

MEMORANDUM

To [REDACTED]

From [REDACTED]

Copy to [REDACTED]

Reference MEJ852-C1-S0003

Date 8 November 2018

Subject **OLIVERS HILL SAFE BOAT REFUGE - PRELIMINARY ENVIRONMENT AND PLANNING ASSESSMENT REVIEW**

PURPOSE

Frankston City Council (council) has commissioned Kellogg Brown & Root Pty Ltd (KBR) to undertake a preliminary assessment of the Olivers Hill Safe Boat Refuge, Frankston South proposal against the requirements of the *Environment Effects Act 1978* and the *Planning and Environment Act 1987*. The purpose of this assessment is to understand the environmental assessment and planning approvals that would apply to support development of the project.

Council is seeking to provide a breakwater as a safe boat refuge in heavy weather at Olivers Hill. This facility would also enable search and rescue operations, such as the coastguard and police vessels to launch safely in adverse weather conditions. This project is supported by the coastguard, emergency services, the local boating community and federal and state governments.

SCOPE OF WORKS

A summary of the main works associated with the concept plan include:

- The installation of a break wall to allow for:
 - Emergency service vessels to be permanently moored, launched and retrieved in all weather conditions;
 - The launching and retrieval of recreational vessels via the existing boat ramps.
- The construction of a new coast guard administration building;
- The construction of new public amenity facilities;
- Potential road and car park upgrades, to be determined at a later date.

Ancillary activities associated with main work are likely to include:

- The installation of a service road to the mooring location for emergency service vessels;
- Periodic sand dredging to allow vessels to continue to access the harbour;
- Installation of a shared user path;
- Modifications and installation of utility services;

- Earthworks, retaining walls, landscaping and other applicable activities.

The current scope of works responds to the need to provide safe boat harbour facilities in the region. The current scope of work is significantly less intense form of development when compared to the previous proposals at this location, which allowed for a range of land uses associated with a safe boat refuge, including large marina style development. Previous proposals included residential hotel, boat sales, pleasure boat facilities, restaurant, and private moorings and associated commercial development. Previous facilities were also located in a fundamentally different position on the foreshore, with the revised concept plan seeking to take advantage of the existing boat launch and pier infrastructure at the bottom of Olivers Hill.

These previous proposals were subject to various assessment and approvals under the *Environment Effects Act 1978* and the *Planning and Environment Act 1987*. These historical assessment and approval processes are important to acknowledge as they influence stakeholder and community expectations for transparency in any development option undertaken.

PLANNING AND ENVIRONMENT ACT 1987 REVIEW

Refer to Attachment 1.

ENVIRONMENTAL EFFECTS ACT 1978 REFERRAL CRITERIA REVIEW

Refer to Attachment 2

RECOMMENDATIONS:

Preliminary recommendations from the planning review include:

- Further discussion with Council's Planning Department and/or DELWP with regards to existing land use and development controls, and how these would apply:
 - Seek confirmation that they agree with the suggested land use definitions and that the bulk of works would be considered exempt under the existing planning provisions;
- Discussion with DELWP with regards to:
 - The suitability of a corrections amendment to address the zoning anomaly;
 - The prospect of Ministerial Intervention to update the planning provisions. Specific points for discussion include:
 - The existing precedent which has been established by Amendments C30 and C50 to the Frankston Planning Scheme;
 - Whether a new Incorporated Document might be appropriate and, if so, what Conditions could apply;
 - Additional background documentation that would need to support an application for Ministerial Intervention;
 - Nature and extent of community consultation that would be necessary to support an application for Ministerial Intervention.
 - Consultation with VicRoads with regards to the potential for modifications to existing access arrangements.

The review of the EES referral criteria concludes that the referral criteria are unlikely to be met. However, due to the large stakeholder interest in the project and the history of EES processes to date, it is recommended that a referral under the *Environment Effects Act 1978* is prepared for the Olivers Hill Safe Boat Refuge.

The following technical assessments be considered to inform both the planning approval and the EES referral:

- Baseline marine ecology assessment
- Preliminary Aboriginal Heritage Test under the Aboriginal Heritage Act 2006
- Due diligence terrestrial ecology assessment
- Landscape and visual impact assessment
- Traffic impact assessment
- Coastal process assessment (largely based on the assessment already completed for the concept design report).

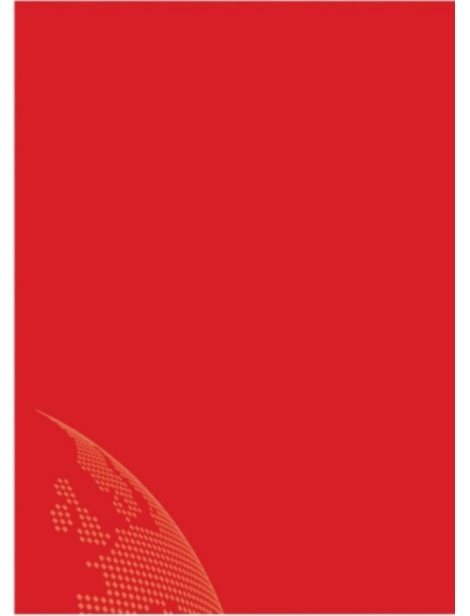
While not considered directly as part of the EES referral criteria, consideration may be warranted to undertake a climate change risk assessment to support the development.

Further, based on feedback from Council's Planning Department, a precinct master plan (incorporating a landscape plan) would be required to support a planning permit process. This requirement could potentially be waived if the Ministerial Intervention process was adopted.

To support the environmental assessment and approvals processes, it is recommended that a Community and Stakeholder Management Strategy be prepared. It is also recommended that consultation with DELWP Planning and Environmental Assessment units commence to confirm support for the approvals pathway and the technical assessments.

Appendix 1

PLANNING APPROVALS
REVIEW



APPENDIX 1- PLANNING APPROVALS REVIEW

Historical Planning Approvals

The following describes the historical planning approvals associated with the construction of a safe boat refuge at Olivers Hill.

Planning Scheme Amendment C15 (in operation from: 22 October 2003).

Planning Scheme Amendment C15 to the Frankston Planning Scheme sought to rezone 35 hectares of land and sea at Olivers Hill from Public Conservation and Resource Zone (PCRZ) to Public Park and Recreation Zone (PPRZ), and sought to introduce an incorporated document into the Frankston Planning Scheme to facilitate and guide the development of safe boating facilities.

