

HERITAGE INSIGHT

OUR REFERENCE 2817

January 23, 2025



RE Letter of Advice: Hampton Foreshore Precinct Project

Dear Harshitha,

As requested, I have undertaken a review of the Hampton Foreshore Precinct Project. The objective of the project is:

- To enhance accessibility at Hampton Foreshore particularly the area surrounding the Hampton Life Saving Club, requiring infrastructure improvements for all community members and those with disabilities.

The components of the scope considered in this advice include:

- Off-street accessible parking, South Ramp and access path.
- Upgrade of the existing shared user path.
- Masterplan works, including picnic/play area improvements.

Preliminary Design plans for the Master Plan are provided in Appendix A of this document.

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Figure 1: Hampton Foreshore Precinct Project Concept Plan (provided by client)

This Letter of Advice outlines Council's obligations under the *Aboriginal Heritage Act 2006*, the *Aboriginal Heritage Regulations 2018*, the *Heritage Act 2017* and the *Planning and Environment Act 1987*. The advice contained in this document does not constitute legal advice, but contains our opinion based on our interpretation of the relevant Acts and Regulations. The advice presented in this document is provided on the basis of the information provided by the client. If the nature or location of the proposed works changes from that provided, then this advice must be reviewed. This advice may include culturally sensitive information and is not intended for public dissemination. The advice is provided only for the purpose of determining statutory

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obligations in relation to Aboriginal or post-Contact European cultural heritage that may relate to the land. No site visit was included in the preparation of this advice.

This advice is authored by Andrew Morris. Andrew Morris is a suitably qualified heritage advisor in accordance with section 189 of the *Aboriginal Heritage Act 2006*, and has been engaged in heritage management in southeast Australia since 2007.

Search of the VAHR

The Victorian Aboriginal Heritage Register (VAHR) was accessed via the Aboriginal Cultural Heritage Register and Information System (ACHRIS) in accordance with Access # 14700. There are no previously registered Aboriginal cultural heritage places relevant to the proposed development area.

There is one previous CHMP that includes part of the activity area:

CHMP 15543 was carried out by Anderson et al (2018) for the development of the Sandringham Foreshore Masterplan on behalf of Bayside City Council. The desktop assessment of this CHMP identified five previously registered shell middens within the activity area, and predicted shell middens and stone artefact scatters as the likely site type to be present, albeit in a disturbed context. The standard assessment relocated two of the five previously registered Ashell middens, and confirmed the extensive disturbance to the activity area resulting from modern landscaping and construction for recreational use. Auger probes carried out within the activity area further confirmed this disturbance. No complex assessment was carried out. A comprehensive monitoring program was implemented for the activity. The CHMP permitted development of the masterplan, incorporating interpretive signage and avoidance of known Aboriginal cultural heritage places.

Cultural Heritage Management Plans (CHMPs)

Regulation 7 of the *Aboriginal Heritage Regulations 2018* makes provision for when a Cultural Heritage Management Plan (CHMP) is required:

7 When a cultural heritage management plan is required

A cultural heritage management plan is required for an activity if-

(a) the activity area for the activity is an area of cultural heritage

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- (b) all or part of the activity is a high impact activity.

The activity area includes areas of Aboriginal cultural heritage sensitivity (Regulation 30: coastal crown land and Regulation 31: coastal land).

30 Coastal Crown Land

- (1) Subject to sub-regulation (2), coastal Crown land is an area of cultural heritage sensitivity.
- (2) If part of an area of coastal Crown land has been subject to significant ground disturbance, that part is not an area of cultural heritage sensitivity.

31 Coastal Land

- (1) Subject to sub-regulation (2), land within 200 metres of the high water mark of the coastal waters of Victoria or any sea within the limits of Victoria is an area of cultural heritage sensitivity.
- (2) If part of the land specified in sub-regulation (1) has been subject to significant ground disturbance, that part is not an area of cultural heritage sensitivity.

In addition, the activity (upgrade of facilities foreshore facilities) comprises the development of a minor sports and recreation facility. This is a high impact activity under Regulation 46 (1)(a)(b)(xv).

