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## **Brewster Wind Farm**

### **Appendix A**

*Cultural Heritage Compliance Assessment*

December 2021

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13 September 2021

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Re: Brewster Wind Farm – Cultural Heritage Statutory Obligations

I am writing in response to your request for an investigation into the cultural heritage statutory obligations regarding the land to be utilised for the Brewster Wind Farm at 54 Kayleys Lane Brewster, 7 Pin Oak Court, Trawalla and 295 Trawalla Road, Trawalla [the activity area] (Map 1). This land is currently proposed for the construction of a wind energy facility [the activity] (Map 2). The activity will be occurring only within the construction area of the activity area (Map 2).

This activity includes the construction of 7 wind turbines, 7 adjoining hardstands and two power poles. Approximately 5.75km of underground cabling, 5.8 km of access track and road upgrades, and 450 metres of overhead cabling spanning Spring Hill Creek. This cable will be installed via helicopter. There will be approximately 2ha of laydown area. Temporary fencing will be installed for the duration of the activity to demarcate the areas of cultural heritage sensitivity around Spring Hill Creek.

This summary focuses on the obligations under the *Aboriginal Heritage Act 2006*, the *Aboriginal Heritage Regulations 2018* and *Heritage Act 2017*. 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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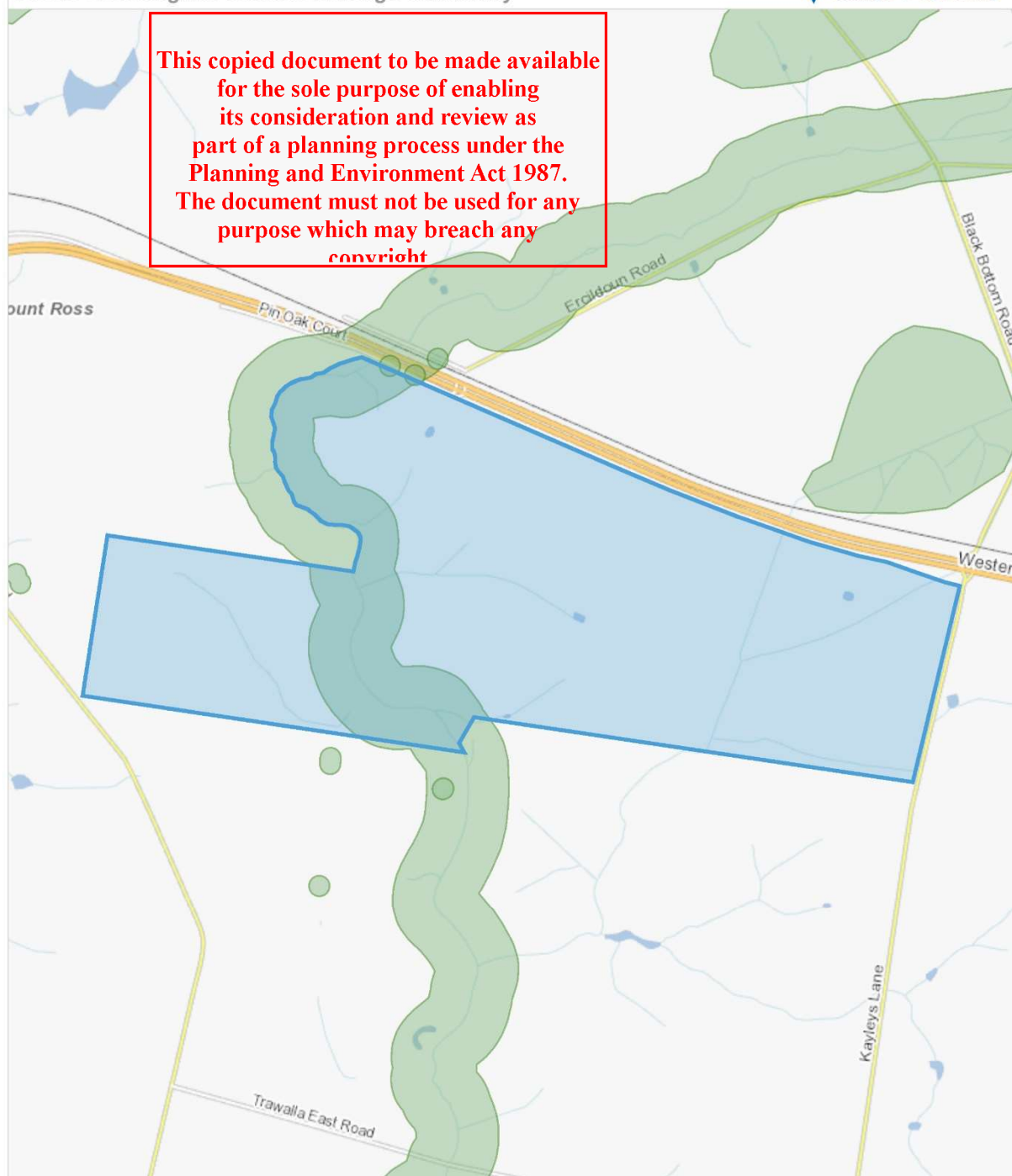
## Brewster Wind Farm