Amendment C15 followed the preparation of the Olivers Hill Safe Boating Facilities Environment Effects Statement (EES) (Kinhill and Arup Joint Venture, September 1998) and the subsequent Ministerial Assessment under the Environment Effects Act 1978 (July 2000). A panel hearing was undertaken to consider the planning scheme amendment, with the final amendment adopting a new Special Use Zone – Schedule 3 (SUZ3) in lieu of PPRZ. Amendment C15 and the associated planning controls allowed for the development of a large marina facility, subject to the satisfaction of a range of conditions as spelt out in the Schedule to the zoning provisions and the Frankston Safe Boating Facilities Incorporated Document (Frankston City Council, June 2004).

Planning Scheme Amendment C30 (in operation from 16 September 2004)

Planning Scheme Amendment C30 clarified areas of ambiguity in the planning controls approval as part of Planning Scheme Amendment C15. Amendment C30 also included a Supplementary Assessment of the environmental effects of the Olivers Hill Safe Boating Facilities. The amendment was approved through Ministerial Intervention as the proposed changes were deemed to not change the intention of Amendment C15, but merely clarify and reinforce the intent of the planning controls.

Changes to the planning controls that were associated with Amendment C30 include:

- Clarification around requirements concerning physical modelling and dredging/sand bypass;
- Incorporation of the Native Vegetation Management – A Framework for Action (August 2002) into the applicable planning controls;
- Minor corrections of wording where necessary to achieve consistency and clarity.

Planning Scheme Amendment C50 (in operation from 4 June 2009)

Planning Scheme Amendment C50 to the Frankston Planning Scheme amended Schedule 3 to the SUZ, and embedded a revised incorporated document into the Frankston Planning Scheme, the Frankston Safe Boat Harbour Incorporated Document (June 2008). As detailed within the explanatory report, Amendment C50 did not significantly alter the current planning and approval requirements included in the Frankston Planning Scheme, nor did it change the boundaries of SUZ3.

Key changes associated with Amendment C50 include:

- Increased the size (from 16ha to 22ha) and the range of activities which could be undertaken without the need for a planning permit.
- Moved land uses (residential hotel, boat sales, restricted recreation facilities and wharf) from Section 2 (permit required) to Section 1 (no permit required) of the Table of Uses of SUZ3, and makes uses subject to the following condition 'Must meet the requirements of the Frankston Safe Boat Harbour Incorporated Document'.
- Retained land uses (office, pleasure boat facility, convenience shop, convenience restaurant and ship chandlery) in Section 1 (no permit required), but deleted the existing conditions and makes uses subject to the following condition 'Must meet the requirements of the Frankston Safe Boat Harbour Incorporated Document'.
- Amended the Incorporated Document as follows:

- o Increased the maximum floor area of building that can be constructed on the site and be used for boat repairs from 80 square m to 300 square m.
- o Increased the maximum floor area of building that can be constructed on the site and be used for retail premises (i.e. convenience restaurant, restaurant, retail facilities, shops and takeaway food premises) from 500 square m to 2,000 m2.
- o Removed restrictions on boat length and beam that were included in the Planning Scheme.
- o Ensured built development is designed and constructed in accordance with the Design Guidelines (included in Section 2 of the Incorporated Document).
- o Provided for dry boat storage (up to 400 boats), short-term residential accommodation (up to 60 units), the sale of boats and boating equipment, a restricted recreation facility and a wharf subject to the satisfaction of specified conditions and requirements.
- o Increased the area of reclaimed land.
- o Increased the number of car parking from 430 to 660 spaces.
- o Provided the potential for a multi-level car parking facility.

Amendment C50 was prepared by the Minister for Planning, who was the planning authority for the amendment. The amendment was made at the request of Frankston City Council and followed the preparation of a Preferred Development Model for the Frankston Safe Boat Harbour, which was adopted by the Frankston City Council on 7 May 2007. Importantly, a precedent may have been established as part of Amendments C30 and C50 which indicates that Ministerial Intervention may be warranted.

PLANNING REVIEW OF CURRENT PROPOSAL

Land Use Definitions

In terms of definitions included within the Frankston Planning Scheme, the most appropriate land use definition for the Olivers Hill safe boat refuge is considered to be an Emergency Services Facility, given the primary purpose of the development is to provide administration and launching facilities for coast guard services, and given coast guard services fall under the remit of Emergency Services Victoria.

The break-wall and associated refuge could also be considered to be a Safe Boat Refuge/Boat Launching Facility, noting that the facility is necessary to allow for vessels to be safely launched and retrieved.

Ancillary uses associated with the proposal include Recreation Boat Facility, Car Park (existing use rights would apply in the instance of existing infrastructure) and Kiosk/Take Away Food Premises.

The applicable land use definitions associated with the proposal are as follows:

Emergency Services Facility is defined as follows under Clause 73.03:

Land used to provide facilities for emergency services, such as fire prevention and ambulance services. It may include administrative, operational or storage facilities associated with the provision of emergency services.

Safe Boat Refuge is undefined under Clause 73.03, however, a **Boat Launching Facility** is defined as follows:

Land used to launch boats into the water and to retrieve boats from the water.

List Ancillary uses:

Recreation Boat Facility is defined as follows under Clause 73.03:

Land used to provide facilities for boats operated primarily for pleasure or recreation, including boats operated commercially for pleasure or recreation.

Car park is defined as follows under Clause 73.03:

Land used to park motor vehicles.

Kiosk is undefined under Clause 73.03, however, a **Take away food premises** is defined as follows:

Land used to prepare and sell food and drink for immediate consumption off the premises.

Preliminary Assessment of Potential Permit Triggers

Zoning considerations

The following section looks at applicable zoning provisions and has separated the permit trigger assessment between marine and foreshore land. It is noted that the provisions of Special Use Zone – Schedule 3 (SUZ3) have lapsed as the applicable documentation identified under Clause 2 was not prepared by 1 November 2017 pursuant to Clause 6. Therefore it is considered that controls governing the use and development of land zoned SUZ3 are inoperable/ineffectual (unless the use and development is otherwise considered exempt under Clause 5).

