



Heritage Council Regulatory Committee

Old Swan Inn (H0267)

4 Hamilton Highway, Fyansford, Greater Geelong City Council

Hearing – 14 August 2020

Members – Prof Andrew May (Chair), Dr Karen Murphy, Ms Natica Schmeder

DETERMINATION OF THE HERITAGE COUNCIL

Amendment of 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 sections 49 and 62 of the *Heritage Act 2017*, to amend the entry in the Victorian Heritage Register for Old Swan Inn (H0267) located at 4 Hamilton Highway, Fyansford.

**Andrew May (Chair)
Karen Murphy
Natica Schmeder**

Decision Date – 20 November 2020

ACKNOWLEDGEMENT

As a peak heritage body, the Heritage Council is proud to acknowledge the Traditional Owners, the Kulin Nation, as the original custodians of the land and waters on which we met, and to acknowledge the importance and significance of Aboriginal cultural heritage in Victoria. We honour Elders past and present whose knowledge and wisdom has ensured the continuation of culture and traditional practices.

APPEARANCES / HEARING SUBMISSIONS

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

Submissions were received from the Executive Director, Heritage Victoria ('the Executive Director'). Ms Clare Chandler, Heritage Officer (Assessments) appeared on behalf of the Executive Director. Mr Geoffrey Austin, Manager – Heritage Register, was also present and available to take questions.

FYANSFORD DEVELOPMENT PTY LTD ('FYANSFORD DEVELOPMENT')

Submissions were received from Harwood Andrews Lawyers on behalf of Fyansford Development Pty Ltd ('Fyansford Development'), a related entity of Fyansford Upper West Pty Ltd and Fyansford West Pty Ltd the owners of part of the land on which the Old Swan Inn is located. Mr Ian Munt of Counsel appeared and made verbal submissions at the hearing on behalf of Fyansford Development, instructed by Ms Amara Coleman of Harwood Andrews Lawyers, who was also present.

Fyansford Development's submissions included a statement of expert witness evidence from Ms Helen Lardner of HLCD Pty Ltd. Ms Lardner was called to give evidence and was available to be cross-examined.

GREATER GEELONG CITY COUNCIL ('GREATER GEELONG')

Written submissions to the hearing were received from Greater Geelong City Council ('Greater Geelong'). Greater Geelong did not make verbal submissions or participate further in the hearing.

INTRODUCTION / BACKGROUND

THE PLACE

01. On 16 September 2019, the Executive Director made a recommendation ('the Recommendation') to the Heritage Council pursuant to section 62 of the *Heritage Act 2017* ('the Act') that the Old Swan Inn, located at 4 Hamilton Highway, Fyansford, and included in the Victorian Heritage Register ('the Register') as item H0267 ('the Place'), should be amended.

02. The Place is described on page 5 of the Recommendation as follows:

'The Old Swan Inn (also known as the Fyansford Inn and Swan Hotel) is located off the Hamilton Highway in Fyansford, near Geelong. The site lies between the Moorabool River to the east and a steep escarpment to the west and includes historic buildings, ruins, historical archaeology, exotic plantings and landscape features. Archaeological deposits related to an additional hotel (1854) and ornamental garden are found on the northern side of the Hamilton Highway near the disused bridge (VHR H1108). The former Inn (1842) and outbuildings are approached via a track from the south. Various exotic trees, including a rare Long-leaved Indian Pine (Pinus roxburghii), are found in several locations. The former Inn is a single-storey rectangular building of linear form, constructed largely from bluestone. Its roof was damaged by fire and has been recently replaced. There are remnants of landscape elements, such as steps and retaining walls, in the surrounding area. Related outbuildings, ruins, and archaeological deposits, features and artefacts are found in the area around the Inn building. Archaeological deposits related to the ford, including basalt stones, are found near the river, adjacent to the Inn. To the west of the Inn is a short steep rise to a gravel road. From the road, the land rises steeply again to the west.'

03. The following historical summary is taken from page 5 of the Recommendation:

'Fyan's ford was a popular crossing point on the Moorabool River for those travelling to and from Geelong as early as 1837. The ford and associated bullock track were critical in providing access to the south-west region of Victoria during the early years of expansion of European colonists and settlers. The track passed between an escarpment and the river to access the ford. The small settlement of Fyansford grew around the ford, becoming a popular stopping point for travellers. The Swan Inn (originally named Fyanstown Inn), was constructed in 1842 on the western side of the bullock track and in close proximity to the ford. It was built for publican John Atkins to a design by Alexander Skene, who later became Surveyor-General of Victoria. Its opening in 1843 coincided with an economic depression and it appears to have closed soon after to become a private house. The building and its surrounds were celebrated for their scenic value and the area was captured by artists such as George Alexander Gilbert in his 1847 sketch. The use of the bullock track and ford increased during the Gold Rush and they continued to be heavily used until the construction of the timber bridge downstream in 1854. By

1856, the building was again used as an inn, this time known as the 'Swan'. Picturesque gardens were added. The Swan Hotel and its gardens were depicted by Samuel Calvert in his 1862 wood engraving 'Fyan's Ford and Swan Hotel'. An additional two-storey hotel was built c.1854-1857 in the area to the south of the Swan Inn, in response to the construction of the timber bridge. It included tea rooms, stables, and an ornamental garden and was used as a house towards the end of the nineteenth century.'

- 04.** The above description and history summary have been taken from the Recommendation and are provided for information purposes only.
- 05.** The current registration for the Place includes all buildings associated with the development of the Place, but no land, having been registered in the Register of Historic Buildings in 1974. The following historical archaeological sites associated with the Place are currently listed in the Victorian Heritage Inventory ('VHI') pursuant to Part 6 of the Act:
- Swan Inn (VHI H7721-0461)
 - Fyan's Ford and Bullock Track (VHI H7721-0462)
 - Moorabool River Tea House and Ornamental Gardens (VHI H7721-0466)
 - Fyansford Timber Bridge Ruin (VHI H7721-0444)

APPLICATION TO AMEND REGISTRATION

- 06.** On 28 August 2019, the Executive Director made and accepted an application to amend the Place in the Register.

RECOMMENDATION OF THE EXECUTIVE DIRECTOR

- 07.** The Executive Director's recommendation was to amend the registration of the Place by:
- including land and clarifying the extent of registration
 - amending the Heritage Act Category to reflect the archaeological significance of the Place
 - updating the Statement of Cultural Heritage Significance and converting it to the current format.
- 08.** The following reasons for the amendment were provided in the Recommendation:

'The Old Swan Inn was registered in the Register of Historic Buildings in 1974. At this time only buildings, and no land, could be registered. Heritage Victoria is undertaking a program of reviewing and updating early registrations to ensure that their extent is clear and land is included as is the current practice under the Heritage Act 2017. Under s.49(1)(d) of the Heritage Act the Heritage Council may include additional land to registered places. It is proposed to include land with the registration of the Old Swan Inn. It is also proposed to change the Heritage Act category and update the statement of significance.'