46 Buildings and works for specified uses

- (1) The construction of a building or the construction or carrying out of works on land is a high impact activity if the construction of the building or the construction or carrying out of the works—
 - (a) would result in significant ground disturbance; and
 - (b) is for, or associated with, the use of the land for any one or more of the following purposes—
 - (xv) a minor sports and recreation facility;
- (2) The terms used in subregulation (1)(b) have the same meanings as they have in the VPP.

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Therefore, typically this activity would require a mandatory CHMP as the activity is a high impact activity, and the subject land includes an area of Aboriginal cultural heritage sensitivity. However, Regulation 46(3) states:

- (3) Despite subregulation (1), the construction of a building or the construction or carrying out of works on land is not a high impact activity if it is for, or associated with, a purpose listed under subregulation (1)(b) for which the land was being lawfully used immediately before 28 May 2007.

Therefore a mandatory CHMP is not required for the proposed upgrades to the Hampton Foreshore Precinct.

Summary

It is our opinion that a mandatory CHMP is not required for the activities included in the Hampton Foreshore Masterplan Project, as these works are 'for or associated with a purpose listed under subregulation (1)(b) for which the land was being lawfully used immediately before 28 May 2007' and are therefore not a high impact activity. As the activity is not a high impact activity, then the conditions in Regulation 7 are not met, and a mandatory CHMP is not required.

Conclusions

Among the recent changes to the *Aboriginal Heritage Act 2006* and the *Aboriginal Heritage Regulations 2018* is a voluntary process of certification – the Preliminary Aboriginal Heritage Test (PAHT). This is a voluntary application for a certification from a statutory authority (First Peoples-State Relations) that a CHMP is not required for an activity. The PAHT process has been designed principally for assessment of subject land where the requirement for, or exemption of, a CHMP is in question, however it is Heritage Insight's assessment that the proposed works do not require a PAHT as the proposed works are not a high impact activity (regulation 46(3)), and therefore do not meet both criteria of Regulation 7 set out at the beginning of this letter.

Although a mandatory CHMP is not required for the proposed works, the client should be aware that the *Aboriginal Heritage Act 2006* provides blanket protection for Aboriginal cultural heritage. Under sections 27 and 28 of the Act, it is an offence to knowingly, recklessly or negligently, by act or omission, harm Aboriginal cultural heritage. In the event that suspected Aboriginal cultural heritage is found during the construction of the works, the following protocol MUST be followed to ensure compliance with the Act.

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- All works within 10m of the relevant discovery area must cease immediately and if necessary protective fencing erected around the relevant area;
- The person making the discovery must immediately notify an appropriately qualified heritage advisor;
- The heritage advisor must be engaged to evaluate and record the findings, as well as inform Bunurong Land Council Aboriginal Corporation and First Peoples – State Relations; and
- If the material is demonstrated to be Aboriginal cultural material, approval for the activity under the *Aboriginal Heritage Act 2006* must be sought.

Traditional Owner Settlement Act 2010

There are no agreements under the *Traditional Owner Settlement Act 2010* which include the project area.

HISTORICAL HERITAGE

Heritage Act 2017

The proposed development areas do not include any current statutory listings under the *Heritage Act 2017*. Therefore, I advise that there are no requirements under the *Heritage Act 2017*. However, if any suspected historic artefacts or features are identified during site development, all works must cease and further advice sought from a qualified Heritage Advisor.

Planning and Environment Act 1987

There are no Heritage Overlays on the Bayside Planning Scheme relevant to the project area.

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Referenced Documents

Legislation and Ordinance

Aboriginal Heritage Act 2006

Aboriginal Heritage Regulations 2018

Heritage Act 2017

Planning and Environment (Planning Schemes) Act 1996

Bayside Planning Scheme

Anderson, A., D. Rhodes & A. O'Connor. 2018. Sandringham Foreshore Masterplan. CHMP 15543. Sponsored by Bayside City Council.

Internet Resources

Department of Premier and Cabinet – Aboriginal Cultural Heritage Register and Information System

<https://achris.vic.gov.au/#/onlinemap>

Department of Environment, Land, Water & Planning – VicPlan

<https://mapshare.vic.gov.au/vicplan/>

Heritage Council Victoria – Victorian Heritage Database

<https://vhd.heritagecouncil.vic.gov.au/>

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Appendix A – Preliminary Concept Plans

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Hampton foreshore accessibility project



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Bayside City Council proudly acknowledges the Bunurong People of the Kulin Nation as the Traditional Owners and Custodians of this land, and we pay our respects to their Elders, past, present and emerging as well as any Aboriginal or Torres Strait Islander community members with us today.



