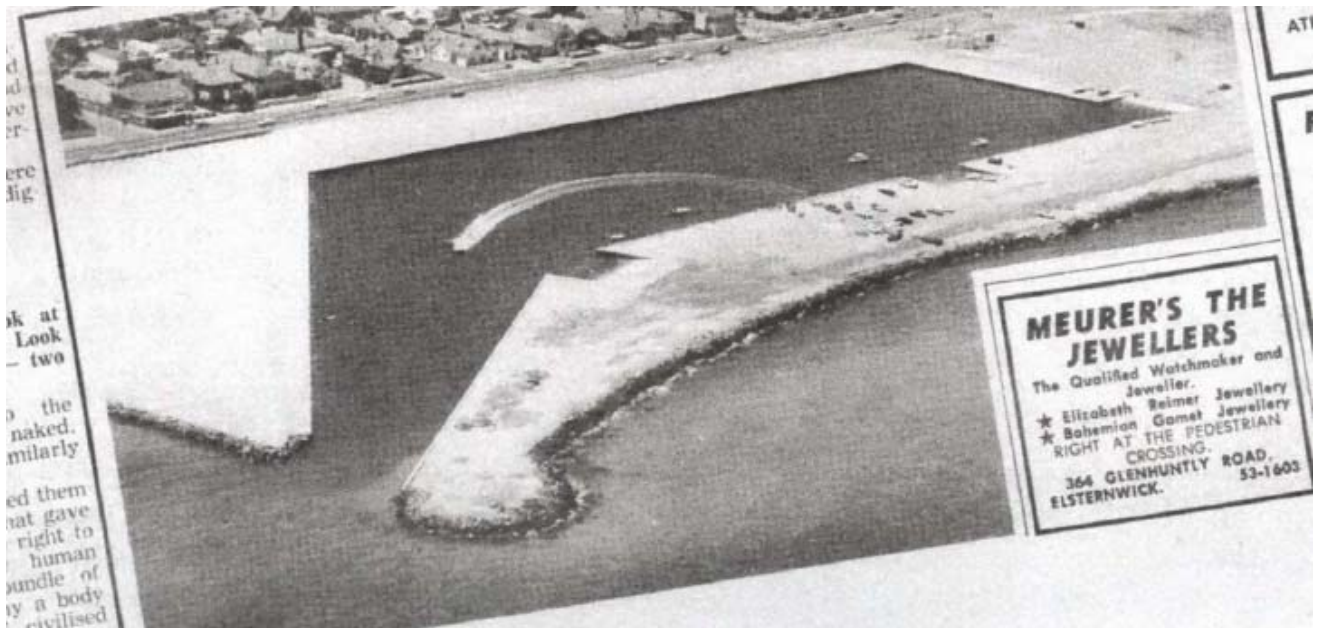


Plate 3 Stage 1 works of the St Kilda Marina Project (Southern Cross, 1968)

In 1967, St Kilda Council called for tenders for Stage 2 of the Marina construction project that would include the formalised development of the boar harbor as a marina with associated facilities (Built Heritage Pty Ltd, 2017).

1968 the Mayor of St Kilda, Mr. H. Hall-Kennedy announced the detailed plans for the proposed \$2 million marina (The Canberra Times, 1968). The winning tender was from Australian Marinas (Australasia) Pty Ltd. Arch Spooner, who established Australian marinas (Australasia) Pty Ltd, visited marinas in California from which the St Kilda Marina is purported to be based on. An article for the proposed Stage 2 works stated that the marina would have moorings, dry boat storage and related facilities, but would also contain *a museum, seaquarium, 50-room motel, restaurant, convention centre...gymnasium, sauna, squash courts, heliport, service station, kiosk, workshop and bulk store* (Age, 1968). The project was to be divided into three phases: Phase 1 would consist of the construction of the service station, administrative offices, workshop, wet and dry pens, observation facilities, safety patrol, fuelling point and a pilot beacon. This phase of works was largely completed by April 1969. Phase 2 was to consist of a boat display, marine centre and sports centre. The sports centre was omitted from the final scheme of works. In August 1969, most of the key elements of the second phase of works were completed, including: the floating berths, dry storage building, marine service centre and amenities block (Built Heritage Pty Ltd, 2017).



Plate 4 Aerial image of St Kilda Marina, 1969 (Modern Boating, 1969)

The new marina was reported as almost fully finished in 1970. At this time the marina architects were praised for its *two-storey boat-house that provides undercover storage for 200 boats... 200 pens that can take craft up to 59 feet long...* The article also refers to the pilot beacon, located on the northern extent of the marina, cited as being an Australian, and possibly world, first, made entirely out of fibreglass (Weekender, 1970).

2.3 Aerial Imagery

Aerial imagery from 1946 shows that the coast begins immediately west of Marine Parade (Figure 6- Figure 7). This is prior to the reclamation of land in the 1960s. Aerial images from 1961 show that reclamation works had yet to begin within the area of the present day St Kilda Marina (Figure 8). More recent aerial images show that the marina is little changed since the initial reclamation and construction (Figure 9-Figure 11).



Figure 6 1945 aerial image of the study area (Department of Lands and Survey, 1945).
Approximate location of study area in red.



Figure 7 1945 aerial image of the study area (Department of Lands and Survey, 1945).
Approximate location of study area in red.



Figure 8 1961 aerial image of the study area (Department of Lands and Survey, 1961).
Approximate location of study area in red.