Areas of Aboriginal Cultural Heritage Sensitivity

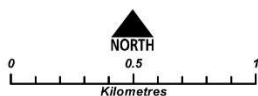


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Heritage ■ Aboriginal Cultural Heritage Sensitivity  
■ Activity Area



Map Projection: GDA 1994 VICGRID94  
Print Date: 8/4/2021



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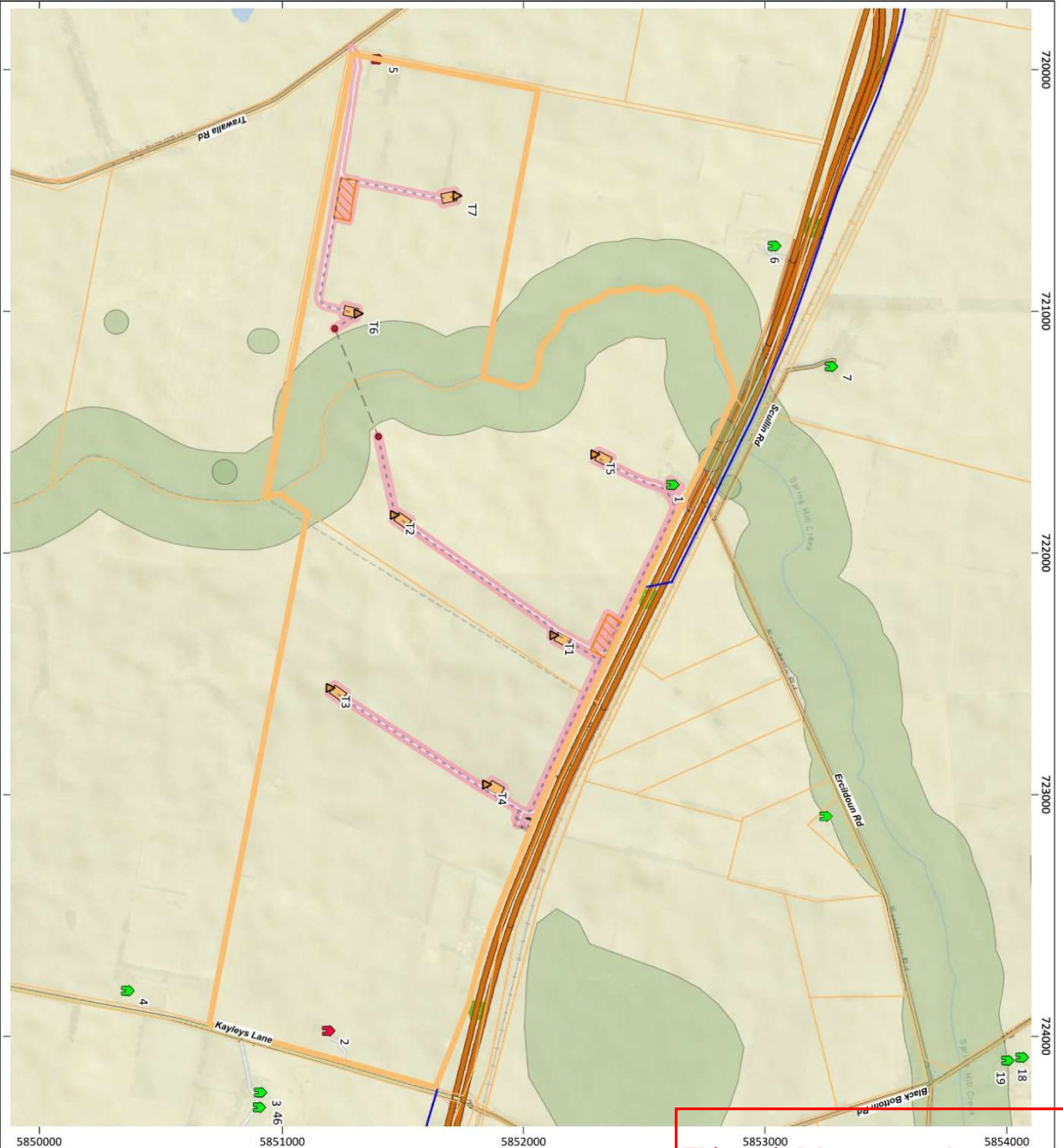
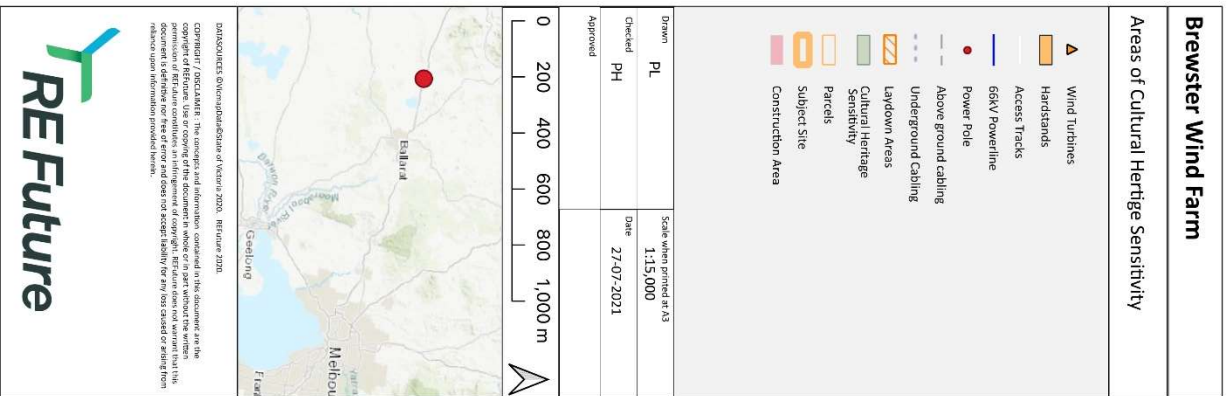
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Map 1

