



## **Heritage Council** Regulatory Committee

### **The Old Lead Diggings, Dunolly (H2402)**

Dunolly-Rheola Rd, Dunolly

**Hearing** – 12 October 2020

**Members** – Mr Patrick Doyle (Chair), Ms Megan Goulding, Mr David Hogg

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#### **DETERMINATION OF THE HERITAGE COUNCIL**

**Inclusion in the Victorian Heritage Register** – After considering the Executive Director's recommendation, all submissions received, and conducting a hearing into the matter, the Heritage Council has determined, pursuant to section 49(1)(a) of the *Heritage Act 2017*, that the Old Lead Diggings, Dunolly (H2402) at Dunolly-Rheola Rd, Dunolly, is a place of State-level cultural heritage significance and is to be included in the Victorian Heritage Register as both a Registered Place and as a Registered Archaeological Place.

**Patrick Doyle (Chair)**

**Megan Goulding**

**David Hogg**

**Decision Date** – 1 December 2020

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## **ACKNOWLEDGEMENT**

As a peak Heritage body, the Heritage Council is proud to acknowledge the Traditional Owners as the original custodians of the land and waters on which we meet, and to acknowledge the importance and significance of Aboriginal cultural heritage in Victoria. In particular, the Heritage Council acknowledges the Dja Dja Wurrung people, on whose traditional land the subject place is located, and honours Dja Dja Wurrung Elders past and present whose knowledge and wisdom has ensured the continuation of culture and traditional practices.

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## **PARTIES WHO LODGED WRITTEN SUBMISSIONS AND APPEARED AT THE HEARING**

### **EXECUTIVE DIRECTOR, HERITAGE VICTORIA ('THE EXECUTIVE DIRECTOR')**

Written submissions were received from the Executive Director, Heritage Victoria ('the Executive Director'). Mr Geoff Austin (Manager, Heritage Register) and Mr Jeremy Smith (Principal Archaeologist), appeared and made verbal submissions at the hearing on behalf of the Executive Director.

### **MR NEVILLE PERRY ['MR PERRY']**

Written submissions were received from Mr Perry, the owner of the Place. Mr Perry appeared at the commencement of the hearing.

## **PARTIES WHO LODGED WRITTEN SUBMISSIONS BUT DID NOT APPEAR OR MAKE VERBAL SUBMISSIONS AT THE HEARING**

### **MR GRAEME MELBOURNE**

A written submission was received from Mr Melbourne, who did not appear or make verbal submissions at the hearing.

## INTRODUCTION/BACKGROUND

### THE PLACE

**01.** On 16 March 2020, the Executive Director made a recommendation ('the Recommendation') to the Heritage Council, pursuant to section 37(1)(a) of the *Heritage Act 2017* ('the Act'), that the Old Lead Diggings, Dunolly-Rheola Rd, Dunolly ('the Place'), should be included in the Victorian Heritage Register ('the Register').

**02.** The Place is described on page 4 of the Recommendation as follows:

#### *'WHAT IS AT THE PLACE?'*

*The Old Lead Diggings, Dunolly comprises several thousand remnant mining shafts relating to alluvial deep sinking along the main lead and tributary gullies. The site extends three kilometres north to south and is about one hundred metres wide. Preserved shafts are generally one-two metres deep and are typically five-ten metres apart. They were originally deeper but have been filled in or have collapsed. The place also includes other archaeological features including artefact scatters, a store and house site and extensive evidence of historical, post-gold-rush ring-barking and tree-felling in the form of stumps and coppiced eucalypts. The Old Lead Diggings, Dunolly includes a dense aggregation of several thousand remnant mining shafts that resulted from the search for nuggety gold. The place contains other archaeological features including artefact scatters a hotel and house site.'*

**03.** The following summary of the history of the Place is also taken from page 4 of the Recommendation:

#### *'WHAT IS THE HISTORY OF THE PLACE?'*

*Gold was first discovered in Victoria in 1851. The Old Lead Diggings, Dunolly is the site of one of the largest and richest gold rushes in Victoria and possibly Australia. Discovery of large nuggets in 1856 drew 30,000–50,000 miners to the lead, who worked in small parties to dig shafts down ten-twenty metres to hit the auriferous 'gutter'. Numerous large nuggets of more than twenty ounces were discovered. The scale and intactness of the place reveals the magnitude of the rush, the techniques used by the diggers and how the lead persisted as a 'small man's diggings'.*

#### *'WHO ARE THE TRADITIONAL OWNERS/REGISTERED ABORIGINAL PARTY(IES) FOR THIS PLACE?'*

*This place is located on the traditional land of the Dja Dja Wurrung people. The Registered Aboriginal Party for this land is the Dja Dja Wurrung Clans Aboriginal Corporation.'*

**04.** The above description and history summaries have been taken from the Recommendation and are provided for information purposes only.

