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31 August 2023

Tim Russell  
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By email: [timrussell@me.com](mailto:timrussell@me.com)

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Department of Environment, Land, Water  
and Planning

22/09/2023

Dear Tim

### 30 The Avenue, Mount Buller – Cultural heritage letter of advice

Our reference: 39725

This letter of advice outlines the statutory requirements under the *Aboriginal Heritage Act 2006*, *Heritage Act 2017* and the *Planning and Environment Act 1987* as they relate to the cultural heritage values of 30 The Avenue, Mount Buller (the study area) in relation to the proposed car parking and storeroom.

A review of the relevant background information and the requirements under the *Aboriginal Heritage Act 2006* has determined that a mandatory CHMP is not required (Table 1).

A review of relevant historical heritage information has identified that there is no requirement for statutory approvals under the *Heritage Act 2017* or the *Planning and Environment Act 1987* (Table 1). Under Section 127 of the *Heritage Act 2017*, if an historical archaeological site is detected during the course of excavation or construction works, notification of the discovery must be reported by the person in charge of the excavation or construction to the Executive Director of Heritage Victoria as soon as is practicable.

**Table 1. Summary of conclusions**

Study Area	Mandatory CHMP required	Voluntary CHMP advised	Historic Cultural Heritage requirements	Planning and Environment requirements
Activity 1: Car park	No	No	No	No
Activity 2: Storeroom	No	No	No	No

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Further information on these conclusions is detailed below. Should you have any queries, please do not hesitate to contact me on 0409 944 165.

Yours sincerely

A handwritten signature in black ink that reads 'Stradwick'.

Jane Stradwick  
Team Leader – Heritage (Victoria)

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## Definitions

'study area' – 30 The Avenue, Mount Buller

'activity' – car parking and storeroom

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## Description of the study area

30 The Avenue, Mount Buller is located on Taungurung Country, which extends eastward to the Barkley River West Branch, south to Wurundjeri Country near Marysville, west toward Bendigo and north to Yorta Yorta Country near Euroa. The study area is part of the Mount Buller Alpine Resort (Unincorporated) Council and the Changue East parish. The study area is approximately 437.21 square metres.

The study area is located on the Eastern Uplands (EU) Bioregion with a geomorphology characterised by capped (basalt) plains made of sub-alpine shrub and grasslands.

## Background Review

### Aboriginal cultural heritage

Biosis acknowledges that the author and internal reviewers of this report identify as non-Aboriginal Australians living on Wurundjeri and Wadawurrung Countries. We acknowledge that they interpret, present, and understand the past and engagement through their own cultural lens. Undertaking this work, we pay our respects to Elders past, present, and emerging, and recognise that Taungurung Country is unceded.

A search of the Victorian Aboriginal Heritage Register (VAHR) was undertaken by Genevieve Schiesser, Biosis Pty Ltd, on 21 August 2023 using the VAHR application for access number: 12431.

Data from ACHRIS provided the following information:

- The study area is located in a designated area of cultural heritage sensitivity under Regulation 26 of the Aboriginal Heritage Regulations 2018, within 200 metres of named waterway Cow Camp Creek and Regulation 33: High Plains (Table 2).
- There are no previously recorded Aboriginal places present within the study area.
- The closest Registered Aboriginal Place is within 500 metres of the study area, VAHR 8123-0003 Mount Buller Cow Camp, and is characterised by artefact scatters of Aboriginal cultural material (Figure 1).

### Historic heritage

A search of the following historic heritage registers was undertaken by Genevieve Schiesser, Biosis Pty Ltd on 21 August 2023:

- Victorian Heritage Register (VHR).
- Victorian Heritage Inventory (VHI).
- UNINC Heritage Overlay (HO).
- National Heritage List (NHL).

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- Commonwealth Heritage List (CHL).
- National Trust Register (NTR).

The search found that there are no historical heritage places listed within the study area and no Heritage Overlay sites within the study area.