Figure 9 2001 aerial image of study area (GeoVic3, 2015)



Figure 10 2009 aerial image of study area (GeoVic3, 2015)

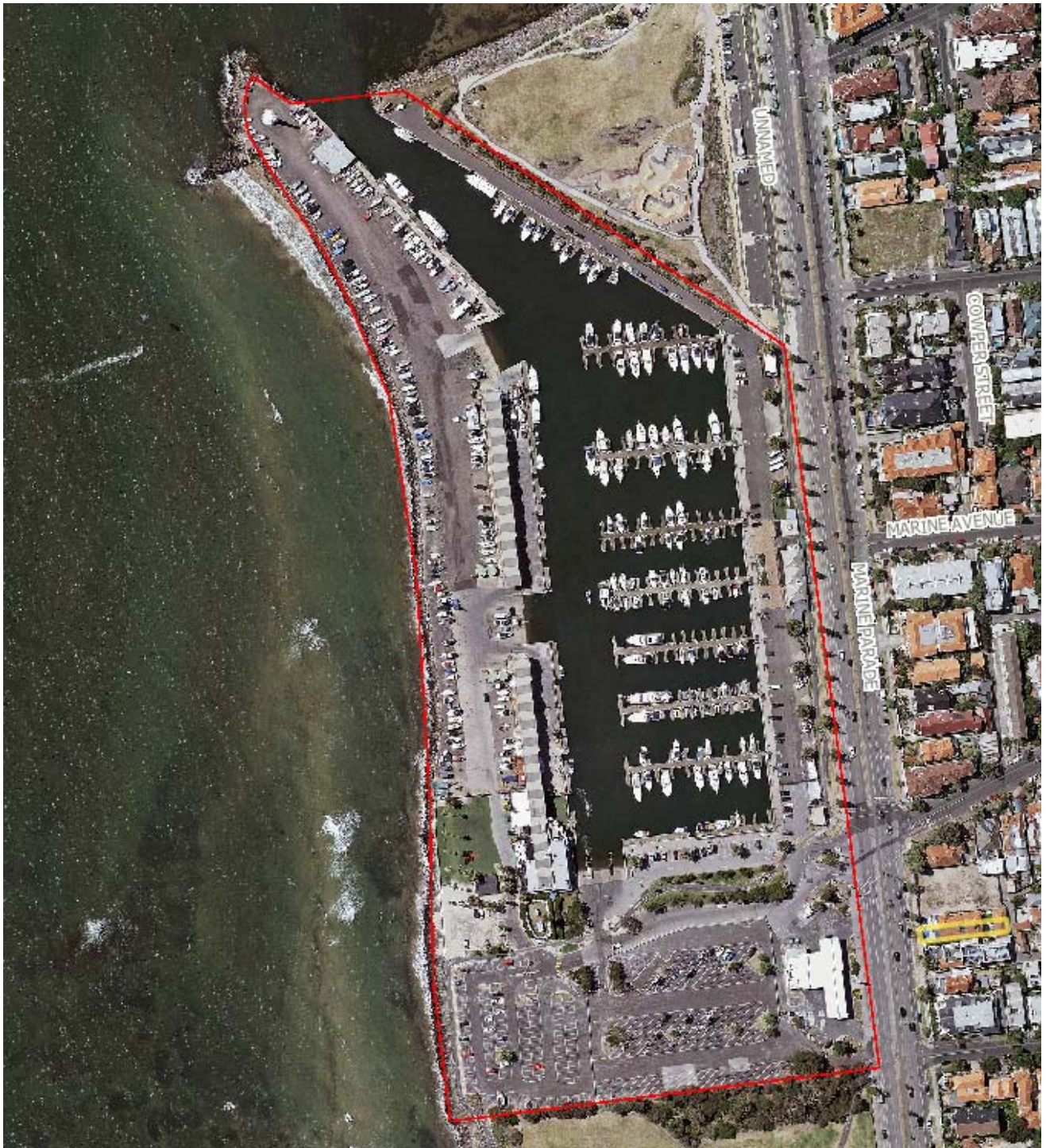


Figure 11 2017 aerial image of study area (GeoVic3, 2015)

2.4 Evidence from previous assessments

Several previous archaeological assessments have been undertaken within the area of reclaimed foreshore land and will be discussed further below in order to ascertain the archaeological sensitivity and potential of the proposed study area.

A CHMP (12220) was undertaken by Vaskos and Donati (2012) prior to proposed works at Marina Reserve, located abutting the present study area to the northeast. The desktop assessment concluded that there are a

small number of previous archaeological investigations that have been undertaken within the immediate area. Land along the St Kilda foreshore has been extensively modified by land clearance, beach re-nourishment and erosion, as well as the construction of breakwaters, sea walls, piers and the channelling of estuaries. The construction of the Marina Reserve resulted in this area being reclaimed and was constructed through the introduction of rock, stone and introduced fill. Based on this, it was considered unlikely that Aboriginal cultural heritage material would be present within the study area. As such, no further investigation was required.

