

Julian Dunn
Project Archaeologist
Andrew Long and Associates
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Attn: Alicia Burnett
Viewbank Solar Farm
Cultural Heritage Assessment

1 Introduction

The purpose of this letter is to assess whether the construction of a solar farm near Girgarre East, Victoria, will require the preparation of a mandatory cultural heritage management plan (CHMP), as may be required by the *Aboriginal Heritage Act 2017* (Vic) (hereafter 'the Act') and the *Aboriginal Heritage Regulations 2018* (Vic) (hereafter 'the Regulations').

The activity area is situated within the City of Greater Shepparton and therefore subject to the Greater Shepparton Planning Scheme. The activity area is also situated within land that is subject to the Farming Zone (VPP 35.07) overlay, and Schedule to the Farming Zone (LPP 35.07).

The activity area is approximately 218 ha and is therefore considered a large activity for the purpose of the Regulations.



PO Box 2471 Fitzroy BC
Victoria 3065 Australia

Andrew Long + Associates Pty Ltd
ACN 131 713 409
ABN 86 131 713 409

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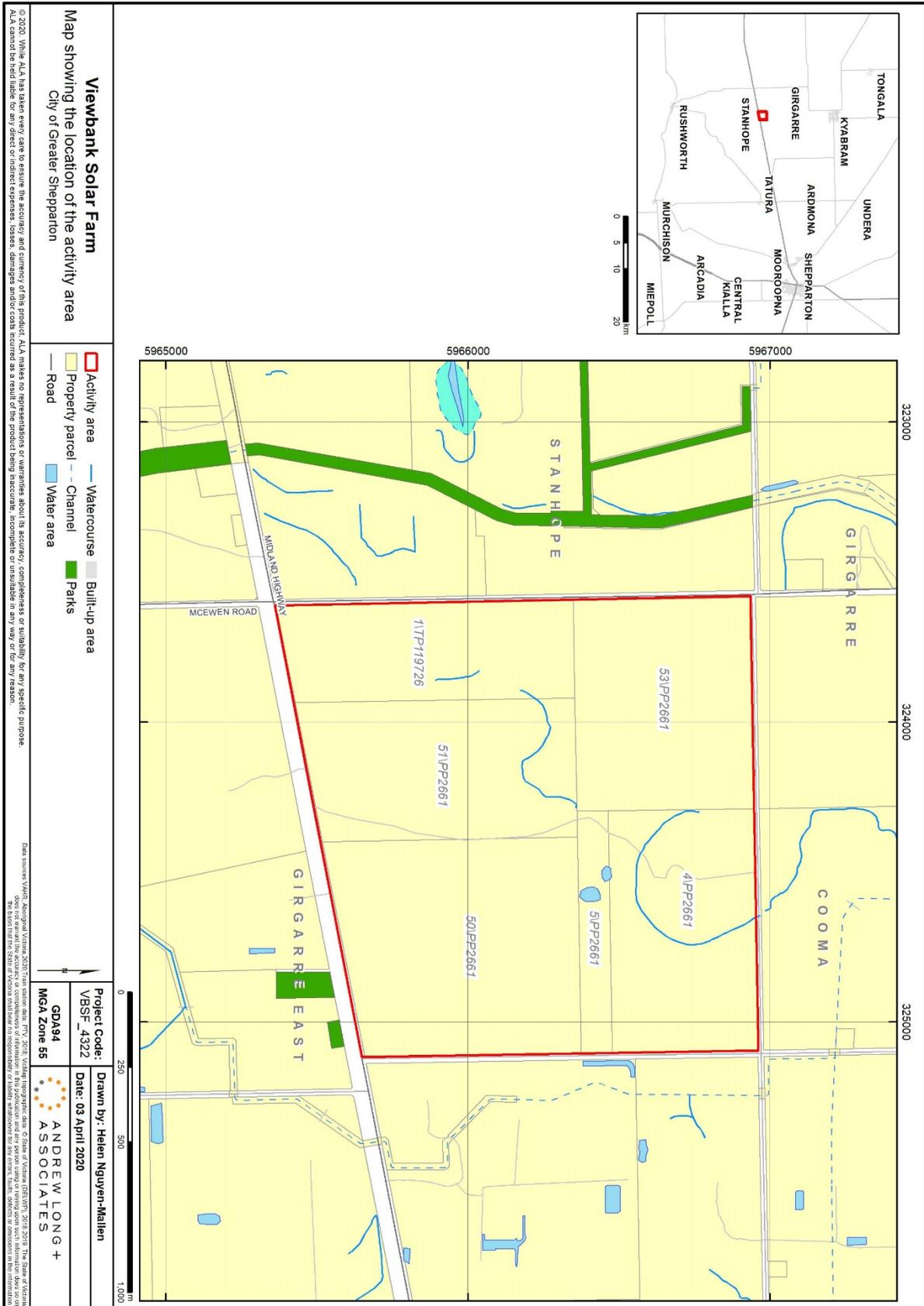


