

Archaeological Assessment: Portland Foreshore



A report for Glenelg Shire Council

Prepared by Catherine Tucker, Luke Falvey, John Hyett

17 December 2010

TERRACULTURE HERITAGE CONSULTANTS

340 Separation Street
Northcote, VIC, 3070
Ph: (03) 9486 4524
inquiries@terraculture.com.au



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1.0 INTRODUCTION

1.1 Project Background

Glenelg Shire Council (GSC) is currently undertaking development along the foreshore at Portland, 360 kilometres west of Melbourne. In 2001, Marshall undertook the Portland Foreshore Heritage Survey on behalf of the GSC which included the extension of the existing roads (both Julia and Henty Streets) east of the harbour, development of a marina and public wharf facilities, and the construction of a tourist cable tram.

In light of this previous study, TerraCulture Pty Ltd were commissioned by the GSC to implement an update of the existing Portland Foreshore Heritage Survey (Marshall 2001) in order to proceed with the implementation of further foreshore development. The GSC development of the foreshore includes land reclamation, relocation of a boat ramp, earthworks, and construction of a marina. TerraCulture Pty Ltd was to assess the impact of the proposed developments and report on the results in light of Aboriginal and historical legislative frameworks, with particular emphasis on maritime heritage concerns due to the proximity of the *Regia*, a brig wrecked in November 1860.

This document reports on Aboriginal, historical and maritime archaeological assessments of the subject property and presents management recommendations for the heritage issues involved. It does not involve any ground surface survey or under water investigation.

1.2 The Study Area

The study area is located in and around the Portland harbour and is located along a stretch of the foreshore from Old Trawler Wharf to the south, along Lee Breakwater Road to the west and is contained by the Lee Breakwater to the north. The study area is within the historic parish of Portland and within the present municipality of Glenelg Shire Council.

The extent of the study area is shown in Map 1.

1.3 Study Aims and Objectives

The indigenous and non-indigenous archaeological assessment of the Portland Foreshore study area includes the following objectives:

- Environmental assessment in terms of how this would have related to Aboriginal use of the landscape;
- Known indigenous cultural heritage values of the study area;
- Background research to determine the previous land use and development dating back to the beginning of European settlement in Portland;
- Analysis of the documentary evidence to determine the areas of archaeological potential for historic significance; and
- Production of a technical report which presents:
 - Findings of the background research and field assessment;
 - Analysis of the background material to create a land-use history of the site; and
 - Management recommendations.

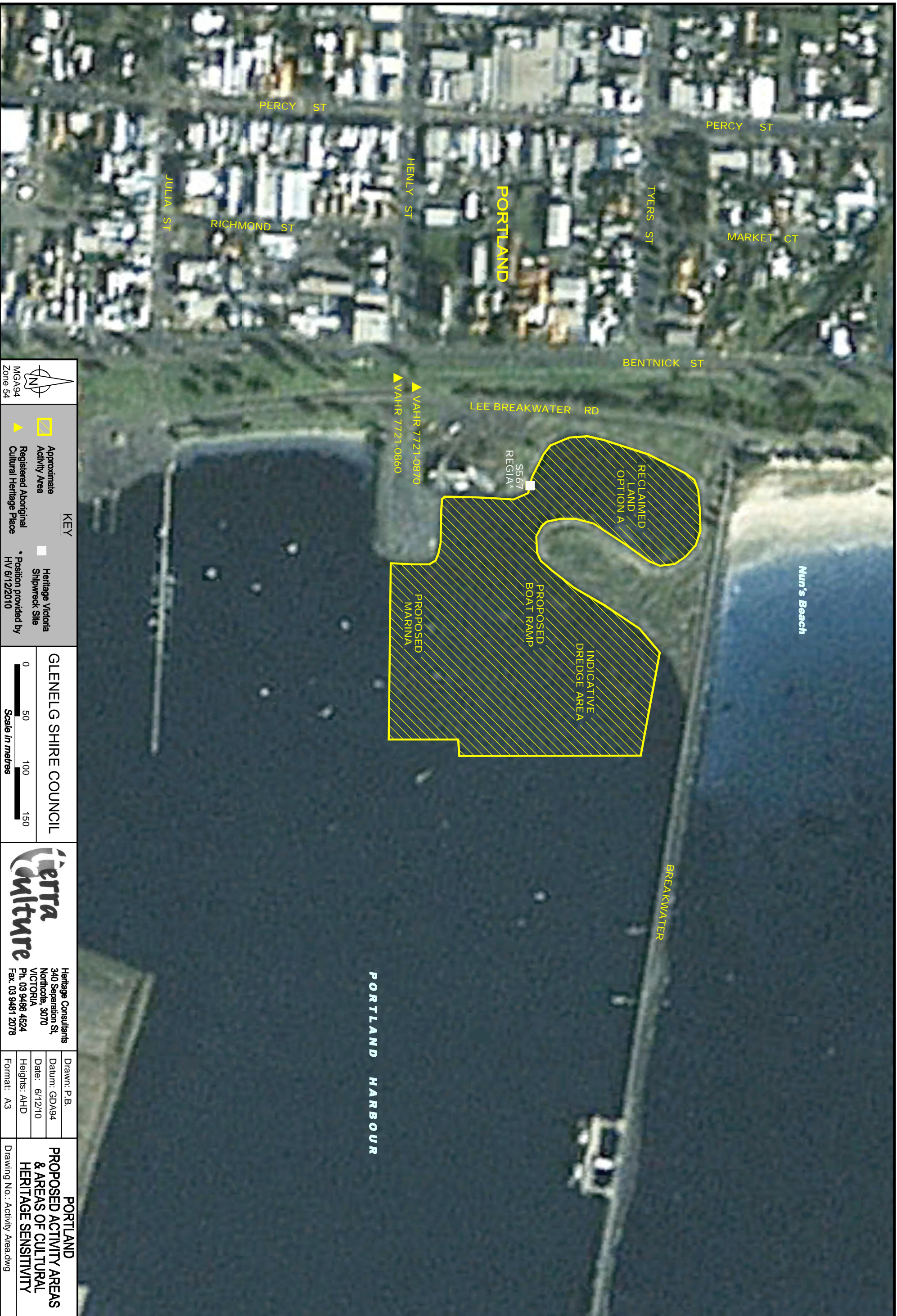
The recommendations of this report were discussed with Heritage Victoria Maritime Unit (Peter Harvey and Cassandra Philipou 17th November 2010) prior to submission to the Glenelg Shire. A draft version of this report was sent to Heritage Victoria Maritime Unit on the 18th November 2010.

1.4 Proposed Works

The proposed redevelopment (as yet to be finalised) of the Portland Foreshore will involve the following elements:

- Land Reclamation

- Proposed Marina
- Dredging
- Landscaping



				KEY	
				Approximate Activity Area	Registered Aboriginal Cultural Heritage Place
GLENELG SHIRE COUNCIL					
				Heritage Consultants 340 Separation St, Northcote, 3070 VICTORIA Ph. 03 9486 4524 Fax. 03 9481 2078	
Drawn: P.B. Datum: GDA94 Date: 6/12/10 Heights: AHD Format: A3				PORTLAND PROPOSED ACTIVITY AREAS & AREAS OF CULTURAL HERITAGE SENSITIVITY Drawing No.: Activity Area.dwg	

MAP 1 : Showing Activity Area.

2.0 BACKGROUND INFORMATION

2.1 Environmental Background

2.1.1 Location and Climate

Portland Bay is located on Victoria's western coast and on the eastern side of the Portland Peninsula; an 'upland' comprising Cape Bridgewater, Cape Nelson, and the smaller Cape Sir William Grant. Portland Bay is a large curving bay extending north along the eastern side of the Portland Peninsula and east to Cape Reamur. The entrances to the bay are marked by Danger Point (the easternmost point on the Portland Peninsula) and Lady Percy Island, a small basalt island some 10 kilometres offshore.

Portland Bay is a mixture of natural and artificial coastal features, which are reflected in its geological and geomorphological history, particularly in the case of changing sea levels and volcanic activity dating to the Pliocene and Late Pleistocene, and more recently the effects of agricultural settlement and development of the harbour. The Lee Breakwater and other built structures at Portland's harbour have modified the natural patterns of sand movement and the morphology of local beaches such as erosion along Dottons Way.

Portland has a temperate climate with cold, wet winters and warm summers. Annual average rainfall is some 837mm falling mostly during the winter months. Summer temperatures are warm averaging 13 to 22 degrees Celsius. Winter temperatures are cold, averaging 6 to 13 degrees Celsius with the lowest winter minimums in July and August, and were likely exacerbated by the proximity of the Great Australian Bight. Portland's climate provided little constraint to Aboriginal settlement of the area; however the prevailing cool conditions and access to the Great Australian Bight and Southern Ocean ensured European settlement was particularly focused on whaling.