### Land use history

It has been well demonstrated in the literature that nature is, and continues to be, the foundation upon which traditional Indigenous social structures are based (Cumpston, Fletcher, & Head 2022). As a result, the lay of the land and its associated features - watercourses, food and craft sources, shelters – cannot be considered as separate from the Aboriginal cultural context. Nature and culture are one and the same, constantly informing and changing one another. While the appearance of landforms within and surrounding the study area may have become altered due to settlement disturbances, the tangibility of the landscape itself continues to inform Indigenous Songlines, both old and new.

There are several recorded floras in the area that may have been used by Aboriginal groups for food, medicine, fibre and implements prior to settlement, including a variety of tubers, fruits, seeds, leaves, stems, gum, and nectar (Marshall, Cusack, & Webb 1999). Eastern Grey Kangaroo, possum and wallabies also populated areas. It has also been documented that pre-contact Aboriginal groups may have held a significant relationship with the presence of Bogong Moths (Bowdler 1981).

During the invasion and colonisation of Indigenous lands in Victoria, Hume and Hovell were the first Europeans to make note of Mount Buller. Colonial settlement did not occur in the area until the late-1800s and the land was used for cattle grazing in the highlands during the nineteenth and twentieth centuries (Marshall, Cusack, & Webb 1999). Two historical maps from 1944 and 1967, accessed from the State Library of Victoria, show the region inclusive of the study area as part of the 'Alpine Village'. It cannot be confirmed if/what ground disturbing works occurred during this time, but the study area was at the very least plotted for development. There has been no significant change in land cover prior to colonisation and the present day.

More recently, the study area has been developed into a ski resort and the area has been subject to ground disturbing works through the introduction of utility services and housing.

### Predictive statement for study area

The Mount Buller summit and surrounding regions are vulnerable to severe climactic changes, likely in the process destroying evidence of early Aboriginal occupation. The melting and re-freezing across the seasons changes alpine and sub-alpine landforms and, in the process, degrades and aggrades areas with potential Aboriginal cultural material such as stone artefact scatters (Marshall, Cusack, & Webb 1999). Additionally, the instability of constant climactic change negatively impacts the surfaces and cores of stone material as the secondary materials and inclusions expand and shrink continuously over time, resulting in cracking, fragmentation, and overall structural losses. The soil surface of the region has also been highly eroded over time.

Previous archaeological and desktop assessments within the region and in proximity of the study area have found that there has been a high level of modern disturbances resulting in a shallow soil profile unsuitable for deposits of archaeological material to occur. This is best described in Marshall, Cusack and Webb's 1999 Aboriginal heritage study of the region which undertook surface and sub-surface excavations and found no Aboriginal archaeological material. The study demonstrated that there were no areas of high archaeological

sensitivity in the Mount Buller Alpine Village, likely because of prior development in the area during the ski tourism boom that began in the 1920s and continues today. A standard assessment undertaken for Cultural Heritage Management Plan 14793 prepared by Biosis Pty Ltd, also recorded no areas of archaeological potential in the study area at 34/36 The Avenue, Mount Buller. The absence of areas of cultural heritage potential at 34/36 The Avenue, Mount Buller is likely due to prior significant ground disturbances (Edwards & White 2017). Asset information provided by Before You Dig Australia (BYDA) demonstrated significant ground disturbing works took place during the installation of fibre optic cables, Ausnet cables, and sewer utilities, and a building already constructed at the address is further evidence of significant ground disturbance.

