

14 April 2026

Dear [REDACTED]

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Re: Cultural Heritage Management Plan Requirement for the proposed development of 123-129 Erskine Street, Middle Park

As a fully qualified archaeologist and cultural heritage advisor (BA Hons, MA Prelim. Archaeology) with over 30 years industry experience I am well qualified under the *Aboriginal Heritage Act* 2006 to advise on any potential requirement for a Cultural Heritage Management Plan (CHMP) at the proposed Activity Area located at 123-129 Erskine Street, Middle Park (Figure 1).

In order to determine whether a CHMP is required for the proposed Activity Area I have undertaken a review of the *Aboriginal Heritage Act* 2006, and the Aboriginal Heritage Regulations 2018; and undertaken a review of the Victorian Aboriginal Heritage Register (VAHR), held at Department of Premier and Cabinet (DPC). In addition, a site inspection was undertaken by Oliver Slater (Heritage Advisor Dugay & Co) on Friday 6th March 2026 to assess for prior significant ground disturbance.

The *Aboriginal Heritage Act* 2006 (hereafter referred to as 'the Act') provides blanket protection for Aboriginal cultural heritage in Victoria. This means that all Aboriginal cultural heritage (recorded and as yet unrecorded) is protected from harm and it is illegal to carry out an activity that can disturb Aboriginal places without the

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appropriate authorities under the Act (and its associated Aboriginal Heritage Regulations 2018). There are two principal mechanisms under the Act that remove the risk of illegal harm to Aboriginal cultural heritage:

- ❖ Cultural Heritage Management Plans (CHMP)
- ❖ Cultural Heritage Permits (CHP)

A CHP is relevant only where an Aboriginal Place is registered in the works area and a CHMP is not a mandatory requirement. This is not the case for the proposed Activity Area therefore the triggers for a CHMP are considered below.

There are two triggers required for a mandatory CHMP as required under Section 46 (a) of the *Aboriginal Heritage Act* 2006. These are defined in the Aboriginal Heritage Regulations 2018 and state that:

A CHMP is required if-

- All or part of the study area for the activity is in an area of cultural heritage sensitivity; and
- All or part of the activity is a high impact activity.

The Proposed Activity

It is proposed to develop the activity area for multi-unit residential development (Figure 7). A high impact activity is defined as an activity that would result in significant ground surface disturbance and involves a use of land specified in the Regulations. The construction of three or more dwellings on a lot or allotment is a high impact activity under Regulation 48(1) and (2) (AHR 2018:24).

Cultural Heritage Sensitivity

A review of the VAHR held at DPC has resulted in the conclusion that there are no previously registered Aboriginal places within the proposed Activity Area (Figure 3).

A review of the mapped areas of sensitivity reveals that the proposed Activity Area is intersected by a mapped area of sensitivity associated with Dunes (reg 40). A dune, including coastal dune deposits, is an area of cultural heritage sensitivity under Regulation 40 (AHR 2018:19) (Figures 4-5).

Subject to Regulation 40(2), if part of a dune, including a coastal dune, has been subject to significant ground disturbance then that part is not an area of cultural heritage sensitivity.

Significant ground disturbance is defined in the *Aboriginal Heritage Regulations* 2018 (r. 5) as ‘...disturbance of – (a) the topsoil or surface rock layer of the ground; or (b) a waterway – by machinery in the course of grading, excavating, digging, dredging or deep ripping, but does not include ploughing other than deep ripping.’ Deep ripping is further defined as ‘the ploughing of soil using a ripper or subsoil cultivation tool to a depth of 60 centimetres or more’ (AHR 2018: 3).

The proposed activity area is currently used for commercial buildings with associated carparking, infrastructure and a brick courtyard.

A determination of the extent and significance of this disturbance, was also investigated via onsite inspection.

