

Attn: Ben Corley
Fulham Solar Energy Facility
Cultural Heritage Assessment

1 Introduction

The purpose of this letter is to assess whether the construction of a solar energy facility and associated grid connection in Fulham, Victoria by Solis Renewable Energy Pty Ltd will require the preparation of a mandatory cultural heritage management plan (CHMP), as may be required by the *Aboriginal Heritage Act 2006* (Vic) (hereafter 'the Act') and the *Aboriginal Heritage Regulations 2018* (Vic) (hereafter 'the Regulations'). While the construction footprint of the proposed solar farm and associated facilities will not impact on the entirety of the indicated activity area, this assessment assumes that the entirety of each property parcel subject to the construction of the proposed solar farm is part of the activity area for the purpose of establishing whether a CHMP is required. The property parcels which will be included within the activity area are:

- 2\LP204862
- 2\PS323461
- 25~B\PP3913
- Road reserve along Hopkins road to Lower Settlement Road.

The solar energy facility and associated grid connection will be situated in Fulham within the Shire of Wellington and therefore is subject to the Wellington Planning Scheme (Figure 1). The activity area is situated within land that is subject to the Farming Zone (VPP 35.07) overlay, and Schedule to the Farming Zone (Clause 35.07).

The activity area is approximately 160Ha. As such, the activity area is considered a large activity for the purpose of the Regulations.

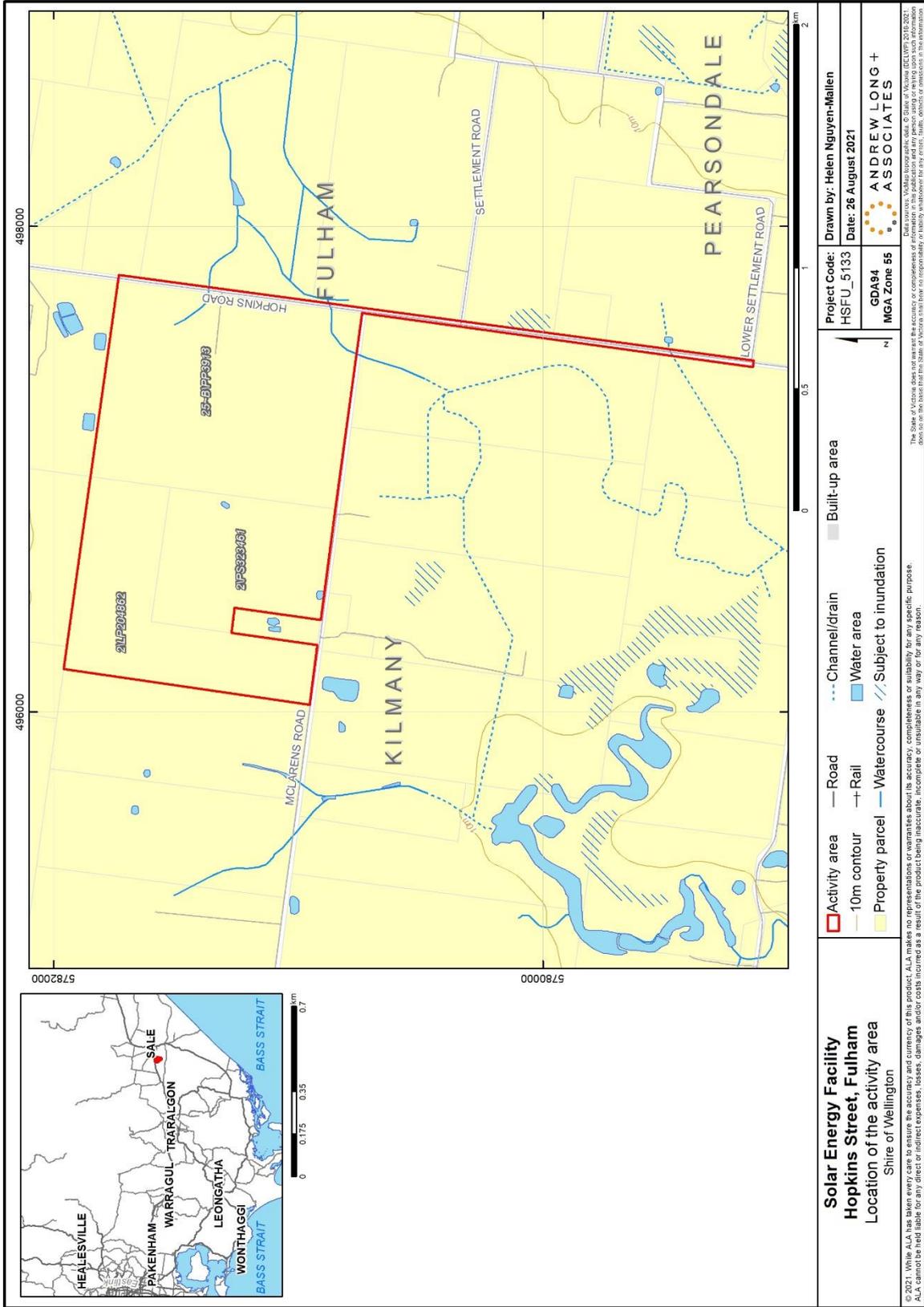


Figure 1 Map of the location of the activity area.