2.1.2 Geology and Geomorphology

According to the Department of Primary Industries Melbourne geological map, Portland Harbour lies at the south western boundary of a geological formation (GeoVic). To the north and east inclusively, the surface geology is dominated by basaltic lava flows that range in age from the middle Pliocene to as recent as 6000 years. These flows are collectively known as the Newer Volcanics and cover an area of over 15000 square kilometres from the South Australian border to north of Melbourne (see Figure 1).

The marine cliffs and bluffs that characterise the eastern shore line of the Portland Peninsula become reduced northward to Battery Point 'where they are fronted by an artificial boulder-fringed reclaimed zone extending to the Portland harbour breakwater' (Bird 1993:31). This reclaimed area (see cover image), was developed during the 1950s as part of the construction of the large breakwater, and included the original outlet to the bay of Wattle Creek. This swampy creek flowed eastward to open northward into the bay and has since been modified into a channel east of Fawthrop Lagoon. None of the original harbour shoreline exists today.

North of the Wattle Creek channel to the Lee Breakwater, the port has been radically modified. In this, our study area, the harbour is delineated from the Portland Township by low cliffs. Bentinck Street runs north-south on top of these cliffs parallel with the foreshore. From near Julia Street, the cliffs begin to rise steadily and reach up to 10m high at Whalers Point. Bird (1993) has provided a detailed description of the distinctive Miocene age white Portland Limestone, and other sediments, that make up this cliff formation. This Portland Limestone belongs to the Heytesbury Group of Late Oligocene to Late Miocene carbonates which extends from the Lower Glenelg National Park in the west to Port Campbell in the east and is particularly represented at Portland (Birch 2003: 303). Between Whalers Point and Anderson Point, the base of the cliff has been protected with large basalt blocks, remnants of eroded Pliocene Volcanics, extending some 15m seaward (see Bird 1993: 33-34, figure 25).

Other than the cliffs, the other major feature is Nunns Beach, located immediately north of the Lee Breakwater. This beach has been formed between the breakwater and Whalers Bluff and has been replenished with sand from Pivot Beach and the harbour.

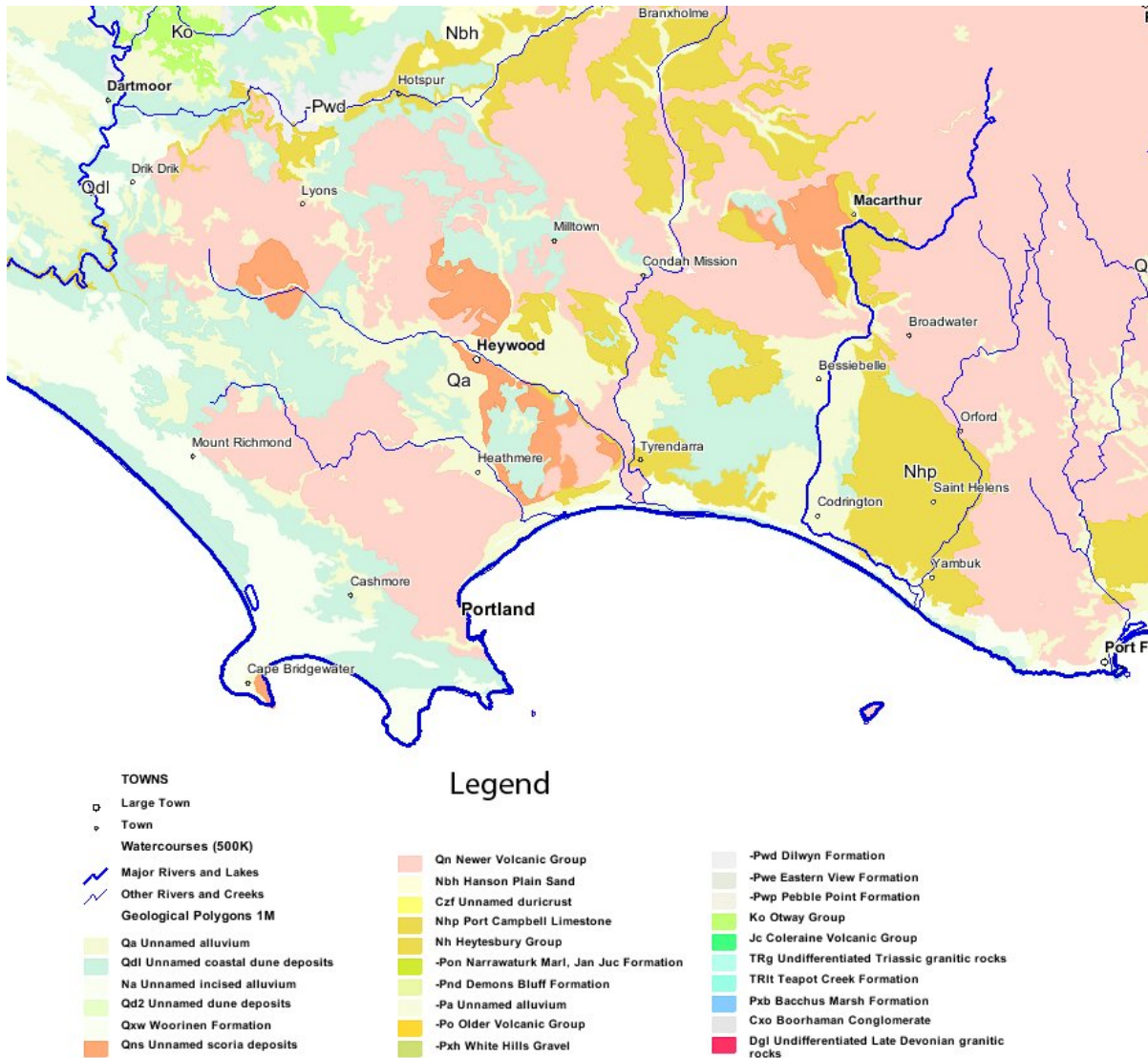


Figure 1 - Portland and surrounds Geological Zones (GeoVic 2010)

2.1.3 Vegetation

The Portland Harbour foreshore has been radically altered since European settlement and is covered in artificial surfaces and parkland. The concept of natural and cultural conservation was slow to evolve in Victoria however, leaving much of the vegetation in the greater Portland Harbour area to the mercy of European development. The *Land Act 1869* provided for the establishment of national parks in Victoria. However, although some early parks were opened as, for example, Tower Hill in Moyne Shire in 1892, an authority to administer vegetative conservation was not set up until 1956.

Rawlinson (in Bird 1993) remarked on the former coastal vegetation: *'When settlement first took place in the West, and for years afterwards the coastline was clothed with verdure; and the west of Belfast the honeysuckle (Banksia) and She-oak (Casuarina) grew in abundance whereas now the dunes are denuded of vegetation and the trees gone; and in many places the material of the dunes is drifting inland'*. The remaining natural vegetation is mainly found in national parks,

wildlife and water catchment reserves, along road and railway reserves, on undeveloped Crown Land and in country cemeteries.

2.2 Aboriginal Background

2.2.1 History of the of the *Dhauwurd wurrung* (*Gundidjmarra*)

Portland falls within the known traditional boundaries of the *Dhauwurd wurrung* (*Gundidjmarra*) language group. The *Dhauwurd wurrung* (*Gundidjmarra*) occupied a large area of south-western Victoria. According to Clark (1990), this territory included the coast west of the Glenelg River to the Hopkins River, and inland areas north as far as Casterton and the Wannon River; and at the eastern end of the territory as far north as near Mount Napier and Mount Rouse. The *Gundidjmarra* language group is one of the better documented in Victoria due to the works of Dawson (1881) and Mathews (1904) who identify some five dialects: *Wulluwurrung*, *Dhauwurdwurrung*, *Gaiwurrung*, *Gurngubanud* and *Bigwurrung* (Clark 2005). The *Gundidjmarra* language group is sometimes also referred to in literature as *Gurnubanud* and *Dhauwurdwurrung*. It appears however that '*Dhauwurdwurrung*' may have been the favoured language name as its usage was confirmed by John Mathew during a visit to Lake Condah Mission in 1907 when he was informed by Peter Ewart, Ernest Mobourne and James Courtwine, that *Dhauwurdwurrung* was the main language of the region while *Giraiwurrung* was the language of their eastern neighbour (Clark 2005). Following Clark (1990: 55), the *Dhauwurd wurrung* (*Gundidjmarra*) were made up of 59 clans; family units who were associated with specific localities.

