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Mr Jarrad Chamberlain
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RE: PLANNING AND ABORIGINAL HERITAGE ADVICE IN RELATION TO PROPOSED MACKILLOP SENIOR CENTRE AT SAINT IGNATIUS COLLEGE, DRYSDALE

Dear Mr Chamberlain

You have sought my advice on planning matters arising from Aboriginal heritage legislation in relation to the proposed MacKillop Senior Centre at Saint Ignatius College, Drysdale. In considering this matter, I have carried out background research, checked the Victorian Aboriginal Heritage Register for registered cultural heritage places and considered the possible implications of the *Aboriginal Heritage Regulations 2018*.

Executive Summary

The summary of my findings is that there is no requirement under the *Aboriginal Heritage Regulations 2018* for a cultural heritage management plan in relation to the proposed MacKillop Senior Centre and there is no requirement for any cultural heritage permits. The summary points are as follows:

- For the purposes of the *Aboriginal Heritage Regulations 2018* the Saint Ignatius College is an education centre, and therefore an existing *high impact activity*.
- The activity area for the proposed MacKillop Senior Centre is situated within the campus of the College, with the footprint including existing school buildings which will be replaced.
- Under the *Aboriginal Heritage Regulations 2018* the construction of a building or the carrying out of works on land is not a *high impact activity*

if it is for, or associated with, an existing *high impact activity* for which the land was being used immediately before the 28th of May 2007.

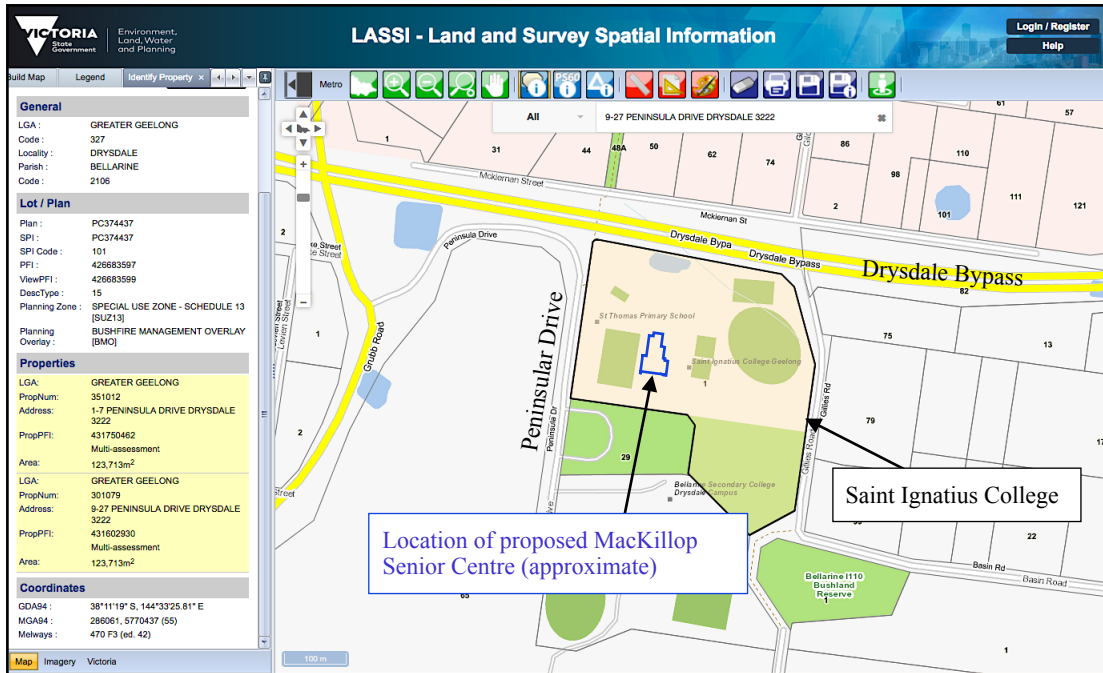
- The land on which the Saint Ignatius College is located was being used for the purpose of an education centre immediately prior to the 28th of May 2007.
- Accordingly, construction of the proposed MacKillop Senior Centre is not a *high impact activity* under the *Aboriginal Heritage Regulations 2018* and therefore does not trigger the requirement for a cultural heritage management plan (CHMP) under the *Aboriginal Heritage Regulations 2018*.
- It is noted that the activity area for the proposed facility has been subject to a succession of previous earthworks including: the staged construction of the current buildings, construction of concrete pathways, formal landscaping and significant screening tree plantings.
- Such earthworks have entailed ground disturbance that constitutes *significant ground disturbance* as defined by the *Aboriginal Heritage Regulations 2018* to the activity area for the proposed facility.
- Any area of land that has been subject to *significant ground disturbance* cannot be an *area of cultural heritage sensitivity* under the *Aboriginal Heritage Regulations 2018*.
- No registered cultural heritage places are located within the proposed facility footprint and no registered cultural heritage places will be impacted by the proposed works. No cultural heritage permits are required.

