

## **Cultural Heritage Due Diligence Advice**

**Prepared for:** Spowers

**Project:** Aged Care Facility Development –  
35-37 & 39 Regent Street, Mount Waverley

**Municipality:** City of Monash

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### **1 Project Background**

Pragmatic Cultural Heritage Services has been commissioned by Spowers to prepare a Cultural Heritage Due Diligence Assessment for the properties located at 35-37 and 39 Regent Street, Mount Waverley, located within the municipal district of the City of Monash (Map 1).

### **2 Proposed Activity**

The proposed activity calls for the removal of the existing dwellings, garages, and recreational facilities on the properties and the construction of an aged care facility. In addition to the impacts associated with the demolition works, construction of the proposed centre will require excavations for structural foundations, deep trenching for service installation, and landscaping works which will cause significant levels of ground disturbance within the property.

### **3 Physical description of Subject Property**

#### **3.1 Property Description**

The study area consists of a pentagonal shaped area of land bounded on the north and south by residential properties, on the west and south-west by the reserve for Scotchmans Creek/Mount Waverley Drain, and on the east by Regent Street (Map 1); the details of the properties are CP104150 (35-37 Regent Street) and Lot 7, LP58432 (39 Regent Street), Parish of Mulgrave, County of Bourke, City of Monash.

#### **3.2 Geology and Geomorphology**

The study area is located within Andersons Creek Formation geological formation, which features marine sedimentary materials dated to the Silurian geological period (identified as being between 443.8 and 427.4 million years old). In terms of soils, it is located within the

boundaries of the low hill landform of the Eastern Victorian Dissected uplands geomorphic land system, which is characterised by moderately leached, highly compacted yellow duplex soils with an average pH of 5.5-6.5; it is also within the boundaries of GMU 1.3.1, which features deposits of Leptic Rudosol soils.

## **4 Existing Heritage Registrations**

The Victorian Aboriginal Heritage Register (VAHR) contains a complete database of recorded Aboriginal Cultural Heritage Places located in Victoria, as well as a library of all reports detailing Aboriginal Cultural Heritage Investigations undertaken in the state. The register is maintained by Aboriginal Affairs Victoria, and can be accessed electronically through the Aboriginal Cultural Heritage Register Information System (ACHRIS). The register was accessed by Ashley Matic (Pragmatic Cultural Heritage Services) on 17 December 2015, with information relevant to the study area (including previously recorded Aboriginal Cultural Heritage Places, Aboriginal Historic Places and previously completed Aboriginal Cultural Heritage Assessments) reviewed.

The review identified that no Aboriginal Cultural Heritage Places have been identified within the study area; the nearest recorded place consists of a scarred tree, VAHR7922-0614 (Valley Reserve 1), located 530 metres north of the study area. No specific Aboriginal Cultural Heritage Assessment Reports have been prepared for the subject area; it does fall, however, within the boundaries of some large scale regional studies of Aboriginal Cultural Heritage in Victoria.

### **4.1 Historical Cultural Heritage**

The Victorian Heritage Database (VHD) is a complete database of Heritage Places located in Victoria that are listed on the Victorian Heritage Register and Heritage Inventory, both of which are maintained by Heritage Victoria, the register of the National Trust of Australia (Victoria), and all places included on the Heritage Overlays of the relevant Municipal Planning Schemes. The VHD was accessed by Ashley Matic (Pragmatic Cultural Heritage Services) on 17 December 2015, with information relevant to the study area reviewed.

The review identified that no places listed on any of the Victorian Heritage Register, Heritage Inventory, Register of the National Trust of Australia (Victoria) or the Heritage Overlay of the City of Monash Planning Scheme are located within the study area.