PROCESS FOLLOWING THE RECOMMENDATION OF THE EXECUTIVE DIRECTOR

- 09.** After the Recommendation was made, notice was published on 20 September 2019 pursuant to section 41 of the Act for a period of 60 days.
- 010.** During the advertisement period, one (1) submission was received pursuant to section 44 of the Act. The submission, received from Fyansford Development, supported the Recommendation in principle, but objected to the recommended extent of registration, the lack of recommended categories of works or activities that may be carried out in relation to the Place without the need for a permit, and the wording of the Statement of Cultural Heritage Significance. The submission requested a hearing before the Heritage Council.
- 011.** In accordance with section 46(2)(a) of the Act, a hearing was required to be held.
- 012.** A Heritage Council Regulatory Committee ('the Committee') was constituted to consider the Recommendation and all submissions received in response to it, and to make a determination. The Committee invited further written submissions and a registration hearing was scheduled for 26 February 2020.

PRELIMINARY, PROCEDURAL AND OTHER MATTERS

ADJOURNMENT

- 013.** On 10 January 2020, the Committee received a request from Harwood Andrews Lawyers on behalf of Fyansford Development to adjourn the hearing due to the unavailability of their expert witness. After seeking the views of all other interested parties, the Committee ruled that the matter should be adjourned, and the Registration Hearing was adjourned and rescheduled for 27 March 2020.

ADJOURNMENT DUE TO COVID-19 AND SUBSEQUENT RESCHEDULED HEARING DATE

- 014.** On 20 March 2020 all persons who had requested to participate in the 27 March 2020 Registration Hearing were advised by correspondence that, due to State Government advice in relation to COVID-19, the hearing would be adjourned until further notice.
- 015.** On 25 June 2020, all participants were advised by correspondence that the Registration Hearing in relation to the Place would be held on 14 August 2020 ('the Hearing'). The correspondence also advised that the Microsoft Teams™ online platform would be used to conduct the Hearing by videoconference. Further specific technical guidance on how the hearings would be conducted was provided.

HEARING HELD VIA VIDEOCONFERENCE

- 016.** On 14 August 2020 the Hearing was conducted using the Microsoft Teams online platform.

CONFLICTS OF INTEREST

- 017.** 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. The Committee members were satisfied that there were no relevant conflicts of interests and made no such declarations.

- 018.** The Committee notes that the submissions and evidence of Fyansford Development referred to the results of archaeological surveys conducted at the Place by Ochre Imprints Pty Ltd ('Ochre Imprints'). The Committee also notes Heritage Council Archaeology Member Ms Megan Goulding's position as CEO and Principal Cultural Heritage Advisor for Ochre Imprints, and confirms, for clarity, that Ms Goulding was not involved in the consideration or determination of the matter.

FUTURE USE, MAINTENANCE AND DEVELOPMENT OF THE PLACE

- 019.** The Committee notes that it is not its role to consider future development proposals nor to pre-empt the consideration of potential future permit applications under the Act or indeed any matters relating to *Planning and Environment Act 1987* (Vic) considerations. 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.
- 020.** The Committee notes that some submissions did refer to the future use, management or development of the Place and land adjacent to the Place, including in the context of suburban housing development. According to the effect of section 44(4) and section 49 of the Act, the Committee has not considered these matters in reaching its determination.

PROCESS FOLLOWING THE HEARING

SITE INSPECTION

- 021.** Due to State Government advice in relation to coronavirus ('COVID-19') the Committee was unable to undertake a site inspection of the Place prior to the Hearing. On 8 October 2020, the Committee undertook a permitted site inspection of the Place accompanied by the Heritage Council Project Officer. Access to the Place was facilitated by Fyansford Development. No submissions were sought, made or received at the time of the site inspection.

ISSUES

- 022.** 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.
- 023.** Any reference to the Criteria or to a particular Criterion refers to the *Heritage Council Criteria for Assessment of Places of Cultural Heritage Significance* (updated by the Heritage Council on 4 April 2019). Please refer to **Attachment 1**.
- 024.** The Committee has referred to the assessment framework and 'steps' in *The Victorian Heritage Register Criteria and Threshold Guidelines* (updated by the Heritage Council on 4 April 2019) ('the Guidelines') in considering the issues before it. Any reference to 'guidelines', 'steps' 1, 2 or 3 or 'threshold for inclusion' refers to the Guidelines.

SUMMARY OF ISSUES

- 025.** The Executive Director recommended that the entry in the Register for the Place be amended by adding land, amending the Heritage Act Category, and updating

the Statement of Cultural Heritage Significance for the Place in relation to Criteria A, C and D.

- 026.** The extent of registration proposed by the Executive Director in the Recommendation was described as: ‘All of the place shown on Diagram 267 encompassing part of Lot 1 on Title Plan 814367, part of Lot 3 on Plan of Subdivision 518309 and part of Crown Allotments 5, 26, 2005 and 2021, Township of Fyansford, Parish of Gherineghap, and part of Crown Allotment 2083, Parish of Moorpanyal’ (see **Attachment 2**).
- 027.** Fyansford Development agreed, in principle, that the Place should be amended. Fyansford Development objected, however, to the recommended extent of registration and proposed a range of categories of works or activities which may be carried out in relation to the Place without the need for a Permit pursuant to section 49(3) of the Act. Fyansford Development further submitted that the Place should be included in the Register in relation to Criteria A, B, C and E, and proposed changes to the Statement of Cultural Heritage Significance. In making submissions Fyansford development relied on the evidence of Ms Lardner.
- 028.** Greater Geelong agreed that the Place should be amended but objected to the inclusion of the Place in the Register for its ‘picturesque’ qualities and proposed an alternative extent of registration.

REGISTERED PLACE NAME

Summary of submissions and evidence

- 029.** Fyansford Development relied on Ms Lardner’s evidence that the name of the Place should be amended to ‘Former Swan Inn Complex’ to better reflect that the Place “is significant to the State of Victoria as a highly significant cultural heritage landscape for its built form, archaeological remains and exotic vegetation”.
- 030.** The Executive Director agreed that the State-level cultural heritage values of the Place are not limited to the Inn building itself and did not object, in principle, to changing the registered name of the Place. The Executive Director noted, however, that the use of the term ‘complex’ in registered place names is often used to describe a collection of buildings and related built features, rather than a broader range of cultural heritage values, as found at the Place. The Executive Director suggested the name ‘Old Swan Inn Historic Landscape’ as an alternative.
- 031.** In response to the submissions of the Executive Director, Ms Lardner gave evidence at the Hearing that the term ‘complex’ has been used more broadly in the Register than just in association with built form, for example at the Deanside Homestead Complex, Melton (VHR H0810) and Summerhill Complex, Wollert (VHR H0958). In her evidence, Ms Lardner disagreed with the Executive Director’s proposed use of the phrase ‘historic landscape’ in amending the registered name for the Place. It was Ms Lardner’s position that this phrase denotes that the cultural heritage significance of the Place is associated only with its landscape features and setting.