Clark's (1990) historical synthesis of the *Gundidjmarra* discusses their first contact with the whalers and sealers at Portland 'from at least 1810,' their relationship with the Henty's and other early pastoralists, their resistance to white settlement, the 'Eumeralla War' of the mid-1840s and the role of the Native Police Corps.

In summary of this he notes:

'Coastal Dhauward wurrung clans had dealings with the ngamadjidj, or 'white man, from at least 1810... when whalers and sealers began to work the Portland Bay area. The ngamadjidj brought disease and violence to the coastal clans but their presence in the region was seasonal and when winter whaling was over, they left and the local people were given some respite. The permanent arrival of the Henty's in 1834 heralded a different land use and their intentions to graze flocks of sheep over extensive areas conflicted with Aboriginal land use tenure. From 1838 local clans began to use their traditional burning off processes as a means of driving the Henty's away. When Robinson travelled through the coastal region in 1841 he noticed the demographic variation between coastal and inland clans. Some of the clans around Portland had been reduced to a handful of members and had joined forces with the Gard gundidj clan at Mt Clay. The Mt Clay people prohibited any Aboriginal person from going into Portland resulting in the situation in 1941, where none had been seen in the township since its foundation' (Clark 1990:33).

It is likely that the prohibition set by the *Gard gundidj* of Mt Clay on their people going to Portland was a reaction to the Convincing Ground massacre of the mid-1830s, whereby ongoing conflicts between Aborigines and whalers resulted in an alleged massacre of an unknown number of Aborigines (Clark 1995). On relations with Europeans during the 1940s, Clark remarks:

'In the early months of 1842, approximately 4000 sheep were driven off or destroyed by Aboriginal bands, and four Europeans were killed and two wounded. Attacks were concentrated upon settlers who had occupied land that contained traditional meeting places and sacred sites near Port Fairy, Mt Napier and Lake Condah; areas essential to the political economy of the Aboriginal clans. This campaign of resistance was maintained for several years and effectively slowed the pace of pastoral settlement. During 1844-5, attacks were so frequent that Browne described the hostilities as the 'Eumeralla War.' In response to the escalation of attacks in 1842, a detachment of the Native Police Corps ... annually visited the Portland and Port Fairy districts and

remained there for several months at a time. The detachment returned to the Western District until 1848. ... by 1846, Aboriginal resistance had been broken' (Clark 1990: 34).

Clark's history continues with accounts of the various inquests into Aboriginal deaths during the 1850s a period he summarises as:

'...one of continued depopulation due to venereal and respiratory diseases; sub-standard nutrition; falling fertility rates; deaths resulting from drunken fighting; and disruption of their general reproductive system. Traditional socio-political structures were collapsing, and depleted family units were camped on either European stations, where they were receiving seasonal employment and exploited by being underpaid, or were camped at the fringes of small townships where their main support was probably begging and prostitution, with greater access to alcohol. Throughout this decade the Aborigines received no government assistance' (Clark 1990: 47).

By 1862 the government census recorded only 100 Aboriginal people at Portland. From the 1860s onwards, many *Dhauwurd wurrung* () people were moved on to the Lake Condah Mission, the Station at Framlingham and other Aboriginal reserves elsewhere in Victoria. Clark's history of these stations is one of a slow but continuing demise in the numbers of resident people, the revocation of reserve land for other uses, e.g. soldier settlements, and the removal of families and their homes to other locations (Clark 1990: 47-53). The Lake Condah Mission was officially closed in 1918, although the school was still operating until 1948.

2.2.2 Local Portland Aboriginal Clan

At European contact, Portland was the location of a local *Dhauwurd wurrung* (*Gundidjmara*) clan known as the *[Ng]jure Gundidj* (Clark 1990: 54 and 79). Members of the *[Ng]jure Gundidj* were mentioned in 1836 whereby John Wedge of the Port Phillip Association protested:

'About a year and a half ago a similar attack was made upon the natives and four of their women were taken from them. It is to be lamented that the like outrages have been committed upon the Aborigines at Portland Bay and other whaling stations...' (Jones 1981a: 35).

As noted by Clark however, there is little known about this clan post-1941, due to their rapid demise and dislocation. He states:

'In 1841 this clan had been reduced to one old man, Wor.rup.mo.un.deen/Wor-up-mo-un-deen, and his five year old son, who would have belonged to his mother's clan. This clan united with the Bome conedeet, Kilcarer conedeet, and Cart conedeet at Mt Clay, when dispossessed of their land in the mid-183's. Robinson noted in his 1841 journal that Aborigines had not been seen in the township of Portland for some years; they never visited the town because Cart cone-deet would not allow any person to go near the place' (Clark 1990: 80).

Neither the moiety nor the head of *[Ng]jure Gundidj* clan is known.

2.3 Historical Background

2.3.1 History of the of European Settlement

It is beyond the scope of this present investigation to add to the large volume of historical research into the development of Portland's town and harbour (for example see Harvey and Learmonth 1966, Anderson 1981, Bennet 1993 and Learmonth 1960). Of the published accounts, Learmonth in particular has written extensively on the development of the harbour and its industry, and the reader should refer to these works for further detail. Much of the historical text has been scrutinised by Eslick (1983) for the purpose of identifying specific archaeological sites and locations where there may be buried remains. For the purpose of this present investigation, the following sections focus on the built components of the foreshore and harbour that may leave archaeological remains and the status of shipwrecks in Portland Harbour.

Due to its coastal location and east facing harbour, Portland had been the focus of European activity since before 1807 when sealers, followed by whalers, established seasonal stations on the foreshore. The first sighting of Portland Harbour was by the British navigator James Grant in 1800, who sailed in the *Lady Nelson* along the Victorian coast. "I also distinguished the Bay by the name of *Portland Bay*, in honour of His Grace the Duke of Portland," wrote Grant. The bay was the only deep sea port between Adelaide and Melbourne and offered a sheltered anchorage against the often wild weather of Bass Strait (Learmonth 1960). The first recorded landing was by William Dutton, a sealer who stayed near Blacknose Point for several weeks in 1828. Prior to the establishment of townships in Port Phillip Bay, the permanent European settlement of Victoria was spearheaded by Edward Henty who arrived in Portland in 1834. Conveying the first livestock from Van Diemens land, Henty immediately began planting crops, grazing sheep and coordinating the whaler trade completely without the knowledge of the NSW government until Major Mitchell's arrival a year and a half later (Blainey 2006). As noted by Bird:

'...after reaching the mouth of Glenelg River, Thomas Mitchell walked inland, eastward to the north shore of Portland Bay and the mouths of the Surry and Fitzroy Rivers. He was surprised to look back and see a brig at anchor and some wooden houses on the shore beneath the cliffs to the west. This proved to be the Henty settlement, where Mitchell stayed for a few days, making a survey of the Portland Coast and inlands...' (Bird 1993:31)



Figure 2 - Henty's Landing Memorial ca. 1945 (SLV 2010: H2000.222/86)

Learmonth (1960) also discusses how Mitchell surveyed (for the first time) the headlands and islands' of Portland Bay during this 1836 visit. In 1839, Foster Fyans, the first police magistrate of Geelong, was directed by NSW Governor Gipps to visit Portland in order to investigate claims of violence and maltreatment against Aboriginals by the whalers and Henty brothers and to provide reports on the areas 'suitability for a town.' While it is unclear if the allegations of violence toward Aboriginals was directly related to the Convincing Ground massacre, Fyans found the Henty's innocent and appointed them magistrates of the district while Fyans himself was transferred to become first police magistrate of Portland (Jones 1981a: 249-63). Charles Tyers was subsequently sent to survey the location for the Portland Township and harbour, which he completed at the end of 1840 (Learmonth 1960: 10-11,17). As noted by Bird:

'Charles Tyers showed Portland Bay, with a swampy stream (Wattle Creek) opening northward behind a gravelly spit below Battery Hill. Low Limestone cliffs backed a sandy beach to the north, ascending to Whalers Bluff, and it was here that the town site was selected in 1840' (Bird 1993: 31)



Figure 3 - Charles Tyers' 1840 Map of Portland, the study area is highlighted in red (PROV)

2.3.2 Portland Harbour's Built Structures: Piers, Baths and Lighthouses

Piers and Jetties

Portland has a strong maritime history and there have been several places of expansion in foreshore infrastructure. Among these include the initial constructions of the 1846 jetty and its replacement with larger and more substantial piers and breakwaters. Learmonth describes the construction of the first pier in 1846 as:

'The most important port accessory during these years was the erection of a jetty in 1846 (sic)... The contractor was Thomas Scott and many of the piles of clay were cut on Mt Clay and towed across the bay from the Convincing Ground. At low tide there was only nine feet of water at the end of the jetty, so ships of any size had to anchor off shore and be loaded and unloaded by lighters. This first port improvement was removed in 1891...' (Learmonth 1960:20).

