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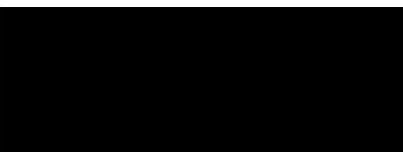
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## APPENDIX E HERITAGE STATEMENT

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Our Ref: 4656.000

3 December 2021



Re: 66kV Line Works Bayview Road, Hastings – Cultural Heritage Statutory Obligations



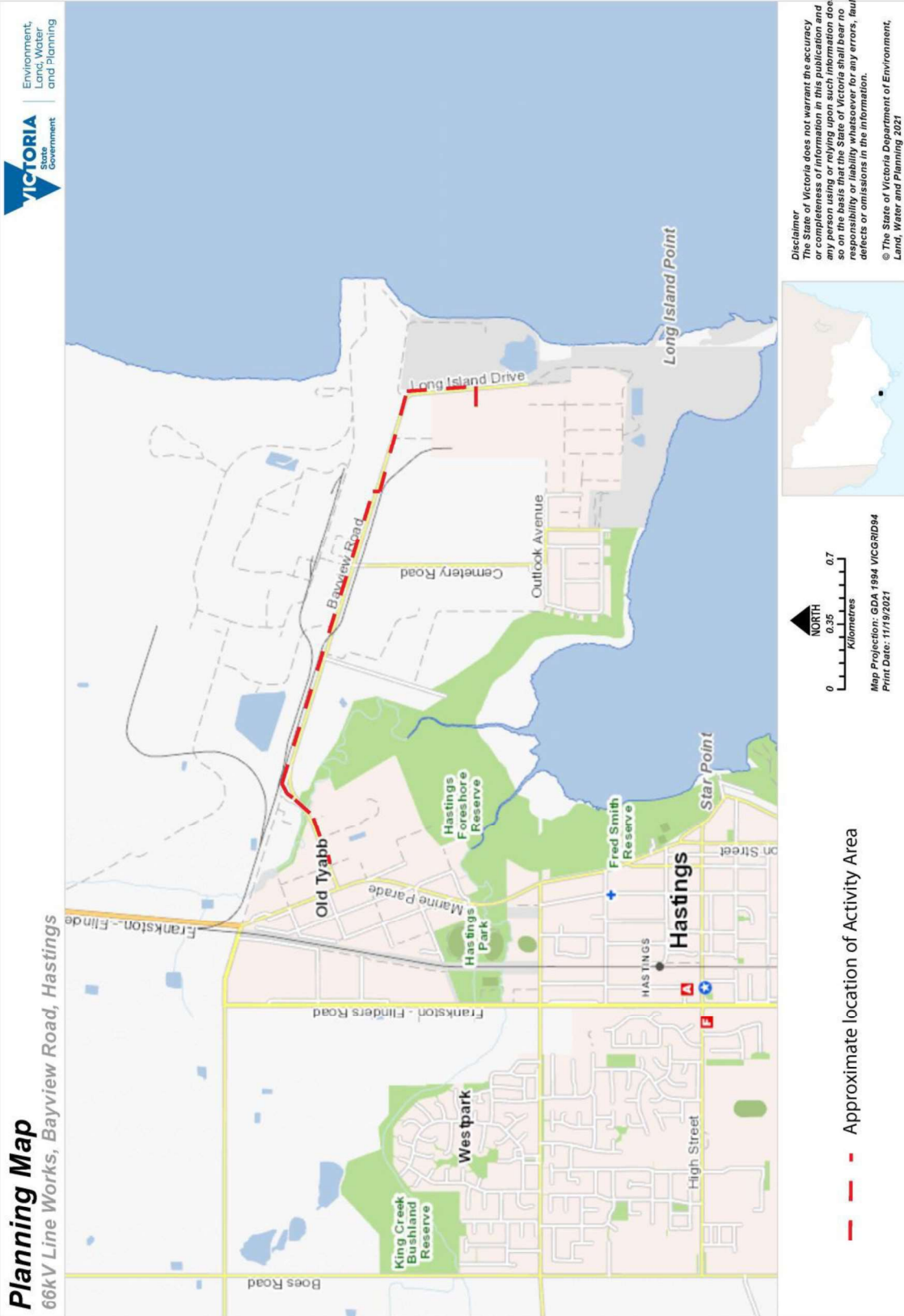
I am writing in response to your request for an investigation into the cultural heritage statutory obligations regarding land situated at Bayview Road, Hastings (**Map 1**). This land is currently proposed for the extension of an existing 66kV powerline. The proposed works will update the existing infrastructure along Bayview Road and extend it further to connect to 1 Long Island Drive (Hastings), and the Hastings Zone Substation.