A CHMP (13455) was undertaken by Spry (2015) prior to the development of 6 Hood Street for a residential subdivision, located c. 120 metres to the east of the present study area. The proposed development site was located within the area formerly occupied by Elwood Swamp. The desktop assessment concluded that due to the draining and infilling of Elwood Swamp as well as reclamation works of the land, it is unlikely that Aboriginal cultural heritage material be identified within the activity area; however, it was thought possible that material may exist in less disturbed pockets within the activity area. Therefore, a standard assessment was undertaken. No Aboriginal cultural heritage material was identified during the standard assessment. The landform identified within the activity area, a level plain, was uniform across the site and considered to be of low to moderate archaeological sensitivity as it is located within 200 metres of the high water mark of Port Phillip Bay. The activity area was also assessed to contain a moderate to high level of prior disturbance associated with previous and current landuse practices of the property. During the complex assessment, a 1x1 metre test pit was excavated within the western aspect of the activity area to a depth of one metre as well as four additional shovel test pits to a depth of 1.1 metres. The excavations reflected the geomorphological information for the activity area. No Aboriginal cultural heritage material was identified during the subsurface investigations. A high degree of disturbance was also identified across the entire activity area associated with the past use of the activity area as residential properties.

A CHMP (13625) was undertaken by Mitchell and Hardiman (2017) prior to alterations and additions to the existing residential property at 77 Marine Parade, Elwood, located c. 225 metres to the south of the present study area. The activity area was located within coastal dunes adjacent to the coastline and areas of wetland. The desktop assessment concluded that the activity area has low potential to contain Aboriginal cultural heritage material due to the location of the site within reclaimed swamp land. However, as significant ground disturbance could not be conclusively shown, a complex assessment was undertaken. (A standard assessment was not undertaken due to the activity area being covered by landscaped gardens and structures; therefore, a survey of the area would not contribute any further information with respect to any Aboriginal cultural heritage that may be present within the activity area. During the complex assessment, two 1x1 metre test pits and 17 shovel test pits were excavated across the activity area. The complex assessment concluded that the activity area was subject to ground disturbance due to drainage works for the Swamp as well as the construction and occupation of the existing dwelling and underground services. No Aboriginal cultural heritage material was identified within the activity area and it was concluded that there was no potential for Aboriginal cultural heritage material to be present.

Summary

Several archaeological investigations undertaken within close proximity to the proposed study area show that land to the south of Mitford Street was located within areas of former swamps that have been impacted on during the 19th century drainage works of the swamp as well as land reclamation of the area. Therefore, there is little to no potential for Aboriginal cultural heritage material within these areas of land.

2.5 Dial Before You Dig

A Dial Before You Dig search was undertaken on 11 January 2018 in order to determine the presence of any underground services and utilities within the present study area. The following assets are located within the study area:

- BP: A BP service station is located in the southeastern aspect of the study area. Several items of BP infrastructure are located here (Figure 12).
- City of Port Phillip: Several stormwater drains are located within the study area (Figure 13-Figure 14) as well as along the adjacent Marine Parade (not shown).
- MultiNet Gas: Underground gas assets are located within the study area, mostly within the southern aspect of the site (Figure 15).