## **5 Registered Aboriginal Party**

There is currently no Registered Aboriginal Party (RAP) in place with responsibility for the management of Aboriginal Cultural Heritage over the region which includes the study area, and there are no active applications for RAP status over the area currently before the Victorian Aboriginal Heritage Council (VAHC). The Bunurong Land and Sea Association Incorporated (BLASAI), Boon wurrung Foundation (BwF), and Bunurong Land Council Aboriginal Corporation (BLCAC), however, have been recognised by the Victorian Aboriginal

Heritage Council as representing the traditional owners of the area within which the subject property lies.

## **6 Existing Conditions (Site Inspection)**

The properties forming the study area were inspected, but not surveyed, by Ashley Matic of Pragmatic Cultural Heritage Services on Tuesday, 15 March and Tuesday, 21 June 2016.

The property at 35-37 Regent Street consists of a large pentagonal shaped parcel of land facing onto Regent Street. Access is via a wide paved driveway which runs from a gate on Regent Street to a large paved turning area immediately in front of a large garage area. This adjoins a large rectangular dwelling which covers much of the north-eastern corner of the property, while to the south of the driveway is a terraced area of grassed open space with paths and outdoor entertainment facilities, surrounded on its eastern and southern boundaries by landscaped gardens adjacent to the fence lines surrounding the property. A second, smaller area of grassed open space and gardens is located in the north-eastern corner, immediately in front of the dwelling.

The remainder of the property in the area between the discussed features and the reserve for Scotchmans Creek is a heavily modified recreation area, including a synthetic grass tennis court, in ground swimming pool and spa, large pool house and relaxation facilities, and extensive area of paving. All of this area has been heavily terraced, with a variety of ground surface levels represented across the rear of the property.

The property at 39 Regent Street is a much smaller trapezoidal parcel of land, predominantly taken up by a large two storey dwelling situated in the centre of the property. It is accessed by a brick paved driveway running parallel to the northern boundary of the property, which extends to a large garage attached to the northern side of the dwelling.

The south-eastern corner of the property consists of a heavily terraced garden area, which extends around the south of the dwelling to the south of the dwelling. The rear yard is accessed via a fence which leads to a level paved area featuring a clothesline and a small shelter containing a water pump (connected to an adjacent pool and spa) and other associated equipment located at its western end; this area sits considerably lower than the remainder of the rear yard to its north and west. The remainder of the yard area has been heavily modified, with the afore mentioned pool and spa located in a level paved area situated immediately behind the dwelling, with the remainder of the property between these features and the western boundary consisting of modified grassed open space with tree plantings.

Some exposures of the topsoil were present in the areas of open space in each of the properties; these demonstrated the presence of a grey sandy silt material, which is consistent with soil types identified in the wider Mount Waverley area. Open post holes along the northern boundary of the property at 35-37 Regent Street associated with an ongoing fence construction demonstrated only a thin layer of such material was present in

that section of the study area (between 100-300mm deep), with a sedimentary bedrock and mixed clay material (presumably derived from the from the natural breakdown of the rock) lying immediately beneath.

A series of photographs demonstrating the features identified during the inspections are presented as Appendix 1.

## 7 Legislative Advice

### 7.1 Aboriginal Cultural Heritage

Under Part 3, Division 1 of the Victorian *Aboriginal Heritage Act 2006* ('the Act') it is an offence to harm Aboriginal Cultural Heritage.

Under Part 4, Division 2 of the Act, mandatory preparation of a Cultural Heritage Management Plan (CHMP) is required if the *Aboriginal Heritage Regulations 2007* ('the Regulations') require the preparation of a CHMP for a proposed Activity; Part 2, Division 1, Regulation 6 states that a cultural heritage management plan is required for an activity if-

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

As the subject property is located on land within 200m of Scotchmans Creek/Mount Waverley Drain, it is located within an Area of Cultural Heritage Sensitivity as specified under Division 3, Regulation 23 of the *Aboriginal Heritage Regulations 2007*, which states:

#### 23 Waterways

- (1) Subject to subregulation (2), a waterway or land within 200 metres of a waterway is an area of cultural heritage sensitivity.
- (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.