### RECOMMENDATION OF THE EXECUTIVE DIRECTOR

**05.** On 16 March 2020 the Executive Director, pursuant to section 37(1)(a) of the Act, recommended the Place be included in the Register.

## **PROCESS FOLLOWING THE RECOMMENDATION OF THE EXECUTIVE DIRECTOR**

- 06.** After the Recommendation, notice was published on 20 March 2020 pursuant to section 41 of the Act for a period of 60 days. The 60-day period closed on 18 May 2020.
- 07.** Two (2) submissions were received, pursuant to section 44 of the Act. Both submissions objected to the Recommendation and both requested that a hearing be conducted.
- 08.** In accordance with section 46(2)(a) of the Act, a hearing was required to be held. A Heritage Council Regulatory Committee ('the Committee') was duly constituted to consider the Recommendation and submissions received in response to it, and to make a determination. Hearing parties were notified that a hearing would be conducted on a date to be confirmed.

## **IMPACT OF THE NOVEL CORONAVIRUS 2019 ('COVID-19') ON THE HEARING**

- 09.** On 1 June 2020 all prospective hearing participants were advised that, in light of Victorian Government public health advice in relation to COVID-19, a registration hearing in relation to the Place was not able to be scheduled until further notice.

## **SCHEDULING OF THE HEARING**

- 010.** On 12 August 2020 all prospective hearing participants were advised that a registration hearing in relation to the Place had been scheduled for Monday 12 October 2020 by way of videoconference using *Microsoft Teams* ('the Hearing'). Written hearing submissions were invited and further information was provided about the Hearing.
- 011.** The Executive Director provided a hearing submission in due course. Neither Mr Perry nor Mr Melbourne provided a hearing submission but their section 44 submissions were before the Committee and able to be considered.

## **PRELIMINARY, PROCEDURAL AND OTHER MATTERS**

### **SITE INSPECTION**

- 012.** Due to Victorian Government public health advice in relation to COVID-19 and related restrictions on movement in Victoria, the Committee was not able to travel to the Place to conduct an in-person site inspection. At the Hearing, the Chair noted that a site inspection of the Place would not be conducted.

### **CONFLICTS OF INTEREST**

- 013.** The Chair invited Committee members to make declarations, written or otherwise, in relation to any matters that may potentially give rise to an actual, potential or perceived conflict of interest. Committee members were satisfied that there were no relevant conflicts of interests and made no such declarations.

### **FUTURE USE, MANAGEMENT AND DEVELOPMENT OF THE PLACE**

- 014.** It is not the role of the Committee to consider future development proposals or to pre-empt the consideration of potential future permit applications under the Act. Pursuant to section 49(1) of the Act, the role of the Committee is to determine whether or not the Place, or part of it, is of State-level cultural heritage significance and whether or not the Place, or part of it, is to be included in the Register. Some reference was made in the material provided by Mr Perry and Mr

Melbourne to the idea of the future use, management or development of the Place. According to its obligations pursuant to section 44(4) and section 49 of the Act, the Committee has not considered these matters in reaching its determination.

## **SECTION 247 OF THE ACT AND THE CONDUCT OF THE HEARING**

- 015.** Very shortly after the Chair opened the Hearing, Mr Perry stated that he was making a recording of the Hearing. The Chair advised Mr Perry that, pursuant to *Heritage Council Protocol 1 – Registration Hearings* ('Protocol 1'), video or audio recording of Heritage Council proceedings is prohibited unless specifically approved by the Committee in advance. The Chair further noted that in response to correspondence received from Mr Perry prior to the Hearing, Mr Perry was advised that he would not be permitted to record the proceedings. The Chair directed in any case that Mr Perry should cease recording immediately.
- 016.** The Chair asked Mr Perry to adhere to the direction of the Committee and informed him that the Committee would refuse to allow Mr Perry to participate in the hearing if he failed to comply with the direction to cease recording. The Chair warned Mr Perry on a number of occasions that he would be excluded from the Hearing unless he agreed to stop recording.
- 017.** Mr Perry continued to assert his right to record the proceeding and his intention to continue recording.
- 018.** At the direction of the Chair, Mr Perry was administratively 'removed' from the Hearing videoconference.
- 019.** This hearing had been scheduled because Mr Perry (and arguably Mr Melbourne) had requested a hearing. With those parties choosing not to participate, the hearing proceeded nonetheless, albeit with the Executive Director the only party appearing.
- 020.** The Committee notes that section 247(2) of the Act gives the Heritage Council the power to refuse to hear any person who fails to comply with a direction of the Heritage Council.