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Figure 1 Location of the Activity Area 129-129 Erskine Street, Middle Park



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Figure 2 Activity Area Existing Conditions



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Figure 3 Study Area and VAHR Registered Places within the Activity Area



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Figure 4 Geomorphology of Activity Area

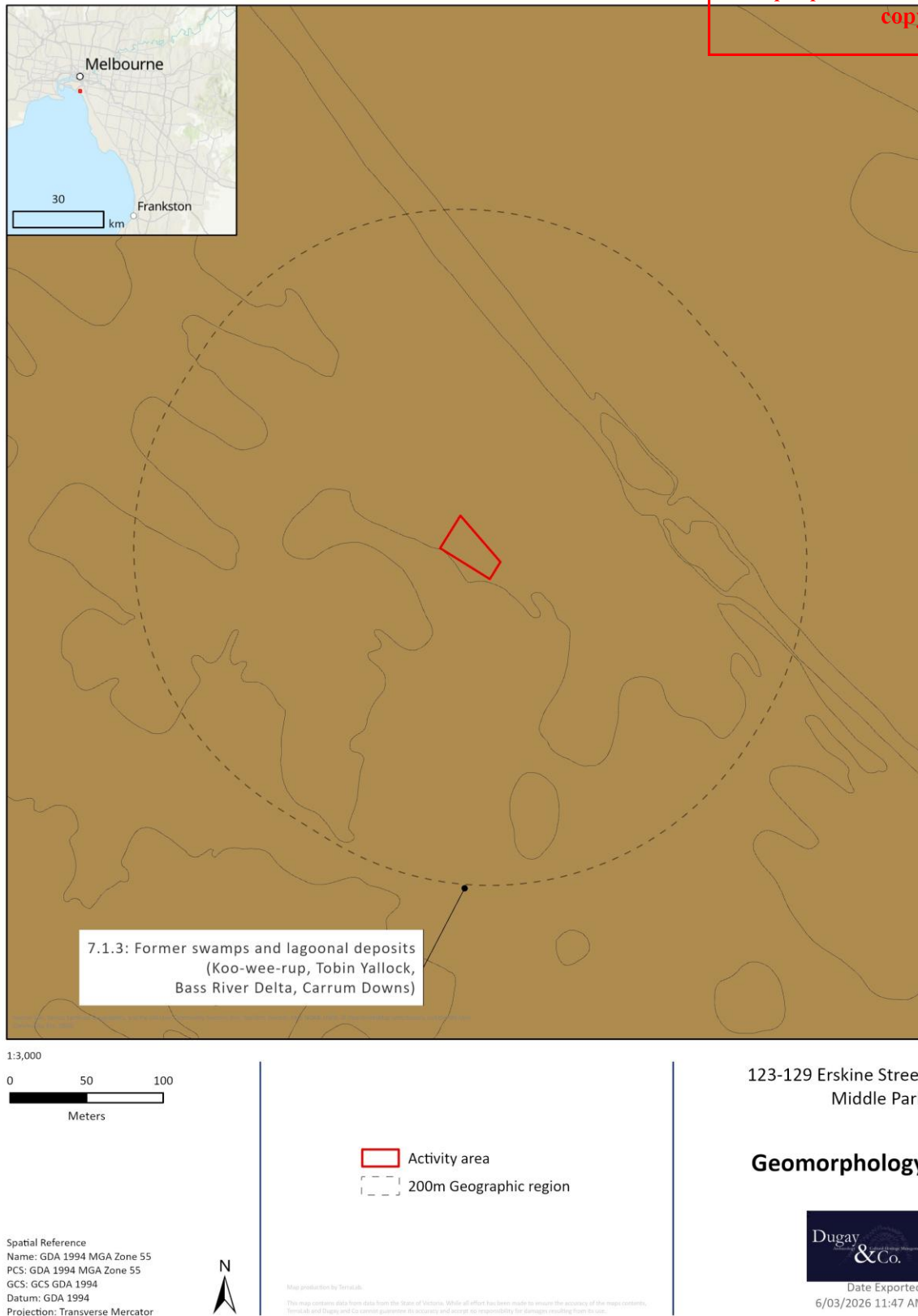


Figure 5 Geology of Activity Area

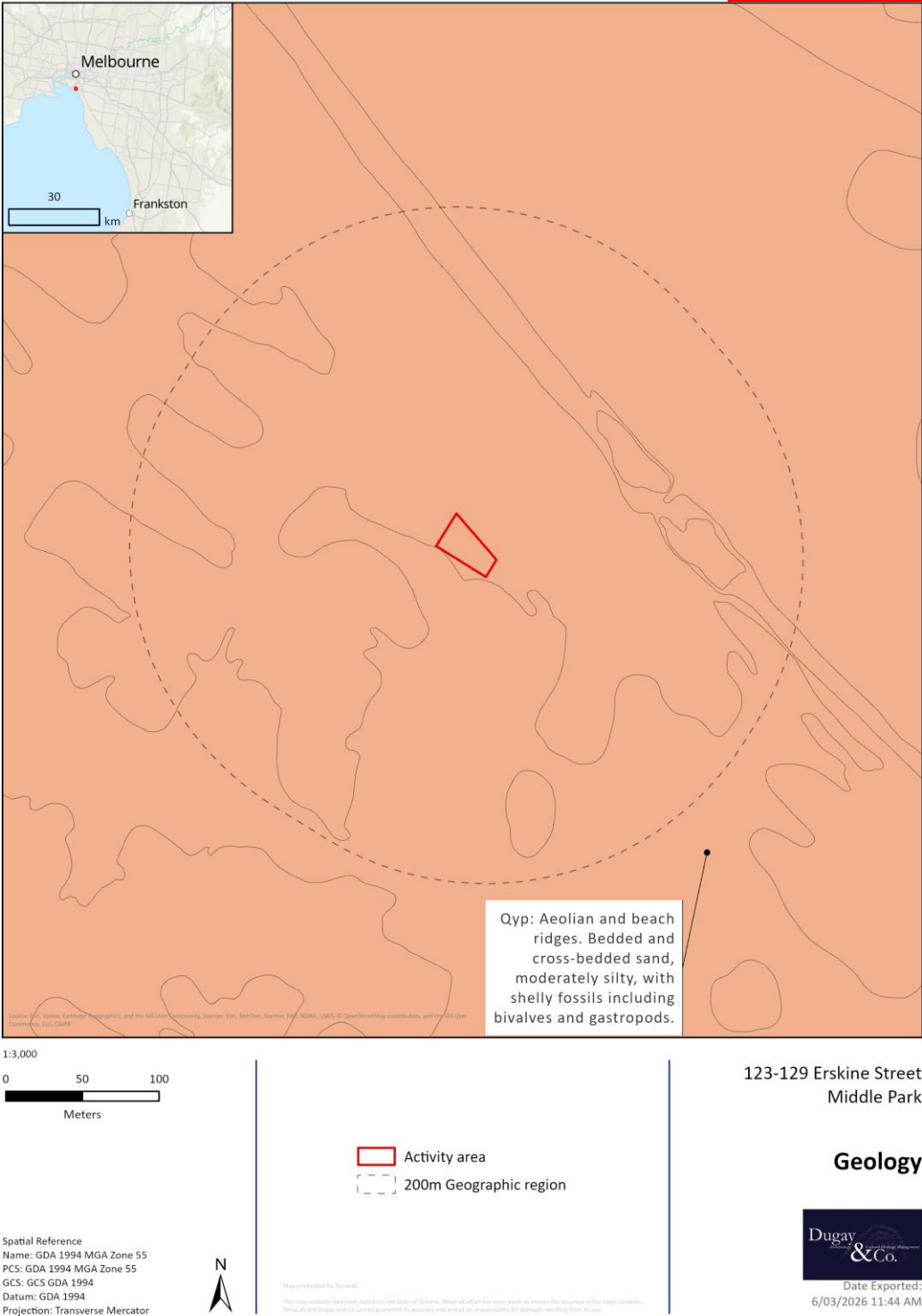


Figure 6 Pre 1750 EVC

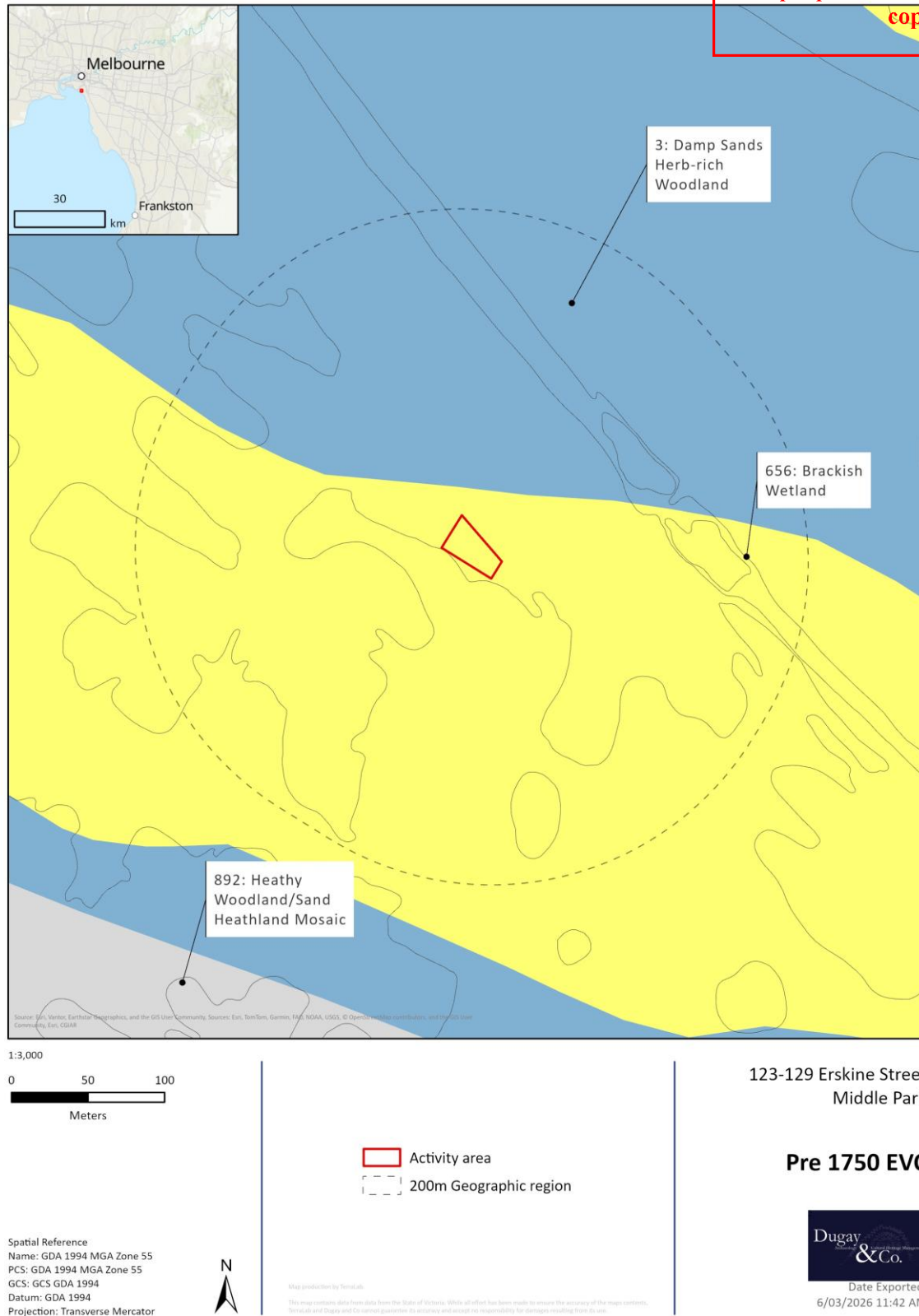
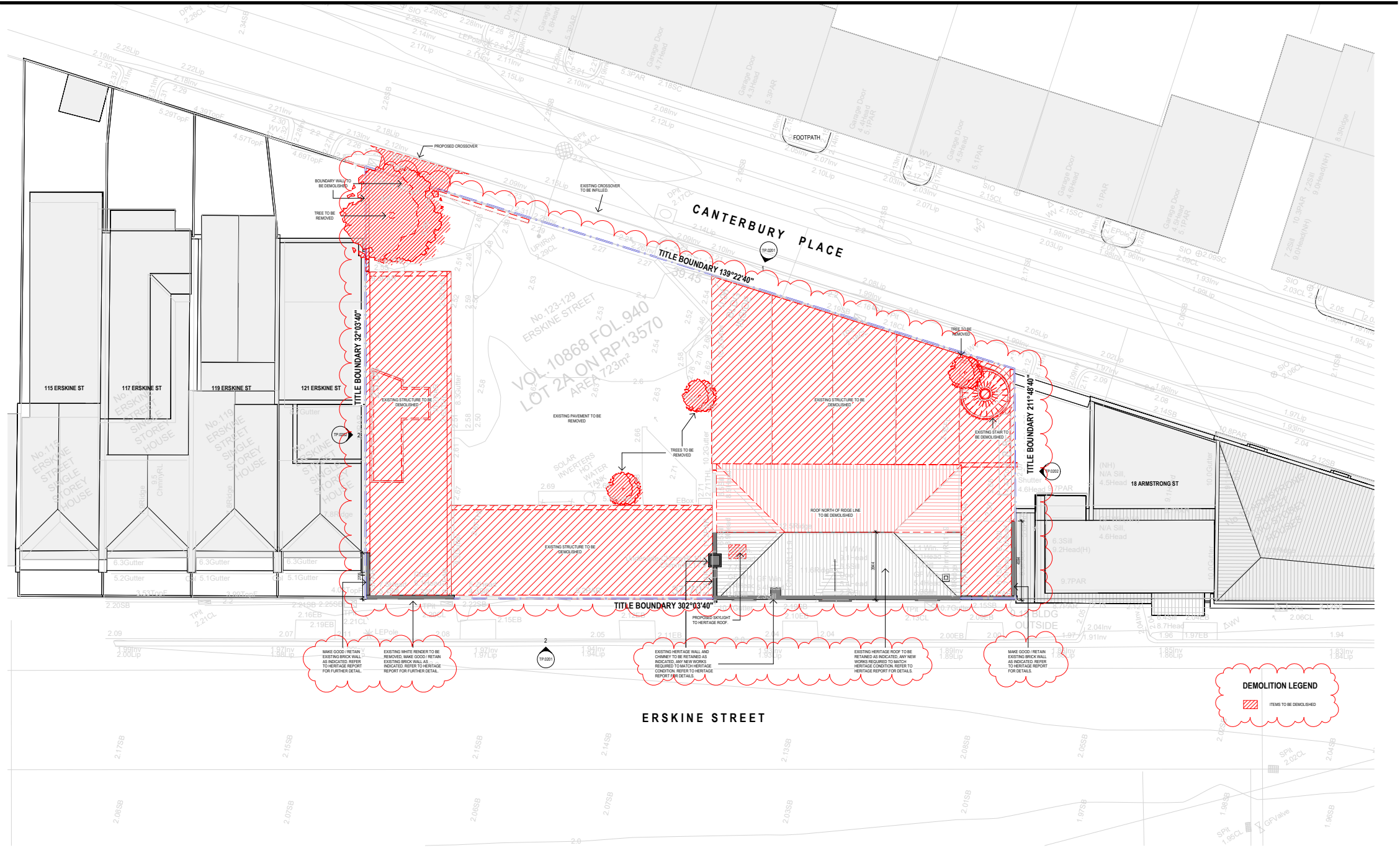