This summary focuses on the statutory obligations under the *Aboriginal Heritage Act 2006*, the *Aboriginal Heritage Regulations 2018*, the *Native Title Act 1996*, 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 Aboriginal and historical 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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Map 1 Approximate Location of the Activity Area

## 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 (a) (b) (xxvii) (A):

#### 46 Buildings and Works for Specified Purposes

- (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
  - (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 –
      - (A) The works are a linear project that is the construction of an overhead power line with a length exceeding one kilometre for which 10 power poles are erected;

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.

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## Exempt Activities

Division 2 and 5 of the Regulations lists exempt activities. A review shows that *part* of the activity is an exempt activity pursuant to Regulation 46 (3) – Division 5:

### 46 Buildings and Works for Specified Uses

- (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.

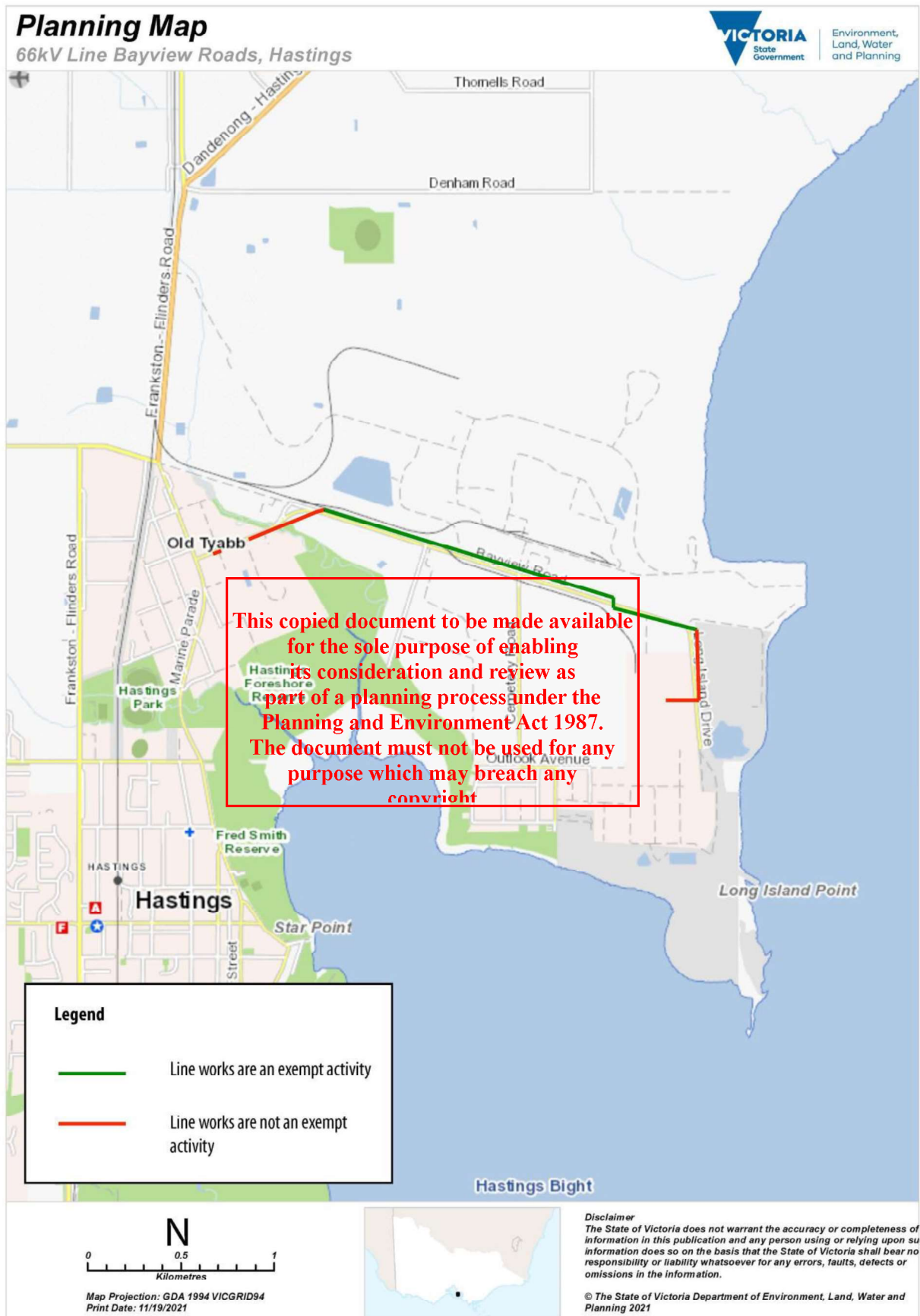
**Map 2** depicts those aspects of the activity area that are exempt pursuant to Regulation 46 (3) – Division 5.