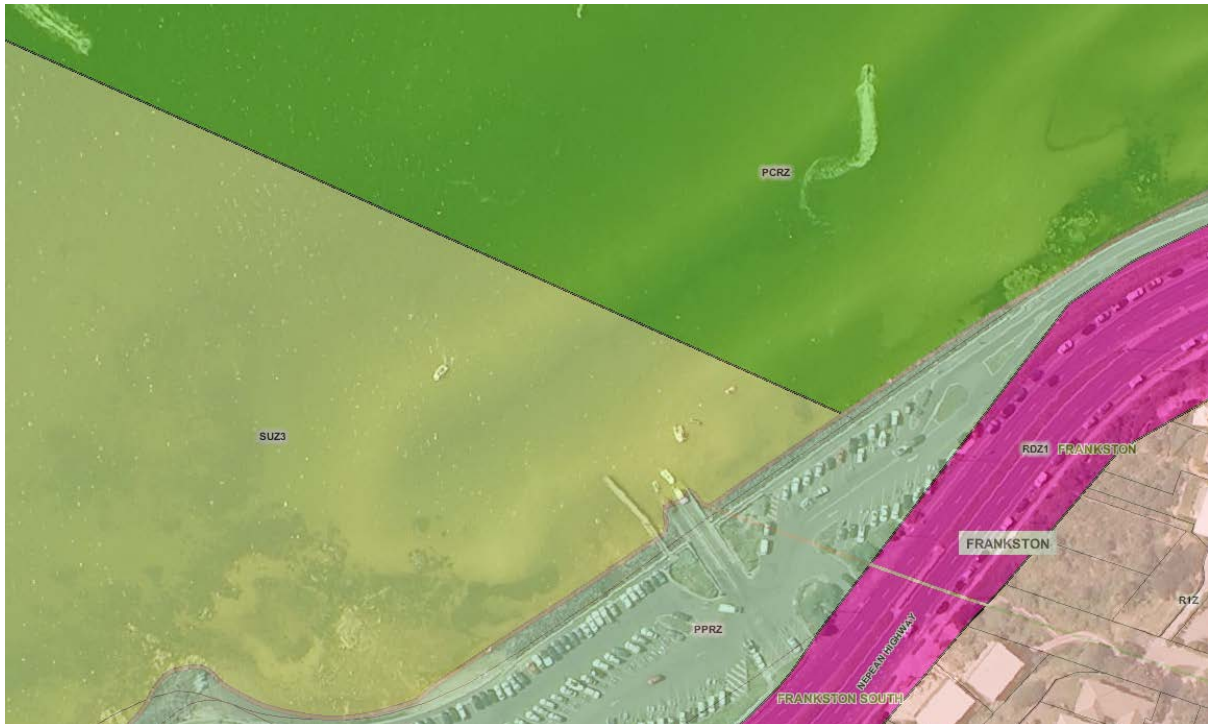


Figure 1. Land Use Zoning in close proximity to the proposed works.

Works within Port Phillip Bay:

The applicable sections of Port Phillip Bay are zoned SUZ3 and Public Conservation and Resource Zone (PCRZ). A small section of the existing boat ramp is also zoned Public Park and Recreation Zone (PPRZ). Table 1 provides a summary of the permit controls relative to the key land use activities identified under Section 4 above.

Table 1. Summary of controls applicable to the marine environs.

Zone	Works proposed	Permit requirements (based on proposed works)
<p>Public Conservation and Resource Zone (PCRZ) – currently applies to the northern section of the break-wall.</p>	<p>Emergency Services Facility</p>	<p>✓ Permit required for use.</p> <p>✗ No permit is required if the buildings and works are to be conducted by/on behalf of a public land manager under the relevant provisions of the <i>Local Government Act 1989</i>.</p>
	<p>Boat Launch Facility</p>	<p>✗ No permit is required if the land use is to be conducted by/on behalf of a public land manager under the relevant provisions of the <i>Local Government Act 1989</i>.</p>
	<p>Boat Launch Facility</p>	<p>✗ No permit is required if the buildings and works are to be conducted by/on behalf of a public land manager under the relevant provisions of the <i>Local Government Act 1989</i>.</p>
	<p>Recreational Boat Facility (Ancillary Use)</p>	<p>✗ No permit required for land use (the key rationale behind the break-wall is tied into a Boat Launch/Emergency Services Facility, not a Recreational Boat Facility; noting that existing use rights would apply in the instance of existing infrastructure).</p> <p>✗ No permit required for buildings and works (main works are considered to be associated with a Boat Launch/Emergency Services Facility, not a Recreational Boat Facility).</p>
<p>Special Use Zone – Schedule 3 (SUZ3) – currently applies to the southern section of the break-wall.</p>	<p>Emergency Services Facility</p>	<p>✗ Pursuant to Clause 5 of SUZ3, no permit is required if the land use is to be conducted by/on behalf of a public land manager under the relevant provisions of the <i>Local Government Act 1989</i>.</p> <p>✗ Pursuant to Clause 5 of SUZ3, no permit is required if the buildings and works are to be conducted by/on behalf of a public land manager under the relevant provisions of the <i>Local Government Act 1989</i>.</p>

Zone	Works proposed	Permit requirements (based on proposed works)
	Boat Launch Facility	<ul style="list-style-type: none"> ✘ Pursuant to Clause 5 of SUZ3, no permit is required if the land use is to be conducted by/on behalf of a public land manager under the relevant provisions of the <i>Local Government Act 1989</i>.
	Recreational Boat Facility (Ancillary Use)	<ul style="list-style-type: none"> ✘ Pursuant to Clause 5 of SUZ3, no permit is required if the buildings and works are to be conducted by/on behalf of a public land manager under the relevant provisions of the <i>Local Government Act 1989</i>.
		<ul style="list-style-type: none"> ✘ Pursuant to Clause 5 of SUZ3, no permit is required if the buildings and works are to be conducted by/on behalf of a public land manager under the relevant provisions of the <i>Local Government Act 1989</i>.
	Public Park and Recreation Zone (PPRZ) – currently applies to the section of the boat ramp which extends into the bay.	Boat Launch Facility
Recreational Boat Facility (Ancillary Use)		<ul style="list-style-type: none"> ✘ No permit required for land use (the key rationale behind the break-wall is tied into a Boat Launch/Emergency Services Facility, not a Recreational Boat Facility; noting that existing use rights would apply in the instance of existing infrastructure).

Zone	Works proposed	Permit requirements (based on proposed works)
		<ul style="list-style-type: none"> ✘ No permit required for buildings and works (main works are considered to be associated with a Boat Launch/Emergency Services Facility, not a Recreational Boat Facility).

Works on the Foreshore:

The foreshore area is zoned PPRZ and interfaces with Road Zone – Schedule 1 (RDZ1). Table 2 provides a summary of the permit controls relative to the key land use activities identified above.