Figure 7 Development Concept (Provided by Client)



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NOTES

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FOOTPATH

REV	DATE	REVISION	BY	CHK
A	26.03.26	PREAPP TP SUBMISSION	GM	HW
B	14.05.26	REV	GM	HW
C	14.07.26	DTP FORMAL APPLICATION LODGEMENT	PD	KH

PROJECT
123-129 ERSKINE ST
123-129 ERSKINE ST, MIDDLE PARK
ERSKINE

DRAWING STATUS
TOWN PLANNING

JOB N° 25178
REVISION N° C
DATE 14.07.26
SCALE 1:100 @ A1
DRAWN BY EC
CHECKED BY HW

DRAWING TITLE
DEMOLITION PLAN



TP.0200

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A site inspection was undertaken as part of this Due Diligence (DD) on the 6th of March 2026. The inspection of the proposed Activity Area confirmed the location of the proposed Activity Area and the high level of existing development within the proposed Activity Area. In particular, the commercial buildings and associated services and infrastructure, and brick courtyard is all *insitu* (Plates 1 – 9). The level of significant prior ground disturbance from the construction of the commercial buildings and associated infrastructure clearly extends across the entire activity area and to the property boundaries (Figure 2; Plates 1 - 9).



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Plate 1: 123 Erskine Street. Street frontage facing east.

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Plate 2: 127 Erskine Street. Street frontage facing north. Note underground services and commercial building entrance to property boundary.



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Plate 3: 129 Erskine Street. Street frontage facing west. Note underground telecommunications services and commercial building to property boundary along entire southern boundary.