Figure 12 Location of BP assets within the study area

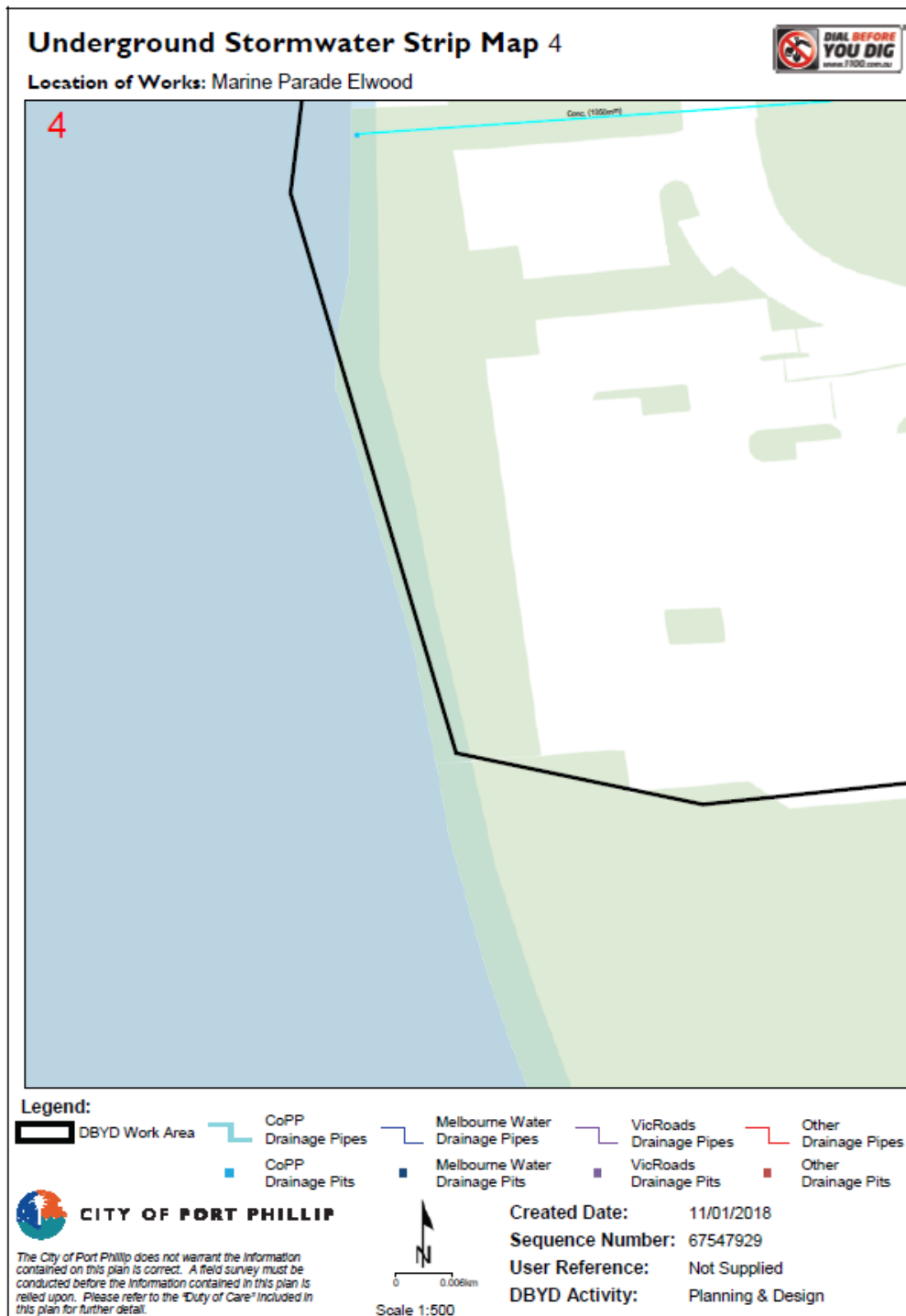


Figure 13 Location of City of Port Phillip stormwater drains in the southern aspect of the marina

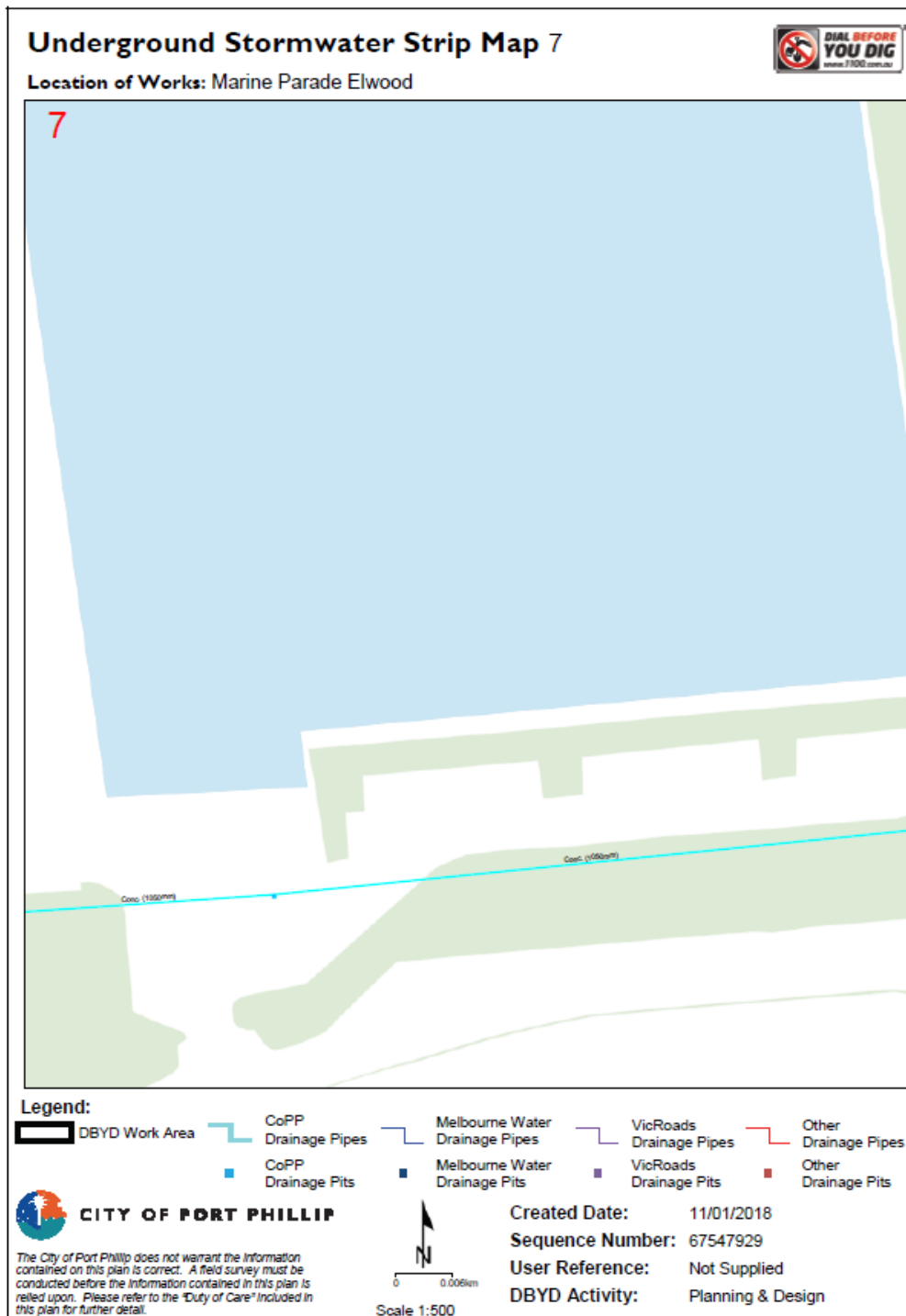


Figure 14 Location of City of Port Phillip stormwater drains in the southern aspect of the marina