Figure 1: Map of the location of the activity area

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1.1 Resources

In preparation of this report the following resources have been referred to:

- Aboriginal Cultural Heritage Register and Information System (ACHRIS)¹
- VicPlan²

While no information detailing the precise nature and extent of the proposed activity has been provided by the client, a map delineating the expected property titles in which the activity may take place has been provided. The respective map was provided to us on the 9th of December 2019.

1.2 Aboriginal Stakeholders

It is important to note that 'cultural heritage significance' as defined in the Act 2006 includes '(a) archaeological, anthropological, contemporary, historical, scientific, social or spiritual significance', and '(b) significance in accordance with Aboriginal tradition'. All Aboriginal heritage sites are protected equally under this legislation, irrespective of significance, and consultants and development proponents are required to seek the views of Aboriginal heritage stakeholders (or Registered Aboriginal Parties [RAPs], as defined in the Act) regarding whether Aboriginal heritage sites may be disturbed in accordance with that significance.

At the time of this assessment, the Yorta Yorta National Aboriginal Corporation (YYNAC) are the appointed RAP for land which includes the Viewbank Solar Farm activity area. As such, the YYNAC are responsible for evaluating a CHMP for the proposed activity should a CHMP be required.

2 When is a CHMP required?

Section 46 of the Act outlines four instances in which a mandatory CHMP is required. Those instances are:

- a) the Regulations require the preparation of a CHMP for a planned activity;
- b) the Minister directs the preparation of a CHMP for the activity under Section 48 of the Act;
- c) a CHMP is required if an Environment Effects Statement (EES), impact management plan or Comprehensive Impact Statement (CIS) must be prepared (Section 49 and Section 49A); or
- d) the Minister certifies, via a Preliminary Aboriginal Heritage Test (PAHT), that a CHMP is required.

It is unlikely, in the current instance, that the Minister will require a CHMP to be prepared, and similarly an EES or CIS will not be required. As such, these pathways are not considered here. A PAHT should only be undertaken where either the Act or the Regulations are not clear as to whether the proposed works would require a CHMP and, as such, is not considered here.

Section 47 of the Act states:

47. Regulations may require plan

¹ <https://achris.vic.gov.au/#/dashboard> - accessed 3 April 2020.

² <https://www.vic.gov.au/vicplan/> - accessed 3 April 2020.

The regulations may specify the circumstance in which a cultural heritage management plan is required for an activity or class of activity.

Regulation 7 of the Regulations thus specifies:

A cultural heritage management plan 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.*

These matters are each addressed in detail below.

3 Does the activity area include an area of cultural heritage sensitivity?

Division 3 of the Regulations defines areas of cultural heritage sensitivity for the purpose of establishing whether a CHMP is required. In the current instance there are two relevant regulations that warrant further consideration. These regulations are:

- Regulation 25: Registered cultural heritage places
- Regulation 27: Prior Waterways

The relevance of these regulations is considered below.