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Map 2 Indicating Regions of the Activity Area Wherein the Proposed Activity is Exempt from a Mandatory CHMP.

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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 Aboriginal Heritage Regulations and ACHRIS shows that *part* of the activity area is an area of cultural heritage sensitivity (**Map 3**) pursuant to Regulations 25, 26, 29, 30, and 31-

### 25 Registered Cultural Heritage Places

- (1) A registered cultural heritage place is an area of cultural heritage sensitivity
- (2) Subject to subregulation (3), land within 50 metres of a registered cultural heritage place is an area of cultural heritage sensitivity
- (3) If part of the land within 50 metres of a registered cultural heritage place has been subject to significant ground disturbance, that part is not an area of cultural heritage sensitivity

### 26 Waterways

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

### 29 Declared Ramsar Wetlands

- (1) Subject to subregulation (2), a declared Ramsar wetland or land within 200 metres of a declared Ramsar wetland is an area of cultural heritage sensitivity
- (2) If part of a declared Ramsar wetland or part of the land within 200 metres of a declared Ramsar wetland has been subject to significant ground disturbance, that part is not an area of cultural heritage sensitivity
- (3) In this regulation, *declared Ramsar wetland* has the same meaning as in the Environment Protection and Biodiversity Conservation of 1999 of the Commonwealth

### 30 Coastal Crown Land

- (1) Subject to subregulation (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 subregulation (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 subregulation (1) has been subject to significant ground disturbance, that part is not 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, if the area of cultural heritage sensitivity has been subject to significant ground disturbance (SGD), then a mandatory CHMP is *not* required (see SGD section below).

## ACHRIS Search

A search of ACHRIS shows that there is **one** registered Aboriginal heritage place within the activity area or within 50m of the activity area boundary. ACHRIS also shows that the activity area has previously been subject to archaeological assessment.

## Relevant Assessments

There have been five previous assessments relevant to the project area.

**CHMP 13785 (Jones 2006):** CHMP 13785 was commissioned by Puma Energy Holdings Pty Ltd. for the construction of a fuel import pipeline and terminal. The activity area comprises roadways and road reserves between 51 Bayview Road, Hastings, and the southern extent of Long Island Drive, Hastings. A pedestrian survey was carried out, resulting in the identification of two landforms within the activity area. These were a small rise and an alluvial floodplain. Two 1m x 1m test pits were excavated, in addition to a further 19 shovel test pits (40cm x 40cm). No Aboriginal cultural heritage was identified during the CHMP.