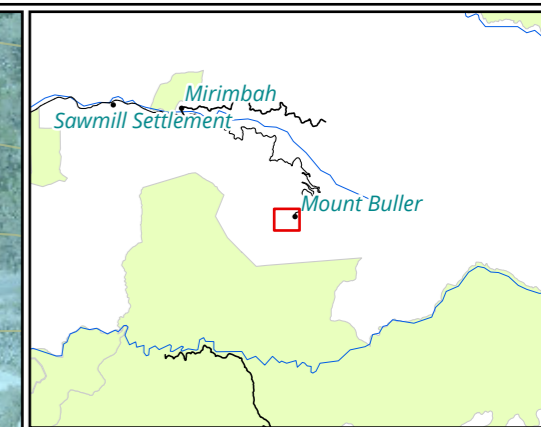
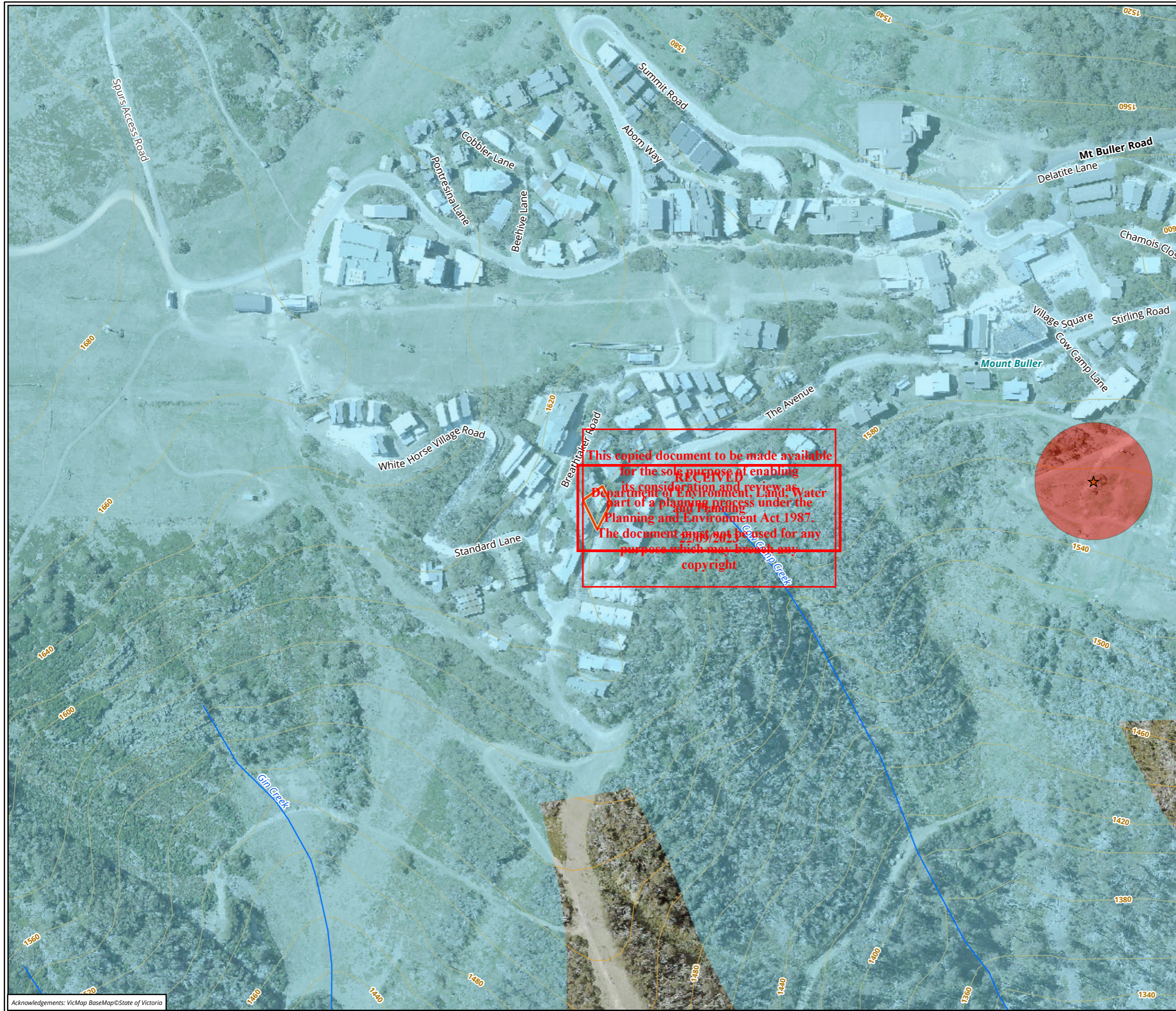
With this considered, the study area is located within a designated area of cultural heritage sensitivity, though one that has been subject to prior ground disturbances. Therefore, the modelled archaeological potential for the study area is low.