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Introduction

Project Objective:

- To enhance accessibility at Hampton Foreshore particularly the area surrounding the Hampton Life Saving Club, requires infrastructure improvements for all community members and those with disabilities.
- Scope Components:
 - Off-street DDA parking, South Ramp and access path.
 - Upgrade of Shared User Path based on recommendations from Road Safety Audit.
 - Masterplan works, including picnic/play area improvements.

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Location

- The project site encompasses the Hampton Foreshore Precinct, running parallel to Beach Road, between Small Street and Orlando Street in Hampton.
- The focal point of the project is the vicinity of the Hampton Life Saving Club.

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Council Notice of Motion (July 2024):

In July 2024, Councillors adopted a Notice of Motion redefining the scope of this project.

Engagement with DAIAC (*Disability Access and Inclusion Advisory Committee*)

DAIAC support the scope of this project with additional scope items which is still in discussion.

Brighton Beach to Ferdinando Gardens Masterplan 2017

Playground, seating derived directly from the Masterplan. Ramp indirectly as providing the handrails are suggested in the masterplan.



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Project Scope : Item 1 : Off-street DDA parking, South Ramp and access path.



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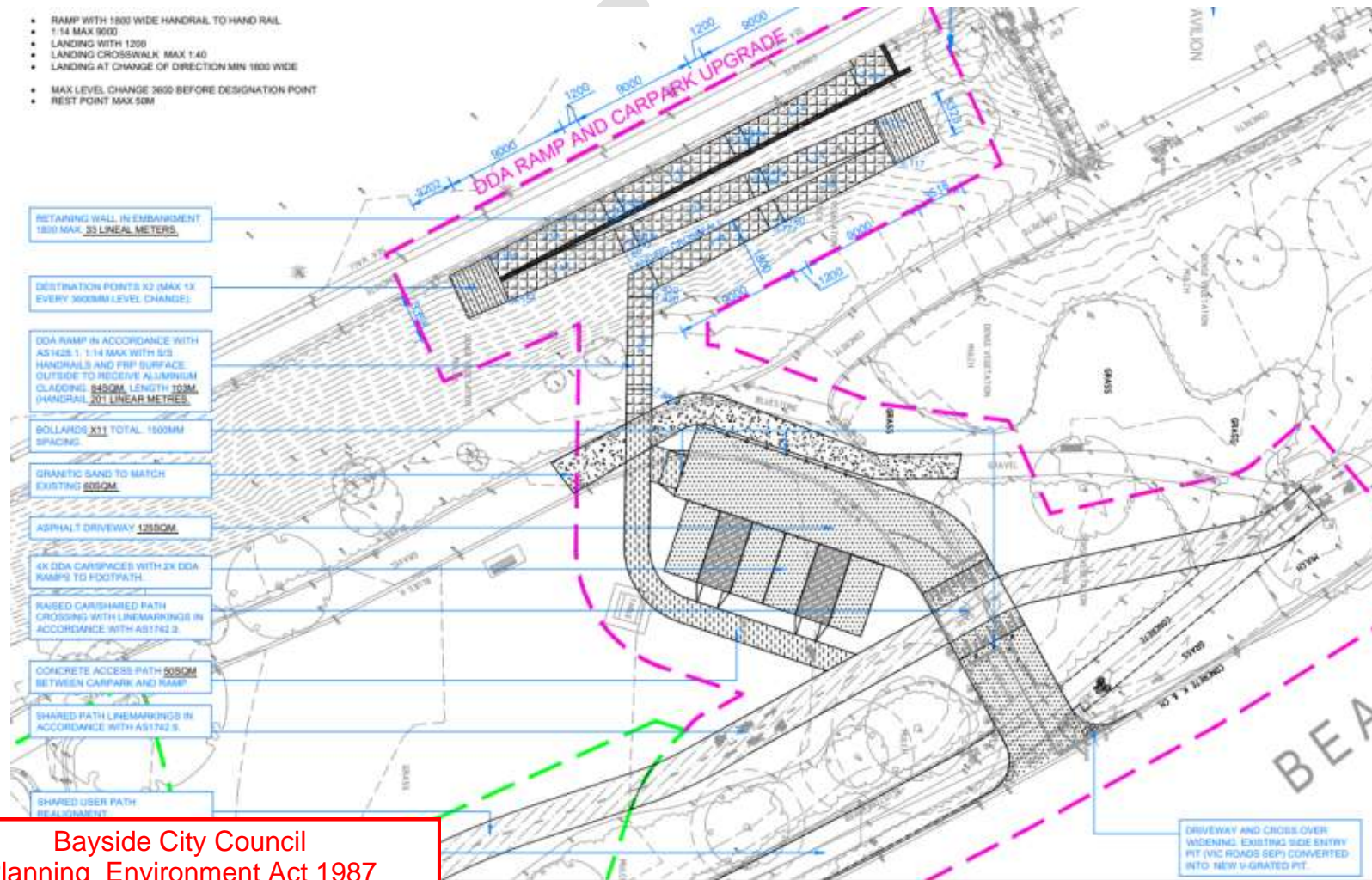
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WIP PLACEHOLDER DRAFT VIEW
FOR CAMERA SELECTION