Areas of Cultural Heritage Sensitivity



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Map 2 Proposed Development Plan

## 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) (b) (xxx) states:

#### 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 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—
    - (xxx) land used to generate electricity, including a wind energy facility.

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 (8-22, 46(3)) lists exempt activities. A review shows that the activity is not an exempt activity.

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## 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). A review of both the Regulations and ACHRIS shows that *part* of the activity area is an area of cultural heritage sensitivity, due to Regulation 25 (2), VAHR 7623-0182 and VAHR 7623-1084 and Regulation 26 (1), Spring Hill Creek.

### 25 Registered cultural heritage places

- (1) Subject to sub regulation (3), land within 50 metres of a registered cultural heritage place is an area of cultural heritage sensitivity.

### 26 Waterways

- (1) Subject to sub regulation (2), a waterway or land within 200 metres of a waterway is an area of cultural heritage sensitivity.

Since *part* of the activity area is an area of cultural heritage sensitivity and the activity is a high impact activity, a mandatory CHMP is required. However, as the construction zone is not an area of cultural heritage sensitivity (**Map 2**) and appropriate measures are being taken to wholly avoid areas of cultural heritage sensitivity (temporary fencing) a mandatory CHMP is not required. For further details see previous Victorian Civil and Administrative Tribunal decisions presented bellow (**Statutory Obligations under the *Aboriginal Heritage Act 2006***).

## ACHRIS Search

A search of ACHRIS shows that there are **two** registered Aboriginal heritage places within 50m of the activity area boundary.

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

## Aboriginal Places

**VAHR 7623-0184** is an artefact scatter consisting of a single quartz complete flake found at a depth of 240-260 mm. This place is located 22m north of the current activity area boundary and 200m northwest of the construction area boundary. The place was registered as part of CHMP 11481 by **Anderson, Kiddell & Watson (2011)** after it was located during the complex assessment. This place was assessed as having low significance.

**VAHR 7623-0182** is an artefact scatter consisting of a single quartz complete flake found at a depth of 0-100 mm. This place is located 16m north of the current activity area boundary and 300m northwest of the construction area boundary. The place was registered as part of CHMP 11481 by **Anderson, Kiddell & Watson (2011)** after it was located during the complex assessment. This place was assessed as having low significance.