Discussion and conclusion

- 032.** The Committee notes the submissions and evidence of the Executive Director and Ms Lardner, respectively, in relation to amending the registered name of the Place. The Committee agrees that the Place retains a broad range of cultural

heritage values at a State level associated with its built form, historical archaeological features and deposits, landscape features and setting.

- 033.** The Committee is of the view, however, that the alternative registered place names, proposed respectively by Ms Lardner and the Executive Director, do not adequately capture the cultural heritage significance of the Place at a State level.
- 034.** Ultimately, the Committee was not persuaded to amend the registered name of the Place and determines that the name 'Old Swan Inn' should be retained.

CATEGORY OF REGISTRATION

- 035.** Section 25(1) of the Act states that a place or object must be recorded in the Register in one or more of the following categories of registration:
- a) a registered place
 - b) a registered object
 - c) a registered object integral to a registered place
 - d) a registered archaeological place
 - e) a registered archaeological artefact
 - f) a registered shipwreck
 - g) a registered shipwreck artefact
 - h) a protected zone
 - i) a place included in the World Heritage List.

Summary of submissions and evidence

- 036.** In recommending that the Place be amended, the Executive Director noted that the current category of registration, 'registered place', fails to acknowledge the State-level significance of the historical archaeology of the Place. The Executive Director recommended that the Place's category of registration be amended to include it as both a 'registered place' and 'registered archaeological place', pursuant to sections 25(1)(a) and 25(1)(d) of the Act, respectively.
- 037.** Fyansford Development submitted that it supported the amendment of the Place in the Register to include the category of registration 'registered archaeological place'.

Discussion and conclusion

- 038.** The Committee agrees with the recommendation of the Executive Director and determines that the Place should be recorded in the Register as both a 'registered place' and 'registered archaeological place', pursuant to sections 25(1)(a) and 25(1)(a)(d) of the Act, respectively.

CRITERIA FOR INCLUSION

Summary of submissions and evidence

- 039.** The Executive Director recommended that the Statement of Cultural Heritage Significance for the Place be amended to reflect the inclusion of the Place in the Register for its State-level cultural heritage significance in relation to Criteria A, C and D.

- 040.** In her evidence, Ms Lardner agreed that the Place should be included in the Register for its State-level significance in relation to Criteria A and C. Ms Lardner gave evidence, however, that the Place does not satisfy the threshold for inclusion in the Register in relation to Criterion D, rather that the cultural heritage values described by the Executive Director in relation to Criterion D are more appropriately understood in relation to Criteria B and E.
- 041.** Greater Geelong submitted that, while it was supportive of the inclusion of the Place in relation to Criteria A, C and D, it broadly objected to the inclusion of the Place in the Register for the ‘picturesque quality of its setting’.
- 042.** Detailed submissions and evidence received in relation to each Criteria are discussed in further detail below.

Criterion A – Importance to the course, or pattern, of Victoria’s cultural history

- 043.** In recommending the registration of the Place be amended in relation to Criterion A, the Executive Director detailed that the Place is historically significant at the State level for its association with a key route which opened up south-west Victoria to colonial settlers and pastoralists from the 1830s onwards, which is evident in the buildings and their siting, in remnant features and in the landscape setting of the Place.
- 044.** In giving evidence on behalf of Fyansford Development, Ms Lardner stated that she agreed with the Executive Director’s in relation to Criterion A.
- 045.** Greater Geelong supported the amendment in relation to Criterion A.

Criterion B – Possession of uncommon, rare or endangered aspects of Victoria’s cultural history

- 046.** The Recommendation made no reference to the inclusion of the Place in the Register in relation to Criterion B.
- 047.** In her evidence, Ms Lardner assessed the Place as being significant at the State level in relation to Criterion B as one of a small number of remaining pre-goldrush buildings. Ms Lardner stated that the Place is especially rare as part of a subset of surviving pre-goldrush inns and hotels and a facility consisting of combined hotel and pleasure gardens. It was the view of Ms Lardner that the Place has a clear association with the early, pre-goldrush phase of settlement in Victoria and that the integrity of the inn and stables, and evidence of their relationship to Fyan’s Ford, remains high for a site of such age.
- 048.** The Executive Director agreed with Ms Lardner’s assessment of the Place in relation to Criterion B, being a rare surviving example of a pre-goldrush inn and combined hotel and pleasure garden. In addition, the Executive Director noted that the Place is also rare as a pre-goldrush hotel and pleasure garden where its rural-type setting has been retained and has not been subsumed or altered over time. The Executive Director stated that he did not object to the inclusion of the Place in the Register in relation to Criterion B.

Criterion C – Potential to yield information that will contribute to an understanding of Victoria’s cultural history

- 049.** The Executive Director’s amended Statement of Cultural Heritage Significance stated that the Place is included in the Register in relation to Criterion C for its potential to contain historical archaeological features, deposits and artefacts relating to the early occupation, use and development of the Place. It is the view of the Executive Director that the Place may yield information about buildings and

their construction, gardens and landscaping, transport infrastructure and routes of movement and trade across the river. The Executive Director further noted that, as minimal subsurface disturbance or development of the Place has occurred since the mid-nineteenth century, there is very high potential for archaeological features, deposits and artefacts to survive at the Place.

- 050.** Ms Lardner agreed with the Executive Director's assessment in relation to Criterion C, adding that, in addition to archaeological features, deposits and artefacts, the extant pre-goldrush era buildings at the Place also have the potential to provide information about methods of construction and building materials of the period and the lifestyles of occupants.
- 051.** The Executive Director, in response to Ms Lardner's assessment of the Place in relation to Criterion C, agreed that in addition to its archaeology, the pre-goldrush extant fabric at the Place also has the potential to yield information that is likely to meaningfully contribute to an understanding of Victoria's cultural history through detailed investigation and did not object to the inclusion of this detail in relation to Criterion C.
- 052.** Greater Geelong supported the amendment of the Place in relation to Criterion C.

Criterion D – Importance in demonstrating the principal characteristics of a class of cultural places and objects.

- 053.** The Executive Director's recommended Statement of Cultural Heritage Significance for the Place stated that the Inn and associated outbuildings are of architectural significance in relation to Criterion D as early vernacular structures built in the early 1840s. The Executive Director further stated that the State-level significance of the Place 'is enhanced by the picturesque quality of its setting at the base of an escarpment in the Barwon River Valley', with its scenic values having been captured by artists such as Samuel Calvert in his wood engraving 'Fyans Ford and Swan Hotel' (1862).
- 054.** Ms Lardner's evidence, however, was that the Place does not meet the threshold for inclusion in the Register in relation to Criterion D. Ms Lardner gave evidence that the Place does not demonstrate the principal characteristics of a class of cultural places as it is an unusual example of its time, and that the vernacular structure of the Inn building and the cumulative impact of changes to the Place between 1840 and c1890 do not demonstrate the principle characteristics of the class of pre-1851 inns.
- 055.** Ms Lardner's evidence further noted that the Executive Director's reference to the significance of the Place as an early surviving example of inns or hotels in relation to Criterion D should be more appropriately recorded in relation to Criterion B, while the significance of the aesthetic values of the Place should be assessed in relation to Criterion E.
- 056.** In response to the evidence of Ms Lardner, the Executive Director agreed that the rarity of the Place, and its aesthetic values, should more appropriately be recognised in relation to Criteria B and E, respectively. The Executive Director submitted that, if the Committee were to agree to the registration of the Place in relation to Criterion B, he would have no objection to the Place not being registered in relation to Criterion D.
- 057.** Greater Geelong stated that while it did not object, in principle, to the inclusion of the Place in the Register in relation to Criterion D, it objected to the inclusion of the Place in the Register for the 'picturesque quality of its setting' (see also paragraph 062 below).