Qualification to provide expert advice

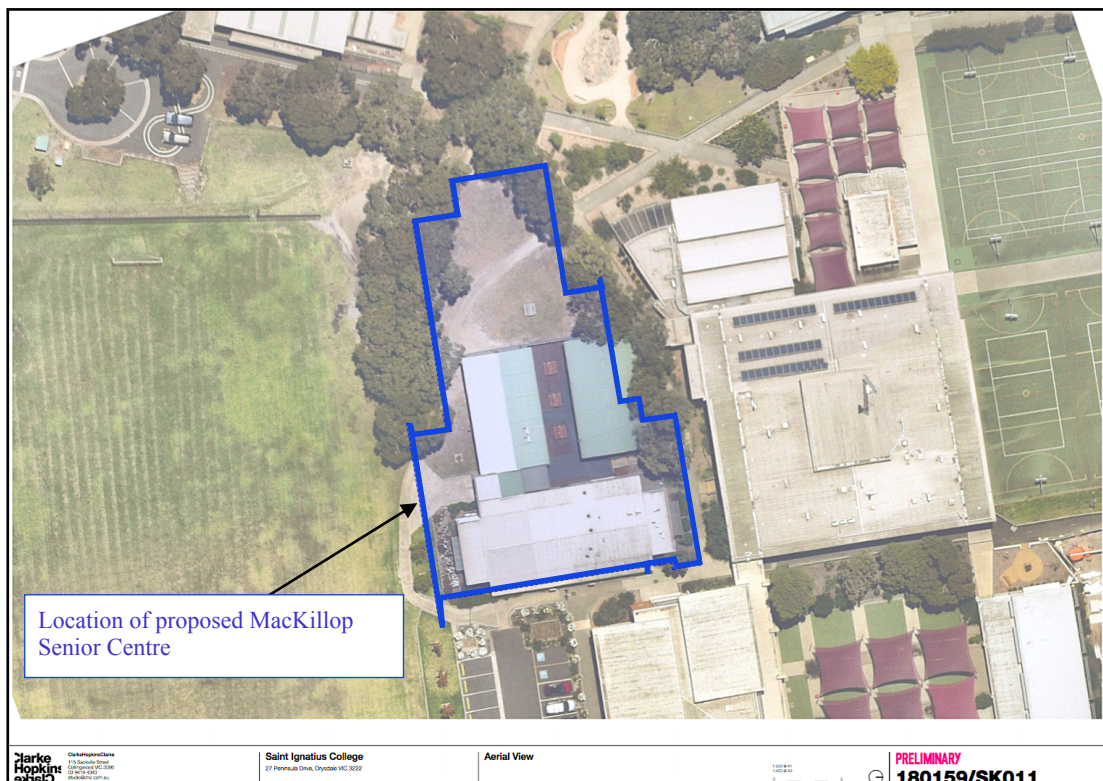
I am a qualified Aboriginal heritage advisor, and am recognised as such by Aboriginal Victoria which is the State Government agency overseeing Aboriginal heritage matters in this State. I hold a Bachelor of Arts (Archaeology) (Honours) and a Bachelor of Applied Science and have been working as an archaeologist/heritage advisor in Victoria for the past 21 years. Apart from my expertise in Aboriginal archaeology and Aboriginal heritage management, my tertiary studies and practical experience includes Aboriginal and colonial history research, gold mining history and technology and identification of faunal remains.

