

**PROPOSED REZONING OF BARWON WATER LAND AT SHAWS  
ROAD, BALLAN**

**CULTURAL HERITAGE DUE DILIGENCE ASSESSMENT**

A report to Barwon Water

by

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## **1. INTRODUCTION**

SMEC is assisting Barwon Water in the preparation of a planning scheme amendment to rezone land at the end of Shaws Road, Ballan (Figure 1). The subject land is located east of the Bostock Reservoir, which Barwon Water manages. Barwon Water proposes to dispose of this land because it is surplus to its needs.

The surplus landholding totals 48.76 ha, with a frontage on the Moorabool River downstream of the reservoir. Currently, it is zoned Public Use Zone (PUZ). The planning scheme amendment is required to change this to Special Use Zone (SUZ) to permit possible future land uses such as tourism and accommodation.

The subject land currently contains a Barwon Water compound (house and sheds) at the entrance to the reservoir, a small pine plantation and some remnant native vegetation. The southern boundary borders a mineral spring (Figure 1).

### **1.1 Aims of this assessment**

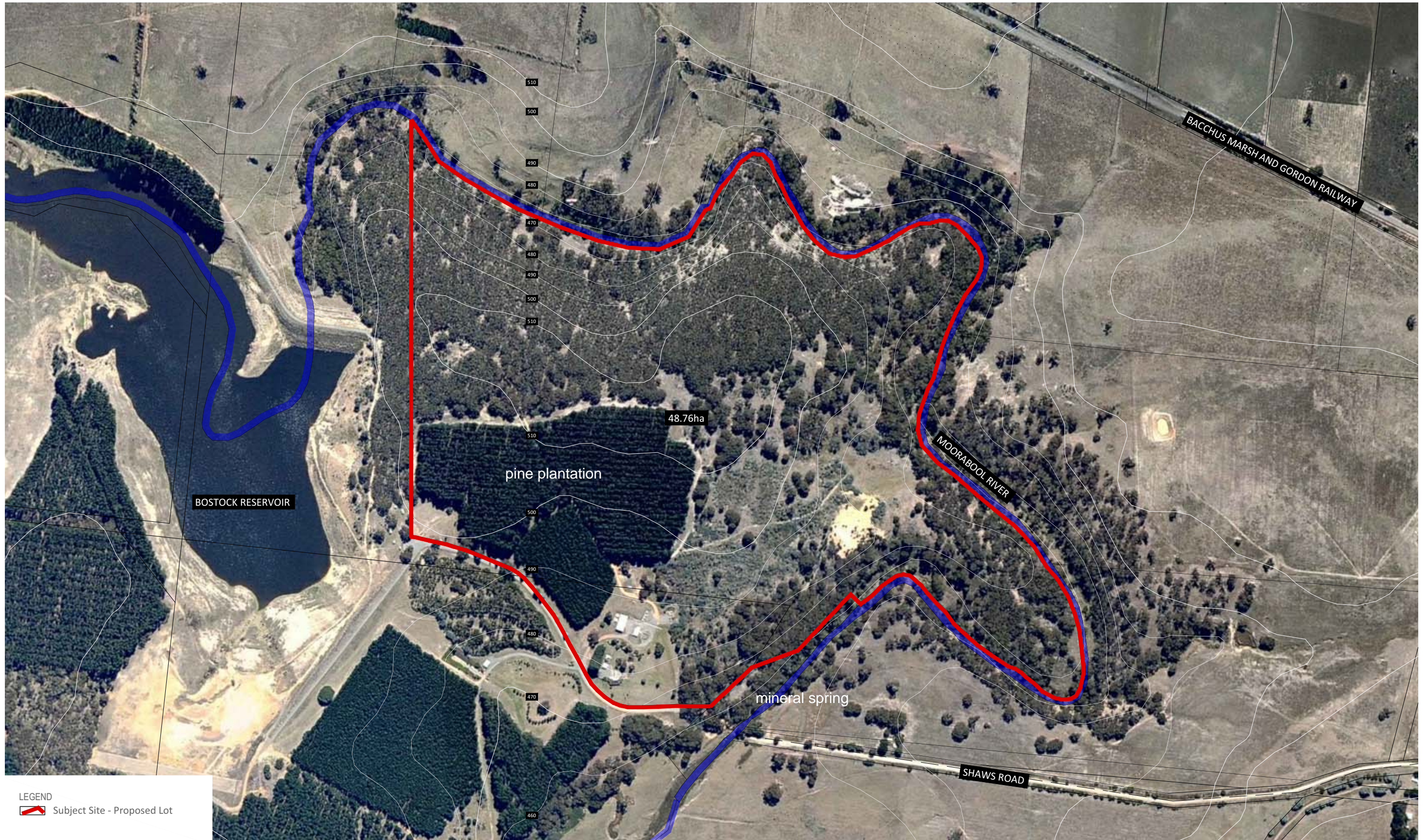
SMEC on behalf of Barwon Water asked Heritage Advisor Dr. Tim Stone to identify any cultural heritage issues that might need to be addressed prior to the planning scheme amendment. Of particular concern is that rezoning and possible future development may be subject to the *Aboriginal Heritage Act 2006* and its *Aboriginal Heritage Regulations 2007*. The requirements of the *Heritage Act 1995*, which protects historic sites, is also relevant.