Table 2. Summary of controls applicable to the foreshore environs.

Zone	Works proposed	Permit requirements (based on proposed works)
Public Park and Recreation Zone (PPRZ) – currently applies to the foreshore area, including the existing car park, toilet block and surrounding garden beds.	Emergency Services Facility	<ul style="list-style-type: none"> ✘ No permit is required if the land use is to be conducted by/on behalf of a public land manager under the relevant provisions of the <i>Local Government Act 1989</i>.
		<ul style="list-style-type: none"> ✘ No permit is required if the buildings and works are to be conducted by/on behalf of a public land manager under the relevant provisions of the <i>Local Government Act 1989</i>.
	Boat Launch Facility	<ul style="list-style-type: none"> ✘ No permit is required if the land use is to be conducted by/on behalf of a public land manager under the relevant provisions of the <i>Local Government Act 1989</i>.
		<ul style="list-style-type: none"> ✘ No permit is required if the buildings and works are to be conducted by/on behalf of a public land manager under the relevant provisions of the <i>Local Government Act 1989</i>.
	Kiosk/Take Away Food Premises (Ancillary Use)	<ul style="list-style-type: none"> ✘ No permit is required if the land use is to be conducted by/on behalf of a public land manager under the relevant provisions of the <i>Local Government Act 1989</i>.
		<ul style="list-style-type: none"> ✘ No permit is required if the buildings and works are to be conducted by/on behalf of a public

Zone	Works proposed	Permit requirements (based on proposed works)
		land manager under the relevant provisions of the <i>Local Government Act 1989</i> .
	Car Park Expansion	<p>✘ No permit is required if the land use is to be conducted by/on behalf of a public land manager under the relevant provisions of the <i>Local Government Act 1989</i>.</p> <p>✘ No permit is required if the buildings and works are to be conducted by/on behalf of a public land manager under the relevant provisions of the <i>Local Government Act 1989</i>.</p>
Road Zone Schedule 1	Road works, including modification and signalisation of the intersection.	<p>✘ No permit required for land use (as detailed below, a permit would be required to intensify use and/or alter access arrangements under Clause 52.29).</p> <p>✘ No permit required for buildings and works (as detailed below, a permit would be required to intensify use and/or alter access arrangements under Clause 52.29).</p>

Overlay Provisions

No overlays are applicable to the area in question.

Particular Provisions

Clause 52.17 (Native Vegetation).

As detailed within the background assessments, there is a patch of 667 metres squared of vegetation within traffic islands and adjacent to the existing boat ramp at the study area, which are classified as Remnant Patch vegetation on the Frankston Planning Scheme. A planning permit would be required for native vegetation removal should this vegetation be impacted upon by the proposal.

Clause 52.29 (Land Adjacent to a Road Zone, Category 1).

A planning permit would be required to alter/intensify land use activities and/or modify access from the foreshore to Nepean Highway.

Summary of Permit Triggers

Under the existing planning controls, it is considered that a planning permit would be required for the following components of the proposal:

- Use of land zoned PCRZ for the purposes of an Emergency Services Facility;
- Native vegetation removal;

- Alteration/intensification of land use activities and modification of access from the foreshore to Nepean Highway.

It is recommended that further consultation with Council's Planning Department and/or Department of Environment, Land, Water and Planning (DELWP) occur to confirm this interpretation of the planning scheme requirements, in particular in regards to the reliance on the exemptions available for buildings and work conducted on behalf of the public land manager (i.e. Council). If these exemptions were challenged by the planning authorities, this would fundamentally change the permit trigger assessment.

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Planning Approval Options:

The following options are considered applicable in terms of delivering new Emergency Services and Boat Launch Facilities as part of the Olivers Hill Safe Boat Refuge. All options require further discussion with DELWP to adequately understand the feasibility and constraints.

Option 1. Pursue a corrections amendment and then seek a planning permit.

The premise of Option 1 is that Council tidy up Planning Scheme Amendment independent of the project (i.e. replace the expired SUZ3 provisions with PCRZ); noting that the SUZ3 provisions have expired and therefore there is a level of ambiguity as to how the existing provisions are to be interpreted. Under Option 1, the Planning Scheme Amendment would be pursued as a 'correction amendment' under the provisions of Section 20(2) of the *Planning and Environment Act 1987*.

Once the zoning anomaly has been rectified, a planning permit application would need to be lodged with Council to cover off on planning permit requirements. As outlined above, our preliminary assessment of the planning controls suggests that specific permit triggers may be limited; although this is dependent on whether or not Council agree that the proposed use, buildings and works is to be by/on behalf of a public land manager under the relevant provisions of the *Local Government Act 1989*.

As part of the planning permit process, members of the community would be able to lodge an objection to a planning application, and there would be a potential for a third party appeal via the Victorian Civil and Administrative Tribunal (VCAT).

Option 2. Seek rezoning and source a planning permit via the Planning Panel process.

The premise of Option 2 is a combined Planning Scheme Amendment (i.e. Panel Hearing and subsequent Ministerial Assessment) and planning permit application. Members of the community would be able to participate in the Panel Hearing process and their feedback would be considered as part of the approvals process (similar process to that which was undertaken as part of Amendment C15). There is no ability for community or other interested parties to seek review at VCAT. This process would need to be wholly managed by Council's project team.

Option 3. Seek rezoning and new/amended Incorporated Document via Ministerial Intervention.

Option 3 involves Ministerial Intervention in the Planning Scheme Amendment to amend the zoning provisions and imbed a new Incorporated Document to facilitate the proposal. Option 3 would require the rezoning of land to allow for the entire project area to be consistently zoned (i.e. PCRZ), and may also require the preparation of a new Incorporated Document and Specific Controls Overlay; noting that the new proposal is too different to that previous considered to simply seek an update to the existing Incorporated Document.

Public consultation would also need to be undertaken with regards to the amendment, and feedback would be provided to the Minister for Planning for consideration. As detailed above, a precedent may have been established as part of Amendments C30 and C50 which indicates that Ministerial Intervention may be warranted.

While the circumstances in which intervention may be considered cannot be prescribe, the criteria spelt out under Table 3 is typically applied (refer to Practice Note 29: Ministerial Powers of Intervention in Planning and Heritage Matters).

Table 3. Assessment against the criteria typically applied to Ministerial Intervention.