Location

The Saint Ignatius College is located on the northern side of the Bellarine Peninsula approximately 1.5 kilometres southeast of Drysdale. The school is situated on the southern side of the Drysdale Bypass, extending between Peninsular Drive to the east and Gilles Road to the west. The site of the proposed Senior Centre is within the school campus, centred approximately 120 metres inside the eastern boundary and 160 metres inside the northern boundary (see location map and plan on the following page).



LASSI map showing the location of the proposed MacKillop Senior Centre (blue polygon, approximate) within the Saint Ignatius College campus (black polygon) on Peninsular Drive, Drysdale. The column on the left of the map shows the cadastral details for the school property.



Location of the proposed MacKillop Senior Centre (blue polygon) within the existing Saint Ignatius College campus.

Description

The site of the proposed Senior Centre currently contains the Loyola Administration Building, which was constructed in multiple stages. Other features include a number of concrete pathways, landscaped garden beds, a

water tank and a line of screening trees planted following the establishment of the school.

The land has been in continual use as an education centre since the establishment of a school on the site in 1997. Development of the buildings and facilities has been ongoing since that time. The school opened as the Drysdale campus of the Catholic Regional College and took the name of Saint Ignatius College for the start of the 2007 school year following amalgamations of other campuses. The southernmost section of the current building within the proposed Senior Centre activity area is visible on the 2004 aerial image below. Also visible is the surrounding cleared/graded ground surface associated with construction of the buildings and pathways in this area of the school. Works undertaken in the proposed footprint since 2004 include the construction of the remaining sections of the existing building, construction of concrete paths and entrance ways, installation of a water tank with associated connections, construction of garden beds and the planting of two lines of screening trees. Such works will have of necessity entailed earthworks across the activity area that constitute *significant ground disturbance*¹ as defined by the *Aboriginal Heritage Regulations 2018*.



2004 Google Earth image showing the activity area for the proposed MacKillop Senior Centre (blue polygon) within the school campus at the time. Indications of past and ongoing development works causing disturbance of the ground surface are evident.

¹Significant ground disturbance is defined in the *Aboriginal Heritage Regulations 2018* (r.5) as: “disturbance of the topsoil or surface rock layer by machinery in the course of grading, excavating, digging, dredging or deep ripping, but does not include ploughing other than deep ripping”

Proposed activity

The proposed activity is the construction of a new 3 storey building for the senior school which will house multiple learning spaces. These include sixteen learning areas, a Maker space for VCAL classes and a 300 seat lecture theatre. Construction of the new building will require demolition of the buildings currently sited within the activity area.

Aboriginal Heritage Regulations 2018: high impact activities

As classified by the *Aboriginal Heritage Regulations 2018* the Saint Ignatius College is an existing *high impact activity* because it is an education centre (r.46(1)(b)(viii)). Use of this land for the purpose of an education centre has been continuous since 1997 with the name change to Saint Ignatius College occurring at the start of the 2007 school year.

Regulation 46(3) states that "*the construction of a building or the construction or carrying out of works on land is not a high impact activity if it is for, or associated with, a purpose listed under subregulation (1)(b) for which the land was being lawfully used immediately before 28 May 2007*".

Given that the construction of the MacKillop Senior Centre and associated works is for the Saint Ignatius College it is therefore for the purpose of an education centre, as listed under subregulation (1)(b) of r.46(3). Accordingly, as the land was being lawfully used for this purpose immediately before 28 May 2007 the proposed construction of the MacKillop Senior Centre is not a *high impact activity* under the *Aboriginal Heritage Regulations 2018*.

Aboriginal Heritage Regulations 2018: areas of cultural heritage sensitivity

The *Aboriginal Heritage Regulations 2018* list a number of criteria to define when an area may be an *area of cultural heritage sensitivity*². One of these criteria applies to the site of the proposed MacKillop Senior Centre, namely:
- an area of dunes (r.40).

However, an area of dunes is not an *area of cultural heritage sensitivity* if it has been subject to *significant ground disturbance* (r.40(2)).