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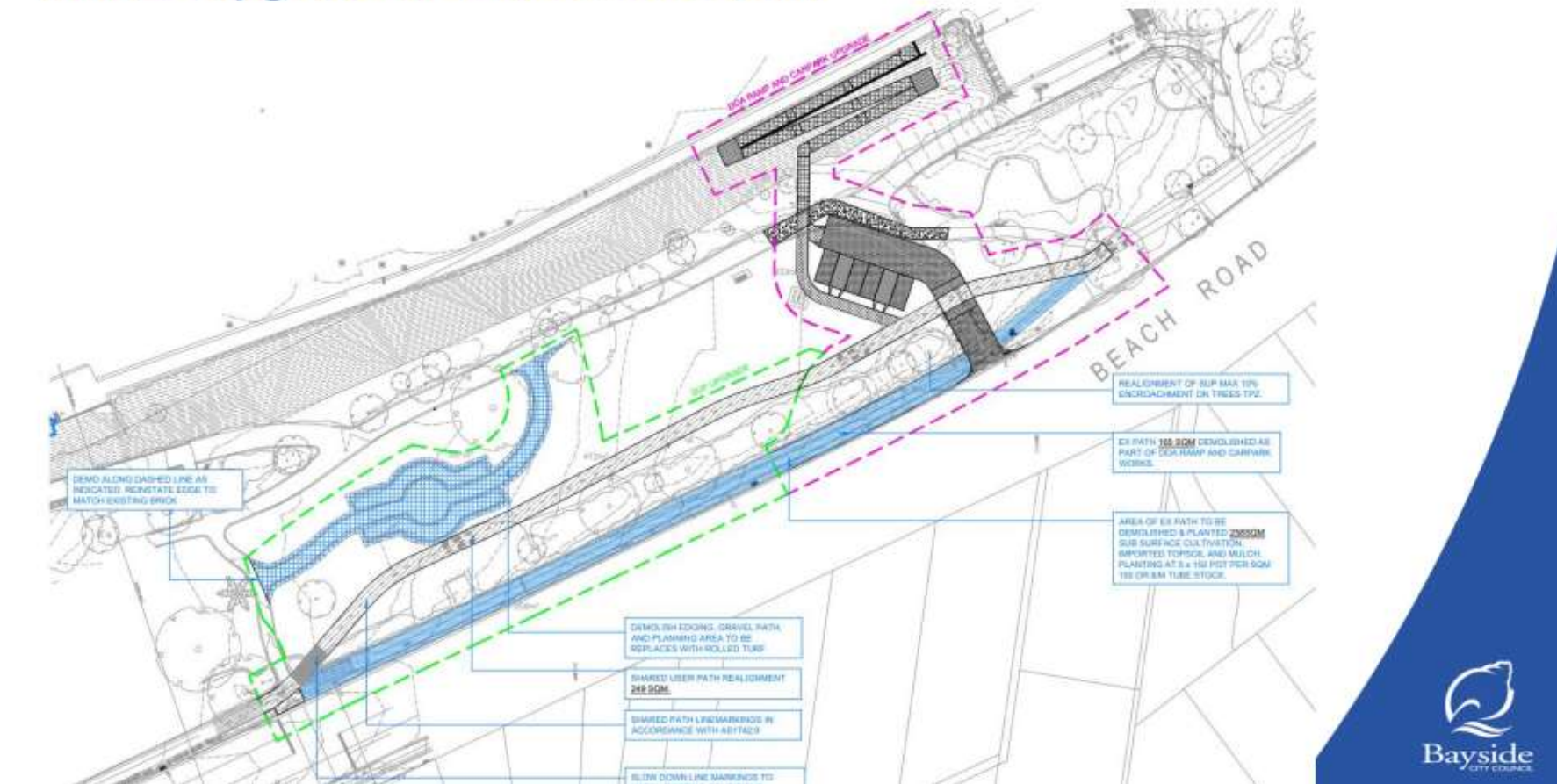