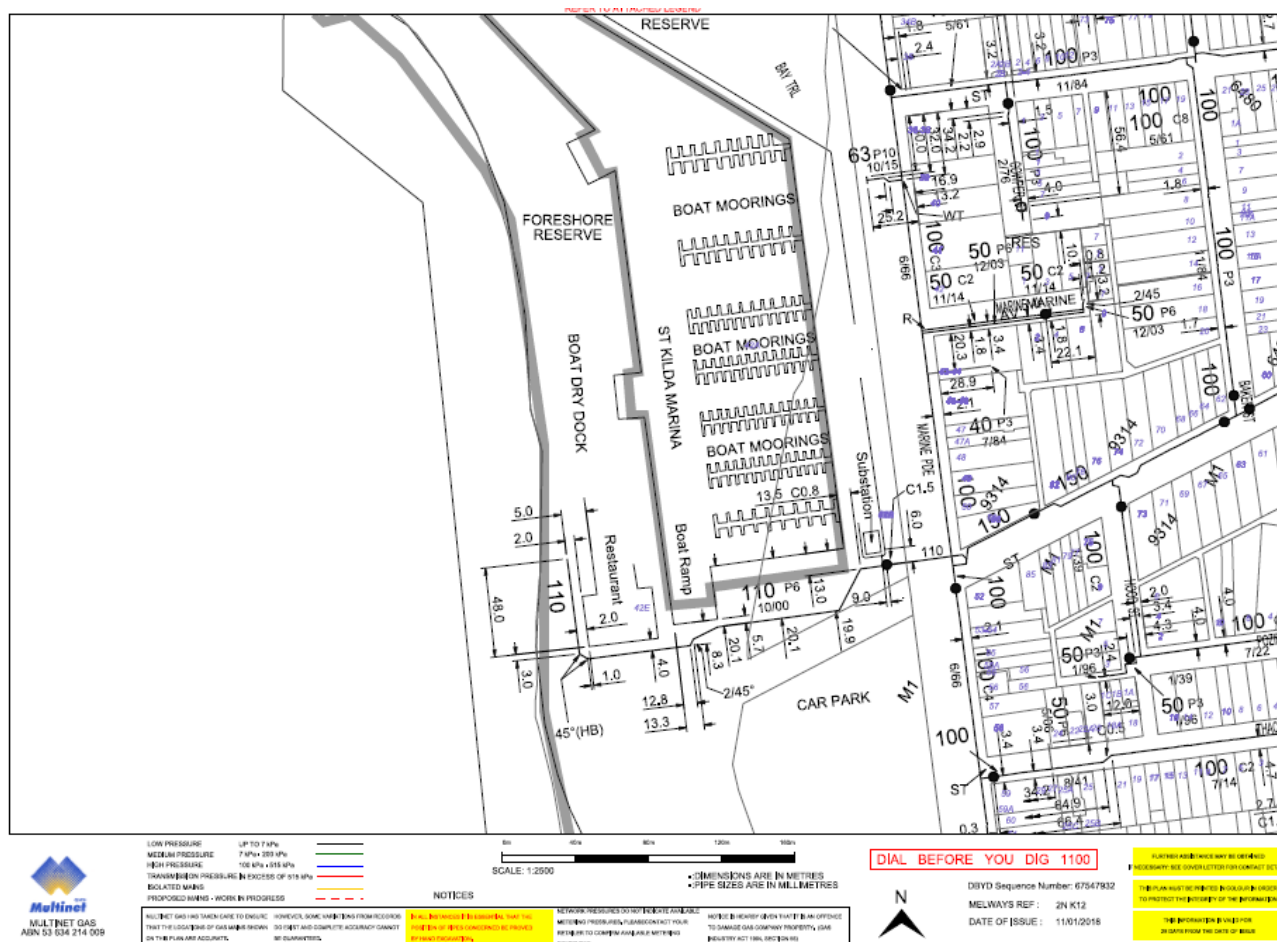


Figure 15 Location of Multinet Gas assets within the southern aspect of the study area

3. Historical heritage - investigation

3.1 Historical heritage – mandatory requirements

HO187: Beacon, Marine Parade, St Kilda is located at the northern tip of the St Kilda Marina and is a visually distinctive structure of significance; a scenic element contributing to the maritime character of the Foreshore area. Under the Port Phillip Planning Scheme any demolition, buildings or works within the HO167 will trigger the need for a planning permit.

3.2 Historical heritage – voluntary requirements

The Aboriginal heritage investigation section of this report (Section 4) documents the land use history and reclamation across the entire study area, such that the presence of any historical heritage material is highly unlikely. No voluntary historical heritage measures are warranted given this level of disturbance.

4. Aboriginal cultural heritage - investigation

4.1 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?

4.2 Is the study area an area of cultural heritage sensitivity?

The following information and databases were reviewed on 9 January 2018:

- Victorian Aboriginal Heritage Register (ACHRIS, 2017)
- Aerial imagery
- Geological and geomorphological databases and mapping (GeoVic3, 2015)
- Victorian Register of Geographic Names (VICNAMES, 2015).

The study area is within an area of cultural heritage sensitivity under Regulation 27:

27 Coastal Crown Land

- (1) Subject to subregulation (2), coastal Crown land is an area of cultural heritage sensitivity.
- (2) If part of an area of coastal Crown land has been subject to significant ground disturbance, that part is not an area of cultural heritage sensitivity.

The study area is entirely within the area of cultural heritage sensitivity associated with coastal Crown land. This is illustrated in Figure 16 below.



Figure 16 Study area (red) showing an area of cultural heritage sensitivity (green) (ACHRIS, 2017)

4.3 Are the proposed works a high impact activity?

As City of Port Phillip are currently preparing for a new lease agreement, there are no proposed works to consider as yet. This section can be updated when more is known about future activities.

