

CITY OF WEST TORRENS



Notice of Council & Committee Meetings

NOTICE IS HEREBY GIVEN in accordance with Sections 83, 84, 87 and 88 of the Local Government Act 1999, that a meeting of the

Council

and

- **Urban Services Prescribed Standing Committee**
- **Governance Prescribed Standing Committee**

of the

CITY OF WEST TORRENS

will be held in the Council Chambers, Civic Centre
165 Sir Donald Bradman Drive, Hilton

on

TUESDAY, 3 APRIL 2018
at 7.00pm

Terry Buss PSM
Chief Executive Officer

City of West Torrens Disclaimer

Please note that the contents of these Council and Committee Agendas have yet to be considered by Council and officer recommendations may be altered or changed by the Council in the process of making the formal Council decision.

INDEX

1	Meeting Opened	1
	1.1 Evacuation Procedures	
2	Present	1
3	Apologies	1
4	Disclosure Statements	1
5	Confirmation of Minutes	1
6	Mayors Report	1
7	Elected Members Reports	2
8	Petitions	2
	Nil	
9	Deputations	2
	Nil	
10	Adjourn to Standing Committees	2
11	Adoption of Standing Committee Recommendations	2
	11.1 Urban Services Committee Meeting	2
	11.2 Governance Committee Meeting	2
12	Adoption of General Committee Recommendations	3
	12.1 Community Facilities General Committee Meeting	3
13	Questions with Notice	3
	13.1 Fence Height in Flood Prone Area	3
14	Questions without Notice	3
15	Motions with Notice	4
	15.1 Category 1 and 2 Developments	4
	15.2 Statement of Intent to Protect Glandore Character Area 24	4
16	Motions without Notice	4
17	Reports of the Chief Executive Officer	5
	17.1 Mobile Food Vendors Policy.....	5
	17.2 Brown Hill Keswick Creek - Appointment of a Nominations Committee	19
18	Local Government Business	32
	18.1 Local Government Circulars	32
19	Member's Bookshelf	35
20	Correspondence	35
	20.1 Adelaide and Mount Lofty Ranges Natural Resources Management Board Minutes	35
	20.2 Fruit Trees on Verges and Nature Strips	35
	20.3 Heart Foundation Local Government Awards program	35
21	Confidential	43
	21.1 Appointment of Council Assessment Panel Independent Members.....	43
22	Meeting Close	43

1 MEETING OPENED

1.1 Evacuation Procedures

2 PRESENT

3 APOLOGIES

4 DISCLOSURE STATEMENTS

Elected Members are required to:

1. Consider Section 73 and 75 of the *Local Government Act 1999* and determine whether they have a conflict of interest in any matter to be considered in this Agenda; and
2. Disclose these interests in accordance with the requirements of Sections 74 and 75A of the *Local Government Act 1999*.

5 CONFIRMATION OF MINUTES

RECOMMENDATION

That the Minutes of the meeting of the Council held on 20 March 2018 be confirmed as a true and correct record.

6 MAYORS REPORT

(Preliminary report for the agenda to be distributed Thursday, 29 March 2018)

Thursday 22 March

- 10.00am Participated in the official opening and ribbon cutting ceremony for Haigh's Chocolates new factory at Mile End. Haigh's Chocolates Chief Executive Alister Haigh said the state-of-the-art chocolate processing plant at Mile End will have the capacity to produce up to 2000 tonnes per year, nearly three times the current level of production.
- 11.30am Conducted an urgent citizenship ceremony for Dr Yu Chao Lee at the Civic Centre.
- 6.00pm Launched the Festival Hellenika Art Exhibition entitled "Phos for Essence" at the Hamra Centre Auditorium Gallery. The Festival Hellenika (formerly The Greek Cultural Month) is Adelaide's annual multi-disciplinary arts festival dedicated to the maintenance, development, promotion and celebration of Hellenic links in the Arts, and their rich and diverse Australian manifestations.

Tuesday 27 March

- 6.00pm Participated with other EMs in the Community Facilities Committee meeting.

In addition, after the compilation of this report on Wednesday as part of the Agenda to be distributed on Thursday, I anticipate having attended or participated in the following:

Thursday 29 March

2.30pm With Cr McKay presenting iPads to Max Fiveash, the 6 years old winning student of the 'Name the CCTV Security Trailer Competition' and to his school, Plympton Primary School. Max's winning name is "Iris" with the community statement "Iris - keeping you safe".

Friday 30 March

4.00pm Hosting guests for lunch prior to the West Adelaide v Eagles Good Friday match at City Mazda Stadium and afterwards in the Council Room.

7.00pm Attending the Women's West Adelaide v North Adelaide match at City Mazda Stadium.

Tuesday 3 April

6.00pm Council Informal Gathering and Dinner

7.00pm Council and Committees meeting followed by a Special Finance and Regulatory Committee meeting to consider the 2018/19 budget.

RECOMMENDATION

That the Mayor's Report be noted.

7 ELECTED MEMBERS REPORTS**8 PETITIONS**

Nil

9 DEPUTATIONS

Nil

10 ADJOURN TO STANDING COMMITTEES**RECOMMENDATION**

That the meeting be adjourned, move into Standing Committees and reconvene at the conclusion of the Governance Prescribed Standing Committee.

11 ADOPTION OF STANDING COMMITTEE RECOMMENDATIONS**11.1 Urban Services Committee Meeting****RECOMMENDATION**

That the recommendations of the Urban Services Committee held on 3 April 2018 be adopted.

11.2 Governance Committee Meeting**RECOMMENDATION**

That the recommendations of the Governance Committee held on 3 April 2018 be adopted.

12 ADOPTION OF GENERAL COMMITTEE RECOMMENDATIONS

12.1 Community Facilities General Committee Meeting

RECOMMENDATION

That the Minutes of the Community Facilities General Committee held on 27 March 2018 be noted and the recommendations adopted.

13 QUESTIONS WITH NOTICE

13.1 Fence Height in Flood Prone Area

Cr Arthur Mangos has given notice of his intention to ask the following question:

Question

As houses are in the flood zone, the height of new homes in the area affected is raised. Does the new owner have to raise the height of the fence as there is an intrusion of the new house into the neighbour's property whether it is the rear or side?

If the answer is in the negative what action in our Policy must occur so that the fence height can be raised?

Answer

Land owners are not compelled to raise the height of fences due to the construction of a new building or dwelling (unless a swimming pool fence). This is irrespective of whether a dwelling or fence is located in a Flood Zone.

The *Development Act 1993* does not require the erection of fences unless in association with a swimming pool. Council's power to require the erection of a new boundary fence or raise the height of an existing boundary fence is limited only to addressing compliance matters or when required as part of the assessment of a development application.

The *Development Regulations 2008* state that development approval is required for the construction of all fences in the following circumstances:

- fences greater than 2 metres;
- situated on land located within a Flood Zone;
- masonry fences higher than 1 metre; or
- fence over 1 metre in height within 6 metres of a road intersection (except where a 4m x 4m corner cut off has been provided).

The erection of boundary fences and any subsequent work to change a fence is governed by the *Fences Act 1975* and is regarded in most circumstances as a civil matter between neighbours. Landowners may seek advice from the Legal Services Commission of South Australia for advice on the legal process for working with their neighbour to undertake fencing work.

Council does not have any powers under the *Development Act 1993* or *Fences Act 1975* to implement a policy requiring boundary fence heights to be raised.

14 QUESTIONS WITHOUT NOTICE

15 MOTIONS WITH NOTICE

15.1 Category 1 and 2 Developments

At the meeting of Council on 20 March 2018, Cr John Woodward moved the following motion which the Council ruled would be adjourned to the meeting of Council on 3 April 2018.

MOTION

That the Administration urgently develops a Statement of Intent for submission to the Minister for Planning to amend relevant sections of the West Torrens Development Plan to reverse the changes in the Housing Diversity Development Plan Amendment in 2015, so that any development exceeding 1 storey in any Residential Policy is classified as a Category 2 development, and so as to allow public notification and representation for the proposed development.

15.2 Statement of Intent to Protect Glandore Character Area 24

Cr Michael Farnden gave notice of his intention to move the following motion:

MOTION

That Council write to Hon Stephan Knoll, Minister for Transport, Infrastructure and Local Government, and Minister for Planning:

1. Congratulating him on his new appointment.
2. Requesting that he consider Council's Statement of Intent to amend the Development Plan to protect Glandore Character Area 24 from high rise development on Anzac Highway, as submitted to the previous Minister for Planning in December.

16 MOTIONS WITHOUT NOTICE

17 REPORTS OF THE CHIEF EXECUTIVE OFFICER

17.1 Mobile Food Vendors Policy

Brief

This report provides an opportunity for further consideration to be given to a report on the proposed new draft *Council Policy - Mobile Food Vendors* as resolved by Council on 20 March 2018.

RECOMMENDATION

It is recommended that further consideration be given to the *Council Policy - Mobile Food Vendors*.

Introduction

In August 2017, the South Australian Parliament passed the *Local Government (Mobile Food Vendors) Amendment Bill 2017* which, together with the *Local Government (General) (Mobile Food Vendors) Variation Regulations 2017*, took effect on 1 March 2018.

Discussion

It was resolved at the Corporate Planning, Policy and Performance (CPPP) Committee meeting on 13 March 2018 that:

- "1. *The Council Policy - Mobile Food Vendors as set out in Attachment 1 to this report be endorsed.*
2. *The fees for mobile food vendor permits be adopted and the Schedule of Fees and Charges be updated as follows:*
 - a. *Annual Fee - \$1,000 excluding GST (if applicable); and*
 - b. *Monthly Fee - \$100 excluding GST (if applicable)*
3. *That the Chief Executive Officer be authorised to make amendments of a formatting and or minor nature to the Council Policy - Mobile Food Vendors as may be necessary from time to time."*

Subsequently, at a Council meeting on 20 March 2018, Council resolved to defer Item 7.1 Mobile Food Vendors Policy to the 3 April 2018 for further discussion.

The CPPP Committee report on the Mobile Food Vendors Policy attached for members information and consideration (**Attachment 1**).

Conclusion

The proposed new draft *Council Policy - Mobile Food Vendors* is presented for further discussion and consideration.

Attachments

1. **Extract from Corporate Planning, Policy and Performance Committee Agenda & Minutes 13 March 2018 - Item 7.1 Mobile Food Vendors Policy**

7 REPORTS OF THE CHIEF EXECUTIVE OFFICER

7.1 Mobile Food Vendors Policy

Brief

This report proposes a new draft *Council Policy - Mobile Food Vendors* as required following recent changes to the *Local Government Act 1999*.

RECOMMENDATION

The Committee recommends to Council that:

1. The *Council Policy - Mobile Food Vendors* as set out in Attachment 1 to this report be endorsed.
2. The fees for mobile food vendor permits be adopted and the Schedule of Fees and Charges be updated as follows:
 - a. Annual Fee - \$1,000 excluding GST (if applicable); and
 - b. Monthly Fee - \$100 excluding GST (if applicable)
3. That the Chief Executive Officer be authorised to make amendments of a formatting and or minor nature to the *Council Policy - Mobile Food Vendors* as may be necessary from time to time.

Introduction

In August 2017, the South Australian Parliament passed the *Local Government (Mobile Food Vendors) Amendment Bill 2017* which, together with the *Local Government (General) (Mobile Food Vendors) Variation Regulations 2017*, took effect on 1 March 2018.

The intent of the amendment of the Act and the variation of Regulations is that councils will develop a policy to encourage mobile food vending businesses to trade within the Council area whilst protecting fixed food businesses. Council must prepare and adopt rules which set out locations within its area in which mobile food vending businesses may operate. These locations must comply with the requirements prescribed by the regulations and be published on Council's website.

The legislation will result in a uniform system for the operation of mobile food trucks across the state, limiting the discretion of local councils to approve or refuse section 222 permits for business purposes under the *Local Government Act 1999*. In short, it will be mandatory for councils to grant a section 222 permit to a mobile food vending business upon application, subject to the relevant legislation.

The changes do not relate to the selling of food on the land other than a local government public road, even if carried out by someone who would otherwise be considered a mobile vending business. For instance, mobile food vendors on privately owned or council-owned land are covered by the *Development Act 1993* and not these regulations. Mobile ice cream vans are also exempt and these permit applications will be considered under the existing provisions of section 222 of the *Local Government Act 1999* and the *Council Policy - Use of Public Footpaths and Roads for Business Purposes*.

The regulations prescribe the maximum annual (\$2,000) and monthly (\$200) permit fees that councils can charge for mobile food vendor permits, as well as a number of other rules with which the vendors must comply. The Administration has developed a draft *Council Policy - Mobile Food Vendors* (the policy) which details recommended requirements for mobile food vendors operating in the Council area.

The regulations do not affect the Mobile Food Vending Businesses obligations under various other Acts, including the *Food Act 2001* and the *Road Traffic Act 1961*.

Discussion

In developing the draft Policy consideration was given to the needs of both established fixed food businesses and the community for example the need for car parking availability, distances to fixed food businesses etc. Consideration was also given to ensure the conditions were equitable for all mobile food vending businesses.

Due to the legislative requirement to develop 'location rules' in terms of which mobile food vending businesses may operate on a road, the attached policy (**Attachment 1**) has been drafted for consideration.

It is acknowledged that a one-size-fits-all approach will not meet the needs of all businesses and the Council will therefore need to be flexible to understand and meet these needs, acknowledging the statutory and regulatory functions of Council, the need for consistency and transparency and the expectations of the broader community.

Location Rules

In developing the 'location rules', as prescribed in Section 225A of the *Local Government Act 1999*, the preferred approach was not to specify locations on a map but rather to allow the traders to determine where they would like to trade and be given guidelines to assist them in choosing suitable locations. This allows the mobile food vending businesses to have the flexibility to identify sites that are suitable for trading and to ensure they will not interfere with fixed food businesses and the community use of the area.

The following 'location rules' were developed.

Mobile Food Vendor Businesses:

- a) Must not operate within:
 - 200 metres of a fixed food business whilst they are operating
 - 30 metres of an intersection (without signalised traffic lights)
 - 50 metres of an intersection (with signalised traffic lights)
 - 15 metres of a residence unless otherwise approved
 - 10 metres of a car park entrance/egress points
 - 10 metres of a crest or bend of a road
- b) Must not park their vehicles in areas where parking is restricted to less than 1 hour. Once mobile food vending businesses have exceeded a timed parking restriction they may not attend the same location with a 24 hour period.
- c) May not cause undue interference or obstruction to persons using the public road, residents or businesses.
- d) Must not obstruct vehicles and pedestrian traffic, footpaths, driveways, access points to buildings and parking areas for people with disabilities.
- e) Must adhere to parking rules / restrictions and only park within designated parking zones.

- f) Are required to park their vehicle parallel to the kerb with trading and service only to occur on the kerb side.
- g) Footpath must have clear access for people with disabilities in accordance with the *Disability Discrimination Act 1992*.
- h) Ensure that no more than two (2) parking bays are used for a mobile food vending vehicle including a tow vehicle.
- i) Must not operate on a road with a speed limit greater than 60 km/h.
- j) Must not operate on the shoulder of a road without designated parking unless otherwise approved in writing.
- k) Must not operate on a road with verge widths of less than 2.8 metres.
- l) Must not operate from a Department of Planning, Transport and Infrastructure South Australia road.

A permit may be cancelled by Council if it is satisfied that there is a sufficiently serious breach of the conditions of the permit. If the Council cancels a mobile food vendor business permit, the permit holder will be prevented from reapplying for a new permit for a period of 6 months.

Disputes may be referred to the Small Business Commission

There are clear legislative processes available for both mobile food vendors and aggrieved fixed businesses to follow, should either party consider they are directly and adversely affected by the location rules. Under section 225 of the Act, the Small Business Commissioner is able to direct Council to amend its location rules in place. If Council is directed under subsection 225A(7), to amend its location rules and fails to comply with this direction, a maximum penalty of \$5,000, may be incurred.

