

d) Advice whether a Cultural Heritage Management Plan has been prepared or is proposed to be prepared for the proposal, or whether any relevant legislative exemption is sought to be relied on.

A Cultural Heritage Management Plan (**CHMP**) has not been prepared for any of the proposals under consideration in Amendments C163, C164, C165 and C166 (**The Amendments**).

Procedurally a CHMP is not required to be prepared for a Planning Scheme Amendment (**PSA**) and this is a matter which is appropriately dealt with by a condition in the Incorporated Document.

The reasoning on timing and the trigger for a CHMP is outlined below.

A: Timing for Cultural Heritage Management Plan

Relevantly, Section 52 of the *Aboriginal Cultural Heritage Act 2006* (**ACHA**) requires:

(1) The decision maker must not grant a statutory authorisation for the activity unless a cultural heritage management plan is approved under this Part in respect of the activity. Note This section does not prevent a sponsor from lodging an application for a statutory authorisation before a cultural heritage management plan is approved.

A 'statutory authorisation' is defined in section 50 of the ACHA as:

statutory authorisation means any of the following—

(a) a permit under the Planning and Environment Act 1987 to use or develop land for all or part of an activity;

(b) an amendment to a permit referred in paragraph (a) if the amendment allows a change to the use or development of the land for all or part of the activity;

(c) an earth resource authorisation other than an authorisation approving an area work plan within the meaning of section 41AD(4) of the Mineral Resources (Sustainable Development) Act 1990;

(d) an amendment to an earth resource authorisation (other than an amendment to an authorisation that approves a variation to an area work plan within the meaning of section 41AD(4) of the Mineral Resources (Sustainable Development) Act 1990) if the amendment allows a change to the activity authorised by that authorisation;

(e) an approval under any Act or regulations to develop land for all or part of an activity, other than an approval—

(i) under the Planning and Environment Act 1987; or

(ii) under an earth resource law;

(iii) that is required for a purpose that relates to a purpose for which an earth resource authorisation is also required;

(f) the amendment to an approval included in this definition by paragraph (e) that allows a change to the development of the land for all or part of an activity.

[our emphasis]

A PSA does not constitute a permit to use or develop land for all or part of an activity under the *Planning and Environment Act 1987* and does not fall under any of the other categories of statutory authorisations listed in section 50 of the ACHA.

This interpretation is consistent with the Tribunal's findings in *Canterbury Hills Pty Ltd v Hume CC* [2015] VCAT 80 and *Australian Tourism No.5 Pty Ltd v Colac-Otway SC* [2018] VCAT 895, in which the Tribunal accepted that the approval of a Development Plan is not a statutory authorisation. Specifically, at paragraph 237 of *Australian Tourism No. 5* the Tribunal noted:

237. The parties submitted that there is no statutory requirement for an approved CHMP prior to the approval of a Development Plan under section 52 of the Aboriginal Heritage Act 2006 having regard to the limited purview of the term ' statutory authorisation ' as defined in section 50 of that Act. We agree.

238. This is to be contrasted with the grant of a planning permit, which cannot be issued unless an approved CHMP has been obtained for the relevant high impact activity and activity area.