A list of high impact activities can be reviewed in the *Aboriginal Heritage Regulations 2007*.

If the future works result in mechanical disturbance to the seabed, then there is a high likelihood that those works are considered high impact. This is because the vast majority of high impact activities under the *Aboriginal Heritage Regulations 2007* require any works to result in Significant Ground Disturbance, However in this instance, the vast majority of works are likely to occur only within the reclaimed land strata.

4.4 Has there been significant ground disturbance to the study area?

No, Yes, the study area has not undergone significant ground disturbance (SGD) to all of its surfaces. St Kilda Marina is an engineered landscape, in which all of the foreshore area was reclaimed during the 20th century, thus the original (being the sea bed), is present below the surface and has not been disturbed.

Clause (2) of Regulation 23 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 cannot be shown to have undergone SGD through mechanical excavation, during the reclamation of land on which the St Kilda Marina was constructed.

5. Aboriginal cultural heritage – conclusions

The proposed activity is not yet known, and may or may not be a high impact activity. The study area is within an area of cultural heritage sensitivity. The study area cannot be shown to a level of high certainty to have been subject to significant ground disturbance (SGD). The seabed in this instance is considered to be the natural ground surface, and has been subject to reclamation.

6. Aboriginal cultural heritage - mandatory requirements

Requirement for mandatory CHMP

At present there is no requirement that a mandatory CHMP. The requirement for a CHMP will be dependent upon construction methodology, and whether it penetrates the seabed beneath the reclaimed land. If the activity is a listed high impact activity and will affect a seabed, then a mandatory CHMP will be required before council issuing statutory approval for any proposed buildings and works.

7. Aboriginal cultural heritage – risk assessment & recommendations

7.1 Risk assessment and options for voluntary heritage management measures

The study area has not been shown to be exempt from the requirements for a mandatory CHMP. However this will be determined finally once the proposed activity becomes clear. There are also 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?

7.2 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 within the reclaimed land strata. The St Kilda Marina was specifically developed in the late 1960s for the use as a marina. This was undertaken by reclaiming 45 acres of land from the sea. Prior to this, the area of land from present day Mitford Street to the coastline consisted of an area of swamps that was drained in the late 19th century as well as the coastline itself. The swamp and its underlying deposits were removed and infilled from sand and clay taken from the Elwood foreshore. This identifies a level of disturbance to the study area that indicates that there is a very low likelihood of Aboriginal cultural heritage material being present in the study area. However, during the late glacial maximum when sea levels were significantly lower, Aboriginal places were known to exist within Port Phillip Bay. Therefore disturbance to the seabed, although unlikely, could potentially cause harm to Aboriginal cultural heritage.

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

No, the study area has low potential for Aboriginal cultural heritage and the entire stratum of reclaimed land appears to be nonsensitive. It could not be considered that any harm to Aboriginal cultural heritage resulting from the proposed activity could be considered knowing or negligent.

7.4 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.

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 2007*. The recommendations reflect the results of the risk assessment provided in Section 6, and include the recommendations of the mandatory compliance investigation (Section 6).

If ground disturbing works take place within the seabed, Council should consider undertaking a CHMP to a desktop level.

8. Recommendations

Recommendation 1. Requirement for a mandatory CHMP

There is no requirement that a mandatory CHMP need be undertaken before council issues statutory approval for the proposed buildings and works, unless works penetrate the seabed. If this is the case, a CHMP to Desktop Assessment level would be appropriate.

Recommendation 2. Requirement for a voluntary CHMP

There is no recommendation that a voluntary CHMP be undertaken so long as works are restricted to the reclaimed land strata before council issues statutory approval for the proposed buildings and works.

Recommendation 3. Requirement for a Planning Permit

HO187: Beacon, Marine Parade, St Kilda is located at the northern tip of the St Kilda Marina and is a visually distinctive structure of significance; a scenic element contributing to the maritime character of the Foreshore area. Under the Port Phillip Planning Scheme any demolition, buildings or works within the HO167 will trigger the need for a planning permit.

Recommendation 4. Consultation with the Traditional Owners for the Area

Biosis recommends consultation with Traditional Owners regarding cultural significance of the area.

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.