3.1 Registered cultural heritage places

Regulation 25 is as follows:

- 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.*

In order to establish whether the activity area contains, or is near to, any registered cultural heritage places a search of the Aboriginal Cultural Heritage Register and Information System was undertaken on 3 April 2020 (Access No. 8052). As is evident in Figure 2, there are no registered Aboriginal cultural heritage places within 50 m of the activity area. Therefore, the activity area does not contain an area of cultural heritage sensitivity associated with any registered cultural heritage places. However, this search did reveal that there are areas of cultural heritage sensitivity located within the activity area that are associated with a prior waterway (see below).

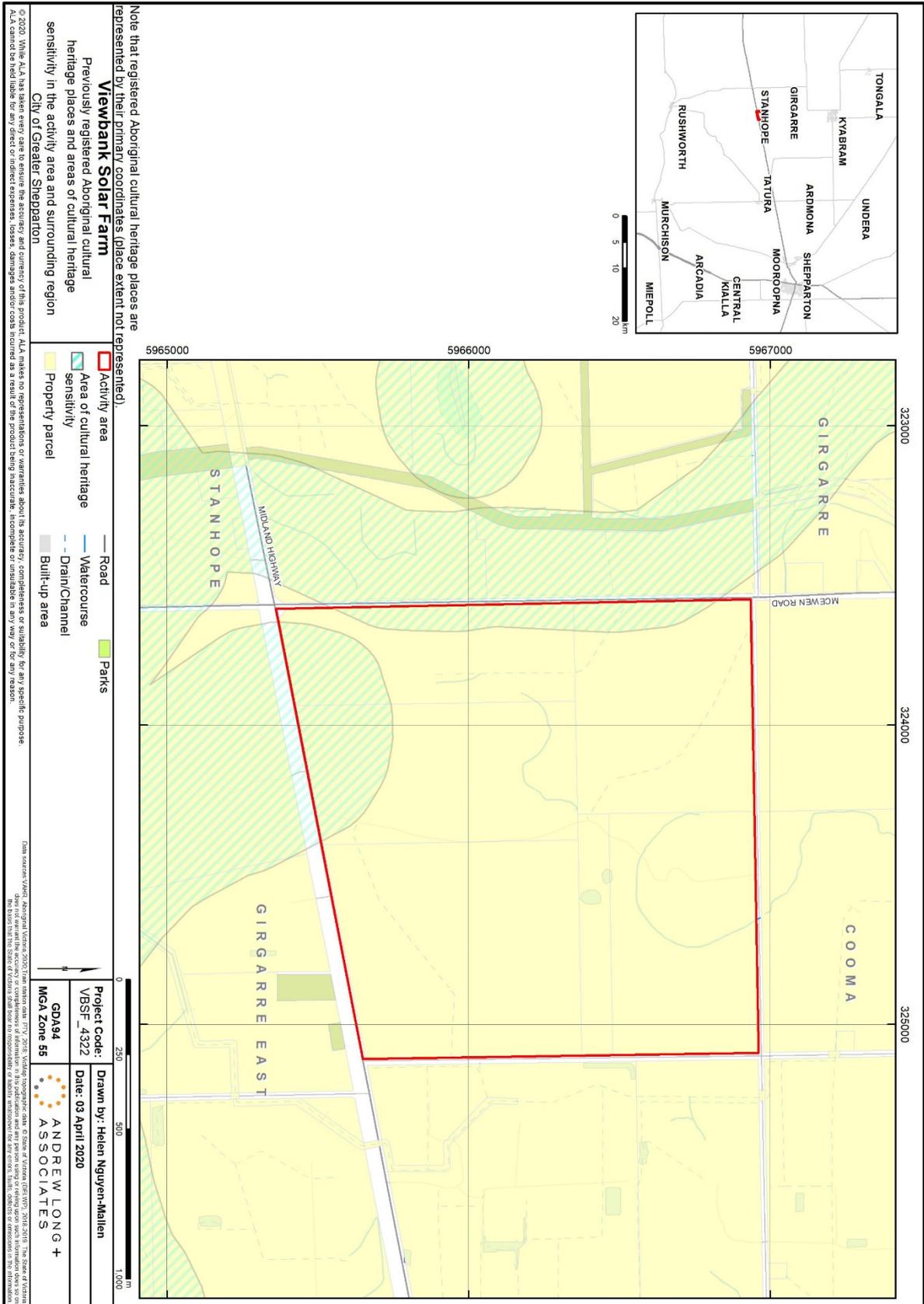


Figure 2: Map of areas of cultural heritage sensitivity and registered Aboriginal cultural heritage places within the vicinity of the activity area

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3.2 Prior waterways

Regulation 27 of the Regulations is as follows:

- 1) Subject to subregulation (2), a prior waterway or land within 200 metres of a prior waterway is an area of cultural heritage sensitivity.
- 2) If part of a prior waterway or part of the land within 200 metres of a prior waterway has been subject to significant ground disturbance, that part is not an area of cultural heritage significance.

Regulation 5 of the Regulations defines a 'prior waterway' as follows:

prior waterway means land which is identified as—