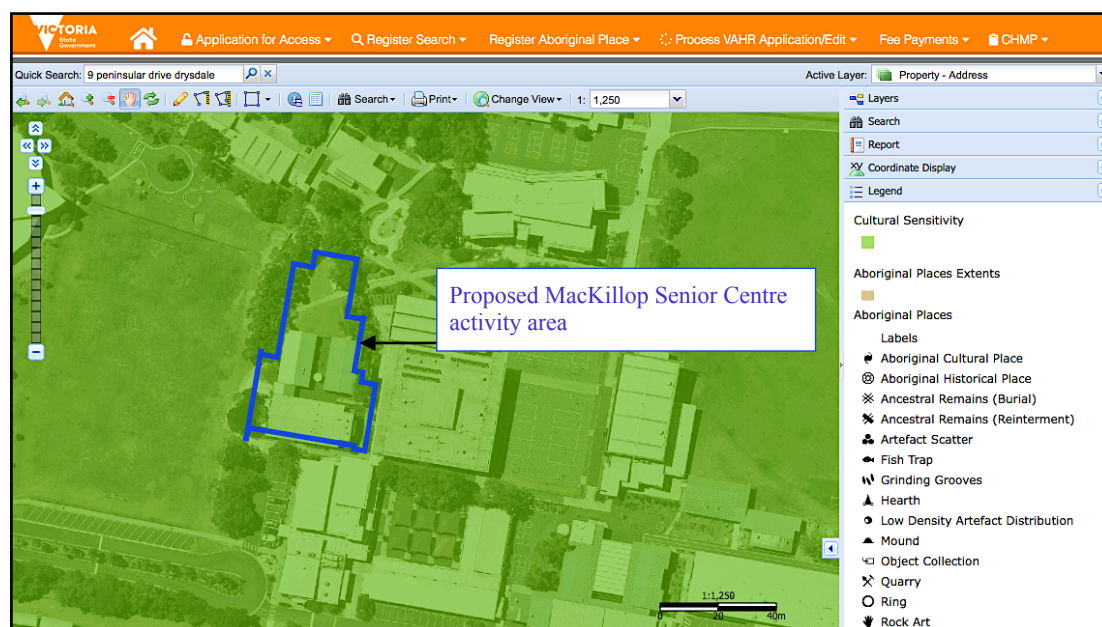
Aboriginal Victoria provides mapping data indicating possible areas of cultural heritage sensitivity to various on-line mapping systems, such as their *ACHRIS*³ website and the Department of Economic Development, Jobs, Transport and Resources' *GeoVic* website. Areas of cultural heritage sensitivity are represented on these maps by areas of green shading. It should be noted that areas where *significant ground disturbance* has occurred are not shown on these maps. If any of the green-shaded areas have been subject to *significant ground disturbance*, then under the Regulations they cannot be areas of cultural heritage sensitivity. Accordingly,

2 Areas of cultural heritage sensitivity are specifically defined by the Regulations but are essentially areas where Aboriginal heritage material is considered more likely to occur.

3 ACHRIS is the Aboriginal Cultural Heritage Register and Information System.

what these maps show are potential areas of cultural heritage sensitivity, and not actual areas of cultural heritage sensitivity.

The activity area for the proposed MacKillop Senior Centre is shown on the ACHRIS map below as being in a potential *area of cultural heritage sensitivity* (area of green shading). A detailed assessment of significant ground disturbance was not within the scope of this advice, however site preparation works, construction of the buildings and pathways, on-going landscaping and maintenance of this part of the school campus will have of necessity entailed earthworks that would constitute *significant ground disturbance*. Based on the footprint of existing features and a review of the historical aerial images it is considered highly likely that the entire activity area for the MacKillop Senior Centre will have been subject to *significant ground disturbance*. Any area that has been subject to *significant ground disturbance* cannot be an *area of cultural heritage sensitivity* under the *Aboriginal Heritage Regulations 2018*.



ACHRIS map showing the activity area for the proposed MacKillop Senior Centre (blue polygon) is a potential area of cultural heritage sensitivity (green shading). Note that the map does not take into account areas that have been subject to previous ground disturbance, such as building footprints or carparks. Such areas have been subject to significant ground disturbance and are therefore not areas of cultural heritage sensitivity under the Aboriginal Heritage Regulations 2018.