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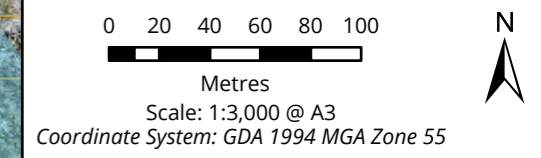
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- Legend**
- Study area
  - ★ VAHR 8123-0003
- Areas of Cultural Sensitivity**
- Area of cultural heritage sensitivity
  - Registered Aboriginal place
- Topography**
- Contour 20m interval
- Hydrology**
- ~ River or creek

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**Figure 1 Extent of study area and Areas of Cultural Heritage Sensitivity within 500 metres of the study area**



Matter: 39725,  
Date: 23 August 2023,  
Prepared for: GS, Prepared by: GO, Last edited by: gologhlin  
Layout: 39725\_F1\_Extent  
Project: P:\39700s\39725\Mapping\39725\_TheAvenueLetterOfAdvice.aprx

## Statutory requirements

### Aboriginal cultural heritage

#### Is a mandatory cultural heritage management plan required?

Under Section 46 of the *Aboriginal Heritage Act* 2006, a mandatory Cultural Heritage Management Plan (CHMP) is required if the regulations require the preparation of the plan for the activity. Under Regulation 7 of the 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.

It must be noted that when Significant Ground Disturbance (SGD), as defined in the Regulations (r.5), has occurred throughout the entirety or part of an area of cultural heritage sensitivity (CHS), then the area of CHS is no longer an area of CHS under Regulation 26 and the proposed works will not require a mandatory CHMP.

A review of the Aboriginal Heritage Regulations 2018 identified the following regulations relevant to the study area (Table 1 and Table 2).

**Table 2. Areas of Cultural Heritage Sensitivity**

30 The Avenue, Mount Buller	Applicable Regulation	Area of CHS
<p><b>Activity 1: Carparking</b></p> <p><b>Activity 2: Storeroom</b></p>	<p>r.26 Waterways</p> <ol style="list-style-type: none"> <li>1. Subject to sub regulation (2), a waterway or land within 200 metres of a waterway is an area of cultural heritage sensitivity.</li> <li>2. If part of a waterway or part of the land within 200 metres of a waterway has been subject to significant ground disturbance, that part is not an area of cultural heritage sensitivity.</li> </ol> <p>r.33 High Plains</p> <ol style="list-style-type: none"> <li>1. Subject to subregulation (2), the high plains is an area of cultural heritage sensitivity.</li> <li>2. If part of the high plains has been subject to significant ground disturbance, that part is not an area of cultural heritage sensitivity.</li> </ol>	<p>The study area lies within 200 metres of a waterway; namely Cow Camp Creek, which is designated area of cultural heritage sensitivity (Figure 1).</p> <p>The study area lies within a designated area of cultural heritage sensitivity, namely High Plains (Figure 1).</p>

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**Table 3. High Impact Activity**

Activity	Applicable Regulation	High Impact Activity
<b>Activity 1: Car parking</b>	<b>r.46 Buildings and works for specified uses</b>  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— (iii) a car park	The construction of the car park will take place within the study area and require ground disturbing works to extract and remove existing soil cover.  The proposed activity <u>is therefore a high impact activity.</u>
<b>Activity 2: Storeroom</b>	<b>r.50 Alpine resorts</b>  1. The construction of a building or the construction or carrying out of works in an alpine resort is a high impact activity if the construction of the building or the construction or carrying out of the works would result in significant ground disturbance.	The construction of the storeroom will require ground excavation and machinery and <u>is therefore a high impact activity.</u>

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**Significant ground disturbance**

Under Regulation number 25 if part of the area of the area of cultural heritage sensitivity has been subject to significant ground disturbance, that part is not an area of cultural heritage sensitivity. Significant ground disturbance is defined as:

**5 Definitions**

**significant ground disturbance** means disturbance of—

- a) the topsoil or surface rock layer of the ground; or
- b) a waterway—

by machinery in the course of grading, excavating, digging, dredging or deep ripping, but does not include ploughing other than deep ripping.