	Criteria	Assessment
1.	The matter will be one of genuine State or regional significance.	It is considered that the project is of regional significance, particularly when considering that the Frankston Volunteer Coast Guard is presently operating out of temporary facilities removed from the foreshore, and that in rough conditions they have to travel to Patterson Lakes to launch a vessel in the event of an emergency.
2.	The matter will give effect to an outcome where the issues have been reasonably considered and the views of affected parties are known.	As evidenced by the EES and subsequent planning scheme amendments, some form of boat refuge facility has been considered at the bottom of Olivers Hill for a long period of time. The facility as proposed is significantly smaller than what was previously approved for the area, and is focused primarily on providing facilities for the safe launching, mooring and retrieval of emergency services vessels. It is noted that the views of affected parties have been taken into consideration as part of the previous approvals for a boat refuge at Olivers Hill, however, additional consultation would need to be undertaken with regards to the revised proposal to help the Minister to determine whether intervention is warranted.
3.	The matter will be the introduction of an interim provision or requirement and substantially the same provision or requirement is also subject to a separate process of review (such as the introduction of permanent controls in a planning scheme).	The matter will result in the introduction of substantially the same provision; noting that the marine land subject to SUZ3 was zoned PCRZ prior to Amendment C15 to the Frankston Planning Scheme.
4.	The matter will raise issues of fairness or public interest, where: The mechanisms of the planning process have created a situation that is unjust, unreasonably causes hardship or is clearly in error; Anomalous provisions apply and the valid intent is clearly evident or simple inconsequential correction is required; There is a need for urgency and the public interest would be served by immediate	The provisions of SUZ3 have lapsed as the applicable documentation identified under Clause 2 was not prepared by 1 November 2017 pursuant to Clause 6. Therefore it is considered that controls governing the use and development of land zoned SUZ3 are inoperable/ineffectual (unless the use and development is otherwise considered exempt under Clause 5). The provisions require amending in order to pursue land use and development opportunities. <i>Clarification question for Council: is there any drivers for the project that would support the premise that the 'public interest would be served by immediate action'?</i>

	Criteria	Assessment
	action; The matter is unlikely to be reasonably resolved by the processes normally available.	

Advantages and disadvantages of potential options

Table 4 provides an assessment of the planning approvals options for consideration as part of the Olivers Hill Safe Boat Refuge project.

Table 4. Assessment of the planning approvals options.

Option	Key Advantages	Key Disadvantages	Estimated Timeframe (Post Lodgement)
Option 1. Pursue a corrections amendment and then seek a planning permit	Key advantages of Option 1 include: It would be an efficient way to address the SUZ3 zoning anomaly; It would allow for community feedback to be considered as part of the planning permit process; It would help to eliminate concerns associated with the previous proposals (i.e. SUZ3 no longer applies, the land would be subject to the same controls as the remainder of the coast); Planning permit triggers are limited and therefore avenues for appeal may be limited.	Key disadvantages of Option 1 include: Potential delays if Council's tidy up amendment is postponed (noting that this amendment would cover non-project related matters); A future planning permit application could be challenged through VCAT, thus delaying approvals and reducing certainty (i.e. the VCAT member could impose additional conditions); Application documentation is likely to be extensive; Likely to be significant costs.	~ 12 - 18 months (allowing for VCAT appeal).
Option 2. Seek rezoning and source a planning permit via the Planning Panel process.	Key advantages of Option 2 include: The process would be a coordinated approval process managed by the project delivery team It would be a fully transparent process; It would preclude the need to separately seek a planning permit (i.e. the processes could be	Key disadvantages of Option 2 include: The panel hearing process can take a significant amount of time; The panel process may require a significant amount of background documentation to be prepared;	~12 months.

Option	Key Advantages	Key Disadvantages	Estimated Timeframe (Post Lodgement)
	combined). Removes risk of third party appeal to VCAT.	Likely to be significant costs.	
Option 3. Seek rezoning and new Incorporated Document via Ministerial Intervention.	Key advantages of Option 3 include: It would be an efficient way to obtain the necessary approvals; It would be consistent with previous amendments associated with Safe Boat Harbour Facilities at Olivers Hill (i.e. Amendments C30 and C50); Provisions for a new/amended Incorporated Document would eliminate the need for a Planning Permit and removes the risk of VCAT appeal The process would still require community consultation.	Key disadvantages of Option 3 include: Community may see the process as lacking transparency; Councillors may not support seeking Ministerial intervention into the planning process The Minister may not deem the project significant enough to intervene.	~6-8 months.

Recommendations:

Preliminary recommendations include:

- Further discussion with Council's Planning Department and/or DELWP with regards to existing land use and development controls, and how these would apply:
 - o Seek confirmation that they agree with the suggested land use definitions and that the bulk of works would be considered exempt under the existing planning provisions;
- Discussion with DELWP with regards to:
 - o The suitability of a corrections amendment to address the zoning anomaly;
 - o The prospect of Ministerial Intervention to update the planning provisions. Specific points for discussion include:
 - The existing precedent which has been established by Amendments C30 and C50 to the Frankston Planning Scheme;
 - Whether a new Incorporated Document might be appropriate and, if so, what Conditions could apply;
 - Additional background documentation that would need to support an application for Ministerial Intervention;
 - Nature and extent of community consultation that would be necessary to support an application for Ministerial Intervention.
- Consultation with VicRoads with regards to the potential for modifications to existing access arrangements.

Appendix 2

ENVIRONMENTAL EFFECTS
ACT REFERRAL
CRITERIA ASSESSMENT



APPENDIX 2- ENVIRONMENTAL EFFECTS STATEMENT REFERRAL CRITERIA ASSESSMENT

Background

In 1997, Frankston City Council (council) and the State Government agencies identified a need to provide safe all-weather boating facilities in the area and identified Olivers Hill as a potentially environmentally suitable location. An Environment Effects Statement (EES) was undertaken to assess the potential significant environmental effects of a development of a large marina facility; Olivers Hill Safe Boating Facilities Environment Effects Statement (EES)¹. The EES supported amendments of the Frankston Planning Scheme (C15) discussed in Appendix 1. Since then, additional changes to the Planning Scheme have occurred and the Preferred Development Model for the Frankston Safe Boat Harbour, was adopted by the Frankston City Council on 7 May 2007. Frankston City Council are now investigating the feasibility of constructing a breakwater to form an all-weather safe harbour at Olivers Hill.