Criterion E – Importance in exhibiting particular aesthetic characteristics

- 058.** The Recommendation did not refer to the inclusion of the Place in the Register in relation to Criterion E.
- 059.** Ms Lardner's evidence was that the Place meets the threshold for inclusion in relation to this criterion for the significance of its "landscaped setting" at the State level. Ms Lardner gave evidence that the Inn building is located on a 'picturesque' sloping bank of the Moorabool River and that the site has been celebrated for its scenic value. Ms Lardner also gave evidence that the location of the Place, which permits views both into and out of the Place from across the river, would have contributed to the experience of the pleasure gardens while in use.
- 060.** The Executive Director agreed with Ms Lardner's assessment of the Place in relation to Criterion E and confirmed that he did not object to the inclusion of the Place in the Register in relation to this criterion, noting that similar values are already captured in the existing registration for the Place, albeit without reference to the Criterion.
- 061.** The Executive Director submitted, however, that the use of the phrase 'landscaped setting' by Ms Lardner appears to imply that the aesthetic significance of the Place is contained only in its 'purposefully designed elements'. It was the view of the Executive Director that the aesthetic significance of the Place at the State level also encompasses its broader landscape setting, including the escarpment to the west, creating a 'cultural landscape'. In her evidence at the hearing, Ms Lardner clarified that her use of the phrase 'landscaped setting' was not meant to imply that the aesthetic significance of the Place was contained only in its purposefully designed elements, noting that she agreed with the Executive Director in relation to the significance of the river and the escarpment in relation to the Place.
- 062.** Although the submissions of Greater Geelong did not refer specifically to Criterion E, its submissions in relation to the setting of the Place referred to considerations relevant to Criterion E.

In particular, Greater Geelong submitted that changes to the river valley setting of the Place, in particular in association with quarrying, the construction of the Hamilton Highway, residential development and the growth of weeds and wildings, have altered the setting of the Place, so much so that it cannot be said to demonstrate a picturesque landscape today. Greater Geelong further submitted that while the Place may once have been captured by artists, such scenic values are no longer evident at the Place.

- 063.** In response to the submissions of Greater Geelong, the Executive Director was of the view that the issues raised by Greater Geelong primarily relate to the current condition of the Place, rather than its cultural heritage significance.

Criteria F, G and H

- 064.** No submissions were received in relation to Criteria F or G. Ms Lardner's statement of evidence included an assessment of the Place in relation to Criterion H for its association with the notable Victorian architect and surveyor Alexander K Skene and with early Geelong publican John Atkins. Ms Lardner assessed that the association of the Place to Skene and Atkins 'is not relevant at State level'. The Executive Director agreed with Ms Lardner's assessment of the Place in relation to Criterion H, particularly in association with Skene.

Discussion and conclusion

- 065.** The Committee notes that the Place's existing registration does not include reference to the Criteria, but states that the Place is of historical, architectural and archaeological significance to the State of Victoria. The Committee understands that to ensure the appropriate management of the Place pursuant the Act, it is desirable for it to determine what are the relevant Criteria.
- 066.** The Committee provides a more detailed response to the Executive Director's recommendation to amend the Statement of Cultural Heritage Significance for the Place at paragraphs 0125–0127. The discussion here relates only to the Criteria.
- 067.** The Committee broadly concurs with the agreed position of the Executive Director and Fyansford Development in relation to the relevant Criteria.

Criterion A – Importance to the course, or pattern, of Victoria's cultural history

- 068.** The Committee notes the position of the Executive Director, and the agreement of Ms Lardner and Greater Geelong, that the Place meets the threshold for inclusion in the Register in relation to Criterion A, for its association with a key route which opened up south-west Victoria to colonial settlers and pastoralists from the 1830s onwards and agrees that this association is evident in the physical fabric of the Place. The Committee finds that the Place satisfies the threshold for inclusion in the Register in relation to Criterion A.

Criterion B – Possession of uncommon, rare or endangered aspects of Victoria's cultural history

- 069.** The Committee agrees with the evidence of Ms Lardner that the Place meets the threshold for inclusion in the Register in relation to Criterion B, as one of a small number of pre-goldrush buildings remaining in Victoria and as part of the subset of surviving pre-goldrush inns and hotels. The Committee also agrees with the position of the Executive Director that the Place is rare as a combined pre-goldrush hotel and pleasure garden where the rural-type setting has been retained and has not been subsumed or significantly altered over time. The Committee finds that the Place meets the threshold for inclusion in the Register in relation to Criterion B.

Criterion C – Potential to yield information that will contribute to an understanding of Victoria's cultural history

- 070.** The Committee notes the agreed position of the Executive Director, Ms Lardner and Greater Geelong in relation to Criterion C, and agrees with Ms Lardner that the extant pre-goldrush buildings at the Place form part of its potential to yield information through investigation that is likely to meaningfully contribute to an understanding of Victoria's cultural history. The Committee agrees that the Place satisfies the threshold for inclusion in the Register in relation to Criterion C.

Criterion D – Importance in demonstrating the principal characteristics of a class of cultural places and objects

- 071.** The Committee agrees with the submissions and evidence of Fyansford Development that the Place does not demonstrate the principal characteristics of the class of pre-goldrush inns in relation to Criterion D.
- 072.** The Committee notes the refined position of the Executive Director in relation to this criterion and that the submissions of Greater Geelong made in response to this criterion relate, broadly, to the aesthetic significance of the Place, rather than

its importance in demonstrating the principal characteristics of a class of cultural places.

- 073.** The Committee determines that the place does not satisfy the threshold for inclusion in the Register in relation to Criterion D.

Criterion E – Importance in exhibiting particular aesthetic characteristics

- 074.** In relation to Criterion E, the Committee disagrees with the submissions of Greater Geelong that the Place cannot be said to demonstrate a picturesque landscape setting today.
- 075.** The Committee is of the view that the setting of the Place is integral to its cultural heritage significance at a State level and that the aesthetic values of the Place remain evident today. The Committee agrees with the Executive Director that the aesthetic significance of the Place includes both its purposefully designed landscape elements and its broader landscape setting, including the Moorabool River and the escarpment to the west. The Committee determines that the Place should be included in the Register in relation to Criterion E.