9. Bibliography

- ACHRIS. (2017). *Office of Aboriginal Affairs Victoria*. Retrieved from Aboriginal Cultural Heritage Register and Inventory System: <https://applications.vic.gov.au/apps/achris/public/home>
- Age. (1968, January 13). St Kilda Marina to cost \$2 million. *Age*, p. 3.
- Annear, R. (2005). *A City Lost and Found: Whelan the Wrecker's Melbourne*. Melbourne: Black Inc.
- Army Victoria. (1862). *Map of a military exercise in teh St Kilda aera, c. 1862*. Retrieved from State Library of Victoria: http://search.slv.vic.gov.au/MAIN:Everything:SLV_VOYAGER690790
- Azzure Investment Group vs Mornington Peninsula SC, 1600 (VCAT August 14, 2009).
- Bride, T. (. (1969). *etters from Victorian pioneers: being a series of papers on the early occupation of the colony, the aborigines, etc., addressed by Victorian pioneers to His Excellency Charles Joseph La Trobe, Esq., Lieutenant-Governor of the colony of Victoria*. Melbounre: Government Printer.
- Built Heritage Pty Ltd. (2017). *St Kilda Marina Preliminary Heritage Assessment*. Emerald: Built Heritage Pty Ltd.
- Cooper, J. (1931). *The history of St. Kilda. vol. 1 : from its first settlement to a city and after : 1840 to 1930*. Melbourne: Printers Proprietary Limited.
- Department of Lands and Survey. (1869). *Town lands (of) St Kilda parish of South Melbourne*. Retrieved from State Library of Victoria: http://search.slv.vic.gov.au/MAIN:Everything:SLV_VOYAGER1358935
- Department of Lands and Survey. (1945). Melbounre D2B or 848 D2B Zone 7 . *Aerial Survey of Victoria*. Department of Lands and Survey.
- Department of Lands and Survey. (1945). Melbourne B4D or 848 B4D Zone 7. *Aerial Survey of Victoria*. Department of Lands and Survey.
- Department of Lands and Survey. (1961, January 17). Port Phillip Bay Eastern Foreshores Run 6.
- Eidelson, M. (2006). *Flood, Fire and Fever: A History of Elwood*. Windsor: Praham Mechanics' Institute Press.
- Ellender, I. a. (1994). *An archaeological survey of Port Phillip Bay*. Central Highaldns Regional Assessment Archaeological Survey.
- Gaughwin, D. (1981). *Sites of Archaeological Significance in the Western Port Catchment. Publication 367*. Victoria: Environmental Studies Division, Ministry for Conservation.
- Geelong Advertiser. (1891, June 4). The Von Schmidt Dredge. *Geelong Advertiser*, p. 3.
- GeoVic3. (2015). *Earth Resources -GeoVic -Explore Victoria Online*. Retrieved from Department of Primary Industries: http://er-info.dpi.vic.gov.au/sd_weave/registered.htm
- Gunson, N. (1968). *The Good Country, Cranbourne Shire*. Melbourne: F.W. CHeshire.
- Gunson, N. (1983). *The Good Country: Cranbourne Shire. 2nd edition with updated appendices*. Melbourne, Victoria: Frankston City Press Holdings.
- HERMES. (2015). *Hermes, Heritage Victoria's Database*. Retrieved from Lands Victoria Services: http://services.land.vic.gov.au/maps/hermes_hv.jsp
- Illustrated Australian News and Musical Times. (1889, August 1). The Elwood Swamp - Progress of Works. *Illustrated Australian News and Musical Times*, p. 19.

- LandsVic. (2015). *Department of Transport, Planning and Local Infrastructure*. Retrieved from Planning Maps Online: <http://services.land.vic.gov.au/maps/pmo.jsp>
- Longmire, A. (1989). *St Kilda: The Show Goes On: The History of St Kilda, Vol III, 1930 to 1983*. Hawthorn: N.S. Hudson Publishing.
- Louisas, V. (2013). *Lot G, Hogans Road, Tarneit, Residential Subdivision*. Melbourne: Office of Aboriginal Affairs Victoria, CHMP 12823.
- Mainstay Australia Pty Vs Mornington Peninsula SC & Ors, 145 (2009) (VCAT February 24, 2009).
- Massola, A. (1959). History of the Coast Tribe. *Victorian Naturalist*, 76, pp. 180 - 183.
- Mitchell, J., & hardiman, L. (2017). *Proposed Alterations and Additions at 7 Marine Parade, Elwood*. Kensington: Alpha Archaeology Pty Ltd.
- Modern Boating. (1969, September). Our First Big Time Marina. *Modern Boating*, p. 90.
- Phillip, C. o. (n.d.). *Point Ormond*. Retrieved April 10, 2018, from [http://www.portphillip.vic.gov.au/default/CommunityGovernance/Documents/Point_Ormond_article\(1\).pdf](http://www.portphillip.vic.gov.au/default/CommunityGovernance/Documents/Point_Ormond_article(1).pdf)
- Presland, G. (1983). An archaeological survey of the Melbourne metropolitan area. *Victoria Archaeological Survey*.
- Reeves, S., & Wixted, D. (2005). *City of Port Phillip: Elwood Heritage Review. Volume 1: Thematic History Citations for Heritage Precincts. A Report by Heritage Alliance for the City of Port Phillip, Victoria*. North Melbourne: Heritage Alliance.
- Rhodes, D. (2003). *Victorian channel deepening project EES: Aboriginal cultural heritage existing conditions report*. TerraCulture Pty Ltd.
- Somerton, C. F. (1862). *Volunteer land and sea fight at Point Ormond, St Kilda beach*. Retrieved from State Library of Victoria: http://search.slv.vic.gov.au/MAIN:Everything:SLV_VOYAGER1771336
- Southern Cross. (1968, January 17). Marina Lease is Let, \$2M Project. *Southern Cross*, pp. 1, 19.
- Spry, P. (2015). *6 Hood Street, Elwood Residential Subdivision*. Fitzroy: Andrew Long & Associates.
- Sullivan, H. (1981). An archaeological survey of the Mornington Peninsula, Victoria. *Archaeological Survey Occasional Reports* (6).
- The Canberra Times. (1968, January 13). New marina for St Kilda. *The Canberra Times*, p. 13.
- The Prahran Telegraph. (1918, January 5). In the Fifties: South Yarra and Toorak: From the Reminiscences of Frederick Revans Champman, St Kilda. *The Prahran Telegraph*, p. 2.
- Vaskos, V., & Donati, L. (2012). *Proposed Works Marina Reserve, St Kilda Marina, St Kilda*. Melbourne: ACHM.
- VICNAMES. (2015). *VICNAMES - The Register of Geographic Names*. Retrieved from Department of Transport, Planning and Local Infrastructure: <http://maps.land.vic.gov.au/lassi/VicnamesUI.jsp>
- Weekender. (1970, December 11). It's Marina for Service. *Weekender*, p. 28.