## **INFRINGEMENT ON PROPERTY RIGHTS, CONSTITUTIONAL RIGHTS**

- 021.** The section 44 submissions of Mr Perry and, to a greater extent, Mr Melbourne, included arguments that the proposed inclusion of the Place on the Register was an inappropriate interference with private property rights, and also made passing reference to the Australian Constitution.
- 022.** The Committee considered those submissions.
- 023.** The Committee's task is not to make legal declarations, such as to determine the validity of provisions of the Act. Rather, the Committee's task is to proceed in accordance with the provisions of the Act.
- 024.** In the present circumstances, the Committee's main task is to conduct a hearing in accordance with section 46 of the Act, and to make a determination in accordance with section 49 of the Act. The central question is whether the Place or part of the Place is of State-level cultural heritage significance. If so, inclusion of the Place in the Register appears to follow as a matter of course.

## **ISSUES**

- 025.** The following section is not intended to be a complete record of submissions that were made to the Committee. It is a summary of what the Committee considers

to be the key issues, followed by an explanation of the position that the Committee takes on each key issue.

- 026.** Any reference to Criteria or to a particular Criterion refers to the *Heritage Council Criteria for Assessment of Places of Cultural Heritage Significance* (as adopted by the Heritage Council on 4 April 2019) (see **Attachment 1**).
- 027.** The Committee has referred to the assessment framework in *The Victorian Heritage Register Criteria and Threshold Guidelines* ('the Guidelines', as adopted by the Heritage Council on 4 April 2019) in considering the issues before it. Any reference to steps 1, 2 or 3 refers to the assessment steps contained in the Guidelines.

## **SUMMARY OF SUBMISSIONS AND ISSUES**

- 028.** The Executive Director recommended that the Place be included in the Register, his assessment concluding that the Place satisfied the State-level threshold in relation to each of Criteria A, C and D. In written and verbal submissions, the Executive Director reiterated the content of the Recommendation, submitting that the Place is of cultural heritage significance at a State level, that the fabric and features of the Place are highly intact and the Place allows its State-level cultural heritage values to be clearly appreciated and understood. In relation to Criteria A and D, the Executive Director submitted that the Place demonstrates the magnitude of the nineteenth century gold rush in Victoria and that the Place is well-preserved and notable in its class in demonstrating the history and method of the deep sinking of shafts in auriferous leads or gutters in the Victorian goldfields.
- 029.** In written hearing submissions, the Executive Director provided additional images to show the features and topography of the Place and to demonstrate the delineation between the open pasture area and the diggings themselves. The Executive Director submitted that, in terms of a comparative analysis, the site is unrivalled in an international context and that no other similar sites have been recorded of an equivalent size or cultural heritage significance. The Executive Director submitted that perhaps only two places were comparable - the Number One Lead at Percydale, Avoca and the Raggedy Lead Gold Mining Precinct at Warrenmang – and submitted that the Place was the best example of its kind in Victoria.
- 030.** In relation to Criterion C, the Executive Director submitted that the backfill contained in the extant shafts would inevitably include personal items discarded by miners, including glass, bone and ceramic metal, and that the site of a contemporaneous store (the Hughes Store) would be highly likely to contain a very rich archaeological deposit and discoverable foundations, if excavated. In relation to the extent of registration, the Executive Director submitted that it is necessary that the lead is not represented as a single linear feature and that the side gullies and other features are part of a rich and complex site that should be reflected as such in the extent of registration.
- 031.** Neither Mr Melbourne nor Mr Perry, in their section 44 submissions, addressed the question of whether or not the place is of State-level cultural heritage significance and neither made reference to the Criteria or to other matters before the Committee (such as extent of registration and permit exemptions).

## ***Discussion and conclusion***

- 032.** In the Committee's view, the associations between the relevant historical phase and the Place are evident and its State-level historical and archaeological

significance are clearly demonstrated by the Recommendation and the Executive Director's submissions.

