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22 November 2022
Ms Jane Bai
ACEnergy Pty Ltd
Suite 502-689 Burke Road
Camberwell Victoria 3124

**Re: Glenbrae BESS - 438 Lobbs Road, Glenbrae – Cultural Heritage Statutory
Obligations**

Dear Jane,

I am writing in response to your request for an investigation into the cultural heritage statutory obligations regarding the land situated at **438 Lobbs Road, Glenbrae** [the activity area] (**Map 1**). This land is currently proposed for Large Scale Battery Energy Storage Project [the activity].

This summary focuses on the statutory obligations under the *Aboriginal Heritage Act 2006*, the *Aboriginal Heritage Regulations 2018*, *Heritage Act 2017* and *Planning and Environment Act 1987*. It includes a review of the Victorian Aboriginal Heritage Register (VAHR), the Victorian Heritage Database (VicPlan), and the relevant Heritage Overlay on the Planning Scheme for previously recorded sites and relevant reports.

The advice in this letter examines legislative requirements in relation to cultural heritage. It does not assess the likelihood of unknown Aboriginal or European cultural heritage being present within the activity area.

The advice contained in this letter is based on our interpretation of the above Acts and Regulations and is considered to be true and accurate. This letter is not legal advice.

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Google Earth
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Map 1

This Activity Area (Red) (Google Earth 2022)

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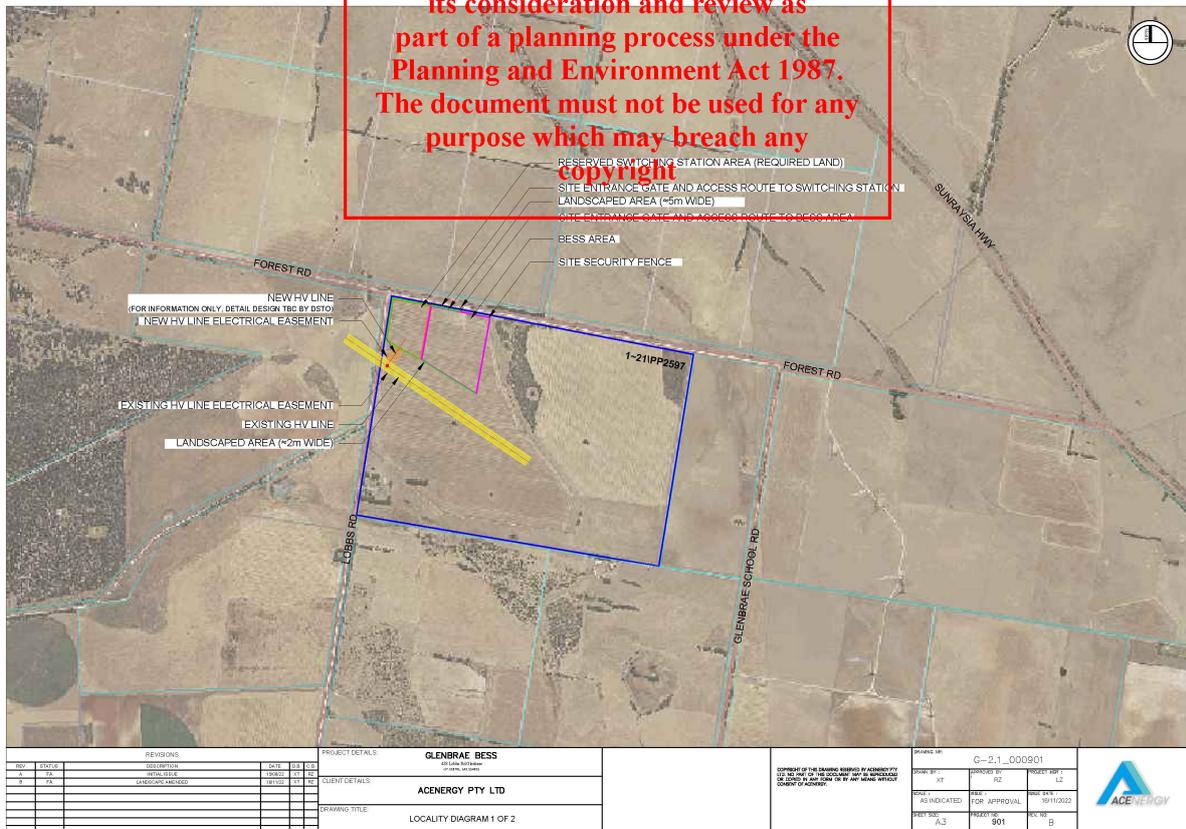
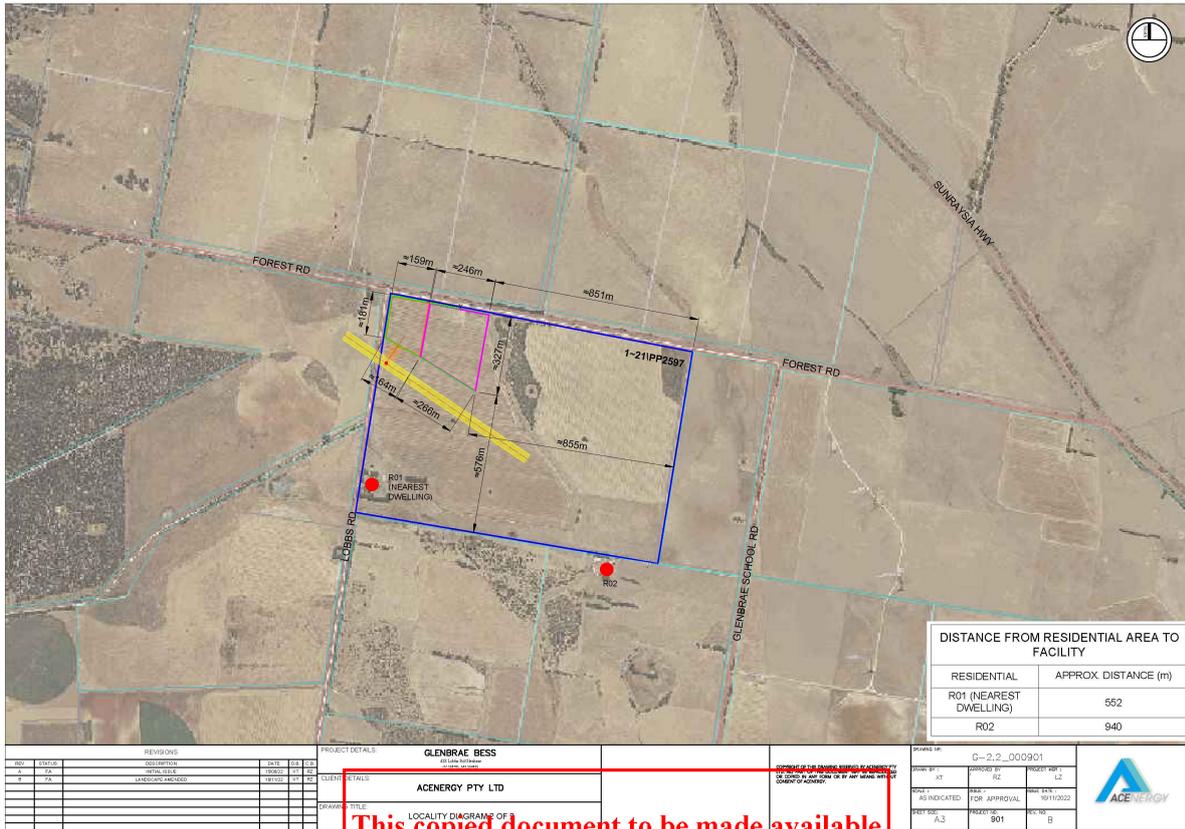