Legislative Requirements

A mobile food vending businesses must select a site for operation which does not breach any relevant requirements under the:

- *Food Act 2001*;
- *South Australian Public Health Act 2011*
- *Environment Protection Act 1993*;
- *Local Nuisance and Litter Control Act 2016*
- *Motor Vehicle Act 1959*
- *Road Traffic Act 1961*
- *Australian Road Rules*
- City of West Torrens By-laws No. 1-5
- Any other related legislation

Compliance

The general conditions for mobile food vending businesses require that they must:

- a) Complete a mobile food vendor application form, which is available on the City of West Torrens' website.
- b) Pay the prescribed fee, yearly or monthly, that is applied in accordance with Council's annual Schedule of Fees and Charges. The prescribed fee is subject to annual review by Council within its adopted Fees and Charges pursuant to Section 188 of the *Local Government Act 1999*.
- c) Hold a valid current City of West Torrens' permit prior to trading within the city.
- d) Only operate between the hours of 9:00am and either sunset or 8:30pm whichever is the earlier. Operating outside these hours is prohibited unless written permission has been given by Council.
- e) Hold and provide a copy of a valid current public liability insurance policy for a minimum amount of twenty million dollars (\$20,000,000) which must indemnify the City of West Torrens against all actions, costs, claims, damages, charges and expenses whatsoever which may be brought or made or claimed against the permit holder in relation to the activity.
- f) Advise Council staff via email or other electronic means as determined by Council when they arrive and start trade at a location within the City of West Torrens providing their permit number and location of trade details of contact available on the application form and Council's website.
- g) Be self-sufficient in regards to power, waste water disposal and rubbish disposal.
- h) Supply adequate rubbish and litter disposal receptacles for the use for the business and customers, and all rubbish is to be removed from the site and not disposed of in Council street or reserve bins.
- i) Accept total responsibility to make good any damage that occurs to Council roads or public infrastructure as a result of the operation of business by the permit holder.
- j) Not assign or otherwise transfer a permit without first obtaining the consent of the Council in writing.
- k) Not have; music or other audible devices, or A-Frame signs must not have balloons, flags, streamers or other things attached to it, it must not rotate or contain flashing parts. These are prohibited unless approved by Council and listed as a condition of the permit.
- l) Must not cause noise, odour, fumes etc. or other disturbance to the surrounding environment.
- m) All advertising must be fixed to the mobile food vendor vehicles and not encroach on the public realm except for one (1) 'A' frame or sandwich board sign, with an advertisement advising 'open for trade' and located no further than a distance of 5 metres from the mobile food vendors vehicle to which it relates. The construction and design and placement of a moveable sign must comply with Council's Moveable Sign By-Law No. 4 of 2017.

Fees

A maximum fee has been set in section 24a (1) (b)(ii) of the *Local Government (General) (Mobile Food Vendors) Variation Regulations 2017*. Council is able to set its own fees, however the fee cannot exceed \$2,000 excluding GST for an annual fee or \$200 excluding GST per month.

It is recommended that City of West Torrens introduces an annual fee of \$1,000 excluding GST and \$100 excluding GST per month for mobile food vendors.

Events

Mobile food trading permit are voided for events (such as Fork in the Road) and trading is not permitted within surrounding roads for a distance of 200 metres for the duration of such an event unless permission has been sought and approved by the event organiser.

Conclusion

As a result of the changes to the *Local Government Act 1999* and Regulations, Council is required to prepare and adopt 'location rules' that set out locations within the Council area in which mobile food vending businesses may operate on roads.

The Schedule of Fees and Charges be amended to include Mobile Food Vendor Fees of \$1,000 (annual fee) excluding GST and \$100 (monthly fee) excluding GST.

Attachments

1. Mobile Food Vendor Policy

CITY OF WEST TORRENS



Council Policy: Mobile Food Vendors

Classification:	Council Policy
First Issued:	
Dates of Review:	
Version Number:	
Objective ID:	
Applicable Legislation:	<ul style="list-style-type: none"> • Local Government Act 1999 • Road Traffic Act 1961 • Food Act 2001 • South Australian Public Health Act 2011 • Environment Protection Act 1993 • Local Nuisance and Litter Control Act 2016 • Disability Discrimination Act 1992 • Motor Vehicles Act 1959
Related Policies or Corporate Documents:	
Associated Forms:	
Note:	
Responsible Manager:	Manager Regulatory Services
Confirmed by General Manager:	Date
Approved by Executive:	Date
Endorsed by Council	Date

City of West Torrens Council Policy - Mobile Feed Vendors

Table of Contents

1. Preamble3

2. Purpose3

3. Scope3

4. Definitions.....4

5. Policy Statement.....4

Objective ID -

Page 2 of 7

The electronic version on the Intranet is the controlled version of this document.
Printed copies are considered uncontrolled. Before using a printed copy, verify that it is the controlled version.

City of West Torrens Council Policy - Mobile Feed Vendors

COUNCIL POLICY - Mobile Food Vendors

1. Preamble

- 1.1 Council recognises that trading from mobile vending can improve services to residents and add a pedestrian-friendly feel to an area, improving public safety and bringing a festive atmosphere to local streets.
- 1.2 Council encourages mobile vending of food and beverages within the City of West Torrens to increase overall community enjoyment of the city. While supporting the practice of mobile vending, Council also recognises the need for appropriate procedures and guidelines for these activities.

2. Purpose

The purpose of this policy is to:

- 2.1 Detail the locations where mobile food vending businesses may trade.
- 2.2 Detail the number of mobile food vending businesses that can trade within the approved locations for roads.
- 2.3 Ensure that there is a reasonable distance between mobile food vending businesses and fixed food businesses during the operating hours of the fixed food businesses.
- 2.4 Take into account the effect of mobile food vending business on:
 - a. Vehicle and pedestrian traffic, footpaths, driveways, access points to buildings and parking areas for people with disabilities; and
 - b. The requirements relating to, and availability of, parking spaces at the locations in which mobile food vending businesses may operate under the location rules; and
 - c. Residents and businesses at the locations in which mobile food vending businesses may operate under the location rules.
- 2.5 Provide a clear, open, equitable and accountable process for the issuing of mobile food trading permits to mobile food vending businesses to allow trade from roads.

3. Scope

- 3.1 This policy applies to all mobile food vending businesses that want to trade from public roads with the exception of mobile ice-cream vendors.
- 3.2 The policy establishes the location rules which mobile food vending businesses may trade and the locations in which they may operate.
- 3.3 The policy ensures that mobile vending businesses operate in a way which complements the existing food businesses and ensures that they do not unreasonably compromise the amenity of the surrounding area.
- 3.4 This policy clearly identifies the terms and conditions of hire of Council land.

Objective ID -

Page 3 of 7

The electronic version on the Intranet is the controlled version of this document.
Printed copies are considered uncontrolled. Before using a printed copy, verify that it is the controlled version.

City of West Torrens Council Policy - Mobile Food Vendors

- 3.5 This policy is not applicable to privately owned land, noting that the provisions of the *Development Act 1993* and related legislation and the Development Plan may apply in relation to use of the land.

4. Definitions

- 4.1 **Public road** - meaning given in the *Local Government Act 1999*.
- 4.2 **Reserve** - means community land reserve or dedicated as a reserve or designated by Council as a reserve.
- 4.3 **Mobile food vending vehicle** - defined as any vehicle whether mobile or stationary, used for the purpose of selling food and/or beverages.
- 4.4 **Mobile food vending business** - means a business involving the sale of food or beverages from a vehicle (within the meaning of the *Road Traffic Act 1961*).
- 4.5 **Fixed food business** - means a business, the primary purpose of which is the retail sale of food and/or beverages that is undertaken on a fixed premises that have a valid land use approval for use as a food business under the *Development Act 1993*. Fixed food businesses includes cafes, restaurants, hotels, delicatessens, take away food businesses, bakeries, green grocers, health food shops, butchers, supermarkets, service stations and sporting clubs.

5. Policy Statement

- 5.1 A mobile food vending business trading on public roads within the Council area must hold a valid City of West Torrens' mobile food trading permit under section 222 of the *Local Government Act 1999*.
- 5.2 A mobile food vending permit is not required for trading on privately owned land or when catering for an event on public land (by invitation) where a permit has already been issued to the event holder.
- 5.3 Fees payable are as detailed in Council's Fees and Charges Register.
- 5.4 Trading on Council reserves is not permitted as part of this policy.

6. Location rules - section 225A of the *Local Government Act 1999*

A mobile food vending business holding a permit issued by the Council may operate anywhere in the Council area, subject to complying with the location rules and any other requirement of the permit.

- 6.1 A mobile food vending business must select a site for operation which takes into account the effect of the operation of the mobile food vending business:
- a) Must not operate within:
- 200 metres of a fixed food business whilst they are operating
 - 30 metres of an intersection (without signalised traffic lights)
 - 50 metres of an intersection (with signalised traffic lights)
 - 15 metres of a residence unless otherwise approved
 - 10 metres of a car park entrance/egress points
 - 10 metres of a crest or bend of a road

Objective ID -

Page 4 of 7

The electronic version on the Intranet is the controlled version of this document.
Printed copies are considered uncontrolled. Before using a printed copy, verify that it is the controlled version.

City of West Torrens Council Policy - Mobile Food Vendors

- b) Must not park their vehicles in areas where parking is restricted to less than 1 hour. Once mobile food vending businesses have exceeded a timed parking restriction they may not attend the same location within a 24 hour period.
- c) May not cause undue interference or obstruction to persons using the public road, residents or businesses.
- d) Must not obstruct vehicles and pedestrian traffic, footpaths, driveways, access points to buildings and parking areas for people with disabilities.
- e) Must adhere to parking rules / restrictions and only park within designated parking zones.
- f) Are required to park their vehicle parallel to the kerb with trading and service only to occur on the kerb side.
- g) Footpath must have clear access for people with disabilities in accordance with the *Disability Discrimination Act 1992*.
- h) Ensure that no more than two (2) parking bays are used for a mobile food vending vehicle including a tow vehicle.
- i) Must not operate on a road with a speed limit greater than 60 km/h.
- j) Must not operate on the shoulder of a road without designated parking unless otherwise approved in writing.
- k) Must not operate on a road with verge widths of less than 2.8 metres.
- l) Must not operate from a Department of Planning, Transport and Infrastructure South Australian road.

6.2 Legislative requirements

A mobile food vending business must select a site for operation which does not breach any relevant requirements under:

- *Local Government Act 1999*
- *Food Act 2001*;
- *South Australian Public Health Act 2011*;
- *Environment Protection Act 1993*;
- *Local Nuisance and Litter Control Act 2016*;
- *Road Traffic Act 1961*;
- *Australian Road Rules*;
- City of West Torrens By-laws No. 1-5
- Any other related legislation

6.3 Compliance

Mobile food vending businesses must:

- a) Complete a mobile food vendor application form, which is available on the City of West Torrens website.

Objective ID -

Page 5 of 7

The electronic version on the Intranet is the controlled version of this document.
Printed copies are considered uncontrolled. Before using a printed copy, verify that it is the controlled version.

City of West Torrens Council Policy - Mobile Feed Vendors

- b) Pay the prescribed fee, yearly or monthly, that is applied in accordance with Council's annual Schedule of Fees and Charges. The prescribe fee is subject to annual review by Council within its adopted Fees and Charges pursuant to Section 1888 of the *Local Government Act 1999*.
- c) Hold a valid current City of West Torrens permit prior to trading within the city.
- d) Only operate between the hours of 9:00am and either sunset or 8:30pm whichever is the earlier. Operating outside these hours is prohibited unless written permission has been given by Council.
- e) Hold and provide a copy of a valid current public liability insurance for a minimum amount of twenty million dollars (\$20,000,000) which must indemnify the City of West Torrens against all actions, costs, claims, damages, charges and expenses whatsoever which may be brought or made or claimed against the permit holder in relation to the activity.
- f) Advise Council staff via email or other electronic means as determined by Council when they arrive and start trade at a location within the City of West Torrens, providing their permit number and location of trade details of contact available on the application form and Council's website.
- g) Be self-efficient in regards to power, waste water disposal and rubbish disposal.
- h) Supply adequate rubbish and litter disposal receptacles for the use for the business and customers, and all rubbish is to be removed from the site and not disposed of in Council street or reserve bins.
- i) Accept total responsibility to make good any damage that occurs to Council roads or public infrastructure as a result of the operation of business by the permit holder.
- j) Not assign or otherwise transfer a permit without first obtaining the consent of the Council in writing.
- k) Not have music or other audible devices, or A-frame signs with balloons, flags, streamers or other things attached, and it must not rotate or contain flashing parts. These are prohibited unless approved by Council and listed as a condition of the permit.
- l) Must not cause noise, odour, fumes etc. or other disturbance to the surrounding environment.
- m) All advertising must be fixed to the mobile food vendor vehicles and not encroach on the public realm, except for one (1) 'A' frame or sandwich board sign, with an advertisement advising 'open for trade' located no further than a distance of 5 metres from the mobile food vendors vehicle to which it relates. The construction and design and placement of a moveable sign must comply with Council's Moveable Sign By-Law No. 4 of 2017.

6.4 Events

Mobile food trading permit are voided for events and trading is not permitted within surrounding roads for a distance of 200 metres for the duration of an event unless permission has been sought and approved by the event organiser.

Objective ID -

Page 6 of 7

The electronic version on the Intranet is the controlled version of this document.
Printed copies are considered uncontrolled. Before using a printed copy, verify that it is the controlled version.

City of West Torrens Council Policy - Mobile Feed Vendors

7. Breach of permit

- 7.1 Council may mobile food vendor business permit if satisfied that there is a sufficiently serious breach of the conditions of the permit.
- 7.2 If the Council cancels a mobile food vendor business permit, the permit holder will be prevented from reapplying for a new permit for a period of 6 months.

8. Disputes may be referred to the Small Business Commissioner

There are clear legislative processes available for both mobile food vendor and aggrieved fixed businesses to follow, should either party consider they are directly adversely affected by the location rules.

If an operator of a food business (defined as a business primary purpose of which is the retail sale of food or beverages) in the Council area is directly and adversely affected by these location rules, then the operator may apply to the Small Business Commissioner for a review of the location rules.

9. Amendments of these rules

The location rules may be amended from time to time by the Council

The location rules must be amended by the Council if directed to do so by the Small Business Commissioner or to satisfy a requirement of the Minister of Local Government.

Vendors are advised to check the website on a regular basis for updates on the location rules.

6 COMMUNICATION BY THE CHAIRPERSON

Nil

7 REPORTS OF THE CHIEF EXECUTIVE OFFICER

7.1 Mobile Food Vendors Policy

This report proposed a new draft *Council Policy - Mobile Food Vendors* as required following recent changes to the *Local Government Act 1999*.

RECOMMENDATION

The Committee recommends to Council that:

1. The *Council Policy - Mobile Food Vendors* as set out in Attachment 1 to this report be endorsed.
2. The fees for mobile food vendor permits be adopted and the Schedule of Fees and Charges be updated as follows:
 - a. Annual Fee - \$1,000 excluding GST (if applicable); and
 - b. Monthly Fee - \$100 excluding GST (if applicable)
3. That the Chief Executive Officer be authorised to make amendments of a formatting and or minor nature to the *Council Policy - Mobile Food Vendors* as may be necessary from time to time.

COMMITTEE RESOLUTION

Moved: Cr Graham Nitschke

Seconded: Cr Arthur Mangos

That the recommendation be adopted.

6.32pm Cr Megan Hill entered the meeting.

CARRIED

17.2 Brown Hill Keswick Creek - Appointment of a Nominations Committee

Brief

At the meeting of Council held 1 August 2017, Council endorsed the establishment of a Nominations Committee comprising a representative from each of the five (5) constituent council to select the board members for the Brown Hill and Keswick Creek Stormwater Board.

Nominations are then to be presented to the five (5) Constituent Councils.

The Brown Hill Keswick Creek Project Steering Group is now seeking to establish the Nominations Committee to assess and evaluate submissions and provide their recommendations to the Constituent Councils.