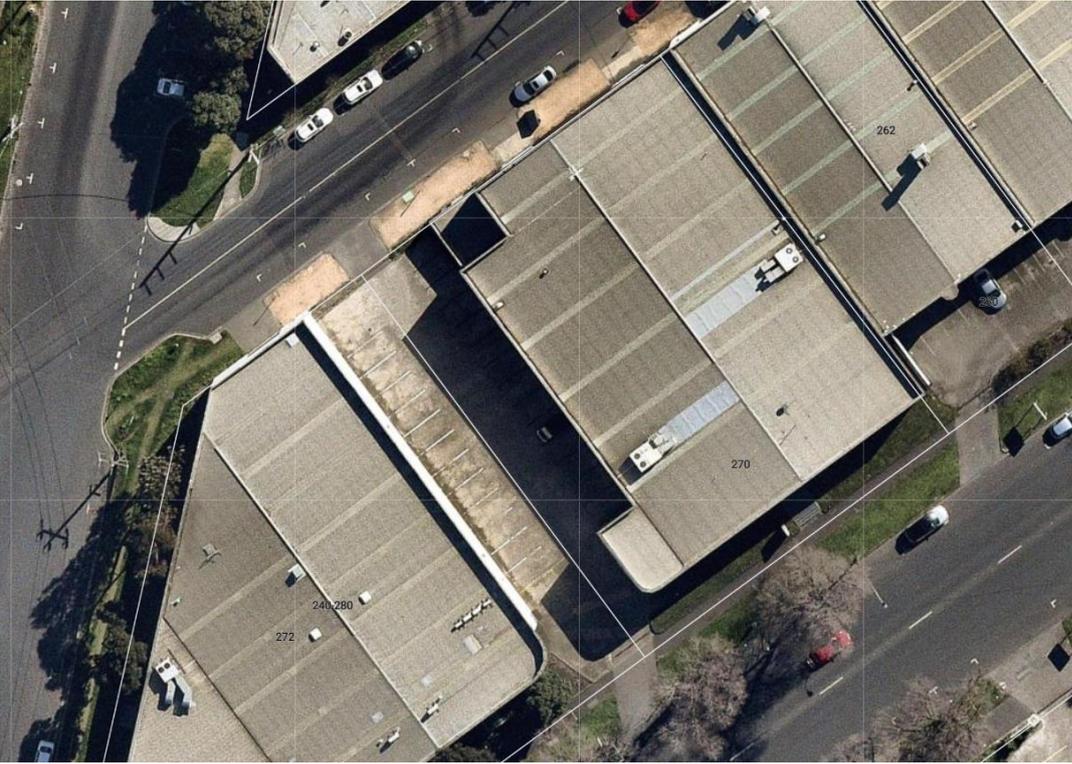
The approval of the incorporated document through the Amendments is akin to the approval of a development plan not requiring a planning permit to develop land and therefore, is not a statutory authorisation. The Amendments can be approved before CHMPs are prepared (if it is determined a CHMP is required).

B: Trigger for CHMP

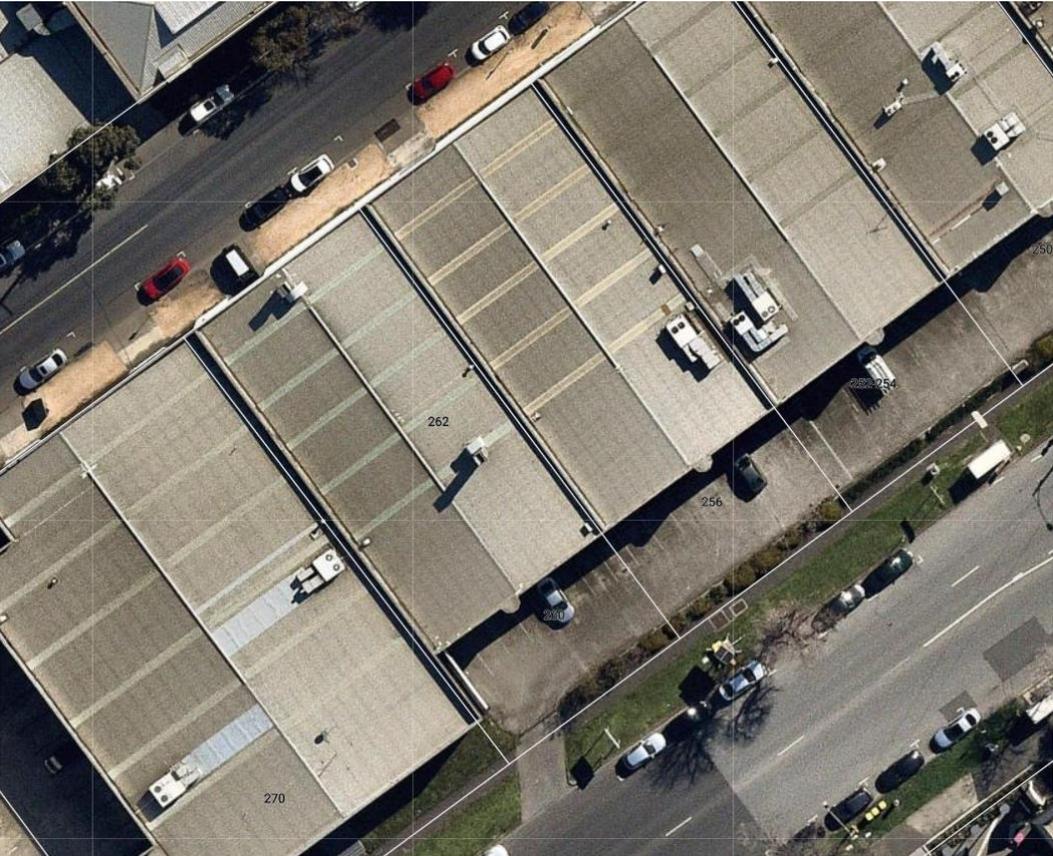
The draft incorporated documents now includes a proposed condition 4 requiring CHMP matters to be addressed before development starts (including demolition, bulk excavation and site preparation works). This will ensure a CHMP is approved if required.