The project assessed in the 1998 EES differed in scope to the current Olivers Hill Safe Boat Refuge proposal, as it was in a different location on the foreshore and included a residential hotel, pleasure boat facilities, restaurant, and private moorings and associated commercial development. Therefore the current proposal is being reassessed for its potential significant effects on the environment.

The Environmental Effects Act referral process

The *Environmental Effects Act 1978* assesses the potential of a project having a significant effect on the environment. This includes effects on the physical, biological, heritage, cultural, social, health, safety and economic aspects of human surroundings, including the wider physical and ecologic systems. Proponents prepare a referral for the Minister administering the Environmental Effects Act to assesses these aspects and decide whether an Environment Effects Statement (EES) should be prepared.

To determine the need for a whether a referral for the current Olivers Hill Safe Boat Refuge is required, the referral criteria (Table 1, Table 2) have been assessed. These include individual potential significant environmental effects that might be of regional or State significance (Table 1) or a combination of significant effects that might be of regional or State significance (Table 2). Therefore, if one of the criteria is met in Table 1 or two or more of the criteria is met in Table 2, an EES referral is warranted.

¹ Olivers Hill Safe Boating Facilities Environmental Effects Statement, Kinhill ARUP EPC, 1998

Table 1: Referral criteria: individual potential environmental effects

Referral criteria	Referral criteria met?	Comments
<p>Potential clearing of 10 ha or more of native vegetation from an area that:</p> <ul style="list-style-type: none"> - is of an EVC classified as Endangered within the Bioregion - is, or is likely to be, of Very High Conservation Significance; and, - is not authorised under an approved Forest Management Plan or Fire Protection Plan. 	Not met	<p>DELWP Ecological Vegetation Class (EVC) mapping indicates that the site constituted EVC 161: Coastal Headland Scrub, which is listed as 'Depleted' under Gippsland Bioregion and therefore does not meet this referral criterion. In addition, although the final amount of vegetation removal has not been finalised, 10 hectares of native vegetation will not be cleared. The land component of the project area itself is less than 10 ha in size.</p>
<p>Potential long-term loss of a significant proportion of known remaining habitat or population of a threatened species within Victoria.</p>	Unlikely to be met	<p>The Commonwealth Department of Environment and Energy (DOEE) Protected Matters Search Tooli (PMST) database² was searched and identified one listed threatened ecological community of natural significance (Natural Damp Grassland of the Victorian Coastal Plain), 50 listed threatened species and 41 listed migratory species, 46 listed marine species and 7 whales and other cetaceans. The previous EES conducted identified no flora communities of declared conservation significance (at a national, state, regional or local level) known to occur in the Olivers Hill Safe Boating Facilities area. In addition, the EES identified one bird species, <i>Lathamus discolor</i>, the Swift Parrot, listed as vulnerable under the Commonwealth Endangered Species Protection Act. This species was also classified as vulnerable under FFG Act, therefore not a threatened species in Victoria. The EES did not identify any threatened marine species or communities under the FFG Act.</p> <p>The study area is likely to be sandy sea bed and contains an area of reef/ rock substratum – sublittoral zone³. There are also marine mammals identified in the project area by The Department of the Environment, Land, Water and Planning (DELWP) Victorian Biodiversity Atlas^{4,5}.</p> <p>The onshore area of the project has generally poor habitat, due to the majority of the</p>

² Department of Environment and Energy 2018. EPBC Act Protected Matters Report, Department of the Environment and Energy, Canberra.

³ DELWP 2017, NatureKit. Department of Environment, Land, Water and Planning, Melbourne. Accessed August 2018.

⁴ Department of Environment, Land, Water and Planning 2015, Victorian Biodiversity Atlas. Department of Environment, Land, Water and Planning, Melbourne.

⁵ Practical Ecology, Flora and Fauna Assessment of Frankston and Seaford Foreshore, Prepared for Frankston City Council, 2010.

Referral criteria	Referral criteria met?	Comments
		<p>site comprising sealed bitumen surfaces, and the relatively small and isolated occurrences of native vegetation⁶. The native vegetation that exists are small and highly modified remnants of Coastal Headland Scrub, and planted indigenous species. There is a patch of 667 metres squared of vegetation within traffic islands and adjacent to the existing boat ramp at the study area, which are classified as Remnant Patch vegetation on the Frankston Planning Scheme. This vegetation is mostly planted and includes common coastal plants (such as Common Boobialla <i>Myoporum insulare</i>, Knobby Club-sedge <i>Ficinia nodosa</i>, Saltbush <i>Atriplex</i> and Bower Spinach <i>Tetragonia implexicoma</i> In addition to these plants, there was also mown exotic grass (particularly Kikuyu <i>Cenchrus clandestinus</i>) and planted Banksia present at the site.</p> <p>In addition, native vegetation is not well connected to other areas of native vegetation beyond the study area on shore, and therefore provides limited habitat for a range of native fauna species It is therefore unlikely that there will be long term loss of a habitat or a threatened species. Previous studies did not identify threatened species however did not cover the extent of the proposed project area (the carpark area to be extended and the road reserve). In addition, this study was conducted in 2010, and conditions may have changed since.</p> <p>Recommendations: the previous EES investigations were focused on impacts associated with an alternative proposal, however the EES concluded that no significant impacts to marine ecology were likely to occur. For the purposes of supporting any referral, it is recommended that a baseline marine ecology assessment be completed to sufficiently evaluate the impact of the current proposal on marine habitat and species.</p> <p>An updated terrestrial flora and fauna assessment is recommended to cover the entire project area.</p>

⁶ Biodiversity Assessment - Olivers Hill Boat Ramp - Ecocentric - BRaJ 2016-01-21 v.02.