RECOMMENDATION

It is recommended that Council:

1. Nominate one (1) representative being..... (an Elected Member or a Council officer) to the Nominations Committee for the purpose of assessing candidate suitability for the Brown Hill and Keswick Creeks Stormwater Board to make their collective recommendations back to the five (5) Constituent Councils for consideration.
2. Notes that the collective recommendations from the Nominations Committee will be brought back to the five (5) Constituent Councils for consideration.
3. Notes that no remuneration is payable for the position on the Nominations Committee.
4. Consistent with the practice that has previously existed in relation to the BHKC Project Steering Group, Council, pursuant to Section 44 of the Local Government Act 1999, delegates to its Chief Executive Officer the power, pending the appointment to and the operation of the Board of Management of the Brown Hill and Keswick Creeks Stormwater Board ('Regional Subsidiary') a regional subsidiary established under *section 43 of and Schedule 2 to the Local Government Act 1999*, to provide approval for or consent to, any matter that is within the powers of the Regional Subsidiary (as set out at clause 6 of the Regional Subsidiary Charter - Brown Hill and Keswick Creeks Stormwater Board) and which would otherwise be a decision made by the Board of Management, in order to enable the Regional Subsidiary to exercise its powers in the fulfilment of its Purpose (as per clause 4 of the Charter) noting that, for the avoidance of any doubt, the delegation of this power includes (but is not limited to) approval for the expenditure of budgeted funds of the Regional Subsidiary.

Introduction

The Stormwater Management Authority (SMA) exercised its power under *Schedule 1A of the Local Government Act 1999 (the 'Act')* to order the five (5) catchment councils (Cities of Adelaide, Burnside, Mitcham, Unley and West Torrens) to be known as Constituent Councils; to develop a catchment based Stormwater Management Plan (SMP) for the Brown Hill Keswick Creek (BHKC) flood plain.

The five (5) Constituent Councils complied with the order and submitted a SMP to the SMA for review, comment and endorsement.

In February 2017, the South Australian Government committed funding assistance to the project totalling 50% of the project (estimated at \$70M) over a twenty-year (20) period.

The SMP (known as the 2016 SMP) was endorsed and subsequently gazetted on 7 March 2017.

A condition as prescribed within the SMP 2016 and the State Government's funding offer was for the five (5) Constituent Councils to form a Regional Subsidiary (a body corporate owned by the five (5) Constituent Councils).

At a meeting of Council held on 1 August 2017, Council endorsed the establishment of a Nominations Committee with a representative from each Constituent Council to select the members to be nominated for the Brown Hill and Keswick Creeks Stormwater Authority ('Board').

The nominations are to be presented to the five (5) Constituent Councils for endorsement.

Council subsequently endorsed on 21 November 2017, the draft BHKC Regional Subsidiary Charter to be submitted to the then Honourable Geoff Brock, Minister for Local Government.

The Minister has now approved the Regional Subsidiary Charter, **Attachment 1 - Brown Hill and Keswick Creeks Stormwater Board - Approval of Regional Subsidiary ('Board')**, issued an approval notice and listed the Charter of the 'Board' within the Government Gazette on 27 February 2018.

This is the date that the 'Board' came into existence, in accordance with the requirements of the 'Act'.

The Regional Subsidiary is known as the Brown Hill Keswick Creek Stormwater Board.

The five (5) Constituent Councils are now seeking to establish the independent and skills based 'Board' for the duration of the project.

Discussion

The primary role of the 'Board' is the implementation of the SMP.

The 'Board' is also responsible for the administration of the affairs of the Regional Subsidiary.

The 'Board' must ensure, insofar as it is practicable, that the Regional Subsidiary observes the objectives set out in the Charter, that information provided to the Constituent Councils is accurate and the Constituent Councils are kept informed of the solvency of the Regional Subsidiary as well as any material developments which may affect the operating capacity and financial affairs of the Regional Subsidiary.

'Board' membership is comprised as follows;

- Five (5) natural persons appointed jointly by the Constituent Councils being persons who not are members or officers of any of the Constituent Councils. These persons will be appointed by the Constituent Councils from recommendations made by the "Nominations Committee".
- The persons recommended for appointment will be determined through a process approved by the Nominations Committee and will comprise persons with demonstrable skills relevant to the purpose of the Regional Subsidiary which may include (but is not limited to) skills in:
 - Corporate financial management;
 - Corporate governance;
 - Project management;
 - General management;
 - Engineering;
 - Economics; or
 - Environmental management.

The 'Board' members will be appointed for a term of three (3) years excepting that the first appointments made will occur on a differential basis, two (2) 'Board' members appointed for three (3) years, two (2) 'Board' members appointed for two (2) years and one (1) 'Board' member appointed for one (1) year for the purposes of ensuring a rolling term of office whereby no more than two (2) of the terms of office of 'Board' members will expire at any one time. At the conclusion of their term of office, 'Board' members will be eligible for reappointment.

Nominations Committee

The BHKC Project Steering Group is seeking to establish the Nominations Committee with a representative (either an Elected Member or an officer) from each Constituent Council.

The Nominations Committee will assess candidate suitability and make their collective recommendations back to the five (5) Constituent Councils for consideration.

Meetings of the Nominations Committee are to be held within the City of Unley - Council Offices and Committee members will be required to attend the following;

1. An initial meeting will be organised through the BHKC Project Steering Group (Chair) Mr Terry Buss; Chief Executive Officer (CEO) - City of West Torrens to provide guidance to the Nominations Committee on the recruitment process (requirement 1 -2 hours - date to be determined);
2. Review application submissions and determine a shortlist of applicants (requirement 2 -3 hours - date to be determined);
3. Interviews of shortlisted candidates (requirement half day - date to be determined).

Interim Steps

The Constituent Councils have been working in collaboration together under the auspices of a Memorandum of Agreement that was entered into in 2008 and by which the BHKC Project Steering Group was established.

The BHKC Project Steering Group has comprised a representative of each Council being the CEO or delegate of the CEO and was conferred with delegated powers and functions to make decisions on behalf of the respective Council.

Consequently, the CEO / delegate were also charged with ensuring that his/her Council was kept informed.

The Memorandum of Agreement contained a self-executing provision that it would terminate on the establishment of the Regional Subsidiary.

Accordingly, the Memorandum of Agreement was terminated and the BHKC Project Steering Group ceased to exist in the terms recognised and provided for in the Memorandum of Agreement on 27 February 2018, the date the Regional Subsidiary was formally established.

Further, the delegations to the CEO for the purposes of the activities of the BHKC Project Steering Group can no longer be considered to operate in the terms in which they were made. The expectation being that the Board of Management of the Brown Hill and Keswick Creeks Stormwater Board would take over responsibility for all matters previously dealt with by the BHKC Project Steering Group and the 'Board' would contract and enter into all other arrangements in its own right as a body corporate through the decision-making of the 'Board'.

However, the establishment of the Brown Hill and Keswick Creeks Stormwater Board on 27 February 2018 has not been contemporaneously complemented by the establishment of the 'Board'.

The result of the above is that the Brown Hill and Keswick Creeks Stormwater Board now legally exists but it does not yet have a governing body and it may only administer its affairs once the 'Board' is established by the membership appointments.

Accordingly, it is necessary to establish a mechanism by which the Brown Hill and Keswick Creeks Stormwater Board may proceed with all business that is required of it resulting from its establishment.

In this regard, it is relevant to note that *section 43(4) of the 'Act'* expressly provides that the establishment of a regional subsidiary does not derogate from the power of a constituent council to act in a matter.

It has been determined that, as an interim step, it is appropriate that each of the Constituent Councils, consistent with the practice that has previously existed in relation to the BHKC Project Steering Group, delegates the power to its CEO to provide approval or consent to any matter that would be (and will be on the establishment of the Board) determined by decision of the Board until such times as the Regional Subsidiary has a Board in place.

Conclusion

The Brown Hill and Keswick Creeks Stormwater Board came into effect on 27 February 2018.

The BHKC Project Steering Group is seeking to form a Nominations Committee and asks each Constituent Council to nominate one (1) representative (an Elected Member or a Council officer) for the purpose of assessing candidate suitability to be a member of the 'Board'.

In addition, as an interim measure, consistent with the practice that has previously existed in relation to the BHKC Project Steering Group, the BHKC Project Steering Group seeks Constituent Councils' consideration and approval to delegate the power to its CEO to provide approval or consent to any matter that would be (and will be on the establishment of the 'Board') determined by decision of the 'Board' of management until such times as the Regional Subsidiary is formed.

It is anticipated that the final appointments to the 'Board' will not occur by the Constituent Councils until approximately May/June 2018.

Attachments

- 1. The South Australian Government Gazette 27 February 2018**

1054

THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE

27 February 2018

LOCAL GOVERNMENT ACT 1999

NOTICE OF APPROVAL OF A REGIONAL SUBSIDIARY

Brown Hill and Keswick Creeks Stormwater Board

The City of Adelaide, the City of Burnside, the City of Mitcham, the City of Unley, and the City of West Torrens have resolved to establish a subsidiary pursuant to Section 43 of the *Local Government Act 1999*, to implement or oversee the construction of stormwater infrastructure for the purpose of implementation of the Brown Hill and Keswick Creeks Stormwater Management Plan (the Plan); oversee the maintenance and repair and/or renewal of stormwater infrastructure; oversee implementation of associated or related infrastructure works; hold stormwater infrastructure; implement other non-infrastructure measures; provide a forum for the discussion and consideration of the constituent council's obligations and responsibilities under the Plan; and enter into agreements with constituent councils for the purpose of managing the Plan.

Pursuant to clause 17 of Part 2 of Schedule 2 of the *Local Government Act 1999*, I approve the establishment of the Brown Hill and Keswick Creeks Stormwater Board.

The charter of the Brown Hill and Keswick Creeks Stormwater Board is set out below.

Dated: 15 February 2018

GEOFF BROCK MP
Minister for Local Government

LOCAL GOVERNMENT ACT 1999

CHARTER

Brown Hill and Keswick Creeks Stormwater Board

ESTABLISHMENT

The Brown Hill and Keswick Creeks Stormwater Board ('the Regional Subsidiary') is established by the Constituent Councils as a regional subsidiary pursuant to section 43 of and Schedule 2 ('the Schedule') to the *Local Government Act 1999* ('the Act').

This Charter governs the affairs of the Regional Subsidiary.

CONSTITUENT COUNCILS

The Regional Subsidiary is established by the Corporation of the: City of Adelaide, City of Burnside, City of Unley, City of Mitcham and City of West Torrens ('the Constituent Councils').

The Constituent Councils have resolved to work together to establish a Regional Subsidiary to co-ordinate the implementation of the Plan.

INTERPRETATION

In this Charter: the singular includes the plural and vice versa and words importing a gender include other genders; words importing natural persons include corporations; reference to a section is to a section of the Act and includes any section that substantially replaces that section and deals with the same matter; headings are for ease of reference only and do not affect the construction of this Charter.

PURPOSE

- 4.1 The Regional Subsidiary has been established for the following purposes:
- 4.1.1 to implement or oversee the construction of stormwater infrastructure for the purposes of the implementation of the Plan - subject to first obtaining the approval of the relevant Constituent Council(s) and, if necessary, the consent of the Storm Water Management Authority, in respect of any material change in the design or the cost of any works of implementation;
 - 4.1.2 to oversee the maintenance and repair and/or renewal of stormwater infrastructure established through the implementation of the Plan;
 - 4.1.3 to oversee the implementation of associated, adjacent and/or related infrastructure works or measures on behalf of a Constituent Council at the cost of the Constituent Council;
 - 4.1.4 to hold stormwater infrastructure constructed in the implementation of the Plan on behalf of the Constituent Councils as agreed from time to time by resolution of the Constituent Councils;
 - 4.1.5 to implement such other non-infrastructure measures as set out in the Plan or approved by the Constituent Councils or as determined by the Board to be necessary or convenient for or incidental to the implementation of the Plan;
 - 4.1.6 to provide a forum for the discussion and consideration of the Constituent Councils' obligations and responsibilities under the Plan;
 - 4.1.7 to enter into agreements with Constituent Councils for the purpose of managing the Plan;

27 February 2018

THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE

1055

- 4.1.8 to co-operate insofar as it is reasonably practicable with the Natural Resource Management Board in the performance of its functions under the *Natural Resources Management Act 2004* and otherwise with any other agency or instrumentality of the State, any body corporate and/or natural person including but not limited to landholders; and
- 4.1.9 to exercise other powers and functions as the Board considers necessary or convenient for or incidental to the purposes for which the Regional Subsidiary has been established.
- 4.2 The Regional Subsidiary is not involved in a significant business activity as defined in the Clause 7 Statement prepared under the Competition Principles Agreement of the National Competition Policy.
- 4.3 The Regional Subsidiary must not undertake any form of public consultation within the proclaimed area of any of the Constituent Councils without first having consulted with and taken into account any response from the Constituent Council.

GUIDING PRINCIPLES

The Regional Subsidiary must, in the performance of its functions and in all of its plans, policies and activities give due weight to all relevant policies of the Constituent Councils and to economic, social and environmental considerations.

POWERS

- 6.1 The Regional Subsidiary is constituted as a body corporate under the Act and in all things acts through the Board.
- 6.2 The Regional Subsidiary has the following powers:
 - 6.2.1 to acquire, deal with and dispose of real and personal property (wherever situated) and rights in relation to real and personal property;
 - 6.2.2 to compulsorily acquire land in accordance with the *Land Acquisition Act 1969*, provided that such acquisition is consistent with the Plan and subject to the Board having received at least four (4) weeks notice prior to consideration of the matter by the Regional Subsidiary and the Board agreeing to the disposal by resolution supported unanimously by all Board members;
 - 6.2.3 to sue and be sued in its corporate name;
 - 6.2.4 to enter into any kind of contract or arrangement;
 - 6.2.5 to receive, hold and expend funds provided by any third party, including funds from the Federal and/or State Governments, in the exercise, performance or discharge of its powers, functions and duties as set out in this Charter;
 - 6.2.6 to return surplus cash flow to Constituent Councils in proportion to their Equitable Interests at the end of any financial year either by way of cash payment or reduction of annual contribution;
 - 6.2.7 to set aside surplus revenue for future capital expenditure;
 - 6.2.8 to invest funds and in doing so to take into account Part 4 of Chapter 9 of the Act;
 - 6.2.9 to provide a guarantee and/or indemnity of the obligations of another person;
 - 6.2.10 to insure against any risk;
 - 6.2.11 to co-ordinate the assessment, planning, demolition, construction, operation and maintenance of stormwater infrastructure as part of the implementation of the Plan;
 - 6.2.12 to establish committees;
 - 6.2.12.1 comprised of any persons for the purpose of enquiring into and reporting to the Board on any matter within the functions and powers of the Regional Subsidiary and as detailed in the terms of reference given by the Board to the committee;
 - 6.2.12.2 with members of the committee holding office at the pleasure of the Board; and
 - 6.2.12.3 with the Chair of the Board being an *ex-officio* member of any committee established by the Board.
 - 6.2.13 to delegate any power or function except to compulsorily acquire land as set out in clause 6.2.2 and excepting the delegations of any of the powers as prohibited from delegation by section 44(3) of the Act, (where applicable to the Regional Subsidiary); and
 - 6.2.14 do anything else necessary or convenient for, or incidental to, the exercise, performance or discharge of its powers, functions or duties.
- 6.3 The exercise by the Regional Subsidiary of any of the powers conferred upon it is subject at all times to any limitations placed upon it by the Constituent Councils in accordance with their joint power of direction, by statute, by this Charter and otherwise as set out in delegations made by a Constituent Council.
- 6.4 For the avoidance of doubt, the Regional Subsidiary is unable to borrow or and may not otherwise raise funds except as set out in this Charter.
- 6.5 The Regional Subsidiary will have a common seal which may be affixed to documents requiring execution under common seal and must be witnessed by the Chairman of the Board and one other Board member.
 - 6.5.1 The common seal must not be affixed to a document except to give effect to a resolution of the Board.
The Executive Officer will maintain a register which records the resolutions of the Board giving the Regional Subsidiary the power to affix the common seal and details of the documents to which the common seal has been affixed with particulars of the persons who witnessed the fixing of the seal and the date of affixation.
 - 6.5.2 The Board may by instrument under seal authorise a person to execute documents on behalf of the Regional Subsidiary. The Executive Officer will maintain a register of such resolutions and details of any documents executed in this manner, together with particulars of the person executing the document.

THE BOARD—ROLE AND MEMBERSHIP

- 7.1 The Regional Subsidiary will be governed by a Board.