It is important to note that significant ground disturbance is not chiefly defined by the extent or depth of any disturbance, but rather by the mechanical means through which it has been caused. The application of the significant ground disturbance exemption is also unaffected by the relative likelihood of archaeological material being preserved in the study area. Such likelihood of preservation may affect the advisability of a voluntary cultural heritage management plan but does not bear on the criteria for a mandatory cultural heritage management plan.



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A request for data on utilities assets within the study area was lodged with Before You Dig Australia (BYDA) by Genevieve Schiesser, Biosis Pty Ltd on 17 August 2023. The results indicated that significant ground disturbances have occurred at the site.

The following outlines the ground disturbances undertaken within the study area:

- The introduction of a sewer pit/manhole at the eastern corner of the property.
- The introduction of fibre optic cables along the southern extent of the study area, extending into the centre of the property. This includes a 100 millimetre PVC conduit cable joining 4-pit and Telstra Plant in a shared utility trench, and a direct buried 10 pair cable into the centre of the property 8 metres from the 4-pit using a 20 millimetre PVC conduit.
- The introduction of underground Ausnet cables along the southern extent of the study area. Construction photos provided show significant ground disturbance in this area was required to install concrete and plastic slabs as well as trenches and cables at a depth of 609 millimetres.

These underground utilities exist along the proposed area for the car parking spaces, demonstrating the requirement for a CHMP under Regulation 25, prior significant ground disturbance. Furthermore, under Regulation 12, a CHMP is also no longer required if the construction of a building is ancillary to a dwelling, including the construction of a garage, workshop, or shed. The proposed location for the storeroom adjacent to the southern extent of the dwelling satisfies this requirement.

The study area satisfies the evidentiary hierarchy for determining significant ground disturbance determined in the Victorian Civil and Administrative Tribunal Decision (Mainstay Australia Pty vs Mornington Peninsular SC & Ors, 145, 2009). A summary of the levels of inquiry and the relevant information that supports the conclusions in this assessment is included below (Table 4).

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**Table 4 Level of inquiry**

Level	Relevant Information
<b>1 – Common knowledge</b>	It is common knowledge that residential and commercial developments have altered the landscape which the study area passes through.
<b>2 – Publicly available records</b>	The BYDA results indicate that numerous underground assets already exist within the study area at the proposed area of three car parking spaces.
<b>3 – Further information</b>	Further evidence supplied by the landowners on the proposed location of the storeroom also shows that the location exists on an area ancillary to a dwelling.
<b>4 – Expert advice or opinion</b>	This assessment has been prepared and reviewed by cultural heritage advisors and their examination of the available information as well as interpretation of the features identified in the ground survey constitutes expert opinion. It is reasonable to infer the past land use history of the study area provides contextual evidence for the use of machinery in land reshaping activities (cf. (Azzure Investment Group vs Mornington Peninsula SC, 1600, 2009).

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### **Conclusions for significant ground disturbance**

There is evidence for significant ground disturbance throughout the entire area of cultural heritage sensitivity within the study area. Therefore, under Regulation 25 and Regulation 12 this area is no longer classified as a designated area of cultural sensitivity. Therefore, the designated area of cultural sensitivity trigger has been removed and a mandatory CHMP is not required.

### **Conclusions for a mandatory cultural heritage management plan**

The proposed works meet the two-trigger threshold to prepare a mandatory CHMP. However, there is evidence of prior significant ground disturbance within the study area (discussed below). Therefore, a mandatory CHMP is not required.

### **Is a voluntary cultural heritage management plan advised?**

Under Section 28 of the *Aboriginal Heritage Act* 2006 doing an act likely to harm Aboriginal cultural heritage is unlawful. Therefore, regardless of the requirement to prepare a mandatory CHMP, an assessment of the study area must be made to determine the likelihood that Aboriginal cultural heritage may be present.