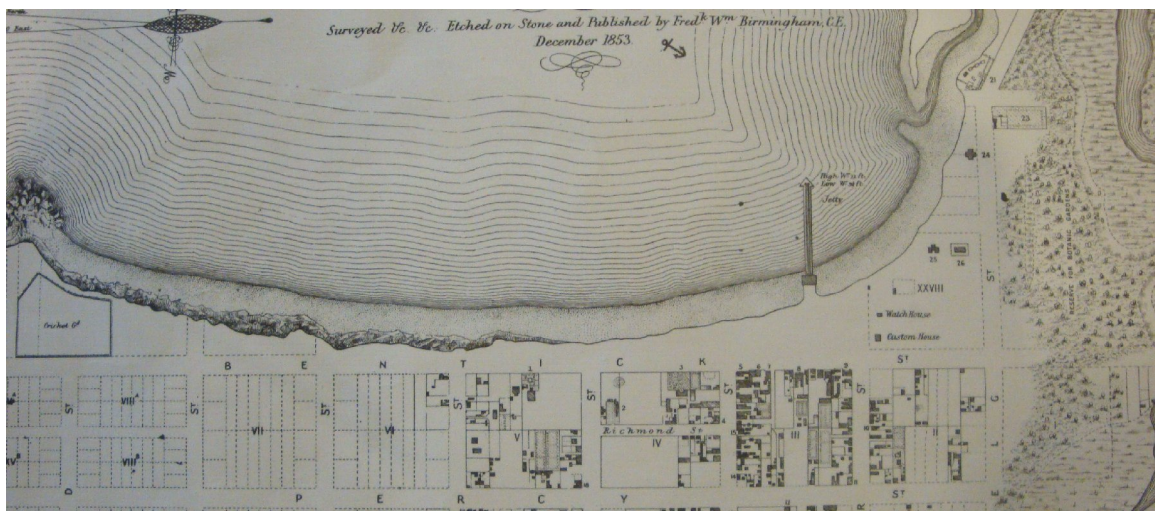


Figure 4 - A detail of Fred Birmingham's 1853 Portland map marking the location of the first Jetty

A second pier was commenced in 1857. The pier was widened and some thirty five feet were added in 1880 when the railway was brought along the structure.



Figure 5 - A wood engraving of the second pier at Portland looking south ca 1878. Note the first, shorter jetty on the far side of the pier (SLV 2010: IAN20/02/78/29a)

A third, much larger pier was commenced in 1899, as by 1898 '*... the lightering system was becoming too cumbersome and direct landing of all cargo a necessity*' (Learmonth 1960: 65). This latest pier was known as Fisherman's Breakwater and was constructed north from Battery Point.

Bird continues the history of Portland's jetties, discussing the lead up to and construction of the breakwater.

'Major storms demonstrated the need for a more enclosed harbour, and several proposals were made. John Barrow presented a report in 1854, and Sir John Coode visited Portland in 1879. Coode was an English harbour engineer who had organised the construction of Portland Harbour in England, and later designed harbours in South Africa and India. He was invited to Australia in 1878 by the Melbourne Harbour Trust to advise on the improvement of the Port of Melbourne, and during this visit he also reported on the harbour problems at Portland, as well as Port Fairy, Warrnambool, Geelong and Lakes Entrance. He recommended building of a large breakwater, a suggestion which was supported by other harbour engineers in later years, and after many delays, the present breakwater was constructed between 1957 and 1961 by dumping basalt blocks quarried from Cape Sir William Grant' (Bird 1993: 31-2).



Figure 6 - Postcard of Portland Harbour from Battery Point, ca. 1940 – 1960. Note the second pier, to the top right of the shoreline (SLV 2010: H2001.132/2)

Baths

In 1960 Learmonth noted that the baths at the end of Henty Street were disintegrating, and that this was also the location of the first baths built in 1858. On the first structure he states:

'When finished it was found that insufficient water had been enclosed and an extra 64 feet was put on. Twenty years buffeting with winter seas put many gaps in this old structure and in 1880 the Borough of Portland built new baths below Gawler Street. The Fisherman's Breakwater and the siltage along the foreshore behind it began to leave these new baths high and dry. After considerable discussion on the proposed sites, the Borough of Portland built the third baths in 1890, those that we see on the beach today' (Learmonth 1960: 66-67).

Lighthouse and Battery

There appears to have been some type of 'guiding light' for Portland Bay in 1858, built on land gazetted for military purposes in the 1840s at Flagstaff Hill, before a more substantial lighthouse was built. The Portland Battery was added to this site in 1889, which comprised a magazine, upper chamber, a parapet wall, and three gun emplacements. The light station (the tower, associated buildings and Battery) were later moved from Flagstaff Hill to the North Bluff in 1890 in order to protect them from 'enemy fire aimed at the battery' (Learmonth 1960: 69)

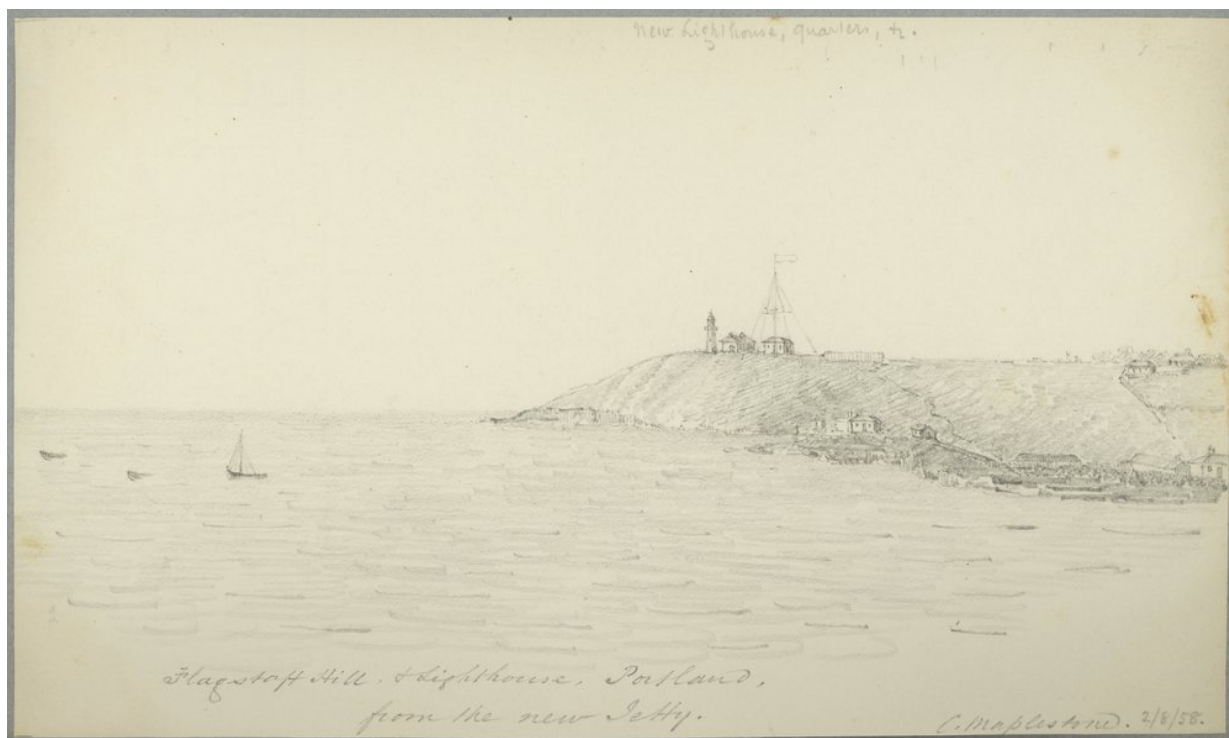


Figure 7 - A sketch of the Portland 'lighthouse' located on Flagstaff Hill, August 1858 (SLV 2010: H2001.166/3)

2.3.3 Shipping in Portland

Portland was a major trading port in nineteenth century colonial Victoria. Many ships visited the port and some came to grief. One of these is of particular interest to this report and is discussed further below.

Regia

The brig *Regia*, at 80-feet long and 13.5- feet deep, was built in Cochin, India in 1835. John Morrison and J T Duff were recorded as its owners in 1844 (Heritage Victoria 2010). In October 1860, *Regia* arrived in Victoria from Mauritius, shipping commodity goods such as sugar to Portland (the *Argus*, 20 Oct 1860, p 6). Its demise came about after enduring heavy seas and being wrecked close to the coastal shore on the 16th November 1860 at Portland, Victoria.