The following advice is drawn from the *Aboriginal Heritage Act 2006* and its regulations. I also searched the Victorian Aboriginal Heritage Register (VAHR), an Aboriginal site database kept by Aboriginal Victoria (AV), for any Aboriginal sites known on the subject land and reviewed relevant archaeological reports for the area.

Heritage Victoria's Heritage Inventory and Victorian Heritage Register (VHR) were similarly checked for historic sites as was the local planning scheme of the Shire of Moorabool.

Lastly, I inspected the subject land to determine the actual risk to cultural heritage sites.



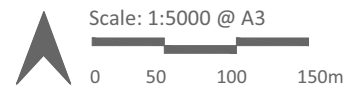


LEGEND  
 Subject Site - Proposed Lot



FIGURE 1

**DRAFT**



Preliminary Site Plan  
 Shaws Road, Ballan



**please note:**  
 This plan is based on preliminary information only and may be subject to change as a result of formal Council/Authority advice, detailed site investigations and confirmation by survey

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## **2. STATUTORY PROTECTION**

All Victorian registered and unregistered Aboriginal cultural heritage sites are protected by the State's *Aboriginal Heritage Act 2006* (commenced May 28<sup>th</sup>, 2007). Similarly, all Victorian historical sites are protected by the State *Heritage Act 1995*. These Acts prohibit the wilful destruction or disturbance of any cultural heritage site, place or object, whether on private or public land.

The Victorian State Government instrumentalities that administer these Acts are the AV and Heritage Victoria. All legislation relevant to the discovery of human remains is subordinate to the *Coroners Act 1985*.

### **2.1 *Aboriginal Heritage Act 2006***

The *Aboriginal Heritage Act 2006* and its *Aboriginal Heritage Regulations 2007* are of particular relevance to the proposed development. A core component of this Act is the preparation of Cultural Heritage Management Plans (CHMPs), which will be required under certain circumstances for high impact activities that require statutory authorisation under the Victorian Planning Provisions. CHMPs must meet prescribed standards and be approved by AV before they can be used to support permit applications to local government or other agencies.

The Act also establishes the Aboriginal Heritage Council, which invites Aboriginal community groups with cultural heritage interests in particular parts of the State to become Registered Aboriginal Parties (RAPs). The RAP(s) may elect to evaluate a CHMP in place of AV. The RAP for the Ballan study area is the Wathaurung Aboriginal Corporation based in Ballarat.

The regulations can be used to determine if a CHMP is required for planning approval. Section 5 of this report makes such a determination for the subject land. The regulations also detail the standards expected of a CHMP, Cultural Heritage Agreements and fees payable under the Act.

Importantly, penalties for offences under the new Act have increased ten-fold in the case of individuals and twenty-fold in the case of corporations.

### **2.2 *Heritage Act 1995***

The *Heritage Act 1995* provides for the protection of all Victorian historic sites, places and objects which are at least 50 years old. It is possible that historic sites are located on the subject land.

Section 127(1) of the Act states:

A person must not knowingly or negligently deface or damage or otherwise interfere with an archaeological relic or carry out an act likely to danger an archaeological relic except in accordance with a consent issued under section 129.