1056

THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE

27 February 2018

- 7.2 The Board is responsible for the administration of the affairs of the Regional Subsidiary. The Board must ensure insofar as it is practicable, that the Regional Subsidiary observes the objectives set out in this Charter, that information provided to the Constituent Councils is accurate and that Constituent Councils are kept informed of the solvency of the Regional Subsidiary as well as any material developments which may affect the operating capacity and financial affairs of the Regional Subsidiary.
- 7.3 Board membership is comprised as follows:
- 7.3.1 Five (5) natural persons appointed jointly by the Constituent Councils being persons who are not members or officers of any of the Constituent Councils. These persons will be appointed by the Constituent Councils from recommendations made by the Nominations Committee.
- 7.3.2 The persons recommended for appointment under clause 7.3.1 will be determined through a process approved by the Nominations Committee and will comprise persons with demonstrable skills relevant to the purpose of the Regional Subsidiary which may include (but is not limited to) skills in:
- (a) corporate financial management;
 - (b) corporate governance;
 - (c) project management;
 - (d) general management;
 - (e) engineering;
 - (f) economics; or
 - (g) environmental management.
- 7.3.3 The Board may appoint observers or specialists to attend meetings of the Board. Such appointees are not Board members and are, therefore, entitled to be present at a Board meeting at the discretion of the Board but are not entitled to vote at meetings of the Board.
- 7.3.4 Board members shall be entitled to:
- (a) receive a sitting fee determined by the Nominations Committee having regard to the *Guidelines for Agencies and Board Directors* (or any successor publication) published from time to time by the Department of Premier and Cabinet for Government Boards and Committees and approved by majority vote of the Constituent Councils; and
 - (b) reimbursement of their reasonable travelling and other expenses properly incurred in attending meetings of the Board.
- 7.4 Each Board member appointed in accordance with the provisions of this clause will be provided by the Executive Officer of the Regional Subsidiary with a written notice of proposed appointment and must provide to the Executive Officer a written acknowledgement, personally signed, confirming acceptance of their appointment and consent to act as a Board member.

TERM OF OFFICE—THE BOARD

The Board members will be appointed for a term of three (3) years excepting that the first appointments made will occur on a differential basis (two (2) Board members appointed for three (3) years, two (2) Board members appointed for two (2) years and one (1) Board member appointed for one (1) year) for the purposes of ensuring a rolling term of office whereby no more than two of the terms of office of Board members will expire at any one time. At the conclusion of their term of office, Board members will be eligible for reappointment.

CHAIRPERSON OF THE BOARD

- 9.1 At all times the Authority must have a Chairperson.
- 9.2 The Board shall determine from its members the Chairperson of the Board.
- 9.3 The Chairperson shall be appointed for a term of one (1) year and is eligible for re-appointment at the expiration of the term of office.
- 9.4 In the event that the Chairperson resigns from the office of Chairperson or as a Board member or is no longer eligible to act as a Board member prior to the expiration of the term of office, the Board shall determine from the other Board members an acting Chairperson until such time as the Board makes a new appointment under clause 9.2.
- 9.5 The Chairperson shall preside at all meetings of the Board and, in the event of the Chairperson being absent from a meeting, the Board members present shall appoint a person from amongst them who shall preside for that meeting or until the Chairperson is present.
- 9.6 The Chairperson's functions include:
- (a) to serve as Chair of all committees established by the Board;
 - (b) to represent the Regional Subsidiary in all external dealings including but not limited to, the Constituent Councils, the State Government and its agencies, other statutory authorities, the media and the public generally; and
 - (c) to exercise other functions as determined by the Board.

PROPRIETY OF MEMBERS OF THE BOARD

- 10.1 The principles regarding conflict of interest prescribed in the Act apply to all members of the Board as if they were elected members of a council.
- 10.2 The members of the Board are required to comply with Division 2, Chapter 5 (Register of Interests) of the Act and to submit returns to the Authority accordingly.
- 10.3 The members of the Board will at all times act in accordance with their duties of confidence and confidentiality and individual fiduciary duties including honesty and the exercise of reasonable care and diligence with respect to the Board as required by Part 4, Division 1, Chapter 5 of the Act and Clause 23 of Part 2 of Schedule 2.

REMOVAL OF BOARD MEMBERS FROM OFFICE

- 11.1 Neither the Regional Subsidiary nor the Board may remove a Board member from office.

27 February 2018

THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE

1057

- 11.2 The office of a Board member will become vacant upon the occurrence of any of the events listed at clause 20(3) of Schedule 2 to the Act.
- 11.3 A Board member may be removed by a decision being a resolution in the same or substantially the same terms passed by at least four (4) of the Constituent Councils.
- 11.4 The Board may request the Nominations Committee to make a recommendation to the Constituent Councils that a Board member be removed from office in the event of:
- (a) behaviour of the Board member which, in the opinion of the Board, amounts to impropriety;
 - (b) serious neglect of duty in attending to the responsibilities of a Board member;
 - (c) breach of a fiduciary duty to the Board or the Regional Subsidiary;
 - (d) breach of the conflict of interest provisions which apply to Board members; or
 - (e) any other behaviour which may discredit the Board and/or the Regional Subsidiary.
- 11.5 A Board member may otherwise be removed from office according to law.

PROCEEDINGS OF THE BOARD

- 12.1 Subject only to the extent that they are modified by this clause, the proceedings of the Board will be the same as those for committees of a council as defined in Part 2 of Chapter 6 of the Act and in accordance with the Regulations for 'Other Committees' comprised in Parts 1, 3 and 4 of the *Local Government (Procedures at Meetings) Regulations 2013*. References in Part 2 of Chapter 6 of the Act to 'the Chief Executive Officer' shall be read as if they were references to the Executive Officer of the Regional Subsidiary and references to 'the Council' or 'the committee' shall be read as if they were references to the Regional Subsidiary.
- To the extent that this Charter and the Act and the relevant Regulations are silent, the Board may determine its own meeting procedures.
- 12.2 Subject only to the special provisions of this clause, a meeting of the Board will not commence until a quorum of Board members is present and no meeting may continue unless there is a quorum of Board members present. A quorum of Board members will comprise half the Board members then in office (ignoring any fraction) plus one. A time limit of 30 minutes shall apply from the advertised commencement time of the Board meeting in which to achieve a quorum. Failure to achieve a quorum within this time limit shall result in a failed meeting.
- 12.3 For the purpose of this clause, the contemporaneous linking together by an audio-visual or other interactive means, including telephone conferencing ('telecommunication meeting') of a number of Board members provided that at least a quorum is present, is sufficient to constitute a meeting of the Board.
- Each of the Board members taking part in the telecommunication meeting must be able to hear and be heard by each of the other Board members present. At the commencement of the meeting, each Board member must announce his/her presence to all other Board members taking part in the meeting. A Board member must not leave a telecommunication meeting by disconnecting his/her, audio visual or other communication equipment, unless that Board member has previously notified the Chairperson of the meeting.
- 12.4 In the event that a quorum is not present at two consecutive meetings of the Board, an extraordinary meeting of the Board may be convened in the same manner as for a special meeting (see clause 9.8), at which the business in the agendas for the two previous failed meetings may be transacted at the extraordinary meeting of the Board where the requirement for a quorum is altered to at least two (2) members being in attendance. Decisions made at the extraordinary meeting of the Board will be binding on the Regional Subsidiary and all members of the Board and the Constituent Councils.
- 12.5 Unless this Charter provides otherwise, all matters for decision at a meeting of the Board will be decided by a simple majority of the Board members present and entitled to vote on the matter.
- Each Board member, including the Chair, is entitled to only a deliberative vote on a matter. Board members may not vote by proxy.
- 12.6 In the event of equality of votes, the Chairperson will not have a casting vote and the matter will be deemed to have lapsed and may at some later time, whether at the same meeting or at a subsequent meeting, be reconsidered.
- 12.7 Meetings of the Board will be held at such time and such place as the Board decides subject only to the requirement that there will be at least one meeting in every three calendar months.
- 12.8 A special meeting of the Board may be held at any time and may be called at the request of the Chairperson or at the written request of three (3) members of the Board.
- 12.9 Notice of all meetings will be given in accordance with the provisions applicable to a committee meeting under Part 2 of Chapter 6 of the Act and the associated Regulations.
- 12.10 Meetings of the Board will be open to the public unless the Board resolves to exclude the public pursuant to section 90 of the Act.
- 12.11 All Board members must keep confidential all documents and any information provided to them in confidence for their consideration prior to a meeting of the Board.
- 12.12 The Board must ensure that accurate written minutes of its proceedings are kept and are produced for confirmation at the next or a subsequent meeting of the Board.

ADMINISTRATIVE MATTERS

- 13.1 There will be an Executive Officer of the Regional Subsidiary appointed by the Board for a maximum of five (5) years on terms and conditions to be determined by the Board.
- 13.2 The Executive Officer will be responsible to the Board:
- 13.2.1 to ensure that the policies and lawful decisions, including contracts and tenders in accord with s49 of the Act and public consultation in accord with s50 of the Act, of the Regional Subsidiary are implemented in a timely manner;
 - 13.2.2 for the efficient and effective management of the operations and affairs of the Regional Subsidiary;

1058

THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE

27 February 2018

- 13.2.3 to provide advice and reports to the Board on the exercise and performance of the Regional Subsidiary's powers and functions; and
- 13.2.4 to give effect to the principles of human resource and work health and safety management generally applicable within local government.
- 13.3 The Executive Officer has those powers, insofar as they may be made applicable, as the chief executive officer of a council as prescribed at section 99 of the Act and such other powers, functions and duties as prescribed by this clause and as determined necessary by the Board from time to time to ensure the efficient and effective management of the operations and affairs of the Regional Subsidiary.
- 13.4 The Board may authorise the Executive Officer to employ such other officers as are required for the efficient and effective management of the operations and affairs of the Regional Subsidiary.
- 13.5 The Board may engage professional consultants and it may authorise the Executive Officer to engage professional consultants to provide services to the Regional Subsidiary to ensure the proper execution of its decisions, the efficient and effective management of the operations and affairs of the Regional Subsidiary and for giving effect to the general management objectives and principles of personal management prescribed by this Charter.
- 13.6 The establishment of the Regional Subsidiary does not derogate from the power of any Constituent Council from performing for itself the same functions and powers as the Regional Subsidiary could on behalf of the Council.
- 13.6.1 The Regional Subsidiary must register with the *Local Government Association Mutual Liability Scheme* and comply with the rules of that Scheme.
- 13.6.2 If the Regional Subsidiary employs any person, it must register with the *Local Government Superannuation Scheme* or employee nominee and the *Local Government Association Workers Compensation Scheme* and comply with the rules of those Schemes.

FINANCIAL CONTRIBUTIONS TO THE REGIONAL SUBSIDIARY

- 14.1 The annual contributions of the Constituent Councils shall be based on the Schedule One (1) percentage shares for Capital Works and operating expenses (including maintenance of assets but excluding depreciation thereof) of the Regional Subsidiary. (*Schedule One (1) reproduced below for ease of reference*).

Constituent Council	Capital Works (Equitable Interest) Percentage Share %	Operating Expenses Percentage Share %
The Corporation of the City of Adelaide	8	20
City of Burnside	12	20
City of Mitcham	10	20
Corporation of the City of Unley	21	20
City of West Torrens	49	20
Total	100%	100%

- 14.2 An individual Constituent Council may with the agreement of the Board by resolution acquire, deal with, operate and/or manage a specific infrastructure asset or project whether in whole or part; provided such asset does not encroach across Council boundaries.
- 14.3 The Board is responsible to provide each of the Constituent Councils with sufficient information for it to ascertain the level of and to understand the reasons for the funding contribution requirements in the following financial year. This will be achieved through the Business Plan and the annual budget.
- 14.4 The Board will determine annually the funds required by the Regional Subsidiary to enable it to perform its functions in the next financial year. The Constituent Councils shall contribute the funds identified by the Board in the annual budget. Councils may contribute additional funds that are required for the continuing function of the Regional Subsidiary and approved by the Constituent Councils, in accordance with Clause 13. The Board must provide full details regarding the need for additional funds to the Constituent Councils.
- 14.5 The annual funding contributions will be paid by each Constituent Council in advance by biannual instalments.
- 14.6 Additional funding contributions (if any) will be paid by each Constituent Council in the manner and at the time determined by the Board.
- 14.7 The Board is accountable to each Constituent Council to ensure that the Regional Subsidiary functions in accordance with its Business Plan and approved budgets.
- 14.8 The Regional Subsidiary may enter into separate funding arrangements with Constituent Councils and with any State or Federal Government or their agencies in respect of any project undertaken or to be undertaken by or on behalf of the Regional Subsidiary.

BUSINESS PLAN

- 15.1 The Regional Subsidiary shall have a Business Plan in respect of the ensuing four years as per clause 24 of Schedule 2 to the Act. The Business Plan will take into account the Long Term Financial Plan of the Regional Subsidiary and other relevant issues relating to the implementation, management, maintenance, repair and renewal of stormwater infrastructure.
- 15.2 The Business Plan must:
- 15.2.1 specify the services to be provided by the Regional Subsidiary;
- 15.2.2 identify how the Regional Subsidiary intends to manage service delivery;
- 15.2.3 identify the performance targets which the Regional Subsidiary is to pursue;
- 15.2.4 set out the financial and other resources and internal processes that will be required to achieve the performance targets and objectives of the Regional Subsidiary; and
- 15.2.5 specify the performance measures that are to be used to monitor and assess performance against targets.

27 February 2018

THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE

1059

- 15.3 Prior to setting the draft budget each year the Regional Subsidiary must review the Business Plan in conjunction with the Constituent Councils and this review must have regard to the Long Term Financial Plan. The Business Plan must be updated each year to ensure it provides for the ensuing four years.

¹ The Members acknowledge and support the right for the City of West Torrens to enter into negotiations with the Adelaide Airport owner (Commonwealth of Australia) and lessee (Adelaide Airport Ltd) to recover 2% of its share representing the assessed average annual flooding damages cost avoided for the Adelaide Airport.

BUDGET

- 16.1 The Regional Subsidiary must prepare a budget for the next financial year.
- 16.2 The budget must:
- 16.2.1 deal with each principal activity of the Regional Subsidiary on a separate basis;
 - 16.2.2 be consistent with and account for activities and circumstances referred to in the Regional Subsidiary's Business Plan;
 - 16.2.3 be submitted in draft form to each Constituent Council before 31 March for approval of the Council's proposed contribution for the next financial year;
 - 16.2.4 not be adopted by the Regional Subsidiary until after 31 May but before 30 June in each year;
 - 16.2.5 the adoption of the budget requires a two-thirds majority of the Board members present; and
 - 16.2.6 identify the amount of and the reasons for the proposed financial contributions to be made by each Constituent Council to the Regional Subsidiary.
- 16.3 The Regional Subsidiary must provide a copy of its budget to each Constituent Council within five (5) business days after adoption.
- 16.4 The Regional Subsidiary must reconsider its budget in accordance with regulation 9 of the *Local Government (Financial Management) Regulations 2011*.
- 16.5 The Regional Subsidiary must submit to each Constituent Council for approval, any proposed amendment to the budget that provides for an additional funding contribution by the Constituent Councils.
- 16.6 Where a Constituent Council has failed to approve its contribution, or an amended budget, and has not served a notice on the Regional Subsidiary in accordance with clause 26.2 within two months of the receipt of the draft budget, or amended budget by the Constituent Council, the approval of the Constituent Council to its contribution or to the amended budget as the case may be, will be deemed to have been given.

ACCOUNTING

The Regional Subsidiary must ensure that its accounting records, accounts and financial statements are prepared and maintained in accordance with the requirements upon it as set out in the Act and the *Local Government (Financial Management) Regulations 2011*.

AUDIT

- 18.1 The Regional Subsidiary must appoint an auditor.
- 18.2 The Regional Subsidiary must provide its audited financial statements annually to the Chief Executive Officer of each Constituent Council by 30 September.
- 18.3 The Regional Subsidiary is required to establish an audit committee unless exempted by regulation.

FINANCE

- 19.1 The Regional Subsidiary must establish and maintain a bank account with such banking facilities and at a bank to be determined by the Board.
- 19.2 The Regional Subsidiary will pay any cost or expense of the establishment, operation, administration or winding up of the Regional Subsidiary.
- 19.3 The Regional Subsidiary may on behalf of the Constituent Councils or on its own behalf, make application for payments out of the Stormwater Management Fund and other funding from the State of South Australia and the Commonwealth of Australia for the purposes of implementing the Plan.
- 19.4 The Regional Subsidiary will only compromise, compound, abandon or settle a debt or claim owed to the Regional Subsidiary subject to due diligence and without prejudice.
- 19.5 All cheques to be authorised must be signed by two members of the Board or one member of the Board and the Executive Officer.
- 19.6 The Executive Officer must act prudently in the handling of all financial transactions for the Regional Subsidiary and must provide quarterly financial and corporate reports to the Board and, if requested, to the Constituent Councils.