- 033.** The Committee agrees with the Executive Director that the Place allows the association between it and the Victorian gold rushes to be understood better than most other places in Victoria with the same association. Further, the Committee determines that the Place is a highly intact and notable example within its class and that its well-preserved features contribute to an understanding of, and display characteristics of, mining techniques from one of the most significant periods in Victorian post-colonial history. The Committee also agrees with the Executive Director that the Place's archaeological potential is significant, and if investigated would be likely to meaningfully contribute to an understanding of Victoria's cultural history.
- 034.** The Committee determines that the Place satisfies the State-level threshold in relation to each of Criterion A, C and D determines that the Place should be included in the Register as both a Registered Place and Registered Archaeological Place of State-level cultural heritage significance of Victoria.

## **EXTENT OF REGISTRATION**

### ***Discussion and conclusion***

- 035.** The Committee agrees with the Executive Director that the recommended extent of registration is appropriate and necessary for the protection and conservation of the Place.
- 036.** The Committee records its determination as to the extent of registration of the Place in **Attachment 2**.

## **CATEGORIES OF WORKS AND ACTIVITIES THAT MAY BE CARRIED OUT IN RELATION TO THE PLACE WITHOUT THE NEED FOR A PERMIT UNDER THE ACT**

### ***Discussion and conclusion***

- 037.** The Committee agrees with the 'permit exemptions' listed in the Recommendation and has listed the categories of works and activities that may be carried out in relation to the Place without the need for a permit under the Act at **Attachment 3**.

## **CONCLUSION**

- 038.** The Committee finds that the Place satisfies the State-level threshold for inclusion in the Register in relation to each of Criterion A, Criterion C and Criterion D.
- 039.** After considering the Executive Director's recommendation and all submissions received, and after conducting a hearing into the submissions, the Heritage Council has determined, pursuant to section 49(1)(a) of the *Heritage Act 2017*, that the Old Lead Diggings, Dunolly, at Dunolly-Rheola Rd, Dunolly, is a place of State-level cultural heritage significance to the State of Victoria and is to be included in the Victorian Heritage Register, as both a Registered Place and Registered Archaeological Place.

## ATTACHMENT 1

### HERITAGE COUNCIL CRITERIA FOR ASSESSMENT OF PLACES OF CULTURAL HERITAGE SIGNIFICANCE

CRITERION A	Importance to the course, or pattern, of Victoria's cultural history
CRITERION B	Possession of uncommon, rare or endangered aspects of Victoria's cultural history.
CRITERION C	Potential to yield information that will contribute to an understanding of Victoria's cultural history.
CRITERION D	Importance in demonstrating the principal characteristics of a class of cultural places or environments.
CRITERION E	Importance in exhibiting particular aesthetic characteristics.
CRITERION F	Importance in demonstrating a high degree of creative or technical achievement at a particular period.
CRITERION G	Strong or special association with a particular present-day community or cultural group for social, cultural or spiritual reasons.
CRITERION H	Special association with the life or works of a person, or group of persons, of importance in Victoria's history.