Section 129 of the Act states:

An application for a consent [to deface or destroy an archaeological relic] must:

- (a) be made to the Executive Director; and
- (b) be accompanied by the prescribed fee

A consent under this section may be issued subject to the following terms and conditions:

- (a) that the activity authorised by the consent be supervised by a person with appropriate professional qualifications and experience as specified in the consent; and
- (b) that archaeological relics found in the course of the activity authorised by the consent are to be conserved and curated in a way specified in the consent; and
- (c) any other terms and conditions that the Executive Director thinks fit.

Penalties for offences against section 127 of the Act are stiff. In the case of an individual person the penalty is \$90,000 or imprisonment for 12 months or both. The penalty for a body corporate is \$180,000.

### **3. PREVIOUS ARCHAEOLOGICAL INVESTIGATIONS**

Previous archaeological studies of sites in central Victoria have demonstrated Aboriginal occupation dating back to the last glacial period some 26,000 years ago. The oldest archaeological site in the central Victorian highlands is a swamp near Lancefield (Gillespie et al, 1978). The deposits of this swamp contain the bones of extinct giant marsupials or “megafauna” in association with Aboriginal stone artefacts. However, there is no evidence to suggest that Aboriginal people had hunted the megafauna or had butchered them for food. The site is currently in the process of being re-dated. Preliminary results (M. Cupper, pers comm.) indicate that the megafauna may be older than the period of Aboriginal occupation.

Most surface archaeological sites in the region probably date to within the past 5,000 years. One of the most significant is the Mount William Axe Quarry also located near Lancefield (McBryde, 1984). This is a site where Aboriginal people have extracted diorite or 'greenstone' for the manufacture and trade of stone axe heads. Ground edge axe heads from this quarry have been found throughout Victoria and as far afield as Broken Hill in N.S.W. The geographical spread of these axe heads is used by archaeologists to infer past Aboriginal exchange networks.

Other significant Aboriginal stone quarries in the region are located at Mount Camel (Mitchell, 1949) and Turpin Falls (AAV 7723-29). The Mount Camel quarries, of which there are four, have been listed on the Register of the National Estate since 1980. These sites comprise worked greenstone strewn over the hillsides of Mount Camel. Among the artefact types represented are axe blanks and large struck flakes. These were also used by McBryde (1984) to reconstruct trade networks in the region.

### **3.1 Aboriginal sites on the subject land**

According to the VAHR, no Aboriginal sites are located on the subject land. The closest known Aboriginal sites are open campsites represented by scatters of stone artefacts and isolated artefacts overlooking the Werribee River on the outskirts of Ballan. The closest to the subject land is more than 1.5 km away.

### **3.2 Historic sites on the subject land**

The Victorian Heritage Register and Heritage Inventory, kept by Heritage Victoria, does not list any historic sites on the subject land. Furthermore, the Shire of Moorabool local planning scheme does not have any heritage overlays on the subject land. This includes the mineral spring on the southern boundary of the subject land, which is signposted as a place of historical interest (see Section 4 below).

## **4. FIELD INSPECTION**

I inspected the subject land on the 24<sup>th</sup> June, 2016. Commencing at the picnic ground in the SW corner of the subject land, I walked along vehicle tracks skirting the pine forest in the centre of the area and accessed the Moorabool River frontage by departing from these tracks. The mineral spring near the entrance to the Bostock Reservoir was also inspected. No Aboriginal or historic archaeological traces were observed.

The dominant landform of the subject land is a high ridgeline and spur deeply incised by the Moorabool River. The valley sides range from precipitous to v-shaped (Plate 1). Sedimentary rock outcrops on the valley sides and forms localised deposits of scree. Cavernous weathering (that produces rockshelter sites) is absent.

Loose nodules of quartz are abundant on the hillslopes and could have been used by Aboriginal people as a source of stone for tool-making. However, the outcropping sedimentary rock does not appear to have been quarried or otherwise used for this purpose or any others, such as axe-head grinding.

The crest of the ridgeline is quite level and parts of it free of loose rock (Plate 2). Aboriginal campsites are possible on the ridge crest, although none were observed. In contrast, the slopes adjoining the Moorabool River are highly unlikely to contain Aboriginal campsites because the steep-sided terrain is unsuitable.