PLANS, REPORTS AND INFORMATION

- 20.1 The Regional Subsidiary must prepare a Long Term Financial Plan and Asset and Infrastructure Management Plan and a Business Plan.
- 20.2 The Regional Subsidiary must submit an annual report including on all works and operations and including the audited financial statements, to each Constituent Council before 30 September of the subsequent Financial Year.
- 20.3 The Board may review any of the Plans of the Regional Subsidiary at any time but must undertake a review of:
- 20.3.1 the Long Term Financial Plan of the Regional Subsidiary within six (6) months of the adoption or update of the Business Plan of the Regional Subsidiary and must, in any event, review the Long Term Financial Plan every four (4) years; and
 - 20.3.2 the Asset and Infrastructure Management Plan of the Regional Subsidiary at any time but must in any event review the Asset and Infrastructure Management Plan every four (4) years.
- 20.4 Within two weeks following each ordinary meeting of the Board the Constituent Councils shall be provided with a Key Outcomes Summary of the meeting which Summary shall include the achievements against the Business Plan when that report has been received at the Board meeting.

1060

THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE

27 February 2018

- 20.5 The Board shall report at any other time at the written request of a Constituent Council on matters being undertaken by the Regional Subsidiary. Such report shall also be provided to all other Constituent Councils.

CONSTITUENT COUNCILS MAY DIRECT THE REGIONAL SUBSIDIARY

- 21.1 The Regional Subsidiary is, in accordance with the Act, subject to the joint direction and control of the Constituent Councils.
- 21.2 To be effective against the Regional Subsidiary, a determination or direction or other decision of the Constituent Councils must be made/given in the same or substantially the same terms as evidenced by either:
- 21.2.1 a minute signed by the chair of a meeting of authorised delegates of the Constituent Councils that at such meeting a resolution was duly made by each delegate on behalf of their Council; or
- 21.2.2 a resolution in the same terms in favour of that decision passed individually by each of the Constituent Councils.

CONSTITUENT COUNCILS ARE GUARANTORS OF THE REGIONAL SUBSIDIARY

As a matter of record, Schedule 2, clause 31(1) of the Act is that liabilities incurred or assumed by the Regional Subsidiary are guaranteed by the Constituent Councils. As between the Constituent Councils, they share in the debts and liabilities of the Regional Subsidiary in proportion to their respective Equitable Interests.

INSURANCE REQUIREMENTS

- 23.1 The Regional Subsidiary must register with the Local Government Association Mutual Liability Scheme and comply with the Rules of that Scheme.
- 23.2 The Regional Subsidiary shall advise Local Government Risk Services of its insurance requirements relating to other special (non-civil liability) risks including all real and personal assets in its ownership or under its management, care and control.
- 23.3 If the Regional Subsidiary employs any person it must register with the Local Government Association Workers Compensation Scheme and comply with the Rules of that Scheme.

ALTERATION TO THE CHARTER

- 24.1 This Charter may be altered (amended) by resolutions passed in the same or substantially the same terms by the Constituent Councils.
- 24.2 The Executive Officer of the Regional Subsidiary must ensure that the amended Charter is published on a website determined by the Executive Officer and that notice of the amendment and a website address at which the Charter is available for inspection is published in the *Gazette* and that a copy of the amended Charter is provided to the Minister.
- 24.3 Before the Constituent Councils vote on a proposal to alter this Charter they must take into account any recommendations of the Board.

WITHDRAWAL OF A CONSTITUENT COUNCIL

- 25.1 A Constituent Council may withdraw from the Regional Subsidiary if and only if:
- 25.1.1 the Council gives written notice of withdrawal and the reasons to each other Council being at least twelve (12) months notice expiring on 30 June of a subsequent financial year; and
- 25.1.2 enters into a binding arrangement with and to the satisfaction of the Regional Subsidiary and the other Constituent Councils to make payment(s) equivalent to the amounts it would otherwise be required to make as a continuing Constituent Council in respect of the full implementation of the Plan and the maintenance and renewal of infrastructure assets and the administration costs of the Regional Subsidiary; and
- 25.1.3 all of the other Constituent Councils approve; and
- 25.1.4 the Minister approves.
- 25.2 A suspended or a former Constituent Council remains liable to contribute to the debts and/or liabilities of the Regional Subsidiary for the purposes of construction, maintenance and repair of the entire stormwater infrastructure as set out in the Plan that is the subject of that Council's contribution as a Constituent Council.

ADDITION OF NEW MEMBER

- 26.1 The Regional Subsidiary may consider the addition of a new member to the Regional Subsidiary;
- 26.1.1 if the proposed new member makes written application (in a form approved by the Board) to become a Member and agrees to be bound by this Charter;
- 26.1.2 the Constituent Councils each resolve to approve the addition of the new member to the Regional Subsidiary; and
- 26.1.3 the Minister approves the proposed new member becoming a Constituent Council.
- 26.2 The Charter shall be amended in accordance with its provisions to address the addition of any new Constituent Council.

DISPUTES

- 27.1 In the event of any dispute or difference between the Constituent Councils and the Regional Subsidiary concerning the operations or affairs of the Regional Subsidiary, the dispute process shall be initiated by a Constituent Council serving a notice of dispute on all other Constituent Councils with a contemporaneous copy being served on the Regional Subsidiary. The Constituent Councils:
- 27.1.1 will attempt to settle the dispute or difference by negotiating in good faith;
- 27.1.2 if good faith negotiations do not settle the dispute or difference within one month of the dispute arising then the dispute shall be referred to an expert for determination. The expert shall be a person with the skills and expertise necessary to resolve the dispute and shall be nominated by the President of the Local Government Association of South Australia ('LGA'). The expert is an expert and not an arbitrator. The expert's determination shall be final and binding on the Constituent Councils. The costs of the expert will be apportioned and payable in accordance with the expert's determination;
- 27.1.3 if the dispute is unable to be resolved by the expert within six months then any Constituent Council may request the Minister to dissolve the Regional Subsidiary; and

27 February 2018

THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE

1061

- 27.1.4 notwithstanding the existence of a dispute or difference, the Constituent Councils will continue to meet their obligations to the Regional Subsidiary.

For the purposes of clause 27.1 'dispute' includes where a Constituent Council has failed or refuses to approve its annual contribution as set out in a draft budget advised by the Regional Subsidiary under clauses 16.2.3 or 16.5.

DISSOLUTION OF THE REGIONAL SUBSIDIARY

- 28.1 The Regional Subsidiary may be dissolved by the Minister in the circumstances envisaged by the Act.
- 28.2 In the event of there being net assets upon dissolution and after realisation of all assets and meeting all liabilities, the net assets will be distributed to the then Constituent Councils on the basis of their equitable interest (Capital Works) in the Regional Subsidiary.
- 28.3 In the event of there being an insolvency of the Regional Subsidiary at the time of dissolution, the then Constituent Councils will be responsible jointly and severally to pay the liabilities of the Regional Subsidiary and between themselves in the proportion of their equitable interest (Capital Works).

TECHNICAL ASSESSMENT PANEL

A 'Technical Assessment Panel' (the Panel) may be appointed to support the decision-making processes of the Board with powers determined by the Board to provide advice to the Board and/or the Executive Officer in relation to the management of the technical aspects of the design, assessment, planning, demolition and construction of the various parts or projects for the purpose the Plan. The Members of the Panel will be appointed at the sole discretion and invitation of the Board but must include the Chairperson and the Executive Officer of the Board.

AREA OF INTEREST

The Regional Subsidiary may be required to undertake activities outside the area of the Constituent Councils yet within the stormwater catchment in order to comprehensively plan, investigate, assess, construct or maintain stormwater infrastructure, where such activities meet the requirements of the Plan and any supplement thereof as approved by the Authority for that particular catchment.

The Constituent Councils by operation of this clause provide their collective authority and consent for the Regional Subsidiary to undertake such activities in accordance with clause 6 of this Charter.

USE OF CATCHMENT STORMWATER

- 31.1 A Constituent Council may take water from stormwater infrastructure for its own use without penalty or other financial contribution.
- 31.2 Where a Constituent Council takes water from stormwater infrastructure for sale to a third party, that Council agrees to pay to the Regional Subsidiary for the water taken at any amount per mega litre set annually by the Board at 1 July for the ensuing twelve (12) months noting that the Council is not required to pay for water taken for the Council's own use unless the Board demands payment from that Council where the use is assessed by the Board to be beyond the reasonable supply capacity of the catchment.
- 31.3 A Constituent Council that takes stormwater for whatever reason or purpose agrees to account annually to the Board for the amount of water taken.
- 31.4 Where any dispute arises between the Constituent Councils concerning the amount of water being taken or proposed to be taken by a Council, the Regional Subsidiary may determine the maximum allocation for any particular year having regard to the reasonable supply capacity of the catchment.

ABOUT THIS CHARTER

This Charter is the charter of the Regional Subsidiary.

This Charter binds the Regional Subsidiary and each Constituent Council.

Despite any other provision in this Charter:

- 32.1 if the Act prohibits a thing being done, the thing may not be done;
- 32.2 if the Act requires a thing to be done, authority is given for that thing to be done; and
- 32.3 if a provision of this Charter is, or becomes inconsistent with the Act, that provision must be read down, or failing that, severed from this Charter to the extent of the inconsistency.

DEFINITIONS

In this Charter:

Act means the *Local Government Act 1999*.

Authority means the Stormwater Management Authority established under Schedule 1A of the Act.

Board means the collective Members of the board of management of the Regional Subsidiary.

Budget (or budget) means a budget that conforms to clause 16 and last adopted by the Board.

Business Plan means a business plan that conforms to clause 15 and last adopted by the Board.

Constituent Council means City of Adelaide, City of Burnside, Corporation of the City of Unley, City of Mitcham and City of West Torrens.

Equitable Interest means the percentage interest of an individual Constituent Council as set out in Schedule 1 to this Charter in the column 'Capital Works (Equitable Interest) Percentage Share'

Establishment Period means at any time the first 12 months during the initial establishment year.

Financial Year means 1 July in each year to 30 June in the subsequent year.

Interpretation means subject to the above, words and expressions in this Charter have the same meaning as in a provision of the Act that deals with the same matter.

1062

THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE

27 February 2018

Nominations Committee means the Chief Executive Officers (or their nominees) and the Mayor (or elected member authorised by the Mayor) of each of the Constituent Councils. A meeting of the Nominations Committee for any purpose provided in this Charter may only occur if at least three (3) of the Constituent Councils are represented by either of the CEO (or nominee) or Mayor (or elected member).

Plan means the approved and Gazetted Stormwater Management Plan

Regional Subsidiary means the Brown Hill and Keswick Creeks Stormwater Board.

Stormwater Management Plan ("the Plan") means a plan and any subsequent revisions or supplements thereof in relation to the Brown Hill and Keswick Creeks catchment of which each of the Constituent Councils are part and approved by the Stormwater Management Authority for implementation by the Regional Subsidiary which complies with the requirements of Division 3 of Schedule 1A of the Act.

Surplus Funds means funds that are surplus to the financial requirements of the Regional Subsidiary in achieving the requirements of the Stormwater Management Plan, and as evidenced by any Plan adopted by the Board.

Technical Assessment Panel (the Panel) means a person appointed to a panel at the discretion of the Board to provide advice and manage the technical aspects of the design, assessment, planning, demolition and construction of the various parts or projects for the purpose the Plan.

SCHEDULE ONE

The contributions of the Constituent Councils shall be based on the following percentage shares for capital works, maintenance of assets of the Regional Subsidiary and operating expenses of the Regional Subsidiary:

Constituent Council	Capital Works (Equitable Interest) Percentage Share %	Operating Expenses Percentage Share % ¹
The Corporation of the City of Adelaide	8	20
City of Burnside	12	20
City of Mitcham	10	20
Corporation of the City of Unley	21	20
City of West Torrens	49	20
Total	100%	100%

¹ The parties acknowledge and agree that, for the purpose of determining the contribution of each Constituent Council, the operating expenses of the Regional Subsidiary do not include depreciation.

Dated: 15 February 2018

18 LOCAL GOVERNMENT BUSINESS

18.1 Local Government Circulars

Brief

This report provides a detailed listing of current items under review by the Local Government Association.

RECOMMENDATION(S)

It is recommended to Council that the Local Government Circulars report be received.

Discussion

The Local Government Association (LGA) distributes a weekly briefing on a range of matters affecting the general functions, administration and operations of councils through a 'General Circular'.

The indices attached for Members' information in this report are numbers 11 and 12.

If Members require further information, they may contact the Chief Executive Officer's Secretariat. In some circumstances, it may then be appropriate for the Member to contact the relevant General Manager for more information.

Attachments

1. Local Government Circulars Weeks 11 and 12



Local Government Association of South Australia

11.2 Role for Elected Members in Community Engagement through the lens of Annual Business Planning March 2018

The LGA through a R&D grant are working on a project that will cover two aspects that are intended to be added as an Addendum to the LGA Community Engagement Handbook.

11.3 Registrations open for AURIN Workshop

AURIN is running a free workshop on its Workbench platform. This Circular provides more information and registration details.

11.4 LG Professionals Australia, SA - 2018 Emerging Leaders Program

Are you or someone from your council ready to step outside of your comfort zone and take your leadership skills to the next level? We are pleased to announce that registrations are open for 2018 Emerging Leaders Program.

11.5 Welcoming Cities Symposium

On 23 March 2018, Welcoming Cities will convene its third national symposium in Adelaide. This Circular provides more information and registration details.

11.6 Nominations sought for the Dog and Cat Management Board

The Minister for Sustainability, Environment and Conservation has written to the LGA requesting nominations for a Local Government member on the Dog and Cat Management Board for a term of up to 3 years. Nominations must be forwarded to the LGA by cob 17 April 2018.

11.7 Business SA's South Australian Young Entrepreneur Scheme and the Encore Entrepreneur Program

Applications open for Business SA's South Australian Young Entrepreneur Scheme and the Encore Entrepreneur Program.

11.8 2018 LGA Ordinary General Meeting - Agenda available

The agenda for the LGA Ordinary General Meeting to be held on Friday 13 April 2018 at the Adelaide Town Hall is now available to download from the LGA website.

11.9 Consultation Draft Model Financial Statements 2018

Consultation Draft Model Financial Statements for 2018 have been released for review and comment. Comments are sought by Friday 20 April 2018.

11.10 Appropriate trees for planting under powerlines - workshops for councils

SA Power Networks are holding a series of workshops to consult with councils in developing a list of appropriate species suitable for planting under powerlines. This Circular has more details.

11.11 2018 Winston Churchill Fellowships

Applications are now open for the 2018 Winston Churchill Fellowships; an opportunity to travel overseas to investigate a topic or issue which you are passionate about.

11.12 Reminder – Nominations for Council Members Recognition of Service

Currently serving council members, who have served for 20 years or more are eligible to receive a Certificate of Service. Further information can be found in this Circular.

11.13 2018 SA State Training Awards Reminder

Opportunities exist for high achieving vocational education and training students and/or their employing councils to be recognised for having achieved excellence within the vocational education and training environment. An information session is being held 19 March 2018 with nominations closing 9 April 2018. More information is contained within this circular.



Local Government Association of South Australia

12.1 Roadworks regulations – information and forum for councils

The State Government's new roadworks permit scheme will commence on 1 June 2018. This Circular provides more information and details of an information session for councils.

12.2 2018 SA Tourism Awards Nominations close 25 June 2018

The South Australian Tourism Awards are presented by the South Australian Tourism Industry Council. With over 30 award categories, the Awards celebrate and acknowledge tourism businesses that have demonstrated outstanding achievement and success throughout the year.

12.3 Illegal dumping

The LGA would like to advocate that the Environment Protection Authority (EPA) provide financial support to assist councils with the liability associated with illegally dumped waste. This Circular provides further details as to how the LGA is seeking councils' assistance to develop a business case.

12.4 LGA Board Meeting 22 March 2018 - Agenda available

The LGA Board will meet on Thursday 22 March 2018 at Regional Council of Goyder, 1 Market Square, Burra. The agenda is now available and this circular provides a list of reports to be considered at the meeting.