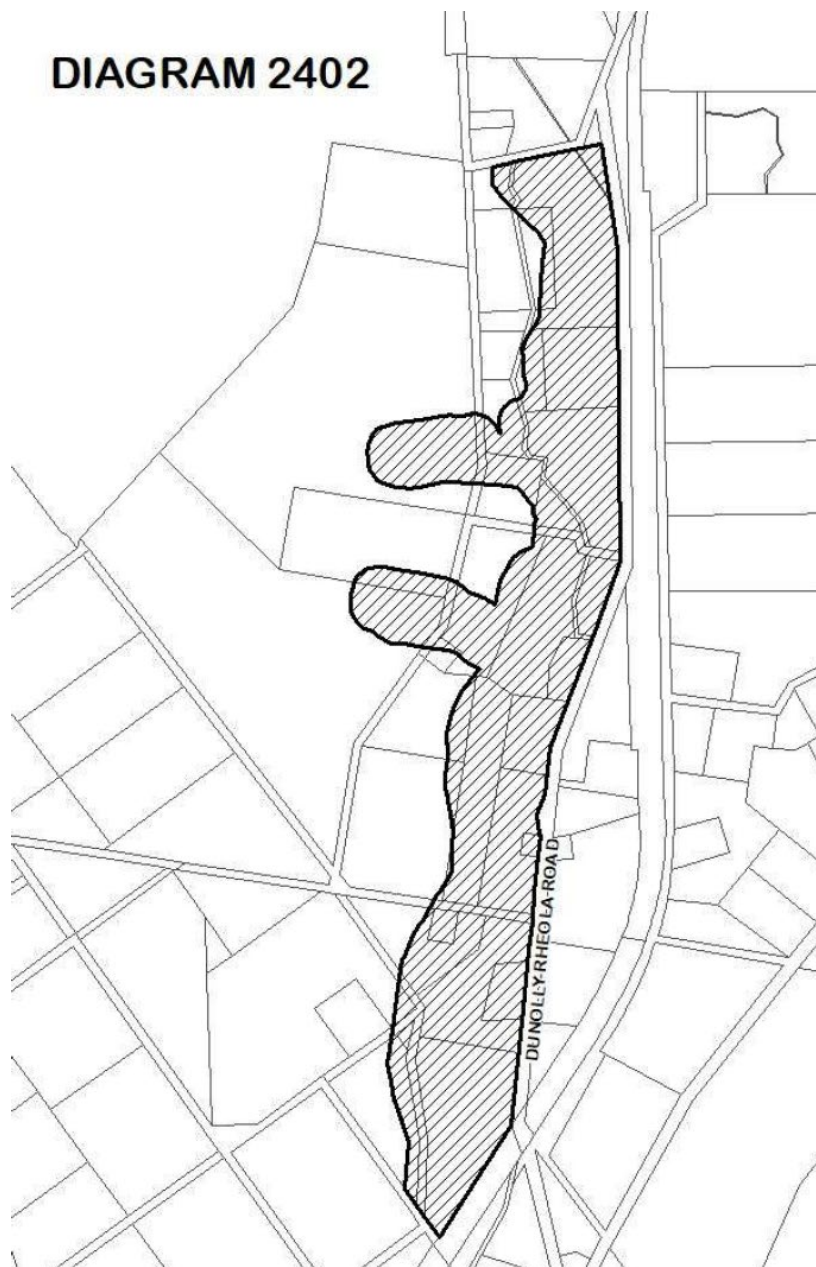
These were updated by the Heritage Council at its meeting on 4 April 2019, and replace the previous criteria adopted by the Heritage Council on 6 December 2012.