It is considered that, and DELWP has indicated as much in correspondence with SJB Planning, the development of the sites is exempt in any event. All the sites have been the subject of significant grounds disturbance with large industrial buildings and hard stand areas prevalent across all sites (refer photos below).

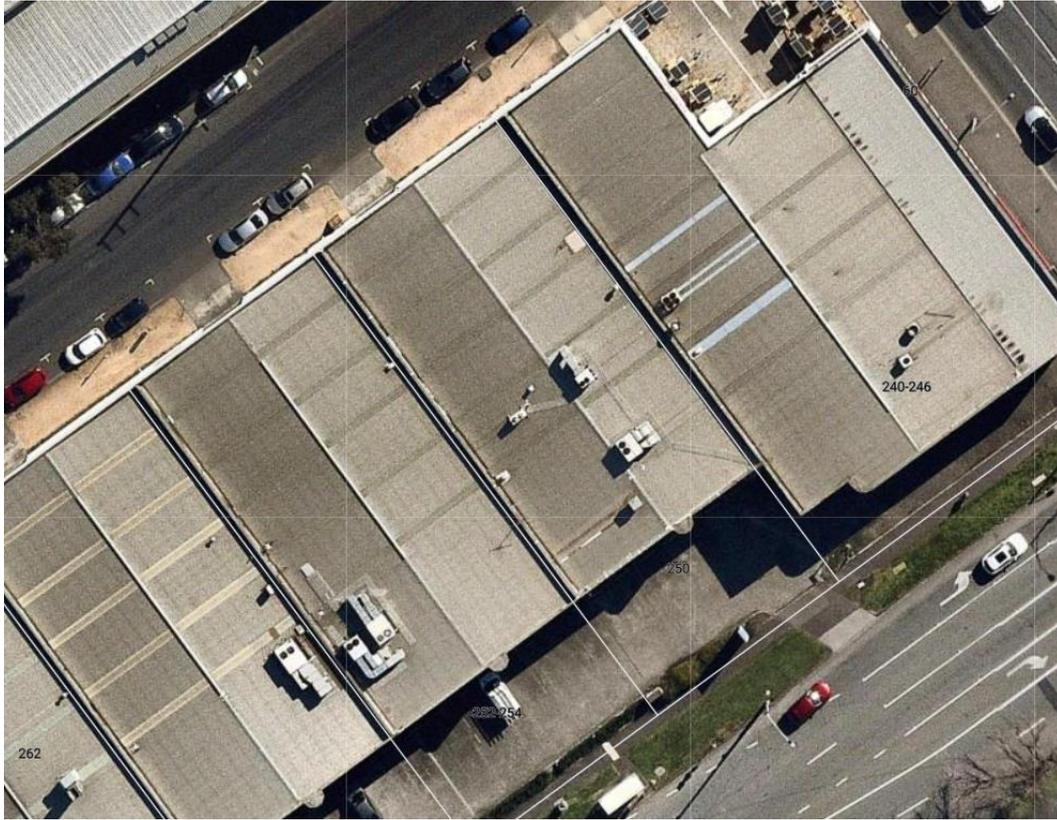
Therefore, the preparation of a CHMP is likely to be exempt pursuant to regulation 25(3) of the *Aboriginal Heritage Regulations 2018*. These matters will be considered by a suitability qualified expert in accordance with condition 4 or Aboriginal Victoria in the course of a PAHT.