Criteria F, G and H

- 076.** The Committee notes Ms Lardner’s assessment that the Place does not meet the threshold for inclusion in the Register in relation to Criteria F, G and H. The Committee agrees with Ms Lardner’s assessment and determines that the Place does not meet the threshold for inclusion in relation to Criteria F, G and H.

Conclusion

- 077.** The Committee determines that the registration of the Place should be amended and determines that the Place be recorded as satisfying Criteria A, B, C and E at the State level.

EXTENT OF REGISTRATION

Summary of submissions and evidence

- 078.** The Executive Director’s recommended extent of registration for the Place included all buildings, outbuildings, garden features and plantings, as well as all archaeological features and deposits associated with the establishment and subsequent development of the Place (see **Attachment 2**). The Executive Director stated that his recommended extent of registration included enough land to provide a setting for the Place and to protect its cultural heritage values.
- 079.** The Executive Director noted that the identified archaeological ruins, deposits and artefacts at the Place are of significance at a State level and there is also the potential for further archaeological features and deposits to be identified and retained across the Place. It was the view of the Executive Director that the extent of registration should provide a ‘buffer’ around the currently listed historical archaeological sites associated with the Place and be ‘generous’ to ensure all potential archaeology is protected.
- 080.** In objecting to the Recommendation, Fyansford Development proposed an alternative extent of registration for the Place. It was the view of Fyansford Development that the ‘statutory test’ set out at section 49(1)(d) of the Act is clear, and the extent of registration recommended by the Executive Director comprised land which should not be included in the Register because:

'a) the State-level cultural heritage significance of the place would not be substantially less if the land or any part of the land which is or has been used in conjunction with the place were developed; and

b) the land surrounding the place is not important to the protection or conservation of the place or contributes to the understanding of the place.'

- 081.** It was the position of Fyansford Development that the Executive Director's reasons for the recommended extent of registration, particularly in relation to providing a 'buffer' for significant land associated with the Place, cannot be taken into consideration when determining to include additional land in the Register pursuant to sections 49(1)(d)(i) and (ii) of the Act.
- 082.** Ms Lardner's suggested extent of registration, adopted by Fyansford Development, broadly aligned with the mapped extents of VHI sites associated with the Place, and took 'the history of the land use and ownership...as well as the current conditions' of the Place into consideration. In relation to the escarpment, Ms Lardner stated that her proposed extent of registration included all sections of this landscape feature visible in views from the east, providing for the protection and conservation of its silhouette behind the Place. Ms Lardner's suggested extent of registration included the face of the escarpment but did not include additional land to the west.
- 083.** In relation to the Executive Director's extent of registration, Ms Lardner stated that she was not aware of the practice of providing additional protection to identified zones of potential archaeology by way of a 'buffer'. Ms Lardner noted that the Place has been subject to recent archaeological surveys and zones of archaeological potential within the proposed extent have been accurately recorded. It was the view of Ms Lardner that there is no need for a 'generous' extent of registration for the Place.
- 084.** Greater Geelong's proposed extent of registration for the Place aligned with its objection to the inclusion of the Place in the Register for its setting. Greater Geelong stated that the rationale for its preferred extent relied upon an understanding that the river and escarpment have no historic association with the Place and should not be included in the extent of registration.
- 085.** In response to the submissions and evidence of Fyansford Development and Greater Geelong, the Executive Director submitted that the Moorabool River and the escarpment directly contribute to the significance of the Place at a State level. It was the view of the Executive Director that these features should guide the extent of registration for the Place, and that enough land must be included to ensure its protection, conservation and appropriate management pursuant to the Act.
- 086.** For ease of discussion, submissions and evidence received in relation to each extent boundary are outlined below.

Northern boundary

- 087.** The Executive Director's recommended extent of registration to the north of the Place included land occupied by the ruins of the stables, extant twentieth-century outbuildings, the archaeological site associated with the Inn building (H7721-0461 Swan Inn), and additional land to provide a setting for the protection and conservation of the Place and a 'buffer' for the archaeological features and deposits identified to date at this boundary. The Executive Director submitted that the recommended extent along this boundary was sensible and reasonable,

including the northern section of the escarpment and utilising both the main quarry roadway and the edge of a levelled area associated with the quarry to ensure that the extent is visible 'on-the-ground'.

- 088.** Ms Lardner suggested an extent of registration to the north directly aligned with the northern extent of the identified zone of historical archaeological potential at the Place. It was the view of Ms Lardner that although there is evidence for the historic use of the land to the north of VHI site H7721-0461, this area has been extensively disturbed and the inclusion of land beyond H7721-0461, for example to provide a 'buffer' for additional archaeological deposits, is not necessary for the protection and conservation of the Place.
- 089.** Greater Geelong's preferred boundary to the north aligned with the Executive Director's, but excluded the escarpment from the extent of registration. Greater Geelong submitted that it also accepted Ms Lardner's suggested extent to the north as a least preferred option.
- 090.** In response to Ms Lardner's suggested extent to the north, the Executive Director submitted that it would be arbitrary, would not be visible 'on-the-ground', and did not include enough land to provide for the protection and conservation of the Place, particularly in relation to its archaeological values.

Eastern boundary

- 091.** The Executive Director's recommended extent to the east comprised land currently included in the VHI as H7721-0462 Fyan's Ford and Bullock Track and additional land to provide a 'buffer' for the site. The Executive Director's recommended extent also included the Moorabool River and its eastern bank. The Executive Director stated that his extent of registration along this boundary was sensible and practical, particularly given the land along this boundary is Crown land and is unlikely to be substantially changed or developed.
- 092.** In evidence, which was relied upon by Fyansford Development, Ms Lardner stated that her suggested boundary to the east was also guided by the extent of the VHI site for the ford crossing (H7721-0462) and included the eastern bank of the Moorabool river, but did not extend further south along the river. It was the view of Ms Lardner that the river and its eastern bank were not historically considered part of the Place and have no known heritage values in relation to it.
- 093.** In response to the Executive Director's rationale for the recommended extent to the east, Fyansford Development submitted that there is no evidence that the Place was appreciated from the river or its eastern bank, with significant views to the Place being protected by the inclusion of land to the north-east, as suggested by Ms Lardner.
- 094.** Greater Geelong's preferred extent to the east and rationale aligned with that of Fyansford Development, further noting that it would be undesirable to require the river and its eastern bank to be managed pursuant to the Act, other than in association with the site of the ford itself.
- 095.** In response to the submissions of Greater Geelong, the Executive Director stated that concerns in relation to the management of the river pursuant to the Act may be mitigated through the inclusion of permit exemptions with the registration of the Place, as proposed by Fyansford Development. In response to the submissions of Fyansford Development, the Executive Director submitted that the extent of registration should include both riverbanks on the basis that the ford extends across the river. The Executive Director further noted that there is

historical evidence that the Place has been appreciated, particularly by artists, from the eastern bank of the river.