## ATTACHMENT 2

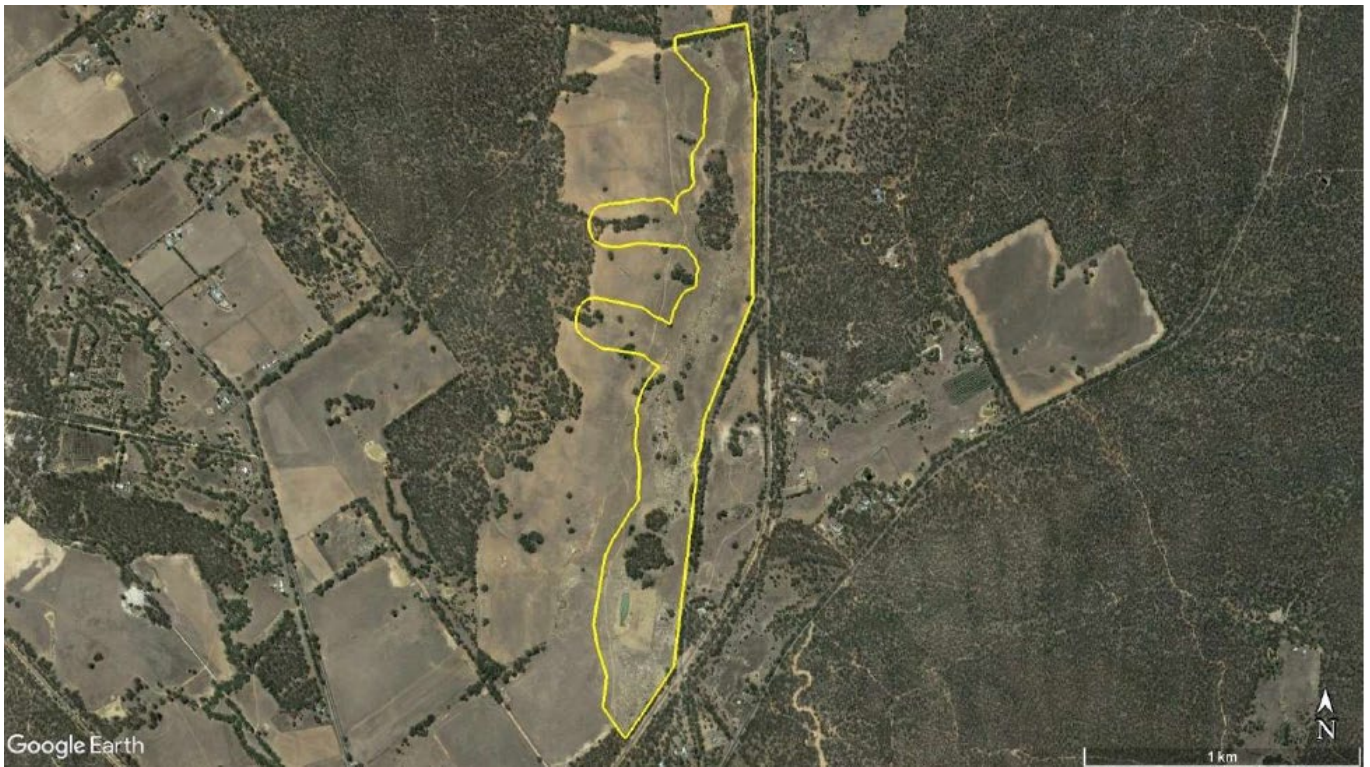
### EXTENT OF REGISTRATION

All of the place shown hatched on Diagram 2402 encompassing all of Crown Allotments 10, 11C, 12, 18A, 18B, 21, 26 and 26A, Section 13 Parish of Painswick; all of Crown Allotments 13 and 19, Section B Parish of Painswick; all of Crown Allotments 15D, 17A and 17B Section F, Parish of Painswick; and parts of Crown Allotments 1, 4, 5A, 5B, 11, 11B, 13A, 13B, 14, 14A, 15A, 15B, 15D, 15E and 17A Section 13 Parish of Painswick; parts of Crown Allotments 7 and 17B Section B Parish of Painswick; and parts of Crown Allotments 15, 15A, 15C, 15E, 16A and 17 Section F Parish of Painswick.



The recommended extent of registration of the Old Lead Diggings, Dunolly in the Victorian Heritage Register affects the whole place shown on Diagram 2402 including the land, remnant mining shafts and historical archaeological features.

**AERIAL PHOTO OF THE PLACE SHOWING EXTENT OF REGISTRATION**



## ATTACHMENT 3

### PERMIT EXEMPTIONS

Exemptions from the need for a permit under the Act for categories of works and activities that may be carried out in relation to places and objects in the Register can be granted at the time of registration (under s.49(3) of the Heritage Act). Exemptions from the need for a permit under the Act for categories of works and activities in relation to places and objects can also be applied for and granted after registration (under s.92 of the Heritage Act).

#### **General conditions:**

- All exempted alterations are to be planned and carried out in a manner which prevents damage to the fabric of the registered place or object.
- Should it become apparent during further inspection or the carrying out of works that original or previously hidden or inaccessible details of the place or object are revealed which relate to the significance of the place or object, then the exemption covering such works shall cease and Heritage Victoria shall be notified as soon as possible.
- All works should ideally be informed by a Conservation Management Plan prepared for the place. The Executive Director is not bound by any Conservation Management Plan, and permits still must be obtained for works suggested in any Conservation Management Plan.
- Nothing in this determination prevents the Heritage Council from amending or rescinding all or any of the permit exemptions.
- Nothing in this determination exempts owners or their agents from the responsibility to seek relevant planning or building permits from the relevant responsible authority, where applicable.

Under s.49(3) of the Heritage Act 2017 the Heritage Council may include in its determination categories of works or activities which may be carried out in relation to the place or object without the need for a permit under Part 5 of the Act, if the Heritage Council considers that the works or activities would not harm the cultural heritage significance of the place or object. The following permit exemptions are not considered to cause harm to the cultural heritage significance of the Old Lead Diggings, Dunolly.

#### **Categories of works and activities that may be carried out in relation to the Place without the need for a permit under the Act:**

The following activities are permit exempt as long as they do not remove or demolish, damage or despoil, develop or alter or excavate, relocate or disturb the mining shafts or any other archaeological features.

- The continuation of existing agricultural practices in current locations including management of livestock grazing.
- Continuation of current vegetation maintenance practices.
- Pruning of dead or dangerous trees to maintain safety.
- Weed and vermin control including above ground removal of noxious plants and weeds and the laying of traps and poisons.