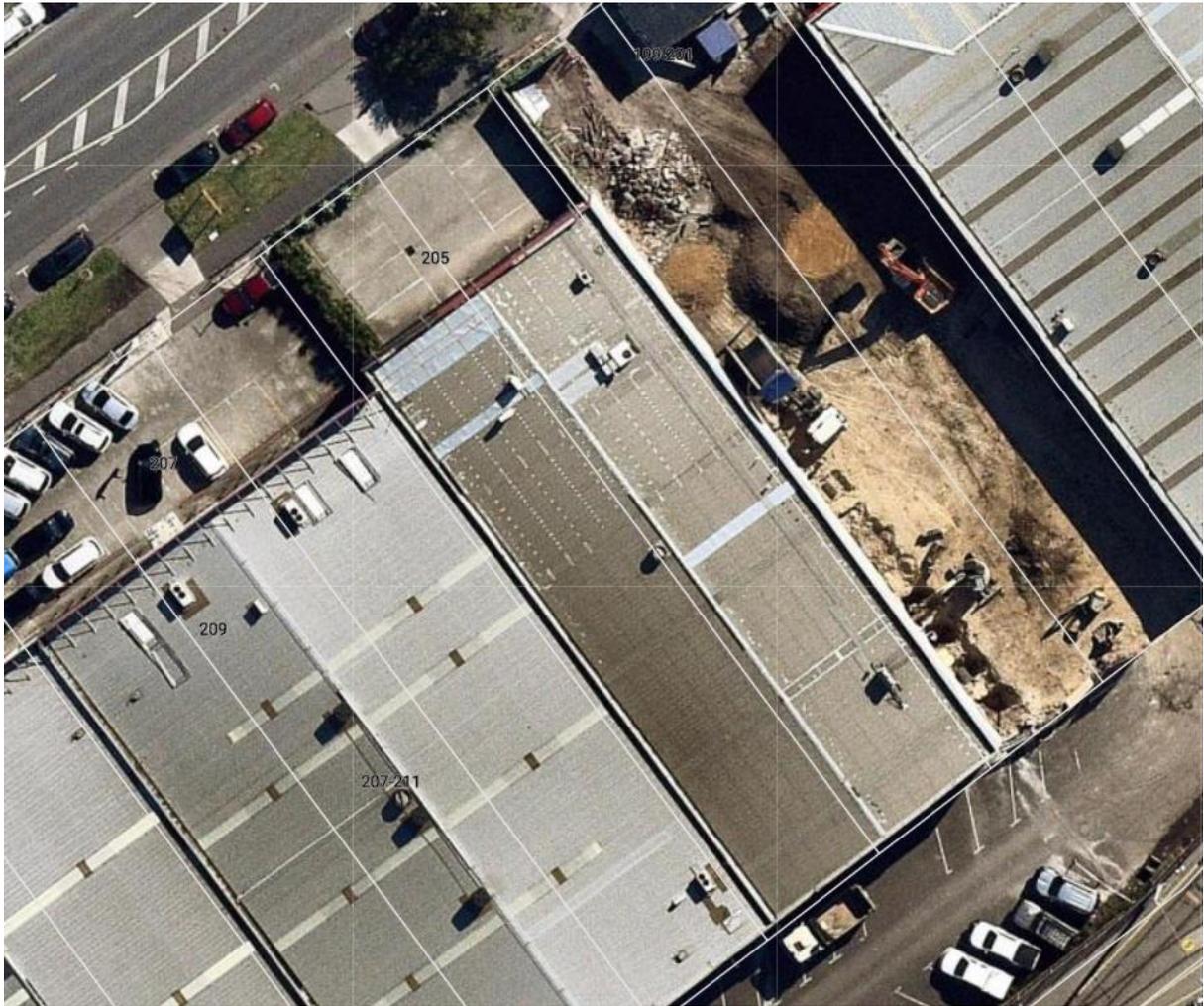
Site 1 - 264-270 Normanby Road, South Melbourne



Site 2 - 256-262 Normanby Road, South Melbourne



Site 3 - 248-254 Normanby Road



Site 6- 203-205 Normanby Road, South Melbourne