Figure 1 Locality Diagram 1

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Aboriginal Cultural Heritage
 Cultural Heritage Management Plan (CHMP) Triggers

Pursuant to Regulation 7, *Aboriginal Heritage Regulations 2018*, a CHMP is required for an activity if:

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

If only one of these two conditions apply, then the preparation of a mandatory CHMP is not required. Areas of cultural heritage sensitivity are specified in Division 3 and Division 4 of Part 2 of the Regulations. High impact activities are specified in Division 5 of the Regulations.

A CHMP is also required:

1. If the Minister directs a CHMP to be prepared pursuant to Section 48 of the Act;
2. If an Environmental Effects Statement, Impact Management Plan or Comprehensive Impact Statement is required pursuant to Section 49 and 49A of the Act; or
3. If the Secretary has certified a preliminary Aboriginal Heritage Test (PAHT) that has determined that an activity requires a CHMP pursuant to Section 46(e) of the Act.

None of these three conditions are known to currently exist.

High Impact Activities

Division 5 of the Regulations lists high impact activities. A review shows that the activity *is* a high impact activity pursuant to Regulation 46(1)(a)(b)(xxvii)(D).

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—

(xxvii) a utility installation, other than a telecommunications facility, if—

(D) the works affect an area exceeding 25 square metres;

Since the activity is a high impact activity, a mandatory CHMP is required *only if* all or part of the activity area is an area of cultural heritage sensitivity and the area of cultural heritage sensitivity has not been subject to significant ground disturbance.

Exempt Activities

Division 2 of the Regulations lists exempt activities. A review shows that the activity is not an exempt activity.

Areas of Cultural Heritage Sensitivity

Divisions 3 and 4 of the Regulations list areas of cultural heritage sensitivity. These are also shown on the Aboriginal Cultural Heritage Register Information System (ACHRIS) (**Map 2**). A review of both the Regulations and ACHRIS shows that *no part* of the activity area is an area of legislated cultural heritage sensitivity.

Since no part of the activity area is an area of legislated cultural heritage sensitivity, a mandatory CHMP is *not* required, *even though the activity is a high impact activity*.