Southern boundary

- 096.** The Executive Director's recommended extent to the south included the VHI sites for the Moorabool River Tea House and Ornamental Gardens (H7721-0466) and the southern extent of the Fyans Ford and Bullock Track (H7721-0462) site, namely the track. The recommended extent was also drawn to abut the extent of registration of the Monier Bridge (VHR H1088), located to the south-east of the Place. The Executive Director submitted that his extent to the south, broadly, utilised the Hamilton Highway as a practical and sensible boundary.
- 097.** In verbal submissions at the hearing Ms Chandler clarified that the recommended extent of registration to the south included the southern-most section of the escarpment and a public parking area connected to the Hamilton Highway. Ms Chandler noted that, further to the Executive Director's position that all of the escarpment should be included in the extent of registration for the Place, archaeological deposits also remain visible in this area. It was the view of the Executive Director that this land should be included in the extent of registration to ensure the protection and conservation of the cultural heritage significance of the Place.
- 098.** Fyansford Development again relied on Ms Lardner's suggested boundary to the south, which aligned with the mapped extents of VHI sites H7721-0466 and H7721-0462 but excluded the southern section of the escarpment and the carpark in the south-west corner of the site from the extent of registration.
- 099.** Ms Lardner's suggested extent also included the extent of the Monier Bridge in the registration for the Place. Ms Lardner gave evidence that although the Monier Bridge is currently included in the Register, the listing does not recognise the significance of the archaeological remains of the Fyansford Timber Bridge Ruin (H7721-0444) directly below it. It was the view of Ms Lardner that the extent of registration of the Place should include the remains of the Fyansford Timber Bridge Ruin, in reference to its association with the Place.
- 0100.** In response to Ms Lardner's position on the inclusion of the Monier Bridge in the registered extent for the Place, the Executive Director acknowledged the relationship between the Fyansford Timber Bridge Ruin (H7721-0444) and the Place, but submitted that extents of registration for adjacent places in the Register should preferably abut, rather than overlap. It was the position of the Executive Director that the Fyansford Timber Bridge Ruin should remain a VHI site.
- 0101.** Greater Geelong's proposed extent to the south excluded both the Monier Bridge and the southern-most extent of the Fyans Ford and Bullock Track site (H7721-0462), namely the track itself, from the extent of registration. Greater Geelong submitted that the southern half of H7721-0462 'is believed to solely relate to potential evidence of the track formation, and not any cultural deposits', is likely to have been subject to a high degree of disturbance over time and should not be included in the extent of registration for the Place.
- 0102.** In response to the extent of registration proposed by Greater Geelong that excluded the carpark in the south-west corner of the site, the Executive Director submitted that the Place is now approached from this direction off the Hamilton Highway and it would be unusual for the extent of registration of a rural-type property not to include its driveway or connection to the public road network.

Western boundary

- 0103.** The Executive Director's recommended extent of registration to the west included the full length of the escarpment and additional land to its west. The Executive Director submitted that the escarpment is highly significant in relation to the Place, defining the location of the ford, bullock track and Inn buildings, and forming the visual backdrop of the Inn and associated features. The Executive Director noted that land on top of the escarpment formed part of the early landholding of the Place and has historically been used in conjunction with it, particularly for agriculture. It was the view of the Executive Director that while the escarpment has been physically altered since the 1840s and is no longer an intact natural landform, it is emblematic of the historic landform of the Place and contributes to its cultural heritage significance at a State level.
- 0104.** Ms Lardner's suggested extent to the west, relied on by Fyansford Development, included the face of the escarpment 'because of the silhouette behind the Inn in views from the east'. It was the view of Ms Lardner that land to the west of or on top of the escarpment has been disturbed and does not need to be included in the extent of registration for the Place to protect the significance of the escarpment.
- 0105.** Greater Geelong's proposed extent to the west was drawn to the road currently used to access the Place, excluding all the escarpment from the extent of registration. Greater Geelong's extent to this boundary aligned with its submissions that the escarpment does not contribute to the cultural heritage significance of the Place and should not be included in the extent of registration. Greater Geelong further submitted that all land to the west of the access road, including the escarpment itself, has been substantially disturbed and should not be required to be managed pursuant to the Act.
- 0106.** In response to the extents of registration submitted by Ms Lardner and Greater Geelong, the Executive Director stressed the importance of the escarpment to the cultural heritage significance of the Place and submitted that any change to, or development on top of, the escarpment has the potential to alter its silhouette behind the Inn buildings and impact on the significance of the visual setting of the Place.
- 0107.** Mr Munt, on behalf of Fyansford Development at the hearing, submitted that the relationship of the Place to the escarpment has primarily focused on the base and face of the escarpment, rather than land on top and to the west of this landscape feature. Mr Munt further submitted that there is a lack of evidence before the Committee to demonstrate that development on land to the west of the escarpment will impact on the State-level cultural heritage significance of the Place, in reference to section 49(1)(d)(i) of the Act.

Discussion and conclusion

- 0108.** The Committee understands that the Place retains a broad range of cultural heritage values at a State level which need to be taken into consideration when determining an appropriate extent of registration for the Place. The Committee is of the view that the extent of registration is required to ensure the protection and conservation of the broad cultural heritage values of the Place at a State level, not limited to its archaeological values. The Committee, therefore, broadly agrees with the extent of registration for the Place recommended by the Executive Director.
- 0109.** The Committee accepts that, generally, where it is impractical for extents of registration to coincide with cadastral boundaries, as at the Place, it is preferable

for extents of registration to use fixed and measurable points of reference, including natural or constructed features. The Committee agrees with the Executive Director that the Moorabool River to the east, and the escarpment to the west, contribute to the significance of the Place at a State level and, in this instance, it is appropriate use to these features to guide the extent of registration for the Place.