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Plate 4: Southeastern activity area boundary on Canterbury Place facing north-west. Note concrete fencing and building to edge of property boundary.

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Plate 5: Eastern side of property on Canterbury Place and mixed-use building to property boundary to east. Note underground service. Facing south.



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Plate 6: Entrance to brick courtyard and end of concrete property boundary on the eastern edge of activity area. Facing south.



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Plate 7: Brick courtyard in the foreground and hot water services, commercial/mixed-use building and associated services in the background. Facing south.

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Plate 8: Brick courtyard in centre of the activity area. Note some vegetation, buildings and services in the background. Facing south.

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Plate 9: Northern boundary of activity area. Note underground telecommunication services. Facing southeast.

Desktop Review

The proposed Activity Area is encapsulated by an existing commercial building and associated services and infrastructure, and a brick courtyard at 123-129 Erskine Road, Middle Park (Figures 1-2; Plates 1-9).

The Activity Area is located within the local government area of the City of Port Phillip.

The Victorian Aboriginal Heritage Register (VAHR) is a record of all previously recorded Aboriginal Places in Victoria. The VAHR was accessed on 6 March 2026 by Oliver Slater (HA Dugay & Co) under the Application Access No. 16663. The VAHR was searched for mapped areas of sensitivity and for records of Aboriginal Places within and adjacent to the Activity Area.

The Activity Area is located within the local geographic region of Middle Park. This geographic region contains landforms and environmental resources similar to those found in or near to the Activity Area. The Activity Area is situated within former swamps and lagoonal deposits (Figures 4-6). The Activity Area is located within an area known as the Port Phillip Sunklands, comprising undulating hills and gullies with a coastal plain and low-lying land adjacent to the coastline.

Based on local geographical features, the vast majority of Aboriginal sites will have been formed during the past 10,000 years, and more probably the last 6,500 years when the current landform stabilised.

Prior to European contact, the vegetation of the region would have consisted predominantly of brackish wetland and damp sands herb-rich woodland (Figure 6). Brackish wetland is commonly associated with sedgeland or hedgeland, occasionally grassland, dominated by salt-tolerant species and typically occurs on heavy, at least seasonally shallowly inundated to waterlogged soils.

There are no previously registered Aboriginal Places within 200m of the Activity Area (Figure 3).

Discussion – Significant Ground Disturbance

Significant ground disturbance is defined in the *Aboriginal Heritage Regulations* 2018 (r. 5) as ‘...disturbance of – (a) the topsoil or surface rock layer of the ground; or (b) a waterway – by machinery in the course of grading, excavating, digging, dredging or deep ripping, but does not include ploughing other than deep ripping.’ Deep ripping is further defined as ‘the ploughing of soil using a ripper or subsoil cultivation tool to a depth of 60 centimetres or more’ (AHR 2018: 3).

The extent and nature of prior land use activities are key to determining whether significant ground disturbance has occurred within the proposed Activity Area.

There are several VCAT decisions that have provided assistance with the interpretation of significant ground disturbance since the inception of the *Aboriginal Heritage Act (2006)*. These relate to

- The spatial extent of prior ground disturbance required to confidently conclude that an area is not an area of cultural heritage sensitivity;
- Whether fill placed on top of an area constitutes significant ground disturbance; and
- The level of proof required for demonstrating prior significant ground disturbance.

The Extent of significant ground disturbance was considered in *The Mainstay v Mornington Shire Council* (2009). VCAT determined that a CHMP does not need to be prepared for a high impact activity if all the area of cultural heritage sensitivity within an Activity Area has been subject to significant ground disturbance. However, it was noted that:

If only part of the land has been subject to past significant ground disturbance, and the remaining part is still an area of cultural heritage sensitivity, a CHMP will be required for the whole development activity. (2009:2).

Azzure vs Mornington Shire Council (2009) subsequently further clarified the level of proof required to demonstrate significant prior ground disturbance need not be “beyond doubt” for small blocks (e.g an average quarter acre block of approximately 1.012m2).