Referral criteria	Referral criteria met?	Comments
Potential long-term change to the ecological character of a wetland Listed under the Ramsar Convention or in 'A Directory of Important Wetlands in Australia' (Environment Australia, 2001).	Not met	<p>The proposed construction works are not located in a Ramsar wetland, or in the directory of important wetlands⁷.</p> <p>The works are located approximately 6kms from the Ramsar and Nationally Important wetlands, Edithvale-Seafood Wetlands. Given the distance from the project site and the nature of species that inhabit this area are migratory and mobile, there is unlikely to be any long term change to the ecological character of the Edithvale-Seafood Wetlands.</p>
Potential extensive or major effects on the health or biodiversity of aquatic, estuarine or marine ecosystems, over the long term.	Unlikely to be met	<p>The previous EES completed in 2018 to assess a similar development (the differences between this project and the current proposal are discussed above). This included three different development options and which were located slightly to the south of the current project area. The EES concluded that the worse potential effect on terrestrial and marine ecology would be low or negative or medium effect for each options⁸.</p> <p>The environmental impact of the breakwater has the potential to be positive on the resident flora and fauna. A previous study investigating the Marine ecosystem of the Portarlinton Safe Harbour Project⁹ identified that the man-made rocks of the breakwater created an artificial substrata, providing habitat for attached invertebrates (sponges, bryozoans, hydroids and mussels) and seaweeds as well as shelter for mobile species such as fish and squid. The Portarlinton submerged breakwater structure was found to provide a relatively complex reef habitat due to the different orientations of boulder surfaces and inter boulder crevices.</p> <p>Once constructed, maintenance dredging activities would be required on an annual basis. Environmental management is recommended in accordance with the Best Practice Environmental Management Guidelines, Dredging and Schedule F6 of the SEPP (Waters of Victoria), and any conditions of coastal management approvals. This includes limits on the amount of sand to be removed, where it is to be placed, and monitoring schedules that will help prevent the occurrence of negative long term effects on marine processes and consequently, marine ecosystems. Previous projects in the</p>

⁷ Department of Environment and Energy 2018. EPBC Act Protected Matters Report, Department of the Environment and Energy, Canberra.

⁸ Olivers Hill Safe Boating Facilities Environmental Effects Statement, Kinhill ARUP EPC, 1998.

⁹ CEE 2015, Portarlinton Safe Harbour Project Marine ecosystem conditions and effects screening assessment, report prepared for Parks Victoria.

https://www.planning.vic.gov.au/__data/assets/pdf_file/0015/7305/2015-03-Attachment-3-Marine-Considerations_CEE.pdf.

Referral criteria	Referral criteria met?	Comments
		area have identified the need for these controls, and can be applied to the Olivers Hill Safe Boat Refuge ¹⁰ . Recommendations: For the purposes of supporting any referral, it is recommended that a baseline marine ecology assessment be completed to sufficiently evaluate the impact of the current proposal on marine ecosystems over the long term.
Potential extensive or major effects on the health, safety or well-being of a human community, due to emissions to air or water or chemical hazards or displacement of residences.	Not met	No emissions to air or water or chemical hazards or displacement of residences are expected to occur due the development, therefore this criterion is not met.
Potential greenhouse gas emissions exceeding 200,000 tonnes of carbon dioxide equivalent per annum, directly attributable to the operation of the facility.	Not met	The project would produce a minor amount of greenhouse gas emissions from the operation of lighting and toilets at the new coast guard facility that is to be built, however this would be below 200,000 tonnes of carbon dioxide equivalent per annum. The rest of the project consists of inert infrastructure that does not produce greenhouse gas emissions.

Table 2: Referral criteria: a combination of potential environmental effects

Referral criteria	Referral criteria met?	Comments
Potential clearing of 10 ha or more of native vegetation, unless authorised under an approved Forest Management Plan or Fire Protection Plan.	Not met	The final amount of vegetation removal has not been finalised, the land component of the project area itself is less than 10 ha in size, and therefore this criterion is not met.

¹⁰ Blairgowrie VPRs, 2018.

Referral criteria	Referral criteria met?	Comments
<p>Matters Listed under the FFG Act 1988:</p> <p>→ potential loss of a significant area of a Listed ecological community; or</p> <p>→ potential loss of a genetically important population of an endangered or threatened species (Listed or nominated for listing), including as a result of loss or fragmentation of habitats; or,</p> <p>→ potential loss of critical habitat; or,</p> <p>→ potential significant effects on habitat values of a wetland supporting migratory bird species.</p>	<p>Not met</p> <p>Not met</p> <p>Not met</p> <p>Not met</p>	<p>It is unlikely that there will be loss of a significant area of a listed ecological community, due to the limited size of the land based component of the development.</p> <p>Recommendation: An updated terrestrial flora and fauna assessment is recommended to cover the entire project area.</p> <p>It is unlikely that the project will result in a loss of genetically important population of endangered or threatened species. Previous studies have been conducted in the area and have not identified such species. In addition, marine and bird species can easily disperse to alternative habitats during construction.</p> <p>It is unlikely that there will be loss of critical habitat from the proposal. The vegetation that exists at the site is small and isolated and not well connected to other areas of native vegetation beyond the study area on shore, and therefore provides limited habitat for a range of native fauna species.</p> <p>It is unlikely that any significant effects on habitat values of a wetland supporting migratory bird species will occur as the Edithvale-Seafood Wetlands are 6 km away from the project area.</p> <p>Recommendation: Due to the small scale of the proposed development it is concluded that the referral criteria are not met. However an updated terrestrial flora and fauna assessment is recommended to cover the entire project area.</p>
<p>Potential extensive or major effects on landscape values of regional importance, especially where recognised by a planning scheme overlay or within or adjoining land reserved under the <i>National Parks Act 1975</i>.</p>	<p>Not met</p>	<p>The study area is listed on the National Trust Register (L10048) as it forms part of the Olivers Hill cultural landscape¹¹. Olivers Hill is also consider a site of geological and geomorphological significance providing the “best exposure of sub-basaltic sediments on the eastern coast of Port Phillip Bay”.</p> <p>In addition, the works area also contains the Sweetwater Creek Reserve Biosite.</p>

¹¹ Ecology and Heritage Partners, Cultural Heritage Letter of Advice for Olivers Hill, Frankston, Victoria 7645, 2016.

Referral criteria	Referral criteria met?	Comments
		<p>Biosites are not considered part of statutory of legislation, but more of a tool for regional planning. The area from Olivers Hill to Seaford Foreshore Reserve is considered regionally significant and Kackeraboite Creek to Olivers Hill is considered to be state significant¹².</p> <p>Minor excavation of the hillside may be required to support expansion of the onshore facilities. Council officers advise this is expected to occur in previously disturbed areas. The limited nature of the works means that extensive or major effects on the landscape are unlikely to occur.</p> <p>Recommendation: While the national trust register and sites of geological/geomorphological significance do not have any statutory protection under state or federal legislation, it is recommended that a landscape and visual impact assessment be prepared to address community concerns and support any referral.</p>
<p>Potential extensive or major effects on land stability, acid sulphate soils or highly erodible soils over the short term</p>	<p>Not met</p>	<p>The project area is within an area of high probability (very low confidence) for acid sulphate soils on the national dataset¹³, but not within an area of acid sulphate soils on the Victorian database¹⁴ However the nature of the works is quite unobtrusive, with limited potential to disturb potential acid sulphate soils and therefore does not have the potential to have extensive or major effects on these acid sulphate soils.</p> <p>Minor excavation of the hillside may be required. Any excavation would need to consider the localised geotechnical conditions. Given the limited nature of the works, it is unlikely to have extensive of major effects on land stability or soils.</p>
<p>Potential extensive or major effects on beneficial uses of waterbodies over the long term due to changes in water quality, stream flows or regional groundwater levels.</p>	<p>Unlikely to be met</p>	<p>It is unlikely that the project will have any major effects on beneficial uses of Saltwater Creek over the long term. Specifically, modelling has shown that the presence of the breakwater will have no adverse impact on the flow of flood water from Saltwater Creek, through the culvert to Port Phillip Bay. In addition, modelling has shown that the</p>

¹² Department of Sustainability and Environment, BioSites in Port Phillip and Westernport area, 2005.