- 0110.** The Committee accepts that the escarpment is no longer an intact natural landform today. In line with its position that the escarpment contributes to the significance of the Place at a State level, however, the Committee is of the view that all of the escarpment should be included in the extent of registration for the Place, as recommended by the Executive Director, rather than sections visible in views from the east, as suggested by Ms Lardner. The Committee's position in relation to the significance of the escarpment has guided their determination for the extent of registration of the Place, particularly to the north, south and west.
- 0111.** The Committee also notes the significance of the rural setting of the Place which has been retained over time, particularly to the north and east of the Place. The Committee is of the view that the extent of registration for the Place should provide for the protection and conservation of the rural setting of the Place and ensure that the development of the land or any part of the land which is or has been used on conjunction with the Place is managed in accordance with the Act.
- 0112.** To the north, the Committee agrees with the Executive Director that Ms Lardner's suggested extent to this boundary, being aligned with VHI site H7721-0461, is insufficient to provide for the protection and conservation of the Place, particularly the escarpment and the setting of the Place. The Committee was not convinced by Ms Lardner's position that the land to the north of VHI site H7721-0461 has been disturbed and that all archaeological context in relation to the Place has been lost. The Committee is further of the view that the land to the north of H7721-0461 is significant to maintaining the setting of the Place and is satisfied that the cultural heritage significance of the Place would be less if this land were developed. The Committee agrees with the Executive Director's recommended extent to the north.
- 0113.** In relation to the eastern boundary, the Committee disagrees with the submissions and evidence of Fyansford Development and Greater Geelong that the Moorabool River and its eastern bank do not contribute to the cultural heritage significance of the Place to the degree to warrant inclusion in the extent of registration. The Committee agrees with the Executive Director that the Place has historically been appreciated from the river, and its eastern bank, as evidenced by Calvert's wood engraving 'Fyans Ford and Swan Hotel' and agrees with the recommended extent to the east.
- 0114.** To the south, the Committee again notes its position on the significance of the escarpment in relation to determining the extent of registration for the Place. The Committee agrees with the Executive Director that the current approach to the Place and connection to the Hamilton Highway should be included in the extent of registration. While the Committee notes that the remains of the Fyansford Timber Bridge Ruin (H7721-0444) are associated with the Place, it accepts the position of the Executive Director that the extents of registration for the Place and the Monier Bridge (VHR H1088) should not overlap.
- 0115.** In relation to the western boundary, the Committee notes Fyansford Development's submissions in relation to section 49(1)(d)(i) of the Act and has formed the view that the State-level cultural heritage significance of the Place would be substantially less if the land recommended by the Executive Director for

inclusion in the extent of registration for the Place were developed. The Committee therefore was not persuaded by the submissions of Fyansford Development that the land to the west of the escarpment should not be included in the extent of registration for the Place. The Committee is of the view that this land is important for the protection and conservation of the cultural heritage significance of the Place, particularly the structural integrity of the escarpment and its silhouette behind the Inn buildings. The Committee agrees with the recommended extent to the west.

- 0116.** Lastly, the Committee notes that while it agrees with the Executive Director's recommended extent of registration for the Place, it would have been open to further submissions and evidence as to additional land, particularly to the north, east and west of the Place, in relation to the protection and conservation of the escarpment and the rural setting of the Place.
- 0117.** The Committee records its determination as to the extent of registration of the Place in **Attachment 3**.

CATEGORIES OF WORKS OR ACTIVITIES WHICH MAY BE CARRIED OUT IN RELATION TO THE PLACE FOR WHICH A PERMIT IS NOT REQUIRED

Summary of submissions and evidence

- 0118.** The Executive Director did not recommend any categories of works or activities which may be carried out in relation to the Place for which a permit is not required ('permit exemptions') for inclusion with the amended registration pursuant to section 49(3) of the Act.
- 0119.** In evidence relied on by Fyansford Development, Ms Lardner suggested a range of permit exemptions, including several 'general' exemptions and specific exemptions for buildings, landscape, fire suppression activities and safety and security.
- 0120.** Greater Geelong proposed the inclusion of a permit exemption to allow for the control of weeds and wildings.
- 0121.** In response to the permit exemptions suggested by Ms Lardner's evidence, the Executive Director stated that he had no objection to their broad intent. However, the Executive Director suggested the permit exemptions related to landscape be reworded to recognise the significant plantings at the Place and the potential for works and activities to disturb potential archaeological deposits. The Executive Director otherwise agreed that the proposed permit exemptions would not cause harm to the cultural heritage significance of the Place.

Discussion and conclusion

- 0122.** The Committee agrees generally with the permit exemptions suggested by Ms Lardner and re-worded by the Executive Director.
- 0123.** The Committee notes, however, that the material before it, including the extracts of Ms Lardner's Conservation Management Plan ('CMP') for the Place, do not include details of the location of significant trees at the Place, as mentioned in the Executive Director's reworded permit exemptions. The Committee has therefore made minor adjustments to the permit exemptions to enable the protection, conservation and management of the Place.

0124. The Committee 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 4**.

STATEMENT OF CULTURAL HERITAGE SIGNIFICANCE

Discussion and conclusion

0125. Whereas the Executive Director recommended that an amended Statement of Cultural Heritage Significance for the Place be considered and determined by the Heritage Council, and the Committee did receive submissions on those matters, the Committee is of the view that it is neither necessary nor desirable for it to either approve or amend those aspects of the Place's registration.

0126. The reasons given above by the Committee for its determinations in relation to the category of registration, registered place name, relevant Criteria, extent of registration and permit exemptions in respect of the Place may be of some assistance to the Executive Director in terms of the final form of the Statement of Cultural Heritage Significance for the Place.

0127. In this context, the Committee recommends that:

- In the Statement of Cultural Heritage Significance, any reference to 'architecturally significant' and Criterion D be removed.
- In the Statement of Cultural Heritage Significance, reference to 'minimal subsurface disturbance and development to the place since the mid-nineteenth century' be clarified to include reference to the 1870s pleasure gardens.

OTHER ISSUES

0128. In her evidence, Ms Lardner noted several inconsistencies with the mapped extent of the Fyans Ford and Bullock Track site (H7721-0462) and of the Monier Bridge (VHR1088).

0129. The Committee notes that it is not within its remit to make determinations in relation to the extent of VHI sites, nor on the extent of registered places other than that subject to the Recommendation.

CONCLUSION

0130. After considering the Executive Director's recommendation, all submissions received, and conducting a hearing into the matter, the Heritage Council has determined, pursuant to sections 49 and 62 of the *Heritage Act 2017*, to amend the entry in the Victorian Heritage Register for Old Swan Inn (H0267) located at 4 Hamilton Highway, Fyansford.

ATTACHMENT 1

HERITAGE COUNCIL CRITERIA FOR ASSESSMENT OF PLACES AND OBJECTS OF CULTURAL HERITAGE SIGNIFICANCE

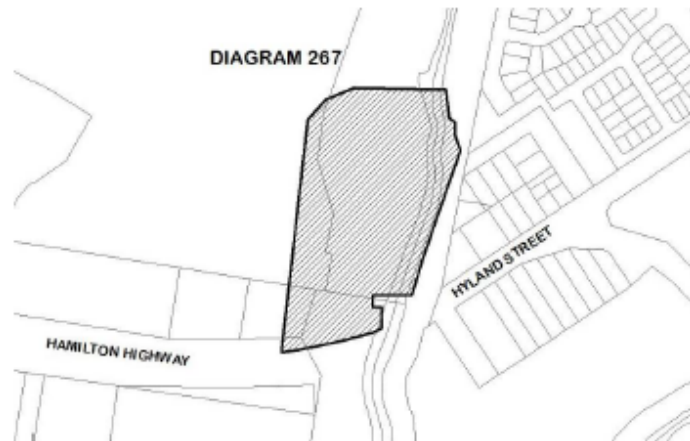
CRITERION A	Importance to the course, or pattern, of Victoria's cultural history
CRITERION B	Possession of uncommon, rare or endangered aspects of Victoria's cultural history.
CRITERION C	Potential to yield information that will contribute to an understanding of Victoria's cultural history.
CRITERION 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

Executive Director's recommended extent of registration for the Place

All of the place shown on Diagram 267 encompassing part of Lot 1 on Title Plan 814367, part of Lot 3 on Plan of Subdivision 518309 and part of Crown Allotments 5, 26, 2005 and 2021, Township of Fyansford, Parish of Gherineghap, and part of Crown Allotment 2083, Parish of Moorpanyal.