**CHMP 12880 (Hislop 2014):** CHMP 12880 was prepared for the construction of multiple 15mL flammable liquid storage tanks and associated plant works. It investigated an area to the immediate south-east of Barclay Crescent, and Barclay Crescent. A standard assessment was undertaken throughout the extent of the activity area. Two rises present within the activity area were identified as having archaeological potential, but no Aboriginal cultural heritage was identified. One 1m x 1m test pit, 14 STPs, and 14 backhoe transects were excavated. No Aboriginal cultural heritage was recorded, and no specific cultural heritage management conditions were stipulated.

**CHMP 12826 (Mathews et al. 2015):** The Esso Pipeline Replacement Project (Western Section) was conducted in preparation for the installation of a replacement pipelines to transport crude oil and condensate ~78.4km between Esso's facilities at Longford and Long Island Point. Vehicular and pedestrian survey was undertaken, although no Aboriginal cultural heritage was identified. Thirteen 1m<sup>2</sup> test pits, four 0.5m<sup>2</sup> test pits, and 608 shovel test pits were excavated. Surveying identified 50 previously unrecorded stone artefacts, which were interpreted as being part of VAHR 7921-1533. Subsurface investigations resulted in the identification of 116 previously unrecorded stone artefacts. Twenty-nine artefacts were found to be components of recorded Aboriginal places, with two additional LDADs (VAHR 7921-1529 and VAHR 8021-0395) being registered. A summary of relevant Aboriginal places and the artefacts pertaining to them (as identified in CHMP 12826) is provided below in **Table 1**.

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Map 3 Areas of Cultural Heritage Sensitivity in the Vicinity of the Activity Area



**CHMP 10200 (Wheeler et al. 2009):** This CHMP was prepared for subdivision of 532ha of land approximately 2km north of Hastings. The activity area was divided into four survey regions. Two surface artefact scatters were identified (BS-AS1 and BS-AS2). Nine 1m<sup>2</sup> test pits, and 41 0.4m<sup>2</sup> shovel test pits were excavated allowing for the identification of another two stone artefacts. Raw materials included silcrete, mudstone, quartz, quartzite, and an unidentified material.

The site was registered as VAHR 7921-0036-2, and a salvage of the activity area was carried out. It was recommended that any significant ground disturbance in the area make efforts to avoid Aboriginal cultural material (or minimise damage where this is not possible). A salvage of the area was also suggested; removed artefacts were reburied in a non-disclosed Keeping Place within the activity area. It was determined that the place had a low scientific significance and high public significance.

**CHMP 15678 (Verduci and Holzheimer 2019):** CHMP 15678 was prepared for the construction of a hydrogen liquefaction and loading terminal at 28A Bayview Road, Hastings. The CHMP involved a pedestrian survey over an effective area of 1,242.54m<sup>2</sup> which identified no Aboriginal cultural heritage. One 1m x 1m test pit was excavated in addition to twenty-two 50cm x 50cm test pits. No Aboriginal cultural heritage was identified during excavation of the project activity area and no specific management conditions were forthcoming.