- (a) a "leveed stream course" on Geological Survey of Victoria map sheet SJ55-2 entitled "Wangaratta" (dated 1974); or
- (b) a "prior stream" on Geological Survey of Victoria map sheet SJ55-1 entitled "Bendigo" (third edition, 2001); or
- (c) a "leveed stream" on Geological Survey of Victoria map sheets SI54-4 entitled "St Arnaud" (dated 1976) and SI54-16 entitled "Swan Hill" (dated 1974); or
- (d) a "leveed stream trace" on Geological Survey of Victoria map sheet SI55-13 entitled "Deniliquin" (dated 1974);

In this instance, the relevant map depicting prior waterways is the Geological Survey of Victoria map sheet SJ55-1 entitled "Bendigo" (third edition, 2001). As is evident in Figure 3 there are prior waterways within the activity area. As such, the activity area contains an area of cultural heritage sensitivity associated with a prior waterway.

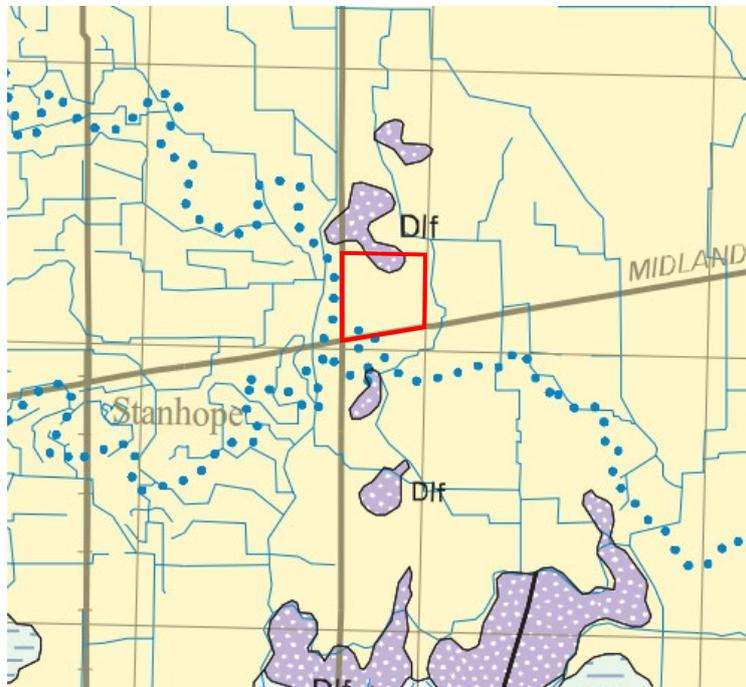


Figure 3: Geological Survey of Victoria map sheet SJ55-1 extract with the activity area (red polygon) overlain and location of prior waterways (dotted blue line) within the activity area depicted

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Regulation 5 of the Regulations defines 'significant ground disturbance' 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;

Contemporary aerial imagery of the activity area (Figure 4) indicates a lack of substantial historical development and suggests that the activity area has likely only ever been subject to standard farming practices. As such there is no evidence to suggest that the areas of cultural heritage significance within the activity area have ever been subject to significant ground disturbance.