Under Section 29 of the *Aboriginal Heritage Act* 2006 a person who does an act that harms or is likely to harm Aboriginal cultural heritage does not commit an offence if -

- (a) the person is acting-
  - (i) in accordance with a cultural heritage permit or approved cultural heritage management plan that applies to the Aboriginal cultural heritage

There is a provision under Section 45 of the *Aboriginal Heritage Act* 2006 which allows for voluntary CHMPs to be prepared even if one is not required.

### **Conclusions for a voluntary cultural heritage management plan**

Significant ground disturbance has occurred throughout the area of cultural heritage sensitivity to the extent that it is unlikely that any natural, undisturbed soil profiles are still present within the area of cultural heritage sensitivity. As a result of this, the potential for the presence of Aboriginal cultural heritage is unlikely; therefore, a voluntary cultural heritage management plan is not advised.

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## Historical heritage

### Are historical permits or consents required?

Under Section 93 of the *Heritage Act 2017* the Executive Director may issue a permit authorising works in relation to a Victorian Heritage Register site and under Section 124 issue a consent authorising works in relation to a Victorian Heritage Inventory site (or an archaeological site which is not recorded in the Victorian Heritage Inventory). Under the Mount Buller Alpine Resort (UNINC) Heritage Overlay, a permit under the *Planning and Environment Act 1987* is required for heritage places specified on their schedule to the overlay.

### Conclusions for historical permits and consents

A review of the Heritage Register, Heritage Inventory and Heritage Overlay did not identify any historic sites within the study area. Therefore, there is no requirement for any statutory approvals under the *Heritage Act 2017* and *Planning and Environment Act 1987*.

### Is a historic survey advised?

All historical archaeological sites in Victoria older than 75 years are protected under the *Heritage Act 2017*, regardless of if they are recorded or not. If a site is uncovered during the activity, under Section 127 of the *Heritage Act 2017* it is an offence to knowingly disturb, damage or excavate a site without obtaining the relevant approval. Therefore, regardless of the requirements for permits or consents, an assessment of the study area must be made to determine the likelihood that historic sites may be present.

There are no historic heritage places listed within the study area and no Heritage Overlays within the study area. The amount of prior ground disturbance has also disturbed top and subsoil layers. It is therefore unlikely that there are unrecorded historical archaeological sites within the study area and a historical archaeological survey is not advised.

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## Conclusions

### *Aboriginal Heritage Act 2006*

#### Requirements

Significant ground disturbance has removed the study area of the cultural sensitivity trigger under the Regulations. Therefore, there is no requirement to prepare a mandatory cultural heritage management plan under the *Aboriginal Heritage Act 2006*.

#### Recommendations

A voluntary cultural heritage management plan is not recommended as the potential for Aboriginal cultural heritage to be present within the study area is very low.

### *Heritage Act 2017*

#### Requirements

There are no historical sites within the study area. Therefore, no Heritage Permits and/or Consents are required under the *Heritage Act 2017*.

Under Section 127 of the *Heritage Act 2017*, if an historical archaeological site is detected during the course of excavation or construction, notification of the discovery must be reported by the person in charge of the excavation or construction to the Executive Director of Heritage as soon as is practicable.

#### Recommendations

The findings of this letter concluded that the potential for unrecorded historical heritage to be present within the study area is very low. Therefore, a historical heritage assessment is not recommended.

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### *Planning and Environment Act 1987*

#### Requirements

There are no requirements to obtain permits for the proposed works under the *Planning and Environment Act 1987*.

#### Recommendations

There are no further recommendations.

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Bowdler S 1981. 'Hunters in the Highlands: Aboriginal Adaptations in the Eastern Australian Uplands', *Archaeology in Oceania*, 16, 2: 99–111.

Cumpston Z, Fletcher M-S, & Head L 2022. *Plants: past, present and future*, Thames & Hudson Australia, Port Melbourne, Victoria.

Edwards A & White K 2017. *Proposed Chalets, 34/36 The Avenue, Mount Buller. Cultural Heritage Management Plan 14793*, Biosis Pty Ltd, Wangaratta, Victoria.

Marshall B, Cusack J, & Webb C 1999. *Mount Buller Alpine Village Aboriginal Heritage Management Study*, A report to the Mount Buller Resort Management Board, Melbourne.

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