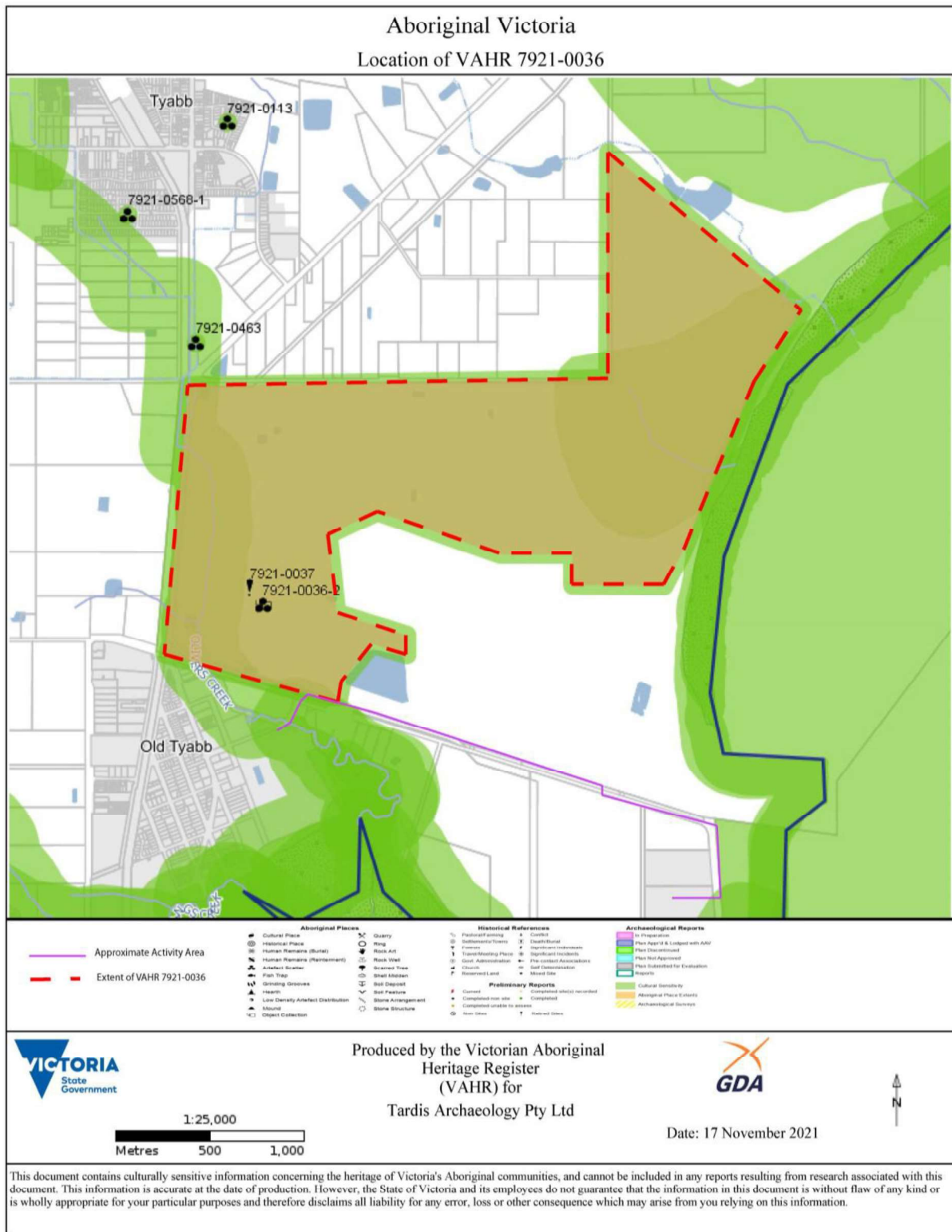
### Aboriginal Places

There is one Aboriginal Place in the activity area.

**VAHR 7921-0036-2: Wheeler et al. (2009)** identified VAHR 7921-0036-2 (**Map 4**), a low-density artefact scatter dispersed across the landscape in both surface and sub-surface contexts. The maximum artefact density recorded was 17/m<sup>2</sup>, with cultural material appearing up to 600mm below surface. CHMP 12826 (**Mathews et al. 2015**) subsequently identified an additional artefact within the northern extent of VAHR 7921-0036-2.

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Map 4 Location and extent of VAHR 7921-0036-2 relative to the Activity Area.