Figure 4: Google Earth imagery of the activity area (red polygon), March 25, 2020

3.3 Conclusion

As has been demonstrated, the Viewbank solar farm activity area contains a prior waterway, and therefore includes an area of cultural heritage sensitivity (r.27), as might be defined in Part 2, Division 3, of the Regulations.

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4 Are the proposed works a high impact activity

Despite no detailed plans having been provided regarding the proposed development, which is the construction of a solar farm (a renewable energy facility for the purposes of the VPP) in the activity area, it is clear that those works are a high impact activity for the purposes of the Regulations.

Part 2, Division 5 of the Regulations lists activities which are considered to be high impact activities. Regulation 46 of the Regulation is as follows:

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;*
 - ...
 - xxx. *Land used to generate electricity, including a wind energy facility.*
- 2) *The terms used in subregulation (1)(b) have the same meaning as in the VPP.*
- 3) *Despite subregulation (1), the construction or carrying out 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.*

As the proposed activity, being the construction of a “renewable energy facility” for the purpose of generating electricity, and may be associated with utility installations, and in order to undertake the activity works will result in significant ground disturbance within the activity area, it is clear that, at a minimum, the proposed works are a high impact activity in accordance with r.46(1)(b)(xxvii) and r.46(1)(b)(xxx) of the Regulations.

Regulation 58 of the Regulations also states that “the use of land for a purpose specified in regulation 46(1)(b) is a high impact activity if a statutory authorisation is required to change the use of the land for that purpose. The activity area is situated entirely within land subject to the Farming Zone (VPP 35.07) overlay, and in accordance with the Greater Shepparton Planning Scheme, a permit will be required for the construction of both a “renewable energy facility” and any associated utilities. As such, the proposed activity is a high impact activity in accordance with r.58 of the Regulations.

By way of review, in accordance with r.46(1)(b)(xxvii), r.46(1)(b)(xxx) and r. 58(1), the proposed activity is a high impact activity.

5 Is a CHMP required

On the basis of the prior discussion, it has been established that the activity area contains a prior waterway, and therefore includes an area of cultural heritage sensitivity (r.27). Further to which, the

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proposed activity, being the construction of a solar farm, is a high impact activity (r.46 [1][b][xxvii]). Therefore, in accordance with r.7 of the Regulations, a mandatory CHMP is required in this instance.

6 Recommendations

As has been established, in accordance with r.7 of the Regulations a mandatory CHMP is required for the proposed activity.

The scope of works for the preparation of a CHMP generally includes the following:

1. Notification and Consultation – a notification form will be submitted to the RAP (if present) and AV of your intention to prepare a CHMP, followed up by preliminary consultation with relevant Aboriginal stakeholder groups.
2. Desktop Assessment – an assessment of previous studies will be undertaken to verify the existing conditions, review any subsequent changes and develop a provisional methodology to evaluate the activity area.
3. Standard Assessment (Field Survey) – as per regulation 62 a standard assessment is required if the results of a desktop assessment show that it is reasonably possible that Aboriginal cultural heritage is present in the activity area. If necessary, the activity area will be the subject of a field survey in co-operation with representatives of the relevant RAP(s), RAP applicant(s) or Traditional Owner Group(s) to meet the requirements of a Standard Assessment.
4. Complex Assessment (Test Excavation) – as per regulation 64, a complex assessment is required if the desktop assessment or standard assessment shows that Aboriginal cultural heritage is, or is likely to be, present in the activity area; and it is not possible to identify the extent, nature and significance of the Aboriginal cultural heritage in the activity area unless a complex assessment is carried out. If necessary, a testing programme may be undertaken to provide an indicator of the presence/absence of archaeological heritage at priority locations. This may include shovel test pits, sample controlled hand excavation (cf. 1m² test pits), mechanical excavation or any other works that are determined to be a condition of proceeding to the approval of the CHMP. Representatives of the relevant RAP(s), RAP applicant(s) or Traditional Owner Group(s) will be involved in this process. This provision allows for at least one 1x1m controlled test excavation (as required to establish stratigraphy) and shovel test pits in stratified transects at appropriate spacing's across priority zones of the activity area, as identified through desktop, preliminary field studies and in consultation with the RAP.
5. CHMP Reporting – a CHMP will be prepared according to the *Aboriginal Heritage Regulations 2018 (Vic)*, the AV approved form and the Guide to Preparing Aboriginal CHMP. This assumes that an in-principle agreement for the management of Aboriginal cultural heritage places can be reached prior to lodgement of the CHMP.