The use of comparative and contextual approach for a small lot helps to address this dilemma. A reasonable level of inquiry of the contextual factors... might reasonably satisfy a decision maker on the balance of probabilities in a given case... that the whole of the small lot has been subject to “significant ground disturbance”. This standard of proof may be met without there being absolute proof beyond doubt of mechanical disturbance by grading, excavation of every square metre of the lot. (2009 Azzure vs Mornington Shire Council). However, a more recent VCAT decision (Platinum King Vs Maningham CC and Orrs 2015) determined that this reasoning would only apply to a relatively small suburban lot in this case where evidence for significant ground disturbance was provided for a material part of the land, but not all of the land (2015: 45). The VCAT decision further stated that where small areas of Cultural Heritage Sensitivity have not been subject to Significant Ground disturbance a mandatory CHMP is required (2015: 10).

The Aboriginal Heritage Act Practice Note on Significant Ground Disturbance by the Department of Premier and Cabinet provides further guidance on determining significant ground disturbance and outline four aspects of enquiry that should be required to satisfy the responsible authority that significant ground disturbance has occurred.

- 1 Common Knowledge. There may be common knowledge that the ground has been significantly disturbed. Little additional information should be required.
- 2 Publicly available records. Information about the prior development and land use history of the land including aerial photographs, may allow a reasonable inference to be made that the land has been significantly disturbed.
- 3 Further Information. Land use information both published and or publicly available such as land use history documents(e.g earlier development plans), old maps and/or photographs. Statements from former landowners may be used but should be provided by statutory declaration or similar.
- 4 Expert advice or opinion. If the above levels of enquiry are not sufficient the applicant may submit a report with expert advice. The person providing the advice may base their advice on a review of the relevant documents as specified above or a preliminary soil probe or geotechnical investigation. A heritage advisor, land surveyor, civil engineer or geomorphologist may have the expertise to provide such advice.

It is also noted that the different lines of enquiry should be dealt with at the lowest possible level; in order to avoid significant delay and cost to the applicant. Where the relevant authority is “simply not persuaded

or where there remains genuine doubt about significant disturbance....the default position is that a management plan is required (AHA 2006 Practice Note. Significant Ground Disturbance: 2-3).

Significant Ground Disturbance Within the Activity Area

The Activity Area at 123-129 Erskine Street, Middle Park is mapped as potentially sensitive for Aboriginal cultural heritage (Figure 3). Significant disturbance must be determined to have occurred within all areas mapped as sensitive for the location of Aboriginal cultural heritage within the Activity Area and reasonably assumed to have occurred within any small areas that do not have supporting evidence for such disturbance.

The field inspection noted that the Activity Area has been significantly impacted by the construction of the commercial buildings and associated services and infrastructure, and a brick courtyard that extend across the entire activity area and across all mapped areas of sensitivity (Figure 2; Plates 1-9).

Summary of Review

- The Activity Area is located within coastal plains with ridges and dune fields;
- Extensive development has already taken place as part of existing commercial building and associated services and infrastructure;
- A site inspection confirms the presence commercial facilities and associated services and infrastructure, and a brick courtyard;

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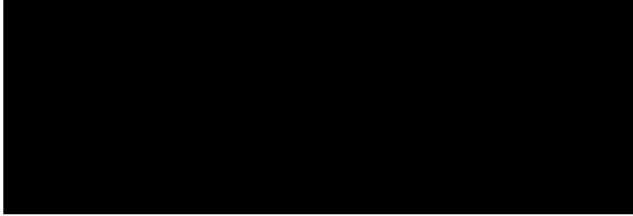
Conclusion

The proposed Activity Area is located at 123-129 Erskine Street, Middle Park. The activity area is encapsulated by one mapped area of potential sensitivity (Figure 3). It is noted that the activity area is located within dunes, and therefore under Reg. 40(1) it is an area of cultural heritage sensitivity; however, under regulation 40 (2) If part of dunes, including a coastal dune, has been subject to significant prior ground disturbance, that part is not an area of cultural heritage sensitivity. Therefore the 2 required triggers for a mandatory CHMP are not present for the activity area located at 123-129 Erskine Street, Middle Park and on this basis a mandatory CHMP is not required.

It should be noted that prior disturbance, of itself, does not necessarily destroy or remove all Aboriginal cultural heritage from a location and the Sponsor has the option to undertake a voluntary CHMP in order to manage any potential cultural heritage risk

If you require any further information or have any questions regarding this matter, please do not hesitate to contact me.

Yours sincerely,



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