12.5 Resilient Australia Awards 2018

Nominations for the 2018 Resilient Australia Awards are now open. This circular has details.

13.1 Applications open for SA Water Community Partnerships Program

SA Water is launching a new Community Partnerships Program to replace its previous sponsorship scheme. This Circular provides further information and application details.

13.2 Accredited Professional Scheme discussion paper and State Planning Commission Blueprint released

The LGA encourages councils to read and provide submissions on the Accredited Professional Scheme discussion paper, and to read and consider the State Planning Commission Blueprint for South Australia's Planning & Design Code. This Circular contains further information and links.

19 MEMBER'S BOOKSHELF

- Department of Veterans' Affairs and Australian War Memorial, Century of Service series - Curiosity: stories of those who report during wartime
- Department of Veterans' Affairs, 2018 Anzac Day poster

RECOMMENDATION

That the additions to Members' bookshelf be noted.

20 CORRESPONDENCE

20.1 Adelaide and Mount Lofty Ranges Natural Resources Management Board Minutes

Correspondence has been received from the Adelaide and Mount Lofty Ranges Natural Resources Management Board regarding the minutes of the board meeting held on Thursday 14 December 2017 (**Attachment 1**).

20.2 Fruit Trees on Verges and Nature Strips

Correspondence has been received from the Executive Director of the Biosecurity SA, Mr Will Zacharin, regarding the use of fruit trees as street trees for verges and nature strips (**Attachment 2**).

20.3 Heart Foundation Local Government Awards program

Correspondence has been received from the Chief Executive Officer - National of the Heart Foundation, Prof John G Kelly AM, advising that the Heart Foundation Local Government Awards program will not be continuing (**Attachment 3**).

RECOMMENDATION

That the correspondence be received.

Attachments

- 20.1 Adelaide and Mount Lofty Ranges Natural Resources Management Board Minutes
- 20.2 Fruit Trees on Verges and Nature Strips
- 20.3 Heart Foundation Local Government Awards program

**ADELAIDE AND MOUNT LOFTY RANGES
NATURAL RESOURCES MANAGEMENT BOARD**



Government
of South Australia

Adelaide and
Mount Lofty Ranges
Natural Resources
Management Board

MINUTES OF MEETING NO 137

**held from 1.00pm to 3.13 pm
on Thursday 14 December 2017
at AMLR NRM Board Office,
205 Greenhill Road, Eastwood**

PRESENT:

Chair: Chris Daniels

Members: Alexandra Kentish
Allan Sumner
Mark Searle
Rachael Siddall
Rob Lewis
Russell Johnstone
Trudi Meakins
James Crocker
Julia Grant
Peter Pfennig

APOLOGIES:

Daniel Casement

IN ATTENDANCE:

Brenton Grear, Regional Director
Katharine Ward, Manager Water Projects
Kim Krebs, Manager Community Engagement
Lisien Loan, Manager Parks & Sustainable Landscapes
Louisa Halliday, Manager Planning & Evaluation
Marguerite Swart, Manager Business Support
Michaela Heinson, Manager Land Marine and Biodiversity Services
Judy Borlase, Minute Secretary
Observer: Susan Ivory, DEWNR AMLR Coordinator Invasive Species & Compliance
Observer: Jason van Weenen, DEWNR AMLR Species Ecologist

141217-137-1.0 MEETING PROCEDURE

141217-137-1.1 Welcome

The Chair opened the meeting and acknowledged that it was taking place on Kurna land and the Aboriginal peoples' ongoing and deep connection with the land. He welcomed all attendees to the meeting.

141217-137-1.2 Apologies

An apology was received from Daniel Casement.

141217-137-1.3 Declarations of Interest

It was noted that a NGO "Experiencing Marine Sanctuaries Inc" which Board member Rob Lewis, as Independent voluntary EMS Board Chair, recently received funding from AMLR. This was received through an application by the company Executive Officer.

There were no additional declarations of interest declared.

141217-137-1.4 Consent Schedule

*The Board **confirmed** the items within the consent schedule be adopted.*

CARRIED**141217-137-1.5 Minutes of Previous Meeting**

*The Board **confirmed** the minutes of meeting number 136 held on 23 November 2017 as a true and accurate record.*

CARRIED**141217-137-1.6 Matters Arising from Previous Meetings**

*The Board **noted** the matters arising.*

CARRIED**141217-137-1.7 Resolution Register**

*The Board **noted** the resolution register.*

CARRIED**141217-137-2.0 PRESENTATION****141217-137-2.1 Urban and peri-urban biosecurity, and range expansion for native species**

The Board received a presentation by the Manager Land Marine and Biodiversity Services, Michaela Heinson, and AMLR Species Ecologist, Jason van Weenen.

Ms Heinson acknowledged the staff within the team, being Susan Ivory, AMLR Coordinator Invasive Species & Compliance; Steve Hearn, Senior Compliance Officer; and Henry Rutherford, Urban Animal Plant Control Officer.

The presentation provided the Board with an update on urban and peri-urban biosecurity around both pest animals and plants.

*The Board **noted** the information provided.*

CARRIED

141217-137-3.0 BOARD MATTERS

141217-137-3.1 Scoping an Urban Community Natural Resource Centre

Manager Community Engagement introduced Rebecca Jenkinson, Program Coordinator for the Community Natural Resource Centres (NRC).

Ms Krebs provided the Board with an overview of the work undertaken since April 2017 in scoping a new Urban Community NRC, including discussions with council, government agencies and other possible stakeholders.

The Board noted the various options and discussed these options along with the next steps for the scoping. It was agreed that a business case will be developed to assist with stakeholder and partner engagement.

The Board:

3.1.1 **endorsed** the development of a business case to establish a coastal and marine Natural Resource Centres (NRC) based on an expanded partnership model and contributing funds towards the \$100k per annum operating costs with other partners.

3.1.2 **requested** a five year snapshot audit be undertaken for all AMLR NRCs on their events and contacts (2012 to present).

CARRIED

141217-137-3.2 Urban Sustainability Program

The Board:

3.2.1 **notes** the Urban Sustainability Program update

CARRIED

141217-137-4.0 WATER PLANNING AND MANAGEMENT MATTERS

141217-137-4.1 Status of Water Allocation Planning within the AMLR Region

The Board:

4.1.1 **notes** the status of water allocation planning in AMLR region's prescribed areas.

CARRIED

141217-137-5.0 FINANCE**141217-137-5.1 Finance Report**

Manager Business Support provided an update on the finances for the Board, including advice on the approved carryovers and depreciation on its assets.

The Board:

5.1.1 **accepted** the financial reports for the financial period ending 30 November 2017

CARRIED

141217-137-6.0 REGION'S REPORT**141217-137-6.1 Region's monthly report**

*The Board **notes** the region's monthly report.*

CARRIED

141217-137-7.0 PAPERS TO NOTE**141217-137-7.1 Register of Interests**

*The Board **notes** information paper 7.1.*

CARRIED

141217-137-8.0 OTHER BUSINESS**141217-137-8.1 Alinytjara Wilurara NRM Board**

The Board noted and offered their congratulations to Mary-Anne Healy in her appointment to the role of Regional Director for the Alinytjara Wilurara region.

141217-137-9.0 MEETING CLOSED

There being no further business, the Chair declared the meeting closed at 3.13 pm.

The next Board meeting will be held on Thursday 22 February 2018 at the office of Natural Resources Adelaide and Mount Lofty Ranges, 205 Greenhill Road, Eastwood.

Chris Daniels
Presiding Member



Date: 22 / 2 / 2018



Government of South Australia
Primary Industries and Regions SA

Our Reference: A3504838

Telephone No: 08 8429 0857

22 March 2018

Biosecurity SA - Directorate
33 Flemington Street
Glenside SA 5065
GPO Box 1671
Adelaide SA 5001
DX 66765
Tel (08) 8207 7900
www.pir.sa.gov.au/biosecuritysa

Mr Terry Buss
Chief Executive Officer
City of West Torrens
165 Sir Donald Bradman Drive
HILTON SA 5033

Dear Mr Buss

The Advertiser article that appeared in the Advertiser 21 March 2018 edition outlining the concept of fruit trees being considered by Council as suitable street trees on verges and nature strips is of some concern.

As you're aware South Australia is the only mainland state that is fruit fly free. Fruit fly is the world's most damaging horticultural pest. Being free of the pest provides our horticultural industries access to premium overseas markets as well as ensuring the community can grow fruit and vegetables without the use of unnecessary chemicals. The South Australian Government invests around \$5 million annually in managing the risk of fruit fly entering our state.

South Australia incurs isolated detections of fruit fly from time to time, predominantly occurring in the highest risk pathway, Adelaide. The prompt eradication of fruit fly is paramount to maintaining SA's fruit fly freedom status and I'm aware detections and fruit fly outbreaks have occurred in or adjacent to your Council area over past years.

The introduction of unmanaged fruit trees and fallen fruit would provide a reservoir for fruit fly and other plant pests, which may significantly impact eradication programs should fruit fly be introduced.

I understand you had a brief phone conversation with Geoff Raven, Manager Plant and Food Standards, Biosecurity SA today regarding the risks of fruit fly and the associated issues with unmanaged fruit trees. South Australia has an exceptional biosecurity status and our fruit fly freedom has been maintained by the actions of the community, industry and government for over 70 years.

I strongly urge you to raise with your Council the risks and issues associated with using fruit trees as street trees and promote the use of non-host trees for nature strips and verges.

Please do not hesitate to contact me on 8429 0857 if you need to discuss this or need further details.

Yours Sincerely



Will Zacharin
**EXECUTIVE DIRECTOR
BIOSECURITY SA**



March 2018

Mr Terry Buss
Chief Executive Officer
City of West Torrens
165 Sir Donald Bradman Drive
HILTON SA 5033

National Heart Foundation
of Australia
ABN 98 008 419 761

Level 2, 850 Collins Street
Docklands VIC 3008

Telephone 13 11 12
heartfoundation.org.au

Dear Mr Buss

For 25 years, the Heart Foundation has been recognising the efforts of Australian councils to build healthy communities. Since the inception of the Local Government Awards, we have received more than 2,500 entries showcasing a huge range of initiatives, ideas and programs. These have been showcased across the country through local, state and national events and publications.

I am writing to inform you that the Heart Foundation Local Government Awards program will not be continuing.

We are proud that we have been able to support so many councils in creating healthier streets, towns and cities. Together we have worked to implement policies and programs that make it easier for Australians to lead heart-healthy lives.

Through our new strategic plan – One Heart 2018-2020 - the Heart Foundation is committed to an ongoing relationship with local councils to improve the wellbeing of all Australians and reduce the risk of chronic disease. We look forward to working with councils through our continuing national programs to ensure that all Australians live, work and play in environments that actively promote and support healthy choices. Details overleaf.

The Heart Foundation is committed to making a difference to Australia's heart health and we cannot achieve this without the support and vital work of local governments.

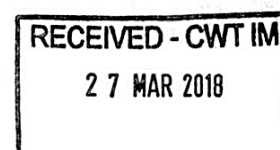
Thank you for your support of the Heart Foundation Local Government Awards.

If you have any queries, please contact Fiona Patterson, National Programs Manager
Fiona.Patterson@heartfoundation.org.au

Yours sincerely,

A handwritten signature in black ink that reads "John Kelly". The signature is written in a cursive, flowing style.

Adj Prof John G Kelly AM
Chief Executive Officer – National



21 CONFIDENTIAL

21.1 Appointment of Council Assessment Panel Independent Members

Reason for Confidentiality

The Council is satisfied that, pursuant to Section 90(3) (a) of the *Local Government Act 1999*, the information to be received, discussed or considered in relation to this agenda item is:

- (a) information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead).

RECOMMENDATION

It is recommended to Council that:

1. Pursuant to Section 90(2) of the *Local Government Act 1999*, Council orders, that the public, with the exception of the Chief Executive Officer, members of the Executive and Management Teams in attendance at the meeting, and meeting secretariat staff, be excluded from attendance at so much of the meeting as is necessary to receive, discuss and consider in confidence, information contained within the confidential report Item 21.1 Appointment of Council Assessment Panel Independent Members, attachments and any associated documentation submitted by the Chief Executive Officer, specifically on the basis of the provisions of Section 90(3) (a) because premature disclosure of this information would be unreasonable given it contains personal information relating to the applicants which could inadvertently prejudice their future career aspirations and breach any duty of confidentiality owed to them by Council.
2. At the completion of the confidential session the meeting be re-opened to the public.

22 MEETING CLOSE

INDEX

1	Meeting Opened	1
2	Present	1
3	Apologies	1
4	Disclosure Statements	1
5	Confirmation of Minutes	1
6	Communications by the Chairperson	1
7	Questions with Notice	1
	Nil	
8	Questions without Notice	1
9	Motions with Notice	1
	Nil	
10	Motions without Notice	1
11	Urban Services Division Reports	2
	11.1 Local Area Traffic Management	2
	11.2 New Depot Facility - Morphett, Road, North Plympton.....	8
	11.3 Urban Services Activities Report	11
12	Meeting Close	26

1 MEETING OPENED**2 PRESENT****3 APOLOGIES****4 DISCLOSURE STATEMENTS**

Committee Members are required to:

1. Consider Section 73 and 75 of the *Local Government Act 1999* and determine whether they have a conflict of interest in any matter to be considered in this Agenda; and
2. Disclose these interests in accordance with the requirements of Sections 74 and 75A of the *Local Government Act 1999*.

5 CONFIRMATION OF MINUTES**RECOMMENDATION**

That the Minutes of the meeting of the Urban Services Committee held on 6 March 2018 be confirmed as a true and correct record.

6 COMMUNICATIONS BY THE CHAIRPERSON**7 QUESTIONS WITH NOTICE**

Nil

8 QUESTIONS WITHOUT NOTICE**9 MOTIONS WITH NOTICE**

Nil

10 MOTIONS WITHOUT NOTICE

11 URBAN SERVICES DIVISION REPORTS

11.1 Local Area Traffic Management

Brief

To provide Council with a discussion paper on the likely implication of combining Precincts D, 17, 19 and 20 as a single LATM project.

RECOMMENDATION

The Committee recommends to Council that the report considering the LATM study for Precincts D, 17, 19 and 20 as a single project be received.

Introduction

At the meeting on 6 March 2018, the following resolution under Motions with Notice was adopted by Council:

That the Administration prepare a report for Council consideration on the likely implication of carrying out the remaining LATM studies for Precincts D, 17, 19 and 20 as a single project to expedite the LATM strategy, having regard to considerations such as cost (in-house and external), consultation with relevant stakeholders, the adopted LATM methodology and other relevant matters that may impact on such a process.

Discussion

In the Transport Plan for the City of West Torrens, the City was divided into LATM precincts numbering 1 to 24 and A to E, which total 29 precincts (**Attachment 1**).

Following the subsequent adoption of a priority ranking system, the LATM precincts were then prioritised based on crash data, traffic data and land use considerations. The LATM precincts with the highest priorities are those with the most significant traffic and parking issues. This ranking process produced a 10-year forward planning program whereby LATM studies for the first group of precincts were approved by Council to be undertaken in the order indicated.

Of this first group of precincts approved by Council for LATM studies, Precincts 9/10 (Torrensville/Thebarton) have been completed, Precincts 21/22/B/C (Novar Gardens/Camden Park) and 16/12 (Richmond/Hilton/Cowandilla/Mile End) have commenced. Precincts D (Marleston), 17 (Netley/North Plympton), 19 (Kurralta Park) and 20 (Ashford/Keswick) are the remaining precincts where LATM studies have not commenced.

The next scheduled LATM project to commence is that of Precinct 20.

However, to expedite the process, the Council resolution requested an analysis be undertaken of combining Precincts D, 17, 19 and 20 as a single project.

Briefly, the current progress of the LATM projects in the City are as follows:

Precincts 9/10 – following the adoption of the LATM strategy, implementation of the LATM projects is in progress with a number of significant projects completed, for example the roundabout at Ashley Street/Hardys Road.

Precincts 21/22/B/C – the first Working Party for the LATM precinct has been initiated following the completion of the data collection, initial consultation with the community and stakeholders and assessment of the issues raised. In the following few months it is envisaged that options would be developed for the LATM strategy for discussion with the Working Party and Council and subsequent further consultation with the community. It is anticipated that the implementation plan for this LATM would be completed by December 2018.