7 Disclaimer

This report does not mean to imply that there are no Aboriginal cultural heritage places within the activity area or are not at risk of impact from the proponent of any future development of the land. The minimum reporting requirements may be met by implementing the attached procedure during any ground disturbing works, which is compliant with the provisions of the Act.

This report does not constitute a CHMP as defined in Division 1 of the Act.

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8 References

Legislation

Aboriginal Heritage Act 2006 (Vic)

Aboriginal Heritage Regulations 2018 (Vic)

Geographic Place Names Act 1998 (Vic)

State of Victoria. 2016. Naming rules for places in Victoria. Statutory requirements for naming roads, features and localities 2016. Department of Environment, Land, Water and Planning.

Victorian Planning Provisions 2018 (Vic)

9 Appendix 1

Statutory Regulations

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ABORIGINAL CULTURAL HERITAGE LEGISLATION

The Aboriginal Heritage Act 2006

It should be noted that new Victorian legislation for Aboriginal heritage protection (the *Aboriginal Heritage Act 2006*) commenced operation on May 28th 2007.

This act provides blanket protection for all Aboriginal heritage sites, places or items in Victoria.

The main aspects of the Act in relation to the development process are as follows:

- An *Aboriginal Heritage Council* (AHC) has been appointed by the Minister, Aboriginal Affairs Victoria, made up of 11 Victorian Aboriginal people.
- Aboriginal community groups with traditional interests in cultural heritage are to apply to the AHC for registration as a *Registered Aboriginal Party* (RAP). RAPs will have the role of endorsing *Cultural Heritage Management Plans* (CHMP) within a given area of interest. There may be two or more RAPs for an area, provided it does not hinder the operation of the legislation.
- Under Section 48, a developer ('sponsor') may be required to submit a CHMP before the issue of a statutory authority by local government or other agency ('decision maker'). A CHMP must be registered with the Secretary, Victorian Communities (AAV), and all relevant RAPs notified in writing. If an RAP does not respond, AAV will act in lieu. A CHMP will contain details of research, field evaluation, consultation and management provisions in regard to the Aboriginal heritage of an area at risk from a development. A *Cultural Heritage Advisor* must be appointed to assist in the preparation of a CHMP. It is the role of an RAP to approve a CHMP if it meets prescribed standards.
- A CHMP will not be considered approved unless it has been approved by all relevant RAPs.

The regulations accompanying the Act specify when a CHMP will be required by law, and prescribe minimum standards for the preparation of a CHMP (Section 53). The approved form for CHMPs specifies the format in which a CHMP should be prepared by a sponsor in order to comply with the Act and the Regulations, and is an approved form under section 190 of the Act. The regulations have not been finalised to date, but their draft content has not been issued to stakeholders.