Under Subregulation (2), however, which states that if part of the a waterway or land within 200 metres of a waterway has been subject to significant ground disturbance then it *is not* considered to be an area of cultural heritage sensitivity, preparation of a CHMP is not mandatory for this project as the study area has undergone significant levels of disturbance in the past.

The construction of the dwellings, recreational facilities and terraced areas of the gardens in each of the properties would have had an extremely significant impact on the natural soil profile of the study area. Given the natural slope of the landform upon which the properties are located is to the south and west is apparent moving north along Regent Street, it is clear that the locations of these features have undergone significant amounts of levelling works in order to provide a level surface upon which construction could occur. Both dwellings sit considerably lower than Regent Street, indication significant levels of excavation have

occurred prior to the construction of the dwelling; this is also evident for both garages and paved turning area at the western end of the driveway of 35-37 Regent Street.

Further evidence of the high levels of landscaping works was evident to the rear of both properties where the recreation facilities are located. Each property features an area containing a pool and spa located immediately to the rear of the dwellings, which has been constructed into a level terrace constructed specifically for the purpose. Further indication of these works are present in both properties; in 35-37 Regent Street the adjacent pool house is at a higher elevation to the pool, indicating additional 'building up' of the ground surface level, whilst in 39 Regent Street the small shelter containing a water pump is considerably lower than the adjacent pool. Also, the tennis court is located to the south-west of the pool features in 35-37 Regent Street extends to the boundary of the property, and is considerably lower than both the pool and pool house; the level surface would have required extensive earthworks to have been constructed, which again removes the possibility of a natural soil profile being located in this area.

The remainder of the properties consists of heavily landscaped grassed open space and gardens; most evident of the disturbances in these locations was the evident terracing works that have been completed in the past. The largest of these are located in the south of 35-37 Regent Street and in the front yard and along the southern boundary of 39 Regent Street, where at least one metre of soil depth has been moved to create the present levels present in those locations. This would have significantly impacted the soil profile where the terracing works occurred, and as it is likely that only a thin layer of topsoil was ever present within the property (as indicated by the observed soil sections in the new fence line post holes) it would have resulted in the total removal of the original natural topsoil layer.

Whilst direct physical evidence (in the form of extant built features) were not present in much of the areas of open space in the property, prior hearings at the Victorian and Civil Administrative Tribunal (*Azzure Investment Group Pty Ltd v Mornington Peninsula SC* [2009] VCAT 1600) have determined that in the absence of specific, definitive evidence of significant ground disturbance as defined within the *Aboriginal Heritage Regulations 2007*, comparative and contextual information can be used to establish significant ground disturbance to a 'sufficient level of satisfaction'. Given the extensive amount of earthworks undertaken for the construction of the other features located within the study area, combined with the natural topography of the wider region around the subject site, it is the consultant's opinion that the observed condition of such areas within the site is consistent with them having undergone a significant level of ground disturbance in the past, which has removed the potential for *in situ* deposits of Aboriginal cultural heritage to survive in those locations.

As such, it is the consultant's opinion that the visible physical evidence, combined with the historic land use practices employed within the study area, demonstrates a significant level of ground disturbance across both sites, consistent with having removed the potential for *in situ* deposits of Aboriginal cultural heritage to survive within their boundaries. Therefore, preparation of a mandatory CHMP **is not** required under the *Aboriginal Heritage Act 2006*

due to the significant levels of ground disturbance that have occurred to the study area in the past.

## 7.2 Historical Cultural Heritage

Upon review of the available heritage registration data for the study area and limited field inspection undertaken, it is considered that no further archaeological investigation is required and there are no historical archaeological constraints on the proposed activity.

Under the *Heritage Act 1995*, there is blanket protection for all historical archaeological sites and relics in Victoria; if any potentially significant archaeological features, deposits, and/or relics are exposed during the conduct of the proposed activity, then works must cease immediately and Heritage Victoria and/or a qualified archaeologist must be contacted for advice on how to proceed.