Finally, the mineral spring is associated with built structures of historical interest but these are located entirely outside the subject land. No additional items of possible historical interest were located on the adjoining subject land.

The inspection was *preliminary* only and in no way constitutes a formal archaeological survey. For Aboriginal sites, this would require participation of the relevant Aboriginal stakeholders under the *Aboriginal Heritage Act 2006*.

## **5. ABORIGINAL HERITAGE REGULATIONS 2007**

The *Aboriginal Heritage Regulations 2007* that accompany the *Aboriginal Heritage Act 2006* are particularly relevant and stringent. Under regulation 6, a CHMP is required for a proposed activity, if:

- (a) all or part of the activity area for the activity is an area of cultural heritage sensitivity; and
- (b) all or part of the activity is a high impact activity.

According to regulation 23(1), any land within 200 m of a waterway (not subject to significant ground disturbance) is an area of cultural heritage sensitivity. Moreover, land (not subject to significant ground disturbance) within 50 metres of a registered cultural heritage place is an area of cultural heritage sensitivity.





Plate 1. Part of the subject land fronting the Moorabool River.



Plate 2. Ridge crest in approximate centre of subject land.



AV's Bacchus Marsh (7722) map of areas of cultural heritage sensitivity (see [www.aboriginalaffairs.vic.gov.au](http://www.aboriginalaffairs.vic.gov.au)) shows that the land proposed by Barwon Water for rezoning is located within 200 m of a waterway (Moorabool River). However, no part of the subject land is located within 50 m of a registered cultural heritage place. The closest is ~1.5 km away (Section 3.1 above).

If an area of cultural heritage sensitivity has been subject to significant ground disturbance, the disturbed part is no longer an area of cultural heritage sensitivity. Significant ground disturbance is defined under the *Aboriginal Heritage Act* 2006 and its regulations 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.

Under regulation 23(2), 'if part of a waterway or part of the land within 200 metres of a waterway has been subject to significant ground disturbance, that part is not an area of cultural heritage sensitivity'. The greater part (~90 %) of the subject land has not been subject to significant ground disturbance previously.

The second prerequisite would be met if the proposed planning scheme amendment (rezoning the subject land from PUZ to SUZ) was a high impact activity. Division 5 of the *Aboriginal Heritage Regulations* 2007 specifies high impact activities for the purposes of the *Aboriginal Heritage Act* 2006. Making an amendment to the planning scheme is not listed in Division 5 as a high impact activity.

**Accordingly, a CHMP under Section 46 of the *Aboriginal Heritage Act* 2006 is not required prior to rezoning the subject land from PUZ to SUZ.** The reason is that the second prerequisite for a CHMP under regulation 6(b) is not met.

However, possible future development for tourism and accommodation may require a CHMP beforehand. The CHMP would be specific to the activity proposed and be undertaken by the proponent of the development prior to construction.

Should development proceed, the risk to Aboriginal and historic cultural heritage is actually low because there are no known cultural heritage sites on the subject land and the potential for them is also low (see Section 4 above).

## **6. HISTORIC HERITAGE OBLIGATIONS**

The background review and field inspection demonstrated that the historical archaeological potential of the subject land is very low, despite the proximity of the mineral spring at the entrance to the Bostock Reservoir.

Furthermore, the Shire of Moorabool does not have any heritage overlays on any part of the subject land. Accordingly, there is no requirement for detailed historical assessment before making the proposed planning scheme amendment.

## **7. RECOMMENDATIONS**

Based on the results of this assessment, it is recommended that:

- the surplus Barwon Water land at the end of Shaws Road should be rezoned from PUZ to SUZ without any further Aboriginal or historic cultural heritage investigation. A CHMP is not required beforehand;
- development after rezoning may proceed in accordance with the *Aboriginal Heritage Act 2006*, the *Aboriginal Heritage Regulations 2007* and the *Heritage Act 1995*. Depending on the nature of the development, a CHMP or detailed historical assessment may be required beforehand;
- In the unlikely event that items of Aboriginal or historic cultural heritage are uncovered while using the subject land, all activity within 50 m of the find should cease and the party making the find must contact the Heritage Advisor, AV or Heritage Victoria for advice. It is an offence under the relevant heritage legislation to disturb or destroy relics without written authorization.



## **REFERENCES**

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