Precincts 16/12 – Further supplementary data collection is being undertaken, with continuing assessment occurring in the crash analysis and review of road conditions.

It should be noted that the outcome of a LATM study is the adoption of a LATM strategy and implementation plan. Beyond this, the implementation plan is 'open ended' in that it is dependent on the staging plan adopted (for example Stage 2 may only proceed if there are impacts arising from Stage 1 works), funding allocations from Council's annual budgets and sources of funding from elsewhere as opportunities arise (e.g. black spot funding, LGA funding, road reconstruction program etc.).

The discussion regarding the timeline for a LATM study therefore relates only to the completion of the study and adoption of a LATM strategy and implementation plan by Council and not the subsequent physical works that may occur thereafter.

In reviewing the timeline to complete the LATM study for Precincts 9/10 (highest priority precinct), the following should be noted:

- Being the first LATM study with the highest ranked priority, this is the area with the most significant traffic and parking issues in the City, as highlighted by the community consultation and the traffic and parking data recorded. Considerable time was required of City Assets staff in developing comprehensive solutions to the issues raised. In conjunction with the LATM study process, opportunities came up to seek external funding to provide safety improvement measures in the area, which City Assets staff managed to take advantage of (e.g. black spot funding from Government), which occurred concurrently with the LATM study process. The design and implementation of these externally funded works required City Assets resources to be allocated, which added to the workload of Council's Traffic Engineer.
- Coinciding with the commencement of the LATM study for Precincts 9/10, major and significant land use changes have also occurred which have impacted on the workload of Council's Traffic Engineer and other City Assets staff. The development of the Brickworks Market Place, with major traffic and parking implications in Precincts 9/10, was one example of the change. The designation of urban corridor zones by the SA Government and subsequent major developments flowing from these land use zoning changes and other in-fill developments have resulted in greater demands from the community to investigate the traffic and parking issues. The workload and time demands for the Traffic Engineer and other City Assets staff have therefore increased significantly as a consequence.
- Coinciding with the LATM study for Precincts 9/10, the construction of the RAH had resulted in significant parking impacts over a wide area of Council. This has diverted City Assets resources and time to looking at ways to deal with the large scale parking impacts, which in turn had impacted on the delivery time for the LATM project.

Based on the considerations above, it is apparent that the LATM study for Precincts 9/10 is unique in that the study had coincided with some major changes to land uses and major projects that had large scale impacts on the City.

To date, the LATM studies are undertaken in-house primarily by Council's Traffic Engineer and technical staff in City Assets, with some technical input from Council's traffic consultant.

Because of the challenges detailed above, Council's Traffic Engineer has had to balance the time between carrying out the 'normal' duties of attending to the day to day work of addressing traffic and parking issues raised by the community, the increased workload from issues arising from the large numbers of in-fill and major developments, the impacts of construction projects elsewhere impacting on the City and progressing with the LATM studies in a timely manner.

As a consequence of the increased workload, the time taken to complete the LATM study for Precincts 9/10 has been considerably longer than initially anticipated.

In-house approach for the LATM project

Following the experience gained from the LATM study for Precincts 9/10, the process to guide the next LATM projects has been refined and streamlined. As a result, the flowchart for the next LATM area, i.e. Precincts 21/22/B/C, envisages a 12-month project timeline from commencement of data collection to the completion of an implementation plan, which is considerably less than for Precincts 9/10. The progress for the LATM study for Precincts 21/22/B/C is on track with the projected timeline.

To estimate the in-house costs associated with a typical LATM study, the experience gained from the Precincts 9/10 project provides the best guess of the likely in-house staff time.

The in-house staff time includes that of the General Manager/Manager to overview and provide direction for the LATM project and to attend key meetings. The majority of the in-house staff time is that of the Traffic Engineer's, who is primarily responsible for the project, and supplemented by other technical staff when required.

The estimated in-house cost to complete the Precincts 9/10 LATM project was in the order of \$80,000 to \$90,000, which includes the time spent to undertake over 50 traffic counts in the area, but excludes the mail-out expenses.

A comparison of the relative sizes of the precincts show that Precincts D/17/19/20 combined would have relative unit area that is approximately 25% larger than Precincts 9/10. The in-house costs estimated for Precincts 9/10 can therefore be increased by 25% to reflect the larger Precincts D/17/19/20 combined.

The estimated in-house cost for the LATM study for Precincts 21/22/B/C combined would be in the order of \$110,000.

External consultant to undertake the LATM project

An estimate of cost was sought from an external consultant familiar with undertaking LATM projects. Given that at this stage a preliminary assessment of Precincts D/17/19/20 has not been undertaken, for example, to determine more accurate requirements such as the number of traffic counts necessary, the estimate provided by the external consultant should be regarded as 'ball-park' only.

The cost estimated for each precinct (after some minor adjustments) provided by the external consultant are:

Precinct 17	\$55,000 excluding GST
Precinct 20	\$50,000 excluding GST
<u>Precincts 19/D</u>	<u>\$60,000 excluding GST</u>
TOTAL	\$165,000 excluding GST

Not included in the external cost estimate is the staff time required to manage the external consultant. It would be likely that a significant amount of staff time would be required to manage the external consultant, provide background information and provide assistance in community consultation etc. The in-house cost estimate has included this staff time in the calculations. To compare like for like, the staff time and cost described above should also be included in the external cost, in the order of \$20,000.

The external consultancy is only expected to produce an 'Issues' paper and an 'Options Report'. The external cost estimate does not appear to include an 'end' report that summarises all of the LATM investigations, options and recommendation, unlike the in-house approach, where a very extensive, detailed and consolidated report would be the end product of the LATM project. It is assumed that the production of this end report would add approximately \$20,000 to the project.

Based on the above, it is estimated that using an external consultant for the LATM study for Precincts 21/22/B/C would cost in the vicinity of \$200,000.

Comparison of in-house and external approaches for Precincts D/17/19/20

In-house cost estimate: \$110,000

External cost estimate: \$200,000

The cost differential using an external consultant to undertake the LATM project is likely to be in the order of twice that of the in-house approach. The higher cost incurred in using external consultants is not unexpected.

If the Council does not have the necessary expertise in LATM work, then using external consultants would probably be the only feasible option available. If the Council does not have adequate staffing levels to commit to the project, then using external consultants would probably be a reasonable approach. Generally, the relevant Council staff have the expertise to undertake the LATM project in-house, however, currently the position is vacant and the successful candidate may require upskilling to be able to undertake LATM projects.

Other factors that should be considered are:

- Many of the City Assets staff have worked in the Council for many years and hence are very familiar with the road conditions and background to the issues gained from previous dealings with ratepayers and day-to-day management. This wealth of knowledge is easily tapped into when the LATM project is undertaken in-house. Whilst this is not suggesting that the external consultancy approach is at a disadvantage, in the end, the external consultant would have to rely on information provided by others without necessarily knowing the background and the underlying issues that may be present. It would take time (and cost) for the external consultant to become familiarised with the conditions and issues in the study area.
- Traffic counting is already part of the regular task of the in-house technical staff. The traffic counts required for the LATM project can be undertaken as efficiently in-house as using external companies. In-house cost for the traffic counts is likely to be significantly lower than using external consultants, since Council already owns the traffic counters.
- The external consultant envisages a project timeline for the LATM commencing mid-2018 and completion by mid-2020. The in-house approach would not be too dissimilar to the external consultancy approach in terms of the timelines (following the experience gained by Council staff from the earlier LATM projects).

The options going forward are as follows.

If the LATM is to proceed as before, i.e. in-house by City Assets, Council's Traffic Engineer would need to balance the workload between the normal duties and the LATM project. If further major changes were to occur outside of the Council's control (e.g. further land use changes by Government), this may have an impact on the LATM project timeline.

If the LATM is to proceed using external consultants, significant staff time would still be required to manage the consultant and to provide ongoing advice and support to the consultant during the course of the project. The timeline would be no different to the in-house approach while the cost would be significantly higher.

Another scenario is to engage four separate consultants to do the four different precincts at the same time. However, managing four separate LATM consultancies at the same time is not considered to be feasible due to the need to liaise with and provide ongoing advice to multiple consultants.

Conclusion

If Precincts D/17/19/20 were to be undertaken as a single project, there were two clear findings from the analysis:

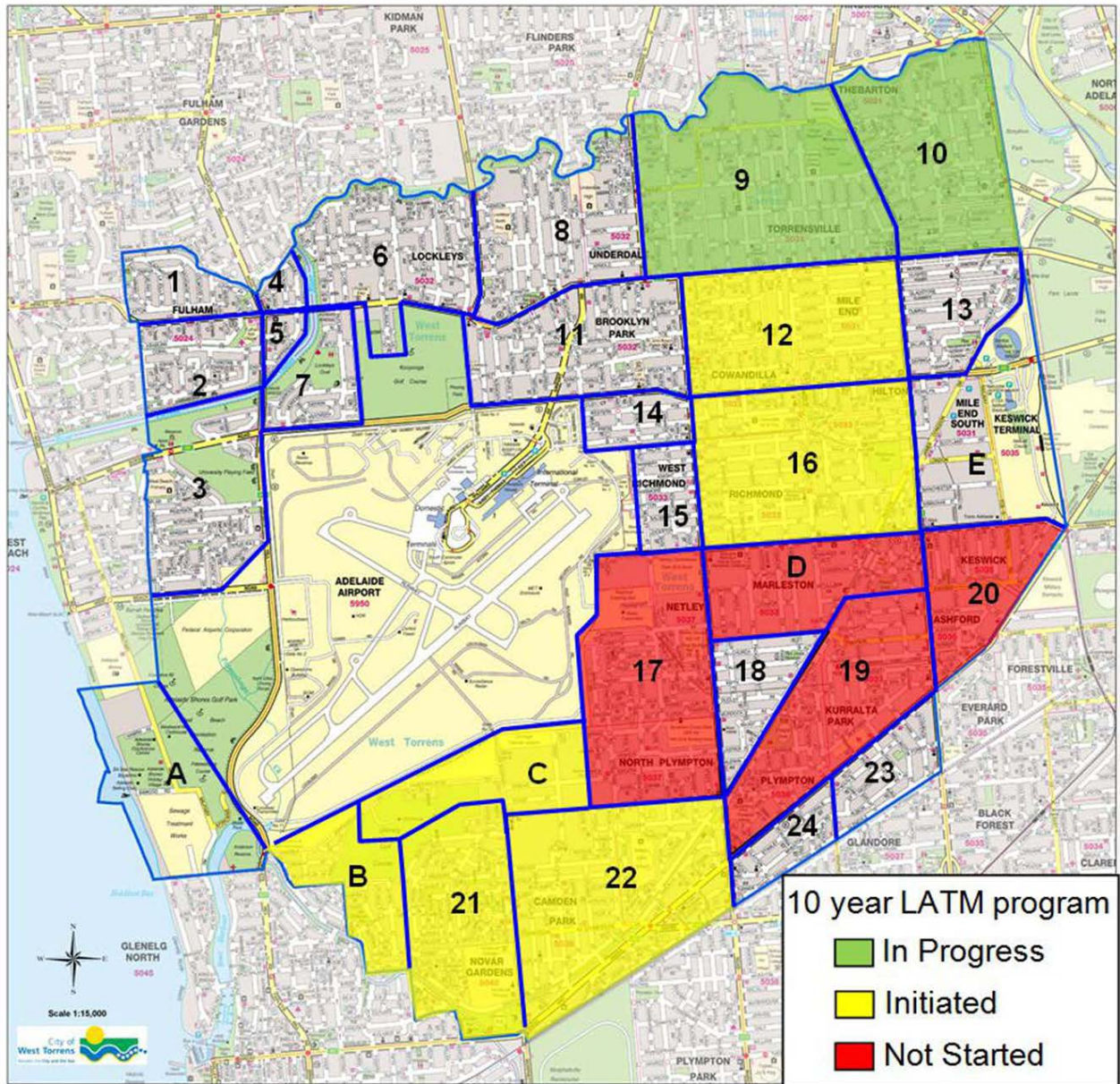
- (1) the LATM project undertaken in-house would cost significantly less than if it were to be undertaken by an external consultancy;
- (2) in terms of timelines, there is probably not a significant difference between doing the work in-house (with City Assets having refined the approach for current LATM projects based on the Precincts 9/10 experience) and using an external consultant.

There are other benefits and disadvantages to the two approaches as discussed above. Using an external consultant would free up City Assets staff to perform their 'normal' duties. If undertaken in-house, City Assets staff would need to balance the workload and commitments to other projects, however, the wealth of knowledge that staff have would probably ensure that the LATM strategy developed would be more 'in tune' with the community's needs. If in-house staff were to deliver the remaining LATM projects, and considering the growing demand of traffic and parking enquiries requiring staff time, an additional staff member would be considered necessary to enable the delivery of the projects and also maintain a suitable responsive level to 'day to day' duties.

Attachments

1. LATM Precinct 10 year Program

LATM precinct 10 year program Numbered 1 to 24 & A to E



11.2 New Depot Facility - Morphett, Road, North Plympton

Brief

To provide Members with a monthly update report on the relocation to the new depot facility at Morphett Road, North Plympton.

RECOMMENDATION

The Committee recommends to Council that the report be received.

Introduction

At the Council Meeting on 12 December 2017, the Council resolved

That the Administration provide an update report to each meeting of the Urban Services Committee on the progress and actions required to relocate staff to the new North Plympton Public Works Depot including timelines and general financial information on how the project is tracking against the approved budget.

This report details the progress and actions taken by the Administration since the previous report presented to the Committee at its meeting of 6 March 2018.

Discussion

The following is a summary of the current status of the relocation of staff from the current depot site on Marion Road to the new depot site at Morphett Road:

- A key milestone achieved this month was the successful relocation of the majority of City Operations staff to the new facility. These staff, together with those from the City Property department, now occupy and operate from this site on a permanent basis.
- A delivery framework has been completed and extensive staff consultation has been ongoing. The delivery framework provides for a structured approach to the move, using different staff reference groups for the implementation, delivery and relocation of the staff to the new depot.
- The feasibility study into the installation of solar/battery and other sustainability solutions at the new depot is continuing and a draft report is expected to be completed in the coming months.
- Detailed investigations are also underway regarding the options for the use (or reuse) of water within the depot. This includes water storage options (for ground/roof run-off) and connection into the recycled water pipeline (Council's recycled water pipeline network).
- Ongoing compliance testing and maintenance has continued in all areas of the site, including electrical/fire compliance, lift servicing, air conditioning, building and gardening maintenance etc. Additional repairs have continued on some of the building elements for occupancy of the building, including roof access systems, ceiling (water) damage, electrical wiring and lighting. A major initiative of this work has been the replacement of the existing energy intense lighting in the administration areas of the facility to new energy efficient LED lighting. The replacement of the existing lighting in the workshop area will be considered as part of the modifications for the 'fitout' elements due to changes in lighting requirements in the specific work areas.

- The modifications to the current ground floor facilities to cater for female use has been finalised to allow the relocation of the staff to the new facility. These works included the removal of an existing (male) wash area and construction of a female change room, shower and toilet facilities.
- The initial Work Health Safety (WHS) compliance tasks have been finalised. These tasks were essential to enable the staged staff relocation scheduled in mid-March. Tasks include staff emergency and evacuation management, staff site inductions and traffic and safety management onsite while the new depot 'fitout' is being implemented.
- Car parking arrangements in the area northwest of the facility have been changed to accommodate permit parking for Council employees. A small section of the carpark is still open to the public for use, however, these arrangements will be reviewed in due course.
- Detailed design is continuing on specific 'fitout' elements, including:
 - Security
 - Wash-down bay and 'water fill' facility
 - Fuel and oil storage
 - Welding/steel fabrication facility
 - Team workshop facilities
 - Mechanical workshop

An update of the timeframes and the deliverables of each of these components will be provided in a future report once the design has been finalised.

Financial

The current status of budget vs expenditure to 28 February 2018 is as follows:

Budget 2017 / 2018	Expenditure (Approx.)
\$1,000,000	\$225,000

Proposed expenditure timeframes will be provided once the detailed design has been finalised for the different elements within the depot facility (as detailed above).

Timeframes for Relocation

The majority of the City Operations Department staff have now relocated into the new facility. The remaining staff will not relocate until specific facilities are implemented at the Morphett Road Depot, i.e. mechanical/fabrication workshops.