¹³CSIRO, Australian Soil Resource Information System.

¹⁴ Department of Economic Development, Jobs, Transport and Resources, Coastal Acid Sulphate Soils spatial data, 2017.

Referral criteria	Referral criteria met?	Comments
		<p>dispersion rate for suspended plumes will increase, and could take up to 24 hours to disperse. However there have been no plumes in Saltwater Creek recorded to date¹⁵. In terms of impacts to the bay, modelling has shown that the breakwater impact on local currents will be restricted to the immediate vicinity of the breakwater. Waves heights will be reduced within the inner harbour of the breakwater and sediment transport will be diverted further east along Frankston beach. During inflow into the harbour, sediment will be transported, however, maintenance dredging will occur routinely to maintain the channels at the required navigational depth. Therefore it is unlikely that there will be extensive or major effects on beneficial uses of the bay over the long term as a result of the Olivers Hill Safe Boat Refuge project.</p> <p>Recommendations: the Coastal Processes Modelling and Assessment should be documented in a stand-alone report (extracted from the Concept Design Report) for the purposes of any referral.</p>
<p>Potential extensive or major effects on social or economic well-being due to direct or indirect displacement of non-residential land use activities.</p>	<p>Not met</p>	<p>No direct or indirect displacement of non-residential land use activities are predicted. Specifically, the project does not involve acquisition of any non-residential land. Some users of the beach that will be sensitive to the changes in landscape, especially those who are sensitive to development in the local area. However, overall the project is expected to provide social benefits to the community including the upgrade of the new coast guard facility building, upgraded amenities and a safe boat launch for recreational vessels.</p>
<p>Potential for extensive displacement of residences or severance of residential access to community resources due to infrastructure development</p>	<p>Not met</p>	<p>The project would not result in the displacement of residents (no land acquisition is proposed) and will provide improved access to a community resource (i.e. the safe boat launch).</p> <p>The project may temporarily impact the recreational use of the beach due the construction phase due to short term road closures and limited areas for beach access, however this is not extensive, and surrounding beaches can be used as an alternative.</p>

¹⁵ KBR, Frankston Coastguard: Breakwater Assessment, 2018, Melbourne.

Referral criteria	Referral criteria met?	Comments
<p>Potential significant effects on the amenity of a substantial number of residents due to extensive or major long term changes in visual, noise and traffic conditions</p>	<p>Not met</p>	<p>Noise (sub-criterion not met) There is the potential for noise to be generated from construction and activity of the Olivers Hill Safe Boat Refuge. In addition, potential signalised intersections (TBC) from the carpark onto Nepean Highway could cause stop-start traffic rather than steadily flowing traffic during construction. However these impacts would be temporary and can be managed under the EPA guidelines for major construction sites, limiting their potential to have significance effects on a substantial number of residents. Once operational, there could also be noise generated from increased activity to the area, however impacts are unlikely to be significant given the limited number of residents in close proximity to the project area.</p> <p>Traffic (sub-criterion not met) During construction, traffic disruption would occur as a result of temporary road closures and movement of construction vehicles to and from worksites. Traffic should be managed through Traffic Management Plans to ensure the safe and efficient use of roads for construction vehicles, minimising impacts to residents in relevant areas and thus is unlikely to have significance effects on a substantial number of residents. Following construction, there will be permanent changes in traffic conditions due to the increased car parking spaces available on site and new signalised intersection. However these changes are also unlikely to have significant effects on a substantial number of residents.</p> <p>Visual (sub-criterion not met) Potential visual impacts are unlikely to be considered extensive or major to a</p>

Referral criteria	Referral criteria met?	Comments
		substantial number of residents as the excavation of the hillside will be minor and expected to occur in previously disturbed areas. Further the proposed safe boat refuge is a significantly smaller scale development than previous proposals and is .
Potential exposure of a human community to severe or chronic health or safety hazards over the short or long term, due to emissions to air or water or noise or chemical hazards or associated transport	Not met	The construction of the Olivers Hill Safe Boat Refuge is unlikely to result in the potential exposure of the human community to health or safety hazards. Air or water emissions are unlikely during construction through correct environmental management on site in accordance with Environmental Guidelines for Major Construction Sites ¹⁶ , Emissions to air and water during operation of the breakwater are unlikely.
Potential extensive or major effects on Aboriginal cultural heritage	Not met	<p>A Cultural Heritage Management Plan (CHMP11602) was completed for previous works in the area. These investigations identified an Aboriginal Place (VAHR 7921-1308: shell midden) within the current project area. In addition, the site is within 200m of an existing waterway (Saltwater Creek) and high tide water mark, making it a culturally sensitive. However, the whole area has been subject to significant ground disturbance and therefore not considered an area of cultural heritage sensitivity.</p> <p>There have been community reports of an Aboriginal fishtrap in the project area, but this has not been verified by the Registered Aboriginal Party.</p> <p>Recommendation: It is recommended that a Preliminary Aboriginal Heritage Test is undertaken to investigate this potential fish trap and to determine whether a CHMP is necessary.</p>
Potential extensive or major effects on cultural heritage places Listed on the Heritage Register or the Archaeological Inventory under the <i>Heritage Act 1995</i> .	Not met	There are no historical sites listed on the Victorian Heritage Register or the Victorian Heritage Inventory and therefore the project does not meet this criterion.

¹⁶ EPA guidelines for major construction sites, EPA, 1996.

ⁱⁱ Department of Environment and Energy 2018. EPBC Act Protected Matters Report, Department of the Environment and Energy, Canberra.

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