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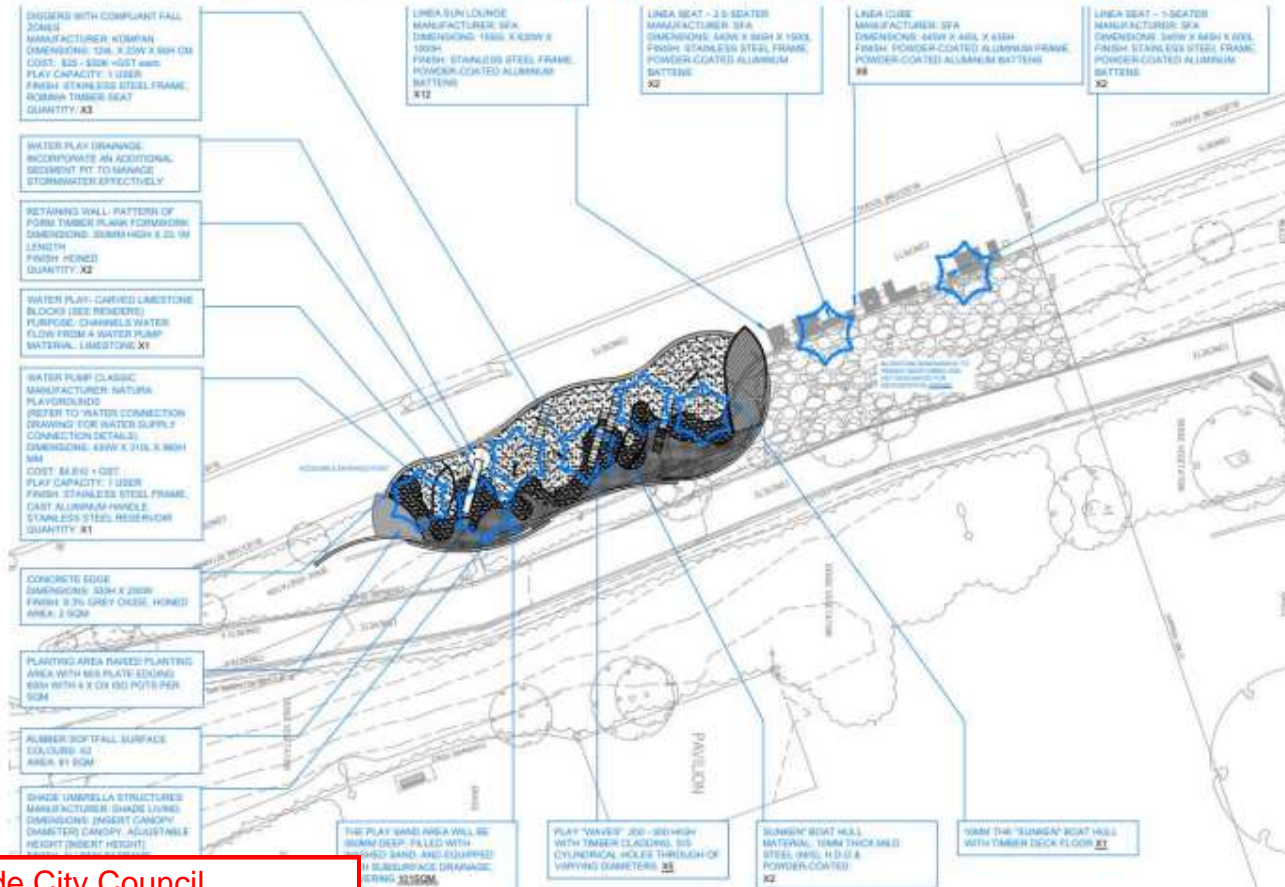
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Item 2 : Upgrade of Shared User Path.