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## Significant Ground Disturbance (SGD)

If the activity is a high impact activity and part of the activity area is a legislated area of cultural heritage sensitivity, then a mandatory CHMP is required. However, if the entire area of cultural heritage sensitivity in the activity area (other than a cave or an Aboriginal place) has been subject to SGD, then it is not an area of cultural heritage sensitivity. This means that a mandatory CHMP is *not* required. This is because the condition relation to the area of cultural heritage sensitivity in Regulation 7 has not been met (see CHMP Triggers above).

SGD is defined in Regulation 5 as follows:

*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;

Topsoil is not defined in the Regulations and has its ordinary meaning. It is not a geological term, but a common name used in a gardening context. The definition and reference for 'topsoil' used here is as follows (Murphy & Murphy 2000: 70-82):

A1 horizon is the surface soil and is generally referred to as **topsoil**. It has an accumulation of organic matter, a darker colour and maximum biological activity relative to other horizons. This is usually the most useful part of the soil for plant growth and re-vegetation. It is typically from 5 to 30cm thick.

The *Practice Note Significant Ground Disturbance* published by Aboriginal Victoria states that the burden of proving SGD is the responsibility of the applicant. It outlines four levels of investigation:

- Level 1: Common knowledge
- Level 2: Publicly available records
- Level 3: Further information from the applicant
- Level 4: Expert advice or opinion

To determine whether or not SGD has occurred, the following investigations have been conducted:

1. Land use history.

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## Land Use History

Insert land use history here. Sources of information may include:

- Publically available information (eg, historical information, historic aerals, Google Earth images, images and maps at State Library of Victoria or Trove online)
- Information from historic archaeological reports at Heritage Victoria.
- Information from historic sites in or nearby the activity area that are listed on the Victorian Heritage Database (VHD).
- Books in the Tardis library
- Information from the local historical society
- Information and photos from the client.

The land use history has identified the following episodes of ground disturbance:

**1845:** First non-Aboriginal settlement of the Hastings area. The earliest European occupant was Ms Martha King, who instituted the Bunguyan pastoral run in Old Tyabb.

**1939:** Historical aerial imagery obtained from ICSM indicates that Long Island Drive was not established as of 1939. However, pastoral development of the area had been occurring, and that nearby roads within the region had been established (**Figure 1**). This includes Bayview Road.



**Figure 1** Aerial imagery obtained from ICSM (2021) depicting the absence of Long Island Drive and presence of Bayview Road from 1939 (Bayview Road marked in red).

Images of the region taken further to the west indicate that Barclay Avenue was also not in use at this time (**Figure 2**).