Appendices

Appendix 1 VCAT precedent and evidentiary standards

The Office of Aboriginal Affairs Victoria has issued an advisory Practice Note regarding Significant Ground Disturbance (AAV 2009). This note is based on a number of recent VCAT 'red dot decisions' which have clarified the circumstances when a CHMP is required. In particular these VCAT decisions have established the modes of evidence and levels of investigation and proof required by a planning decision maker, to determine whether significant ground disturbance has occurred. It is of benefit to refer directly to the full text of these decisions rather than to the précis of them contained in the Practice Note (AAV 2009).

Mainstay Decision

The Mainstay Decision (Mainstay Australia Pty Vs Mornington Peninsula SC & Ors, 2009) specifically provides a hierarchy of acceptable modes of evidence, and the level of proof required to be adduced from them. An extract of the Mainstay Decision (2009) is provided below:

Many parts of the state are not areas of cultural heritage sensitivity, and many activities are exempt requiring a CHMP. Use should be made of the AAV on-line 'Aboriginal heritage planning tool' to determine if a CHMP is required;

It is the fact of significant ground disturbance that creates an exception under the Regulations, and determines if a CHMP is not required. The actual likelihood of Aboriginal heritage existing in the area is irrelevant to this determination;

The timing of the significant ground disturbance is irrelevant. It may have occurred many years ago in the early history of European settlement in the state;

If only part of the land has been subject to past significant ground disturbance, and the remaining part is still in an area of cultural heritage sensitivity, a CHMP will still be required for the whole development activity;

The burden of proving that the land has been the subject of significant ground disturbance rests with the applicant. The planning decision maker (and, on review, the Tribunal) must feel an actual persuasion of the existence of that fact to its reasonable satisfaction. This should not be derived or produced by inexact proofs or indirect inferences, and little weight should be given to a mere assertion by an applicant or landowner;

In assessing whether significant ground disturbance has occurred, there are four levels of inquiry that might commonly arise, and the assessment should be dealt with at the lowest applicable level. These levels are:

- (1) common knowledge,*
- (2) publicly available records,*
- (3) further information from the applicant, and*
- (4) expert advice or opinion.*

If the decision maker is not persuaded by the applicant that there has been significant ground disturbance, the 'default' position is that a CHMP is required. This accords with the purpose and intent of the Aboriginal Heritage Act 2006;

'Significant ground disturbance' is defined in the Regulations. The disturbance must have been caused by machinery in the course of grading, excavating, digging, dredging or deep ripping. Ploughing other than deep ripping is expressly excluded. 'Deep ripping' is also a defined term that

requires the use of a ripper or subsoil cultivation tool to a depth of 60 cms or more. By reference to these definitions, past ground disturbance caused by conventional ploughing (such as by a disc plough or a rotary hoe) does not constitute significant ground disturbance. Both the depth of ploughing and the type of machinery used are relevant to whether deep ripping (as defined) has occurred.

The Mainstay Decision (2009) therefore establishes that the onus of proof of significant ground disturbance rests on the applicant. It defines the modes of acceptable evidence, and the need to establish such disturbance through direct reliance on evidence, to a level of reasonable satisfaction. It also reinforces explicitly that the exception from undertaking a CHMP is triggered purely by legislative criteria such as significant ground disturbance, and not by the potential absence or presence of archaeological material.

Azzure Decision

The Azzure Decision (Azzure Investment Group vs Mornington Peninsula SC, 2009) is particularly relevant to the criteria of determining significant ground disturbance on small urban or suburban lots. In the Azzure Decision, the Tribunal accepted that in the absence of 'smoking gun' evidence (i.e. proof beyond doubt) that firmly establishes significant ground disturbance as defined in Regulation 4 (i.e. disturbance of topsoil by machinery), evidence for significant ground disturbance can still be established to a sufficient level from comparative and contextual information. Such information might include:

- the urban context: the timing of subdivision
- the shape, size, topography and configuration of lots
- the actual development of dwellings and outbuildings and pattern of use over time
- the provision of underground drainage and services
- the style and configuration of the house and garden
- the lack of remnant vegetation.

The following statement from the Azzure Decision (2009 VCAT 1600) is reproduced here in verbatim:

The comparative and contextual information must still reasonably satisfy the decision maker that the relevant land has been disturbed in the past by machinery in the course of grading, excavating, digging, dredging or deep ripping (other than ploughing) – i.e. the definition of the AH Regulations must still be met. However, in the absence of a single item of proof, the contextual approach may assist in achieving this level of satisfaction though a reasonable inquiry and examination of a range of relevant information (none of which necessarily conclusive itself) and 'joining the dots' to reach a common sense conclusion from the available information....The standard of proof is on the 'balance of probabilities' – not proof beyond doubt.

The Azzure Decision thus provides far clearer parameters for establishing the presence of significant ground disturbance through the combination of a number of contextual or indirectly indicative pieces of evidence which combine to establish that there exists better than 50% probability of significant ground disturbance having occurred. The Azzure Decision (2009) is clear that for instance, where it is known that the methods of subdivision, preparation and development of residential blocks in an area, had historically characteristically taken place in a manner that entailed mechanical disturbance to the ground surface consistent with the definition of significant ground disturbance – then such significant ground disturbance may be contextually argued to be present in any similarly developed block.