The *Regia* was anchored at Portland on 16th November 1860, when a strong southeastern gale struck Portland Bay. Several vessels, including the brig *Regia*, the schooner *Eva* and the barque *Temora*, were blown ashore. At that time, the brig was anchored by one small bower (chain); a second anchor was dropped to prevent the brig being driven away by the gale's force (Heritage Victoria Site Card Listing 2010). The *Regia* maintained its position until 5pm when both chains gave way and broke their moorings. The brig then became grounded near the north of the 'new jetty' (built in 1857), where a convict ship 'Australasia' was previously wrecked in 1855 (the *South Australian Advertiser*, 17 Nov 1860 p 3) (see below). The brig was 'still apparently whole, but thumping heavily' (The *South Australian Advertiser*, 19 Nov 1860, p3). The crew were safely landed by the Harbour Master.

On 24th November, The *Argus* confirmed the loss of *Regia* (the *Argus* 24 Nov 1860 p5).

In late years the brig became land locked as a result of sand deposits following the effects of construction of breakwaters (see Map 1). A Cultural Management Plan was prepared for the vessel when it was revealed in 2001 but the report is presently unavailable (pers. com. Cassandra Philippou 18th October and 17th November 2010).

Australasia

This vessel was a convict transportation vessel accommodating convicts from Dublin to Hobart. The *Australasia* is reported to have been wrecked in Portland in 1855 and it was reported in the South Australian Advertiser in 1860 (see above) that it was at the same spot as the later wreck the *Regia*. The location has not been confirmed and it is suspected that it has been highly broken up and potentially dispersed (VHR database).

2.3.4 Other Industries

In 1839, Fyans suggested that a cutter be sent to Portland Bay in order to investigate the port and the illicit trading being undertaken by the whalers and Henty's. This cutter discovered over 20 boats engaged in illegal fishing and whaling with oil, spirits and tobacco being readily available for duty free sale. Robert Webb, the Principal Customs Officer of Port Phillip sought to stop the illicit Portland trade from detracting from Melbourne's importing revenue and, under the direction of Governor Gipps, ordered that all vessels from Van Dieman's Land report and pay the duty of their goods offloaded at Portland Bay upon their arrival at Port Phillip (Jones 1981b).

As well as sealing and whaling, Portland developed other industries that depended heavily on the harbour for transport and the transferral of goods, ships and shipping, and for the processing of produce and resources from western Victoria. These industries included wool production (scouring of fleeces) and tanneries, being second only to early fishing and whaling. As a result, Henry Gisborne, the Commissioner of Crown Lands, in his 1839 report on Portland believed the unmetered exploitation and export of whale oil was "very considerable" at the time and observed that fishing and whaling resources were steeply on the decline (Jones 1981b). Naturally, shipbuilding was also an early industrial pursuit and continued to be important for the operation of the harbour.

As noted above, the development of the harbour also involved the extension of the railway into Portland's second pier. Learmonth (1960) noted that the construction of the present railway commenced in 1874 with the Portland North station acting as the terminus. He noted that 'it was proposed to connect the pier by a deep cutting through the intervening hill.' The first engine entered Portland in 1878.



Figure 8 - A wood engraving of Portland looking north ca 1878. Note the second pier to the right and Bentinck Street to the left with the railway cutting the 'intervening' hill (SLV 2010: IAN20/02/78/29b)

The Parish of Portland map shows the original coastline has been altered by reclamation works and the construction of facilities along the foreshore. The present Activity Area is located between the breakwater and partially overlapping the 'New Pier' indicated in Figure 9 (below).

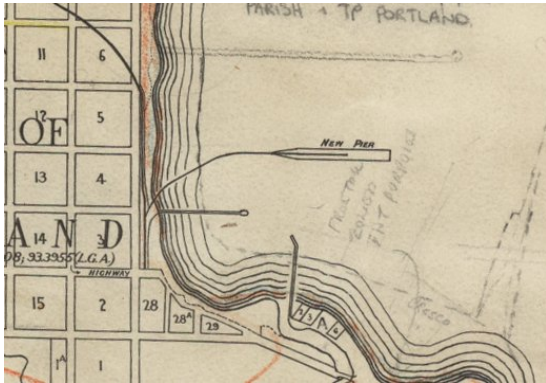


Figure 9 - Parish of Portland Map re-drawn 1948

An 1878 wood engraving of the harbour (Figure 8) shows the rail line to the “New Pier”, located opposite Henty Street at what is now the car park at the Portland Discovery Centre, and the coast line running north along the study area. The present breakwater access road, Lee Breakwater Road, was constructed between 1957 and 1961 (see Figure 10). Following the construction of the breakwater, sand accumulated on the southern side of the new structure, potentially burying the former ‘New Pier’ depicted in Figure 9.



Figure 10 - Construction of the new breakwater (SLV: Victorian Railways 1955 Accession No: H91.330/4283)

Figure 11 depicts the present reclaimed shoreline overlaying the original town layout (see also Map 1), indicating the extent of alteration within the mid to late nineteenth century. This plan shows that the second pier (railway pier opposite Henty St) is no longer present prior to the alteration of the foreshore.

3.0 DESKTOP ASSESSMENT

3.1 Search of the Victorian Aboriginal Heritage Register and Heritage Victoria Register

Aboriginal Affairs Victoria (AAV) maintains a register (Victorian Aboriginal Heritage Register) of all recorded Aboriginal archaeological sites and a library of all published and unpublished reports describing investigations of these Aboriginal archaeological sites within Victoria. The AAV register was visited on September 1, 2010 by Caroline Seawright and a map generated showing the location and type of local registered Places. The Place cards were copied and checked against the relevant report and maps contained therein. A separate register contains details of Aboriginal Historic Places and this was also consulted.

Heritage Victoria maintains a register of all recorded Historical sites and a library of all published and unpublished reports describing investigations of these Historical sites within Victoria. The Heritage Victoria Inventory was accessed on October 21, 2010 by Caroline Seawright and site cards pertaining to the study area were retrieved. The site cards were copied and checked against the relevant report and maps contained therein.

3.2 Aboriginal Places in the Portland Foreshore Region

There are two Aboriginal cultural heritage places recorded on the Victorian Aboriginal Heritage Register (VAHR) within close proximity to the proposed works. These are both recorded as artefact scatters, 7221-0860 and 7221-0870, and, according to the coordinates listed on the VAHR, are spaced about 20 metres apart on the foreshore opposite Henty Road. The coordinates place one site, 7221-0870, in the centre of Lee Breakwater Road and the other, 7221-0860, on the landward edge of the road. An examination of the original site cards show these sites to be occurrences of single artefacts located east of Lee Breakwater Road on either side of a bluestone culvert. One artefact (7221-0860) is a waste silcrete flake while the other (7221-0870) is a damaged coastal flint core and both sites were described as in poor contextual integrity. Neither Place is within the present study Area.

VAHR Site ID	Place Name	Place Type	Landform	Distance from Study Area
7221-0178	Portland 68 Golf Course	Artefact Scatter	Coastal Cliffs	Approx. 2.5 km southeast
7221-0492	C1	Artefact Scatter	Coastal Dune	Approx. 2.5 km southeast
7221-0493	C2	Artefact Scatter	Coastal Dune	Approx. 2.5 km southeast
7721-0860	Portland Foreshore 1	Artefact Scatter	Modified Coastal Terrace	125 metres of the Activity Area
7721-0870	Portland Foreshore 2	Artefact Scatter	Modified Coastal Terrace	110 metres of the Activity Area

Table 1 - Registered Aboriginal cultural heritage places within two kilometre locality of the Activity Area

Previous work in the Portland Foreshore Region

The following is a summary of those archaeological reports that are relevant to this present investigation, especially those reports dealing with assessments of the same or similar landform units being investigated.

Cultural Heritage Management Plans (CHMP)

Chandler, 2009

This 2009 report investigated the cultural heritage impact of the installation of a pipeline in West Portland. The activity area extended some 8 kilometres from Pitts Road to an unnamed creek adjacent to the Henty Highway and was a maximum of 10 metres wide. The methodology solely involved shovel test pitting along the activity area at 50 metre intervals in some areas, with a total of 83 shovel test pits excavated.

One isolated artefact was found during the complex assessment and the report recommended fencing the site during the pipeline works.

Debney and Patton 2008

In 2008, Biosis Research Pty. Ltd. undertook an investigation of the activity area for a proposed Bald Hill Reserve Osmosis Plant, approximately 3 kilometres south of the present study area. The standard and complex archaeological assessments identified three Aboriginal archaeological sites within 50 metres of the activity area including an artefact scatter and two isolated artefacts, while a fourth site was identified outside the 50 metre inclusion zone but close enough to warrant mention. All sites were believed to be disturbed or destroyed.

The standard assessment identified landforms of potential archaeological sensitivity however no new Aboriginal or historical sites in the activity area were recorded during the standard or complex assessments.