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Item 3: Masterplan works, including picnic/play area improvements.



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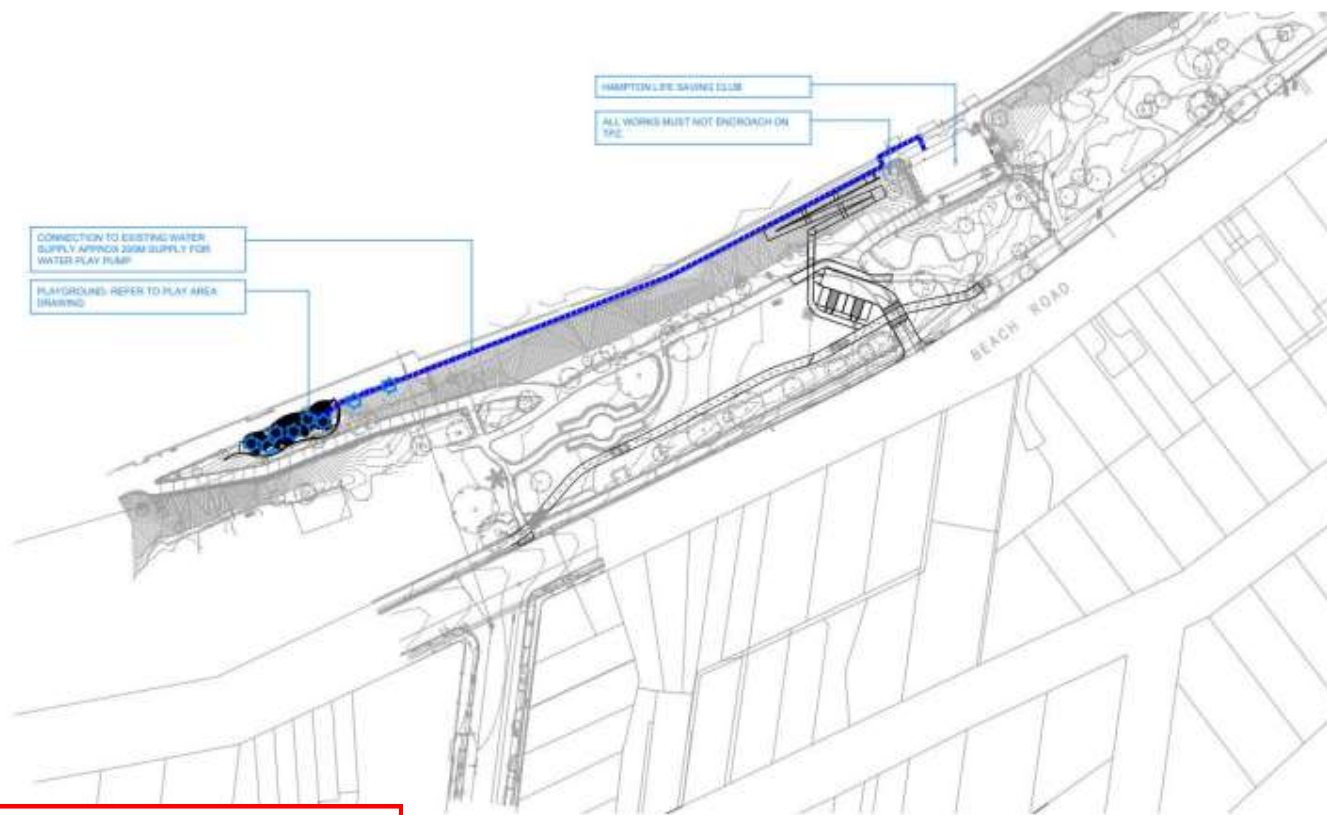
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New Water connection to Water play equipment proposed in the playground



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