The extent of registration of the Old Swan Inn in the Victorian Heritage Register affects the whole place shown on Diagram 267 including the land; buildings (interiors and exteriors); ruins; archaeological deposits, features and artefacts, including the ford and bullock track; trees and vegetation and garden features.

The registration also includes all fixtures and fittings attached to the buildings at the time of registration.

Figure 1 – Recommended extent of registration¹



Figure 2 – Aerial photograph showing recommended extent of registration²

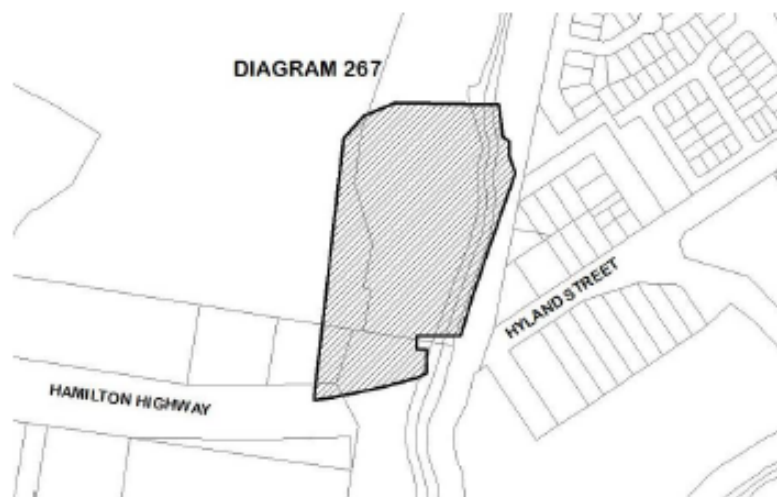
¹ Source: Executive Director's Recommendation for the Place, page 3

² Source: Executive Director's Recommendation for the Place, page 4

ATTACHMENT 3

Extent of registration

All of the place shown on Diagram 267 encompassing part of Lot 1 on Title Plan 814367, part of Lot 3 on Plan of Subdivision 518309 and part of Crown Allotments 5, 26, 2005 and 2021, Township of Fyansford, Parish of Gherineghap, and part of Crown Allotment 2083, Parish of Moorpanyal.



The extent of registration of the Old Swan Inn in the Victorian Heritage Register affects the whole place shown on Diagram 267 including the land; buildings (interiors and exteriors); ruins; archaeological deposits, features and artefacts, including the ford and bullock track; trees and vegetation and garden features.

The registration also includes all fixtures and fittings attached to the buildings at the time of registration.

ATTACHMENT 4

Permit exemptions

General conditions

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 section 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 section 92 of the Heritage Act)

General Condition 1

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.

General Condition 2

Should, during further inspection or the carrying out of works, original or previously hidden or inaccessible details of the place or object be 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. This place may contain archaeological features, deposits and/or artefacts relating to its long period of use.

Note: All archaeological places have the potential to contain significant sub-surface artefacts and other remains. In most cases it will be necessary to obtain approval from the Executive Director, Heritage Victoria before the undertaking any works that have a significant sub-surface component.

General Condition 3

Works should be informed by the 2019 Conservation Management Plan prepared by HLCD with Ochre Imprints 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.

General Condition 4

Nothing in this determination prevents the Heritage Council and/or the Executive Director, Heritage Victoria from amending or rescinding all or any of the permit exemptions.

General Condition 5

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.

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

Under section 49(3) of the Act 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 Swan Inn. If any archaeological

remains are found during any works (including those exempted below), works must cease, and Heritage Victoria is to be contacted immediately.

Buildings

Minor patching, repair and maintenance which replaces like with like without large-scale removal of or damage to the existing fabric or the large-scale introduction of new materials.

Repairs must maximise protection and retention of fabric and include the conservation of existing details or elements. Any new materials used for repair must not exacerbate the decay of existing fabric due to chemical incompatibility, obscure existing fabric or limit access to existing fabric for future maintenance.

Repair to or removal of items such as external lighting, air conditioners, pipework, ducting, flues, wiring, antennae, aerials and flyscreens and making good.

Maintenance and replacement of existing external electrical and fire services in the same location and of the same size.

Exterior

Painting of existing plain painted external surfaces in the same colour, finish and type provided that preparation or painting does not remove all evidence of earlier paint finishes or other decorative schemes.

Interior

Repair to or removal of items such as air conditioners, pipe work, ducting, wiring, antennae, aerials and making good.

Painting of previously plain painted internal surfaces in the same colour, finish and type provided that preparation or painting does not remove all evidence of earlier paint finishes or other decorative schemes.

Works to the parts of the building which have undergone recent changes providing such work does not alter the original fabric of the building.

Fire suppression activities

Fire suppression activities provided the works do not involve the removal or destruction of any significant above-ground features or sub-surface archaeological features, deposits and/or artefacts.

Note: Fire management authorities should be aware of the location, extent and significance of historical and archaeological places/sites when developing fire suppression and firefighting strategies. The importance of places in the VHR must be considered when strategies for fire suppression and management are being developed.

Safety and security

Works or activities, including emergency stabilisation, necessary to secure safety in an emergency where a structure or part of a structure has been irreparably damaged or destabilised and poses a safety risk to its users or the public. Every attempt must be made to conserve and retain as much significant fabric as possible. The Executive Director, Heritage Victoria, must be notified within seven days of the commencement of these works or activities.

The erection of temporary security fencing, scaffolding, hoardings or surveillance systems to prevent unauthorised access or secure public safety.

Landscape

A schedule and map of significant trees should be prepared before any further works on the site are undertaken to ensure their protection under any future development.

Management and maintenance of trees including formative and remedial pruning, removal of deadwood and pest and disease control. Any works to significant trees identified should be carried out by a qualified arborist.

The processes of gardening including slashing, mowing, disease, weed and invasive plant species control provided control measures do not involve disturbance of above ground or subsurface features. Herbicides should not be used within the vicinity of significant trees.

Control of tree seedlings and suckers except by herbicides.

The removal or pruning of dead or dangerous trees to maintain safety. A report must be provided to the Executive Director within 21 days of the commencement of any works to significant trees.

Maintenance, repair and replacement (of the same size, in the same location, and using the same depth of footings) of all existing roads and paths.

Maintenance to care for existing plants and replanting the same species to replace removed or lost plants or trees providing these works do not involve disturbance of above ground or subsurface features.

All works associated with the maintenance, repair and replacement of existing services (including irrigation, power, drainage and sewage) in existing locations where the works do not include sub-surface disturbance to a depth or width which exceeds that of existing service trenches.

Installation of physical barriers or traps to enable vegetation protection and management of possums and vermin.