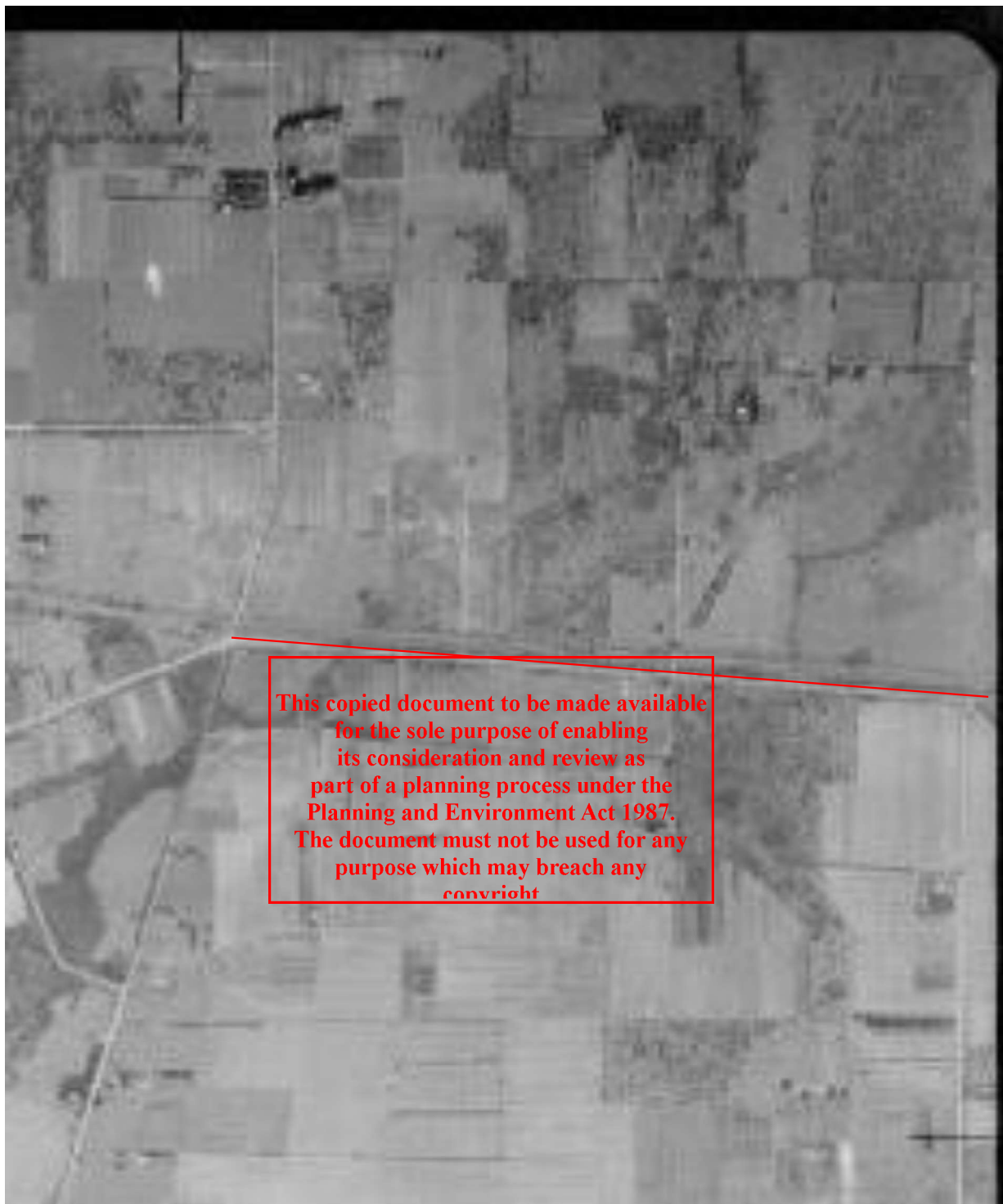


Figure 2 Aerial imagery obtained from ICSM (2021) indicating that the western extent of Bayview Road had been established in 1939, but that no evidence of Barclay Avenue was present (Bayview Road marked in red).

1957: Historical photographs listed on Trove evidence the existence of Main South Road and adjacent buildings (including Kuchel's Royal Hotel) (Figure 3).

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Figure 3 Historical photograph of Main South Road, evidencing its construction prior to this date.

**1985:** Correspondence with the Sponsor has confirmed that the previously installed powerline was constructed in 1985. Original powerlines ran at 22kV and extended west of the activity area at its westernmost extent, and south of the activity area at its southernmost extent. United Energy is currently in possession of the project records relating to this powerline.

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**1994:** Traffic lights are installed on the corner of Barclay Avenue and Bayview Road, according to the 1996 Hastings Port Industrial Area Land Use Structure Plan.

**1995:** Completion of a 21-hectare storage facility and ancillary petroleum pipeline (extending to the Crib Point Jetty) on Barclay Avenue by Whitemark Pty Ltd, according to the 1996 Port Industrial Area Land Use Structure Plan. A map detailing the precise location of either of these features is not provided in the 1996 Port Industrial Area Land Use Structure Plan.

**2002:** The purchase of the Western Port BlueScope Steel property by BHP Group Ltd (ABN 49 004 028 077), located on the northern side of Bayview Side and to the east of Kippes Lane is evidenced within the VHD. The property was downsized in 2011 following a recession in the stock price of BHP Group Ltd.