## 8 Conclusion/Recommendations

In summary, preparation of a Cultural Heritage Management Plan **is not** mandatory for the proposed activity under the provisions of *The Aboriginal Heritage Act 2006*, as the study area has undergone significant levels of ground disturbance in the past that have removed the potential for it to contain undisturbed deposits of Aboriginal Cultural Heritage material.

Additional investigation with regards to the historical archaeological potential is not necessary due to the lack of places having been recorded within the boundaries of the study area, the lack of observed features during the inspection, and the prior levels of disturbance the property has undergone.

## 9 Declaration

I, Ashley Matic of Pragmatic Cultural Heritage Services, declare that I have undertaken a sufficient and appropriate level of inquiries into the Cultural Heritage Requirements for the proposed activity, and no matters of significance which I regard as relevant to this project have, to my knowledge, been withheld from this report.

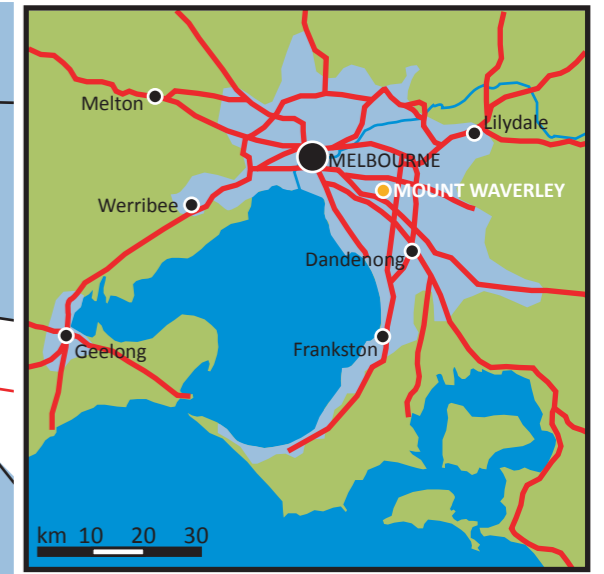
A handwritten signature in black ink, appearing to read "Ashley Matic", written in a cursive style.

Ashley Matic  
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# MOUNT WAVERLEY

STUDY AREA



Bruce Street

Regent Street

Thai Court

Oxford Street

Nagara Court



## **Appendix 1 – Site Inspection Photographs**





**View to west from the entry into 35-37 Regent Street, from Regent Street**



**View to south west along the dwelling to the garage, showing the driveway and paving in 35-37 Regent Street**



**View to north-east over paved turning area showing relationship to the dwelling in 35-37 Regent Street**



**View of terracing present in the south of 35-37 Regent Street**



**View to north-west over area of open space in the south-eastern corner of 35-37 Regent Street**



**View to the north immediately to the rear of the garage in 35-37 Regent Street showing the pool and pool house**





**View to the north over the tennis court in 35-37 Regent Street**



**View of the pool house in 35-37 Regent Street looking to the south-east**



**A view to the east from behind the pool house, looking towards the swimming pool and dwelling at 35-37 Regent Street**



**View from the rear of the dwelling in 35-37 Regent Street looking west showing the pool and pool house**



**View of exposed topsoil in the south-eastern corner of 35-37 Regent Street**



**View of post hole excavation and associated spoil in the north of 35-37 Regent Street**





**View to west from the entry into 39 Regent Street from Regent Street**



**View to east showing landscaping works adjacent to the driveway in 39 Regent Street**



**View to north-east showing landscaping works in the front yard of 39 Regent Street**



**View of paved area located to the south of the dwelling and pool facilities in 39 Regent Street**



**View to east over the rear yard of in 39 Regent Street**



**View of exposed topsoil in the front yard of 39 Regent Street**