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

The respective shapefiles and design documents which inform the activity area were created by ALA. These were based on materials provided by the client to ALA via e-mail on August 3, 2021.

1.2 Aboriginal Stakeholders

It is important to note that 'cultural heritage significance' as defined in the Act 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 Gunaikurnai Land and Waters Aboriginal Corporation (GLaWAC) are the appointed RAP for land which includes the activity area. As such, GLaWAC 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 Environmental Effects Statement (EES), impact management plan or Comprehensive Impact Statement (CIS) must be prepared (s.49 and s.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

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

¹ <https://achris.vic.gov.au/#/dashboard> - accessed 23 August 2021.

² <https://mapshare.maps.vic.gov.au/vicplan/> - accessed 23 August 2021.

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 26: Waterways

The relevance of each 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 23 August 2021 (Access No. 9658). As is evident in Figure 2, there are no registered Aboriginal cultural heritage places within 50m of the activity area. The activity area therefore does not contain an area of cultural heritage sensitivity associated with any registered cultural heritage places (Figure 2).

3.2 Waterways

Regulation 26 is as follows:

- 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.

While a waterway is located approximately 1 km south southwest of the activity area (see Figure 1), the activity area is of a sufficient distance away from this waterway to not be an area of cultural heritage sensitivity (see Figure 2). As such, the activity area does not contain an area of cultural heritage sensitivity associated with any waterways.

3.3 Conclusion

As has been demonstrated, the activity area does not contain an area of cultural heritage sensitivity, as might be defined in Part 2, Division 3, of the Regulations.

4 Are the proposed works a high impact activity

The proposed development is the construction of a solar farm (a renewable energy facility for the purposes of the VPP) and associated works (grid connection). As presented below, it can be demonstrated that the proposed development is a high impact activity for the purposes of the Regulations.

Part 2, Division 5 of the Regulations lists activities which are specified as high impact activities. Regulation 46 of the Regulations 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.

The proposed activity is the construction of a “renewable energy facility” and associated works (grid connection) for the purpose of generating electricity. As such, the proposed works are a high impact activity in accordance with r.46(1)(b)(xxx) of the Regulations. Furthermore, works associated with undertaking the activity may require utility installations that will result in significant ground disturbance across an area more than 25 square meters. The proposed works are therefore likely to be specified as a high impact activity in accordance with r.46(1)(b)(xxvii) 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 Wellington Farming Zone overlay and, in accordance with the Wellington Planning Scheme, a permit will be required for the construction of 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

Based on the above information, it has been established that:

- the activity, being the construction of a renewable energy facility and associated infrastructure (grid connection), is a high impact activity as defined by r.46 of the Regulations; and
- the activity area does not contain an area of cultural heritage sensitivity as defined by Division 3 of the Regulations.

Therefore, in accordance with r.7 of the Regulations, a mandatory CHMP is not required by the Regulations.

6 Recommendations

As has been established, in accordance with r.7 of the Regulations, a mandatory CHMP is not required for the proposed activity.

However, should the works be undertaken without having an approved CHMP there would be no mechanism in place to manage any Aboriginal cultural heritage materials that may be encountered during the activity. Significant delays in the construction timeframes could be expected if Aboriginal cultural heritage materials were encountered during the activity.

Should Solis Renewable Energy Pty Ltd elect to prepare a voluntary CHMP in accordance with s.45 of the Act prior to undertaking the activity, the relevant approval authority cannot require the presentation of an approved CHMP either before evaluating or issuing a permit for the activity to take place. Preparation of a voluntary CHMP will likely take between four to eight months depending on the capacity of the RAP to be available for meetings in a timely manner and whether Aboriginal cultural heritage is identified during the CHMP process. Please note that this estimate assumes that the RAP will agree to a conventional archaeological assessment methodology.

7 Disclaimer

This report does not mean to imply that Aboriginal cultural heritage places are not present within the activity area or are not at risk of impact from the proposed activity, only that there are no known Aboriginal cultural heritage places within the activity area.

This assessment did not include any stakeholder engagement. 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.

8 References

Legislation

Aboriginal Heritage Act 2006 (Vic)

Victorian Planning Provisions 2018 (Vic)

Regulations

Aboriginal Heritage Regulations 2018 (Vic)

9 Appendix 1

Statutory Regulations: Aboriginal Heritage Legislation, Victoria

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

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,

- 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.