Due to the lack of Aboriginal archaeological sites present in the activity area, the study argued that there was little potential for the discovery of further sites.

Other Reports

Murphy and Rymer, 2007

This 2007 study was commissioned by Wannan Water to assess the potential impact of proposed bores at the Bald Hill Water Facility in Portland. The study identified 57 previously registered indigenous sites including stone artefact scatters and shell deposits within 1 kilometre of the study area.

A ground surface survey identified no Aboriginal or historic sites.

Undisturbed areas were assessed as containing moderate potential for very low density stone artefact scatters and low potential for shell deposits. The authors concluded that any indigenous sites were likely to have been disturbed by erosion with no intact stratified deposits, have little spatial or temporal integrity and therefore have low to moderate scientific significance. Murphy and Rymer noted that Aboriginal community representatives expressed concern that undisturbed sites may be present within relatively undisturbed areas and requested Aboriginal community monitoring if subject to significant ground disturbance. On this basis, it was recommended that a cultural heritage management plan be prepared if development required significant ground disturbance in areas not subject to previous ground disturbance.

Background research led the authors to conclude that there was no potential for historical sites to be identified in the study area.

Feldman and Schell, 2004

In 2004, Feldman and Schell undertook an archaeological survey of the then proposed Cliff Street Overpass in Portland for VicRoads. The purpose of the survey was to identify and record any Aboriginal or historical archaeological sites located in the study area. The study area was located in a highly modified zone, south of Portland Wharf, including an area of reclaimed land, a tidal canal, rail yards, a man-made tidal canal, residential and industrial land and roads.

The survey established that there had been a high level of disturbance in the study area from post-contact land use and more recent industrial development. As such, the proposed study area was assessed as having very low potential to contain Aboriginal sites. Three historical sites (H7221-183 The Battery, D7221-2 'Kingsley' (house) and D7221-8 the remains of a demolished bridge) and an area of moderate historical archaeological sensitivity (H7221-62 a demolished brewery) in the vicinity of the study area were determined to have the potential to be impacted by components of the proposed works.

The report made a series of recommendations regarding preferred works alignment options to avoid impact on the identified sites.

Jean, Kellaway and Rhodes, 2002

In 2002, Kellaway, Rhodes and Jean drafted part one (an environmental history) of a Glenelg Shire Heritage Study on behalf of the Glenelg Shire. The report commences with an examination of the natural environment of Portland and the surrounding region including the Glenelg River and its tributaries. It explores the pre-history of the indigenous inhabitants of the region, the Dhauwurd wurrung/Gunditj-mar and the impact of European culture on the indigenous population of south-west Victoria to the present day. The establishment of settlements/towns and the development of local and regional economies to the late twentieth/early twenty first century are examined in detail.

The importance of the coastal areas as well as inland resources to both Aboriginal people and the later European inhabitants of the region is clearly demonstrated through this study.

Marshall 2001

Marshall (2001) conducted a heritage survey of the Portland Harbour foreshore in order to assess the impact of proposed developments on the foreshore heritage. Marshall argued that due to the heavily modified nature of the foreshore, including reclaimed land, the construction of several jetties and nearly 200 years of European shipping disturbance, that most archaeological remains would be European in origin. The resultant survey recovered and recorded two isolated Aboriginal artefacts near Lee Breakwater Road, however Marshall notes that ground visibility was poor at the time of survey and concluded that the foreshore is likely to contain only low density isolated artefacts which have either been dispersed or disturbed due to European developments.

Portland Aluminium Smelter Site

The Alcoa Portland Aluminium Smelter Site, south of the study area, has been the focus of several intensive surveys. Wesson and Clark (1980) carried out the preliminary survey of the area in 1979, followed by further studies by Djekic and Snoek (1980) and Simmons and Djekic (1981).

These studies were mostly restricted to the high ground on the headland, but Wesson and Clark (1980) included the cliff tops around Point Danger and Blacknose Point, and described them as being covered with native vegetation. Djekic and Snoek (1980) reported low ground visibility, however bulldozing, ploughing and harrowing in preparation for landscaping works increased ground visibility at times to 90%. Later surveys by Simmons and Djekic (1981) were restricted solely to the smelter site some 1000 metres from the coastline.

The results of these surveys detailed artefact scatters which have been interpreted as being workshop areas associated with the manufacture of stone tools from the local marine chert (Simmons and Djekic 1980). In addition to these artefact scatters, Simmons and Djekic (1980) reported up to nine shell midden sites associated with the rock formations west of Cape Sir William Grant. The middens were located on the cliff tops and comprised a variety of shellfish and stone artefacts.

3.3 Historic Sites near the Study Area

There are five registered historic sites near the immediate Study Area (Table 2), including the Regia Shipwreck that is located in the south west portion of the study area.

Glenelg Shire maintain a schedule of heritage places that have been assessed as important to the local municipality and are listed in a Heritage Overlay (<http://www.dse.vic.gov.au/planningschemes/glenelg/map.html>). There are no heritage places listed on the Glenelg Heritage Overlay or with the National Trust of Australia (Victoria) in the study area.

Heritage Victoria Site ID	Site Name	Site Type	Description	Distance from Activity Area
H7221-0197	Railway Bridge Cutting	Railway	Railway Bridge and hill cutting	Outside Study Area

H7221-0268	Frederick Court Drain	Drain	Trench lined with bones and ceramics associated with a cottage	Outside Study Area
H7221-0493	Cliff Street Tunnel	Drain	Drain linking gaol to foreshore	Outside Study Area
H7721-0860	Andersons Point Whaling Station	Commercial Building	Buildings associated with whaling	Outside Study Area
S567	<i>Regia</i> Shipwreck	Shipwreck	Submerged Shipwreck	South west portion of the Activity Area
S48	<i>Australasia</i>	Shipwreck	Highly dispersed	Unknown

Table 2 - Historic sites listed with Heritage Victoria in or near the Study Area (H = Heritage Inventory Site and S = a shipwreck)

In 2001 the *Regia* shipwreck was revealed during natural sand shifting processes and it was inspected by Cosmos Coroneos and a report prepared and submitted to Heritage Victoria. This report was unavailable for the preparation of this assessment report as it is in storage. The report was requested but it was not available. In an article in The Sunday Age 20 January 2002 it was reported that Mr Coroneos estimated that 80-90% of the *Regia* was removed or dispersed from the wreck site (www.shipwreck.com.au/shipwreck-articles/2--2/1/20).

Historic Reports

Eslick 1983

Portland had been previously investigated for historical archaeological sites, spanning from the 1820s to 1900 by Eslick (1983). This major study involved much field survey and data compiled from a range of documentary sources (plans, maps, manuscripts, newspaper reports, published works and unpublished reports).

Eslick recorded a total of 260 sites; 199 in the Portland township and the remaining 61 elsewhere in the shire. Of these sites, township dwellings make up the bulk (82), followed by sites related to trade and exchange also within the town. Of the potential sealing and whaling sites, only one was extant. Eslick (1983: 32) noted that 'most of the industrial sites, including those on the coast of Portland, have been destroyed'.

Overview

From the above information, it is apparent that the landform within and around the study area is heavily modified with contextual integrity disturbed or destroyed. Aboriginal archaeological sites in this area comprise artefact scatters located in former coastal dune or terrace contexts. However, owing to the extensive modifications of the foreshore in the present study area, it is unlikely that *in situ* Aboriginal cultural heritage would exist. Further to this, the existing registrations are greater than 50m from the study area and therefore do not result in the proposed works area being an area of Cultural Heritage Sensitivity.

In terms of non-indigenous heritage there are no known sites within the study area. In the vicinity was the former rail pier, the remains of which may have been covered in sand. Despite the known location of the pier there is insufficient information concerning any potential for it to exist in the study area as an archaeological site, but should there be substantial removal of the reclaimed foreshore there is some potential for it to be identified.

4.0 FIELD ASSESSMENT

4.1 Field Inspection

4.1.1 Personnel

The Portland Foreshore was inspected by John Hyett (Senior Archaeologist) on 7 September 2010.

4.1.2 Methodology

The field inspection involved a visual inspection of the foreshore and harbour. The area was walked for the purpose of identifying the extent of the study area for the purposes of this report and to determine the nature of the landform and evidence of land modification. The inspection did not actively search for archaeological sites and none were identified during the site visit. Only the study area accessible by land was visited and no inspection was undertaken in the water.

4.1.3 Constraints

The site inspection was not designed to be an official survey as defined under the *Aboriginal Heritage Act 2006* or the *Heritage Act 1995* but was an inspection of landform and land use activity.

4.1.4 Results

The field inspection determined that the foreshore area had been significantly altered in order to create the harbour, car parks, retaining walls, sea walls and pier facilities. The reclaimed harbour foreshore is situated on a low terrace under a natural embankment that supports the town and especially the church that is just above the study area. The escarpment stratigraphy is visible in some of the exposed cuts in the embankment and erosion is noted in places.