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Map 2 Cultural Heritage Sensitivity overlaid with Activity Area (Red) (VicPlan 2022)
ACHRIS Search

A search of ACHRIS shows that there are **no** registered Aboriginal heritage places within the activity area or within 50m of the activity area boundary.

ACHRIS also shows that the activity area has **not** previously been subject to archaeological assessment.

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Statutory Obligations under the *Aboriginal Heritage Act 2006*

The above investigation demonstrates that the proposed Battery Storage at **438 Lobbs Road, Glenbrae** does *not* require the preparation of a mandatory CHMP because no part of activity area is a legislated area of cultural heritage sensitivity, even though the activity is a high impact activity pursuant to Regulation 46(1)(a)(b)(xxvii)(D).

If the Sponsor wishes to mitigate any risk of lengthy delays caused by the discovery of Aboriginal cultural heritage during the conduct of the activity, then a voluntary CHMP can be commissioned.

If any unexpected Aboriginal cultural heritage is discovered during the ground disturbance works, then works must cease at this location and a Cultural Heritage Permit must be obtained. Works are only required to cease at the found location and a 10m buffer either side.

Historic Cultural Heritage

Statutory Obligations under the *Heritage Act 2017*

All historic sites are protected under the *Heritage Act 2017* which requires appropriate Consents or Permits to be obtained before any historic site is disturbed. In addition, all historic sites must be reported to the Executive Director of the Heritage Council. Any archaeological site older than 75 years is considered to have potential archaeological value. Historic archaeological sites with above low scientific significance are listed on the Heritage Inventory. Historic sites with State Significance to the Government of Victoria are listed on the Victorian Heritage Register.

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Historic Heritage Databases Search

A search of Heritage Victoria's Victorian Heritage Database (VHD), the VicPlan online map and Pyrenees Planning Scheme Online Heritage Overlay shows that there are **no** previously recorded historic sites in or immediately adjacent to the activity area.

Statutory Obligations under the *Native Title Act 1993*

Native Title is the recognition by Australian law that Indigenous people have the right to their land, water, traditional laws and customs. In order to acquire Native Title, a Native Title determination decision must be administered by the Federal Court or High Court of Australia. Claims can only be made on un-allocated Crown Land or water. Native Title cannot be ascribed to past or present allocated Crown Land such as residential freehold or public land such as roads, schools or hospitals.

A search of the Aboriginal Cultural Heritage Register Information System (ACHRIS) demonstrates that under the *Native Title Act 1993* no National Native Title Tribunal applications are relevant to the activity area. Additionally, the land is not vacant or unallocated, and no future Native Title claims can include the activity area. Therefore, no action is required regarding the *Native Title Act 1993*.

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Statutory Obligations under the *Planning and Environment Act 1987*

Local councils are responsible for issuing Permits for the use and development of local heritage places under the *Planning and Environment Act 1987*. Heritage places are listed on the Heritage Overlay on the Local Council Planning Scheme. The Heritage Overlay includes places of local significance as well as places of State Significance to the Government of Victoria on the Victorian Heritage Register.

Planning Scheme Search

A search of LGAs Planning Scheme (Heritage Overlay) shows that there are **no** previously recorded historic sites in or immediately adjacent to the activity area.

Summary of Statutory Obligations

This investigation has reviewed the statutory obligations in relation to the relevant Aboriginal and historic heritage Acts and Regulations. The obligations are summarised in the table below.

Table 1 Summary of Cultural Heritage Statutory Obligations

Aboriginal	<i>Is the activity a high impact activity?</i>	Yes, pursuant to regulation 46(1)(a)(b)(xxvii)(D)
	<i>Is part of the activity area a legislated area of cultural heritage sensitivity?</i>	No
	<i>Is a mandatory CHMP required?</i>	No
Historic	<i>Are there any Heritage Inventory (HI) or Victorian Heritage Register (VHR) places within or immediately abutting the activity area?</i>	No
	<i>Are there any Pyrenees Heritage Overlays within or immediately abutting the activity area?</i>	No
	<i>Are any Permits or Consents required from Heritage Victoria required prior to the activity commencing?</i>	No
	<i>Are any Permits required from Pyrenees required to manage a Heritage Overlay prior to the activity commencing?</i>	No

Tardis provides the following heritage advice in relation to the activity:

Aboriginal Cultural Heritage:

The proposed activity does not require a mandatory CHMP prior to the activity commencing. If the proponent of the activity wishes to mitigate the risk of the discovery of

any Aboriginal cultural heritage during the conduct of the activity, a voluntary CHMP can be commissioned.

Historic Heritage:

There are no further historic archaeological, or heritage matters that need to be addressed prior to the works commencing.

Yours sincerely,



Nicholas Arnold
Archaeologist

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- Murphy BW & CL 2000 'The Soil Profile.' In PEV Chapman & BW Murphy eds. *Soils: Their Properties and Management*. 2nd Edition. Oxford University Press: 79-82.

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