Registered cultural heritage places

On your behalf, I have checked the Victorian Aboriginal Heritage Register and can confirm that as of the date of this advice there are no registered cultural heritage places (Aboriginal sites, artefacts, etc.) located on, or within 150 metres of, the proposed footprint of the MacKillop Senior Centre. The proposed MacKillop Senior Centre will not impact any registered cultural heritage places and there is no requirement for any Aboriginal heritage permits.

Aboriginal Heritage Regulations 2018: cultural heritage management plans

Unless directly required by the Minister, or unless an Environmental Effects Statement is required⁴, the possible statutory requirement for a Cultural Heritage Management Plan (CHMP) is dealt with under Regulation 7 of the *Aboriginal Heritage Regulations 2018*. Under this Regulation there are two triggers, both of which must be activated, for there to be a statutory requirement for a Cultural Heritage Management Plan to be prepared and approved prior to seeking statutory approvals. The two triggers are:

- a) that all or part of the activity is a *high impact activity*, and
- b) that all or part of the activity area for the activity is an area defined by the Regulations as being an *area of cultural heritage sensitivity*.

Note: an area that has been subject to *significant ground disturbance* cannot be an *area of cultural heritage sensitivity*.

- a) High impact activity? Construction of the proposed MacKillop Senior Centre is not specified by the *Aboriginal Heritage Regulations 2018* as a *high impact activity*. (r.46(3), r.46(1)(b)(viii))

The first trigger **is not** activated.

- b) Area of cultural heritage sensitivity? It is highly likely that the entire activity area for the proposed MacKillop Senior Centre has been subject to *significant ground disturbance* and therefore will not have any areas of cultural heritage sensitivity as defined by the *Aboriginal Heritage Regulations 2018*.

The second trigger may not be activated.

As the proposed works at Saint Ignatius College, Drysdale do not activate both the required triggers, there can be no statutory requirement for a cultural heritage management plan to be prepared in relation to the proposed MacKillop Senior Centre.

Recommendations and comments

1. Following background research, a check of the Victorian Aboriginal Heritage Register for registered cultural heritage places and consideration of the *Aboriginal Heritage Regulations 2018*, it is clear that there are no statutory impediments from Aboriginal cultural heritage that would prevent planning approvals being granted in relation to the proposed MacKillop Senior Centre at Saint Ignatius College, Drysdale.

4 Under s.48 and s.49 of the *Aboriginal Heritage Act 2006*: neither of these apply in this case.

2. Under the *Aboriginal Heritage Regulations 2018* construction of the proposed MacKillop Senior Centre is not a *high impact activity* and therefore does not trigger the requirement for a cultural heritage management plan (CHMP).
3. It is considered highly likely that earthworks associated with the progressive development of the proposed Senior Centre site since 1997 have caused *significant ground disturbance* to the entire activity area.
4. Under the *Aboriginal Heritage Regulations 2018* any area of land subject to *significant ground disturbance* cannot be an *area of cultural heritage* sensitivity.
5. The proposed MacKillop Senior Centre will not impact any registered cultural heritage places and there is no requirement for any Aboriginal cultural heritage permits.
6. There are statutory requirements under Victorian Aboriginal Heritage legislation to report the discovery of Aboriginal heritage materials to the Secretary of the Department of Premier and Cabinet. Should suspected Aboriginal heritage materials be discovered during work, contact the heritage advisor Janet Cockbill (0418 548559) or Aboriginal Victoria directly. In relation to the extremely unlikely scenario that human remains are located during works, there is a legal obligation to report the discovery to the State Coroner's Office⁵ (Coronial Admissions and Enquiries on 1300 309 519).
7. 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*.

If you require further information on this or other projects, please contact me any time by phone (0418-548-559) or email to clarkeology@bigpond.com

Yours sincerely

Janet Cockbill

⁵ The majority of human remains found in Victoria are associated with crime scenes – which is why there is mandatory reporting to the Police or the Coroner. In a very small proportion of cases, the human remains are from Aboriginal burials.