The harbour foreshore is highly modified and the retaining wall is constructed using imported stone that is modified in shape but not laid in any defined coursework. Vehicle tracks with introduced gravel material extend around the perimeter of the harbour to a gravel car park that is located near the Portland Discovery Centre towards the southern extremity of the study area.



Plate 1 - Reclaimed area next to breakwater



Plate 2 - Sea-wall protecting reclaimed area



Plate 3 - Looking south along Lee Breakwater Road



Plate 4 - Car park next to Portland Discovery Centre

Sandy deposits are visible in the artificial harbour and it is unlikely that they are *in situ* and are more likely to have been brought to the area as part of the reclamation and modification works.

The sea area is largely unencumbered by maritime structures (within the study area) excepting the pier at the eastern end of the harbour. Vessels using the harbour are large shipping containers suggesting to some extent that the harbour depth is sufficiently deep to accommodate vessels of this size.



Plate 5 - Reclaimed area next to breakwater



Plate 6 - Looking east from the car park

4.2 Discussion

An examination of historical maps, photographs and sketches and comparison with the existing conditions indicate that the area has been subject to significant ground disturbance in the past and in more recent times.

An 1878 wood engraving of the harbour (see Figure 8) shows the rail line to the “New Pier”, located opposite Henty Street at what is now the car park at the Portland Discovery Centre, and the coast line running north along the study area.

The construction of the breakwater in 1958 and the access road, Lee Breakwater Road, along the foot of the escarpment has resulted in significant ground disturbance below the escarpment as the land was levelled, filled and landscaped to create the road reserve and a rock sea-wall was constructed to prevent erosion.

The site inspection and the examination of historical maps and images indicate that the original ground surface within the study area has been subject to significant ground disturbance within the meaning of the *Aboriginal Heritage Regulations 2007* and reclaimed areas are the result of either disturbance of the original soil or importation of material.

5.0 LEGISLATIVE PROTECTION FOR CULTURAL HERITAGE SITES

5.1 Aboriginal Cultural Heritage Act 2006

Since the 28th May 2007 all Aboriginal cultural heritage in Victoria has been protected by the provisions of the *Aboriginal Heritage Act 2006* and the *Aboriginal Heritage Regulations 2007*.

Under these pieces of legislation it is an offence to harm Aboriginal cultural heritage except in accordance with the provisions of a cultural heritage permit or a cultural heritage management plan that applies to the cultural heritage. A cultural heritage permit cannot be issued for an activity that requires a cultural heritage plan under the provisions of the *Act*.

A cultural heritage management plan (CHMP) is required under the *Aboriginal Heritage Act 2006* if:

- The regulations require the preparation of a plan;
- The Minister requires a plan to be prepared; or
- An Environmental Effects Statement is required.

The *Aboriginal Heritage Regulations 2007* require a plan to be prepared if:

- All or part of the activity area is an area of cultural heritage sensitivity (as defined); and
- All or part of the activity is a high impact activity (as defined).

If a CHMP is required a statutory authority must not grant any permit for the activity until a plan has been prepared and approved.

All heritage legislation is subordinate to the Coroner's Act 1985 in relation to the discovery of human remains.

5.2 Victorian Heritage Act 1995

The Victorian *Heritage Act* (Victoria) was passed in 1995. The main purposes of the Act are:

- To provide for the protection and conservation of places and objects of cultural heritage significance and the registration of such places and objects;
- To establish a Heritage Council; and
- To establish a Victorian Heritage Register.

The Heritage Act serves to protect all categories of historic cultural heritage relating to the non-Aboriginal settlement of Victoria, including historic buildings, shipwrecks and archaeological sites. The Act defines an archaeological relic as:

- a) Any archaeological deposit; or
- b) Any artefact, remains or material evidence associated with an archaeological deposit which:
- c) Relates to the non-Aboriginal settlement or visitation of the area or any part of the area which now comprises Victoria; and
- d) is more than 50 years old (*Heritage Act 1995 Part 1 Section 3*).

There are two categories of listing provided for under the *Heritage Act* (1995); the Heritage Register and the Heritage Inventory. The Heritage Register is established under Section 18 of the Act and the Heritage Inventory under Section 120.

5.2.1 The Heritage Register

The Heritage Register is a register of all heritage places, relics, buildings, objects or shipwrecks deemed to be of outstanding cultural significance within the State of Victoria. Section 23 of the Act sets out procedures for nomination of a place or object to the Heritage Register. Section

23(4) of the Act states that nominations are required to clearly specify why the place or object must be included in the Heritage Register and are to include an assessment of cultural significance against the criteria published by the Heritage Council. Nominations are assessed by the Executive Director of Heritage Victoria; if accepted, the Executive Director may then recommend to the Heritage Council that the nomination be accepted for inclusion in the Heritage Register. The notice of the recommendation must be published in a newspaper within the area where the place or object is located. Submissions in relation to a recommendation for inclusion in the Heritage Register can be made within 60 days after notification of a decision by the Executive Director. A person with a specific interest in the place or object, such as a property owner or local historical society, may request a hearing by the Heritage Council into a recommendation by the Executive Director for nomination. Archaeological sites or places and relics from any such sites or places can be nominated for the heritage register.

Section 64 of the *Heritage Act* (1995), states that it is an offence under the Act to disturb or destroy a place or object on the Heritage Register. Under Section 67 of the Act, a person may apply to the Executive Director for a 'Permit to carry out works or activities in relation to a registered place or a registered object'. Permit applications within the classes of works identified in Section 64 must be referred to the Heritage Council. They must also be publicly advertised and formal notification provided to local government authorities by the Executive Director. The Heritage Council will state, within 30 days of receiving a permit application, whether it objects to the issue of a permit.

5.2.2 The Heritage Inventory

Section 121 of the Acts states that the Heritage Inventory is a listing of all:

1. Places or objects identified as historic archaeological sites, areas or relics on the register under the *Archaeological and Aboriginal Relics Preservation Act* 1972;
2. All known areas where archaeological relics are located;
3. All known occurrences of archaeological relics; and
4. All persons known to be holding private collections of artefacts or unique specimens that include archaeological relics.

Under Section 127 of the Act, it is an offence to disturb or destroy an archaeological site or relic, irrespective of whether it is listed on the Heritage Register or the Heritage Inventory.

Consent from Heritage Victoria is required to disturb or destroy historical archaeological sites, places, buildings or structures listed on the Victorian Heritage Inventory. An application may be made to the Executive Director for a Consent to disturb or destroy an archaeological site or relic listed on the Heritage Inventory under Section 129. Consent application fees apply.

5.2.3 D Classification

Heritage Victoria also has a 'D' classification for places of low historical or scientific significance. Sites assigned a 'D' classification are listed on the Heritage Inventory but there is no requirement to obtain a Consent from Heritage Victoria to allow the removal of these sites.

5.3 Other Commonwealth Protection for Historic (non-indigenous) Cultural Heritage

In August 2003 the Federal Parliament passed three new sets of legislation that identify, conserve and protect cultural and natural heritage places of national significance. The legislation also creates an independent body to advise the relevant Minister on the registration and management of significant heritage places. These acts are:

1. *Environment and Heritage Legislation Amendment Act* (No. 1) 2003
2. *Australian Heritage Council Act* 2003; and
3. *Australian Heritage Council (Consequential and Transitional Provisions) Act* 2003

5.3.1 The Environment and Heritage Legislation Amendment Act (No. 1) 2003:

This Act:

- Replaces the *Australian Heritage Commission Act 1975*;
- Amends the *Environment Protection and Biodiversity Conservation Act 1999*;
- Sets out steps for entering places on the National Heritage List and Commonwealth Heritage List (see below); and
- Prescribes criteria for the nomination of places on these lists and sets out management principles for listed places.

Under this Act, Australia's National Heritage '...will be protected using the Commonwealth's constitutional powers and managed co-operatively with State and Territory governments and private owners where appropriate'.

5.3.2 The Australian Heritage Council (Australian Heritage Council Act 2003)

As of 1 January 2004, the *Australian Heritage Council Act 2003* establishes the Australian Heritage Council (AHC). The AHC replaces the Australian Heritage Commission and as stated in the Act its functions are to:

- Assess nominations in relation to the listing of places on the National Heritage List and the Commonwealth heritage List
- Advise the Minister on specified matters relating to heritage
- Promote the identification, assessment and conservation of heritage.
- Keep the Register of the National Estate; and
- Perform any other functions conferred on the Council by the EPBC Act.

The Australian Heritage Council (Consequential and Transitional Provisions) Act 2003 'provides for the smooth transition between the old heritage regime and the new'.