10 Appendix 2

SUGGESTED PROCEDURE

IN THE EVENT

AN ABORIGINAL HERITAGE PLACE

IS IDENTIFIED

DURING CONSTRUCTION

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A. Management of Aboriginal Cultural Heritage Found During Works

If Aboriginal places or objects are found during works, the following steps must be applied:

- The person who identified the find will immediately notify the person in charge of the activity.
- The person in charge of the activity must then suspend any relevant works at the location of the discovery and within 5 m of the relevant site extent and isolate the find via the installation of safety webbing, or other suitable barrier and the material to remain *in situ*.
- Works may continue outside of the 5 m barrier.
- The person in charge of works must notify the Heritage Advisor (HA) and the Secretary (AV) of the find within 24 hours of the discovery.
- The HA must notify the RAP(s) or other agreed Aboriginal stakeholder(s) within 24 hours of the discovery and invite RAP(s) or other agreed Aboriginal stakeholder(s) to inspect the find.
- Within 24 hours of notification, a HA is to attend the site and evaluate the find to determine if it is part of an already known site or should be registered as a new site and to update and/or complete site records as appropriate and advise on possible management strategies.
- Enable RAP(s) or other agreed Aboriginal stakeholder(s) to inspect site within 24 hours of notification and remove/rebury any cultural heritage material found.
- Within a period not exceeding three (3) working days the Sponsor, in consultation with the HA, RAP or other agreed Aboriginal stakeholder, shall, if necessary, apply for a Cultural Heritage Permit (CHP) in accordance with Section 36 of the *Aboriginal Heritage Act 2006*.
- If a CHP application is lodged, works may only recommence within the area of exclusion following the issue of a CHP and compliance with any conditions.
 - When the appropriate protective measures have been taken;
 - Where the relevant Aboriginal cultural heritage records have been updated and/or completed;

In the case of the discovery of human remains, separate procedures relating to the discovery of human skeletal remains must be adhered to (see below).

B. Custody and Management of Aboriginal Cultural Heritage Recovered

- Any Aboriginal cultural heritage recovered or salvaged from the activity area remains the property of the RAP(s) or other agreed Aboriginal stakeholder(s). Any such recovery or salvage will be agreed to and overseen by a RAP(s) or other agreed Aboriginal stakeholder representative(s). In any such instance it will be the responsibility of the Heritage Advisor to:
 - Catalogue the Aboriginal cultural heritage;
 - Label and package the Aboriginal cultural heritage with reference to provenance; and
 - With the RAP(s) or other agreed Aboriginal stakeholder(s), arrange storage of the Aboriginal cultural heritage in a secure location together with copies of the catalogue and assessment documentation.

C. The Management of the Discovery of Human Remains

The following steps must be taken if any suspected human remains are found in the activity area:

1. Discovery:

- If suspected human remains are discovered, all activity in the vicinity must ***cease immediately*** to ensure minimal damage is caused to the remains; and,

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- The remains must be left in place, and **protected** from harm or damage.
2. Notification:
 - Once suspected human skeletal remains have been found, the Coroner's Office and the Victoria Police must be notified immediately;
 - If there is reasonable grounds to believe the remains are Aboriginal Ancestral Remains, the Coronial Admissions and Enquiries hotline must be immediately notified on 1300 888 544; and
 - All details of the location and nature of the human remains must be provided to the relevant authorities.
 - If it is confirmed by these authorities that the discovered remains are Aboriginal skeletal remains, the person responsible for the activity must report the existence of the human remains to the Victorian Aboriginal Heritage Council in accordance with s.17 of the *Aboriginal Heritage Act 2006*.
 3. Impact Mitigation or Salvage:
 - The Victorian Aboriginal Heritage Council, after taking reasonable steps to consult with any Aboriginal person or body with an interest in the Aboriginal Ancestral Remains, will determine the appropriate course of action as required by s.18(2)(b) of the Act.
 - An appropriate impact mitigation or salvage strategy as determined by the Victorian Aboriginal Heritage Council must be implemented by the Sponsor or Sponsor's delegate.
 4. Curation and further analysis:
 - The treatment of salvaged Aboriginal Ancestral Remains must be in accordance with the direction of the Secretary.
 5. Reburial:
 - Any reburial site(s) must be fully documented by an experienced and qualified archaeologist, clearly marked and all details provided to AV;

Appropriate management measures must be implemented to ensure that the remains are not disturbed in the future.