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## Statutory Obligations under the *Aboriginal Heritage Act 2006*

This investigation demonstrates that the proposed activity (wind energy facility) at **54 Kayleys Lane Brewster, 7 Pin Oak Court, Trawalla and 295 Trawalla Road**, does *not* require the preparation of a mandatory CHMP because no part of the construction area is a legislated area of cultural heritage sensitivity and additional steps have been taken to minimise any risk to areas of Aboriginal cultural heritage sensitivity (including temporary fencing demarcating the location of areas of cultural heritage sensitivity and using a helicopter to span Spring Hill Creek). This letter also considers the requirement that the activity area of a CHMP must be consistent with the activity area of any relevant planning permits.

This conclusion is based on previous Victorian Civil and Administrative Tribunal (VCAT) decisions. Including but not limited to:

*Croke v Moira SC* [2018] VCAT 1476. This decision looked at the requirements of a solar farm and if a CHMP was required. The solar farm and required connections to the power infrastructure was deemed a high impact activity. Part of the activity area was an area of cultural heritage sensitivity. However, the activity would be separated from these areas by security fencing. Thus, a physical barrier would be demarcating the high impact areas where significant ground disturbance and the activity would be occurring, from the areas of cultural heritage sensitivity. It was concluded that a CHMP is not required as no part of the high impact area is in an area of cultural heritage sensitivity.

*Melbourne Islamic Centre Lit v Melton CC* [2018] VCAT 1347. This decision considered if a mosque required a CHMP to be built on a lot that was partially an area of cultural heritage sensitivity. The planning application material and activity description described impact to the whole of the site. It was determined that if the initial plans had explained in a legend or notation that the activity was limited to a smaller extent than the activity area that no CHMP would be required. However, the proposal was not explicit that the activity would not include the areas of cultural heritage sensitivity. It was concluded that a CHMP was required.

*Bremner & Ors v Golden Plains SC* [2011] VCAT 1261. This case presented an activity area that included areas of cultural heritage sensitivity and an activity of a quarry construction. The level of detail in the activity description was explicit in excluding the areas of cultural heritage sensitivity and thus they would not be impacted by the activity. It was concluded that a CHMP was not required.

*Williamson & Ors v Yarra CC & Anor* [2011] VCAT 357. The activity included the construction of several dwellings within the activity area; however, the rear 20-25 metres was separated by a retaining wall and wire fence and had a 15 metre drop to the river. The Tribunal was satisfied that these physical barriers were sufficient in proving that the significant ground disturbance (the activity) would not impact the areas of cultural heritage sensitivity. No CHMP was required.

Common factors with these VCAT decisions include the explicit explanation of the areas where significant ground disturbance will occur and a physical demarcation of the areas of cultural heritage sensitivity and/or the limits of the construction area. Where these are present a mandatory CHMP is not required. Since RE Future Pty Ltd has incorporated these actions in their plans and have taken appropriate means to not disturb areas of cultural heritage sensitivity a mandatory CHMP is not required for the construction of Brewster Wind Farm.



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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.

## 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-alienated Crown Land or water. Native Title cannot be ascribed to past or present alienated 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 scheduled or registered applications, or native title determinations 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*.

## 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.

### Historic Heritage Databases Search

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

The proposed activity will not impact any registered historic places. No Consents or Permits are required.

### 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.



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## Planning Scheme Search

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

The proposed activity will not impact any Heritage Overlays. No Permits are required from the Pyrenees Shire.

## 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)(b)(xxx) a wind energy facility.
	<i>Is part of the activity area a legislated area of cultural heritage sensitivity?</i>	Yes, pursuant to Regulation 25, a previously registered place and Regulation 26, a waterway.
	<i>Is a mandatory CHMP required?</i>	No, since the construction area is not in an area of cultural heritage sensitivity, no areas of cultural heritage sensitivity will be impacted.
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 Shire 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 Shire required to manage a Heritage Overlay prior to the activity commencing?</i>	No

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

**Aboriginal Cultural Heritage:**

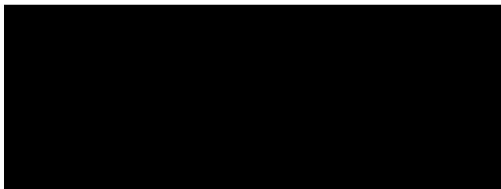
The proposed activity does not require a mandatory CHMP prior to the activity commencing. The construction area will not impact any areas of cultural heritage sensitivity and there will be a physical indicative barrier present on site to demarcate these areas. This letter also considers the requirement that the activity area of a CHMP must be consistent with the activity area of any relevant planning permits.

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,



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## REFERENCES

Anderson W, Kiddell H & B Watson 2011 Western Highway Project Burrumbeet To Beaufort Duplication, CHMP 11481 for VicRoads.

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