5.3.3 National Heritage List

This list consists of sites (both within and outside Australian territory) that are of outstanding national Indigenous, historic or natural value to the Nation of Australia. The list applies to sites that have 'special meaning for all Australians' and demonstrate important aspects of the history of Australia. A site or place on the National Heritage List will only be listed on the Commonwealth Heritage List if it is owned or managed by the Commonwealth.

5.3.4 Commonwealth Heritage List

The Commonwealth Heritage List consists of sites that are owned or controlled (leased) by the Australian Government. The sites listed on this list will have been assessed as to whether they have significant heritage value to the Nation of Australia. This list may apply to sites owned or leased by the Commonwealth, including defence, communications and customs. A site or place on the Commonwealth Heritage List can also be listed on the National Heritage List.

5.3.5 Register of the National Estate

The Register of the National Estate (RNE) is a register that was established under the *Australian Heritage Commission Act 1975*, but is now administered by the *EPBC Act (2004)* as a result of changes to heritage laws. The Commonwealth is the only body within Australia who is affected by constraints as a result of a site listing on the RNE. While there is no legislative protection under the *EPBC Act* for privately owned sites on the RNE, these sites however are usually listed on other State or Commonwealth registers that do provide statutory protection. The Register of the National Estate contains natural, cultural and Indigenous places that are special to Australians and that are worth preserving for the future.

6.0 DISCUSSION

The following section discusses the results of the Assessment.

6.1 Aboriginal Heritage

6.1.1 Desktop Assessment

There are two Aboriginal cultural heritage places within close proximity to the proposed works VAHR 7221-0860 and 7221-0870 (the former is 125 metres from the Activity Area and the latter is 110 metres). The site inspection did not involve a ground surface survey but was an inspection of the general area to assess the condition of the environment. As a result, the previously registered Aboriginal Places were not inspected nor located, but in this instance their presence does not trigger a mandatory Cultural Heritage Management Plan as they are greater than 50 metres from the Activity Area.

6.1.2 Statutory Compliance

The proposed activity contains elements that are defined as high impact activities under the *Aboriginal Heritage Regulations* 2007 r. 43 (1) (b) (xviii) a pleasure boat facility that would result in significant ground disturbance. The Activity Area initially falls under regulations 27 Coastal Crown land and regulation 28 Coastal land within 200 metres of the high tide mark. In addition, it should be noted (r.18) that the development of the sea-bed of the coastal waters of Victoria is an exempt activity and does not require a mandatory CHMP. The combination of a High Impact activity and being within an Area of Sensitivity would trigger a mandatory Cultural Heritage Management Plan. However, in this instance some discussion of significant ground disturbance is required.

The land defined as the Activity Area (as detailed by the *Aboriginal Heritage Act* 2006) ceases to be an area of cultural heritage sensitivity if they have been subject to significant ground disturbance. Significant ground disturbance is described in the *Aboriginal Heritage Regulations* 2007 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.

In this instance it is reasonable to conclude that the Activity Area has suffered from significant ground disturbance as described under the Act. This is because the present shoreline is artificial and was formed as a result of works to create the breakwater to the north. The construction of this breakwater was undertaken by machine (see Figure 9) and the accumulation of sand following this (to create the present shoreline) filled in areas of the bay that were formerly underwater. It is unlikely that Aboriginal cultural heritage existed in the areas of the Activity Area that are part of the land reclamation undertaken in this part of Portland.

However, it should also be noted a registered Aboriginal cultural heritage place remains culturally sensitive and is not affected by 'significant ground disturbance' as defined under r 4 of the *Aboriginal Heritage Regulations* 2007. Therefore if there is Aboriginal cultural heritage in the significantly disturbed area a CHMP will need to be undertaken whether or not the land is significantly disturbed. At this stage there is no reason to believe that there would be Aboriginal cultural heritage in this artificial shoreline.

For further consideration it should be noted that the Portland Foreshore is within the boundaries of the *Gunditj Mirring* Traditional Owners Aboriginal Corporation (GMTOAC) who is the Registered Aboriginal Party (RAP) and Native Title Holders for the Portland area. Even though a mandatory CHMP is not required for this activity, the GMTOAC may express an interest in this

proposed development under the provisions of the Futures Act Regime of the Native Title Act 1993. Legal advice should be sought in relation to responsibilities of the Native Title Act.

6.2 Non-Indigenous Heritage

There is one registered heritage place in the Activity Area: the *Regia* (S567) shipwreck; located in the south west.

There are no other known heritage places within the Activity Area. The location of the *Australasia* is unknown but is suspected to be near the *Regia* and is highly dispersed. A former railway line is located to the west and now forms part of Lee Breakwater Road and is not in the Activity Area. However, associated with this former railway line is the 'New Pier' as depicted in Figure 9. There is some potential for remains of this pier to occur within the study area however, they may have been demolished or be already buried in the reclaimed land (see Figure 11). As a result, there is insufficient information at this stage to submit a heritage inventory card to Heritage Victoria, but should remains be identified then there is some potential for this listing to occur. This pier has the potential to contribute to understanding early pier technologies with particular reference to coastal railway infrastructure. If remains exist there is the potential for recording of the technological construction and the design of this nineteenth century pier and provide comparative information for piers of a similar type throughout Victoria.

There is no value in conducting a land survey for this area as the study area (where the pier may have been located) is covered in bitumen but an underwater survey may be beneficial. It was intended to use the Conservation Management Plan for the *Regia* to examine the potential for this pier to exist as the ship and surrounds was visible when the report was written, but at this stage the report is unavailable. It may also have provided additional information on the potential for identifying the location for the *Australasia*.

7.0 MANAGEMENT RECOMMENDATIONS

Aboriginal Cultural Heritage

A mandatory Cultural Heritage Management Plan is not required for this activity for the following reasons;

- a) the subject land has suffered from 'significant ground disturbance' as defined under r4 of the *Aboriginal Heritage Regulations 2007*. This is due to reclamation works undertaken south of the Lee Breakwater where the present Activity Area is situated.
- b) the two Aboriginal Cultural Heritage Places located nearest to the Activity Area are 110 and 125 metres respectively from the proposed works area.

However, the *Aboriginal Heritage Act 2006* has provision for a sponsor to undertake a voluntary CHMP for a proposed Activity regardless of whether the land qualifies for a mandatory plan.

Native Title

The project should be discussed with the *Gunditj Mirring* Traditional Owners Aboriginal Corporation (GMTOAC). Legal advice should be sought on the provisions of the Native Title Act 1993 and how it may or may not be a consideration in this proposal.

Non-Indigenous Heritage

There is one registered heritage place within the Activity Area: the shipwreck the *Regia*.

The assessment identified that the Activity Area has been significantly altered since the construction of the breakwater as a result of sand movement and subsequent land reclamation. This change in the foreshore buried the original shoreline and part of the bay. In this area were elements (no longer visible) including a former pier, the shipwrecks the *Regia* and the *Australasia* all (except the *Regia*) which are likely to be out of the present Activity Area for this project. None of these elements are visible from the present ground surface and as a result, no ground surface survey is recommended. The shipwreck must be avoided by any proposed works as it is unlikely that a Permit would be issued by Heritage Victoria for its destruction.

An underwater survey should be conducted of the Activity Area as it is not possible to determine from this assessment whether there are archaeological remains specifically within the works area. There is some discrepancy over the co-ordinates over the location of this vessel and therefore an underwater survey would clarify this issue and also determine if there is potential for archaeological remains of the former pier that is described as being in close proximity to the *Regia*. In addition, the unknown location of the documented shipwreck the *Australasia* further demonstrates the need for an underwater survey. The survey must be conducted by a maritime archaeologist.

The former pier (see New Pier in Figure 9) that was subsequently demolished around the time of the construction of the breakwater originally extended from Henly Street and out into the water and may have been located in the present Activity Area. There is no surface indication of the pier and it is not known whether there are any remains within the water. As a result, there is insufficient reason at this stage to warrant a listing on the Heritage Inventory for its archaeological potential.

However, as there is some potential for elements associated with the original foreshore if mechanical excavation is required then an archaeologist should be present to see if these remains exist. The archaeologist would monitor deeper excavation (i.e. at a depth where such remains might be encountered such as pier pylons) and would occur in consultation with the development team to assess exactly when the archaeologist would be required. A Consent application (see Section 5.2.2) would not be required for these monitoring works as there are no Heritage Inventory listings for the pier or other former infrastructure. In the event that archaeological remains are identified then they may be listed on the Heritage Inventory and

Consent provisions for its destruction (should it be permitted) be followed. This may entail archaeological recording or excavation and there must be contingency provisions should this eventuality occur. The recommendation for monitoring is a risk management issue.

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