**2009:** Aerial imagery obtained from Google Earth Pro suggests that Long Island Drive had been constructed by 2009. This imagery (**Figure 3**) also depicts buildings and earthworks to the west of Long Island Drive and the activity area.

**2014:** The BlueScope Steel private access rail is listed as having been constructed in the 2014 Port of Hastings Development Project – Land Use Transport Corridor running in a west-east orientation along Bayview Road.

**2015 - 2021:** Aerial imagery obtained from Google Earth Pro depicts the ongoing existence of Long Island Drive, however, does not suggest any further ground disturbance in the region surrounding the road or within the activity area.

### **Has Significant Ground Disturbance Occurred?**

Several Victorian Civil and Administrative Tribunal (VCAT) hearings have addressed the issue of SGD. For example, in relation to subdivision, the Azzure decision (VCAT 2009) determined that if there was no 'smoking gun' evidence, SGD could reasonably be determined through comparative and contextual information, including urban context; timing of subdivision; the shape, size, topography and configuration of lots in the subdivision; the development of buildings on the site and the pattern of use over time; the provision of underground drainage and services; the style and configuration of houses and gardens; and the lack of remnant vegetation.

The above investigation has shown that SGD has occurred in the activity area for the following reasons:

1. The land use history has demonstrated that Bayview Road was in use from at least 1939, requiring SGD. Ancillary buildings had been constructed along Bayview Road prior to this date. At the intersection of Bayview Road and Barclay Avenue, traffic lights were later added in 1994 which also would have required SGD to have occurred;
2. A 21-hectare storage facility was constructed along Barclay Avenue in 1995, which likely would have required SGD to have occurred;
3. Supporting infrastructure deemed necessary by BlueScope Steel has been installed along the north side of Bayview Road since 2002; this has included the construction of an access railway along Bayview Road.
4. Previously installed powerlines were erected in 1985, requiring SGD to have occurred.
5. Aerial imagery obtained from Google Earth Pro and ICSM indicates that Long Island Drive was constructed between 1985 and 2009. SGD was likely necessary for its construction. This imagery also suggests ground disturbance to the left of Long Island Drive from earthworks. However, the precise nature of the works and their extent cannot be established.

It is therefore reasonable to extrapolate from the evidence presented above that ground disturbance has occurred across the majority activity area and this disturbance has been caused by machinery and satisfies the definition of SGD in Regulation 5.

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

The above investigation demonstrates that the **66kV Line Works** at **Bayview Road, Hastings** does *not* require the preparation of a mandatory CHMP as although the activity is a high impact activity pursuant to Regulation 46 (1)(a)(b)(xxvii)(A), **no** part of activity area is a legislated area of cultural heritage sensitivity. Areas highlighted in **Map 2** are exempt pursuant to Regulation 15(3); a mandatory CHMP is not required for these activities.

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.

The Bunurong Land Council Aboriginal Corporation (BLCAC) are currently the Registered Aboriginal Party (RAP) for the activity area and must be consulted during the preparation of any CHMP.

## 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 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 Victorian 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 Mornington Peninsula 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.

## 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 the Mornington Peninsula 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 current Heritage Overlays.

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## 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 2 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)(A)  Direct replacement of (previously installed) 22kV lines is an exempt activity pursuant to Regulation 15(a).
	<i>Is part of the activity area a legislated area of cultural heritage sensitivity?</i>	Yes, pursuant to Regulations 25, 26, 29, 30, and 31.  Previous significant ground disturbance has occurred across the majority of the activity area.
	<i>Is a mandatory CHMP required?</i>	No
Historic	<i>Are there any Victorian Heritage Register (VHR) places within or immediately abutting the activity area?</i>	No
	<i>Are there any Mornington Peninsula 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 Mornington Peninsula 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,



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