Site Leasing

The leasing of the remaining area of the facility continues to progress by the agent. Further information is available from the following website, Real Commercial:

<https://www.realcommercial.com.au/property-industrial+warehouse-sa-adelaide+airport-502695098>

Marion Road Depot

The Administration is continuing to clean up the existing facility and relocate plant/equipment to the new facility at Morphett Road.

A future report is currently being prepared by the Administration in regarding to the options to progress the disposal/sale of the Marion Road site.

Conclusion

The Administration will continue to provide an updated report to each meeting of the Urban Services Committee on the progress and actions required to relocate staff to the new North Plympton depot site.

Attachments

Nil

11.3 Urban Services Activities Report

Brief

To provide Elected Members with information on activities within the Urban Services Division.

RECOMMENDATION

The Committee recommends to Council that the Activities Report be received.

Discussion

This report details the key activities of the City Assets, City Development, City Operations and City Property Departments.

Special Project Work	
New Drainage System - Lockleys Catchment Henley Beach Road Crossings - Stage 4b May Terrace, Douglas Street and Rowells Road	<p>Advance works, with minimal traffic or resident impact, have commenced on site.</p> <p>Service alterations to several underground services conflicting with the new drainage works have been arranged with relevant service providers/authorities.</p> <p>Major drainage works will commence upon completion of the service works, which is currently anticipated to be during late April to early May 2018.</p> <p>The ultimate staging of the Council civil works is dependent on numerous inputs, overlaps and timing for the service works, with further consideration of DPTI's requirements.</p> <p>Public and Resident Notification of the works will be undertaken once final understanding of the services and works scheduling is known.</p>
George Street, Thebarton Stormwater Drainage Upgrade and Road Reconstruction	George Street (South Road to Dew Street) - Construction works underway. Currently installing the underground stormwater pipes and culverts.
Dew Street and Maria Street, Thebarton, Stormwater Drainage Upgrade	Refer to George Street Stormwater Drainage and Road Upgrade.
George Street and Dew Street, Thebarton, New Roundabout	Refer to George Street Stormwater Drainage and Road Upgrade.
Brown Hill and Keswick Creek Maintenance	Consultant quotes have been received and are currently under assessment for design solutions for three sites where maintenance works are necessary to be undertaken for stability on these creeks.
Brown Hill Creek Bridge Replacements	Consultant quotes have been received and are currently under assessment for the concept design of two replacement road bridges over Brown Hill Creek at Daly Street, Kurralta Park, and Watson Avenue, Netley.

River Torrens Linear Park, (Pedestrian Light Project)	The River Torrens Linear Park Pedestrian Lighting Projects for 2017/2018 from Tapleys Hill Road, Fulham, to the Council boundary (for both the north and south sides of the river) are currently underway and are scheduled for completion in April 2018.
Westside Bikeway, (Pedestrian Lighting Project)	The Westside Bikeway Pedestrian Lighting Project for 2017/2018 along Birdwood Terrace, Plympton/North Plympton, and Deacon Avenue, Richmond is underway and scheduled for completion in June 2018.
Rolling Underground Stormwater Condition Audit 2017	Condition audit for this year's program has been completed and this information is now being integrated into Council's Asset Management systems.

Capital Works

Road Reconstruction Works	<p>The following is an update on roadworks occurring in our City:</p> <p>West Beach Road - the administration are continuing to work with the City of Charles Sturt to develop detailed design and documentation.</p> <p>Design and documentation is currently being undertaken for the following roads:</p> <ul style="list-style-type: none"> - Mortimer Street (Gray Street to Grassmere Street) - St Andrews Crescent (Sunningdale Avenue to Bonython Avenue) - St Andrews Crescent (Bonython Avenue to Hoylake Street) - Aldridge Terrace (Richmond Road to Lucknow Street) - White Avenue (Tracey Crescent to Pierson Street) - Phillips Street - West Thebarton Road - construction tender is currently in the market and works are expected to start in May 2018 following the completion of the undergrounding of power. <p>The tendering process has been completed and construction works are underway for the following roads:</p> <ul style="list-style-type: none"> - Wainhouse Street (Ashley Street to Carlton Parade) - Complete. - George Street (South Road to Dew Street) - Construction works are underway and expected to be completed by end of July 2018. - Britton Street (Marion Road to Norwich Street) - works underway and expected to be completed by the end of April 2018. - Birmingham Street (South Road to Pymbrah Road) - works underway and expected to be completed by the end of June 2018. - Toledo Avenue - works underway and expected to be completed by the end of April 2018. - Cambridge Avenue - works underway and expected to be completed by the end of April 2018.
---------------------------	--

Undergrounding of Power West Thebarton Road/ Phillips Street, Thebarton	Power pole and cabling works are ongoing. There was a delay due to contractual issues between SAPN and their contractor. SAPN have now advised that the completion date for the project will be April 2018.
Kerb & Water table Program	<p>The following is a list of the streets allocated for kerb only works in 2017/2018. The streets have been divided into two (2) stages of equal duration.</p> <p>Stage 1 - Works underway:</p> <ul style="list-style-type: none"> - Tilden Street (James Street to Gray Street) - Complete - Thanet Street (Henley Beach Road to Marshall Terrace) - design works are underway. <p>Stage 2 - Works complete:</p> <ul style="list-style-type: none"> - Clifford Street (Oscar Street to Lipsett Terrace) - complete - Bonython Avenue - complete - East Parkway (Riverside Drive to Hughes Avenue) - complete - Kellett Avenue (Kenton Street to Torrens Avenue) - complete - La Jolla Avenue (Huntington Avenue to Ayton Avenue) - complete - Lorraine Avenue (Anthus Street to Grallina Street) - complete - Ebor Avenue (Darebin Street to Tarragon Street) - complete - Laverack Road (Birdwood Terrace to Marion Road) - complete - Moss Avenue (Richmond Road to Commercial Street) - complete
Road Reseal Program	<p>The road reseal program is underway.</p> <p>The following streets have been completed:</p> <ul style="list-style-type: none"> - Clifton Street (Stonehouse Avenue to Carlton Road) - Patricia Avenue (Clifton Street to Whelan Avenue) - Warwick Avenue (Daphne Street to Cross Terrace) - Coulter Street (Allchurch Avenue to Galway Avenue) - Mackay Avenue (Edward Davies Street to Laverack Road) - Park Terrace (Allchurch Avenue to Talbot Avenue) - Talbot Avenue (Marion Road to Birdwood Terrace) - Darebin Street (Ebor Avenue to Falcon Avenue) - Albert Street (Milner Road to Martin Avenue) - Arthur Street (Brooker Terrace to Shaw Avenue) - Davenport Terrace (South Road to Milner Road) - Smith Street (Dew Street to Holland Street) - Sherriff Court - Bedford Street (Wakefield Place to end) - Acacia Avenue (End to Willingale Avenue) - Fulham Park Drive (Arcoona Avenue to Corona Avenue) - Rostrata Street (Willingale Avenue to End) - Torrens Avenue (End to Dartmoor Street) - Rankine Road (Grey Street to House No. 31) - Torrens Street (Wilton Terrace to Ferris Street)

<p>Road Reseal Program (continued)</p>	<ul style="list-style-type: none"> - Wilton Terrace (Elizabeth Street to end) - Fitch Road (Halsey Road to Good Street) - Layton Street (Henley Beach Road to Ashburn Avenue) - Samuel Street (Mackirdy Street to Weetunga Street) - Susan Street (Ayton Avenue to Henley Beach Road) <p>Road reseal works for the following are currently being programmed for after Easter:</p> <ul style="list-style-type: none"> - Sunningdale Avenue (Muirfield Street to St Andrews Crescent) - Read Lane (Coneybeer Street to Major Avenue) - McArthur Avenue (Glenburnie Terrace to Long Street) - Norma Street (South Road to Falcon Avenue) - on hold due to development - Dew Street (Rose Street to George Street) - James Street (Phillips Street to Smith Street) - Victoria Street (Henley Beach Road to Hughes Street) - Huntington Street (Henley Beach Road to Riverside Drive) - Charles Veale Drive (Windsor Terrace to Tapleys Hill Road) - Burbridge Road (Davis Street to Boundary) - Halsey Road (Western end side road)
<p>Road Rejuvenation Program</p>	<p>Works complete for the following roads:</p> <ul style="list-style-type: none"> - Byrnes Street (Lipsett Terrace to Sir Donald Bradman Drive) - Cudmore Terrace (St Anton Street to Richmond Road) - Fenner Avenue (Brooker Terrace to End) - Sanders Street (Lucas Street to Bignell Street) - Weaver Avenue (Lucas Street to Redin Street) - Lane Street (Brooker Terrace to Weaver Avenue) - Allchurch Avenue (Packard Street to Marion Road) - 50% - Raymond Avenue (Kinkaid Avenue to Padman Street) - Lea Street (Raymond Avenue to End) - Deeds Road (End to Kinkaid Avenue) - Fairfax Terrace (Elizabeth Street to End) - 50% - Lantana Court (Hopson Street to End) - Frasten Street (Torrens Street to End) - Dudley Avenue (Edward Davies Street to Birdwood Terrace) - Victoria Avenue (Curzon Street to Morphett Road) - Sir Donald Bradman Drive (Service Road) (Brecon Street to Rutland Avenue) - Sir Donald Bradman Drive (Service Road) (Moresby Street to Brecon Street) - Mawson Crescent (Rutland Avenue to Rutland Avenue) - Sabre Street (Streeters Road to Convair Street) - Lewis Crescent (Bransby Avenue to Neston Avenue) - Lasscock Avenue (Riverview Drive to Garden Terrace) - Bransby Avenue (Hawson Avenue to End)

Road Rejuvenation Program (<i>continued</i>)	<p>Preparatory works have been completed. Rejuvenation to be programmed for the following roads:</p> <ul style="list-style-type: none"> - Victoria Street (Ballara Street to Daringa Street) - Railway Terrace (Hughes Street to Junction Lane) - Hughes Street (Railway Terrace to First Chicane) - Babidge Lane (Cuming Street to Flaherty Lane) - Flaherty Lane (Railway Terrace to End) - William Street (Rosslyn Street to End) - Burt Avenue (South Road to Milner Road) - Fewings Avenue (Clifford Street to Byrnes Street) - Witter Place (Lewis Street to End) - Sarah Street (George Street to Richmond Road) - Broughton Avenue (Clifford Avenue to Selby Street) - Ballantyne Street (Lowe Street to South Road) - Pine Avenue (Capri Avenue to Coorilla Avenue) - Bonython Avenue (Leane Avenue to Boundary) - Ayliffe Place (Stanford Avenue to End) - Coral Sea Road (Burnley Street to Halsey Road) - Tapleys Hill Road (Service Road) (Weston Street to Tapleys Hill Road) - McCann Avenue (Orana Avenue to Shannon Avenue) - Crossley Street (Glenburnie Terrace to Long Street) - Fairfax Terrace (Elizabeth Street to End) - Day Avenue (Anzac Highway to Everard Avenue) - Selby Street (Basnett Street to End) - Riverside Drive (East Parkway to City Boundary)
Footpath Program	<p>The following is a list of the streets allocated for footpath works in 2017/2018:</p> <p>Works complete:</p> <ul style="list-style-type: none"> - Warwick Avenue (Mortimer Avenue to Anzac Highway) - complete - Tapleys Hill Road (Chippendale Avenue to Suburb Boundary) - complete - Tapleys Hill Road (Suburb Boundary to Sir Donald Bradman Drive) - complete - August Street (Neville Road to South Road) - complete - Delray Street (Gault Avenue to Crispian Street - complete - Ingerson Street (Tapleys Hill Road to Kitt Street) - works complete - Ingerson Street (Kitt Street to Davis Street) - works complete <p>Works underway:</p> <ul style="list-style-type: none"> - Broughton Avenue (Tennyson Street to Clifford Street) - Clifford Street (Lipsett Terrace to Kennedy Street) - Clifford Street (Fewings Avenue to Sir Donald Bradman Drive) - Clifford Street (Kennedy Street to Fewings Avenue) - Airport Road and Lipsett Terrace (Southern Centre Island) - Queen Street (Reid Street to West Thebarton Road) - Clyde Avenue (Frontage Road to Castlebar Road)

Playground Upgrade 2017/2018	<p>The following is an update on the current outstanding program of works:</p> <ul style="list-style-type: none"> - Memorial Gardens, Hilton - At the time of the preparation of this report, a report on this project has been included in the agenda for the Community Facilities General Committee Meeting of 27 March 2018. - Joe Wells Reserve, Netley - Playground project is completed and has now been opened to the public. <p>Works are scheduled to commence in the coming months on the following replacement program for playgrounds at:</p> <ul style="list-style-type: none"> - Montreal Avenue Reserve, Novar Gardens - East Parkway Reserve, Fulham - Works are scheduled to commence in May - Dove Street Reserve, Thebarton - Works have commenced and are scheduled for completion in April. - Jubilee Park Reserve, Glandore - Works are scheduled to commence in April/May.
Upgrade of St Georges Reserve, Glandore	<p>The proposed project to upgrade the reserve includes the following:</p> <ul style="list-style-type: none"> • Upgrade to the irrigation • Additional playground equipment, including shade to the existing play area • New path, fencing and reserve furniture • New plantings in the reserve <p>The updated site plan and notification letter has now been circulated to neighbouring residents. The works to the reserve, including modifications to the existing playground and additional play equipment will commence in April with an expected completion scheduled for June 2018. The additional timeline is required due to the changes to playground equipment.</p>
Reserve Irrigation Upgrades, 2017/2018	<p>The following is the status update on the current program of works:</p> <ul style="list-style-type: none"> • Frank Norton Reserve, Torrensville - complete • Amy Street Reserve, Novar Gardens - complete • Joe Wells Reserve, Netley - complete <p>The remaining irrigation projects are currently in design/documentation and scheduling or the current year's program:</p> <ul style="list-style-type: none"> • Westside Bikeway, Plympton (staged) • Mile End Common Reserve, Mile End • Jubilee Park Reserve, Glandore <p>The irrigation project scheduled for Thebarton Oval, Torrensville, has now been placed on hold due to late feedback received from the South Australian Amateur Football League (SAAFL) regarding a proposed sizing and re-alignment to a north/south direction of the oval. Further information is available from the Community Facilities General Committee report of 28 November 2017. A further update will be provided at the next Community Facilities General Committee meeting on 27 March 2018.</p>

Traffic Projects and Parking Management	
Torrensville/Thebarton LATM	<p>Detailed development of the following projects is continuing:</p> <ul style="list-style-type: none"> • Concept plan being developed for Ashley Street (between Holbrooks Road and Hayward Avenue) <p>Concept for Ashley Street/Sheriff Street roundabout removal is complete and consultation material is being developed for distribution during early April 2018 to affected residents.</p> <p>The following projects are completed:</p> <ul style="list-style-type: none"> • North Parade and Wainhouse Street kerb extension - works complete • Hardys Road and Ashley Street roundabout (Black Spot funding - \$79,950) - works complete • Ashwin Parade and Hardys Road intersection realignment - works complete • Pram ramps (x4) on Ashley Street adjoining Thebarton Senior College
Novar Gardens/Camden Park LATM	A Working Party meeting was held on Wednesday 13 March 2018 to present community consultation results and discuss preliminary solutions. Currently developing a solutions paper for presentation at a future Working Party meeting.
Richmond/Mile End LATM	Baseline traffic data has been collected. Currently undertaking crash data analysis and supplementary traffic counts.
Rutland Avenue slow points	Concepts of upgrade of speed control devices and associated drainage upgrade have been developed and are currently out to community consultation.
Parking Review	<p>Installed No Stopping at the bend of Mortimer Street, Kurralta Park fronting property 12 and 14 Mortimer Street.</p> <p>Extended existing No Stopping on Strathmore Avenue intersection with Henley Beach Road Lockleys by six (6) meters south.</p> <p>Installed Temporary Work Zone on Clarence Street, Hilton fronting property 10 Clarence Street.</p>
Bus Stop Upgrades	<p>Locations for the bus stop upgrades have been selected and works have commenced for this financial year as follows:</p> <ul style="list-style-type: none"> – Holbrooks Road - Stop 13 West side – Ashley Street - Stop 7, 8, 10, 11 & 12 North side – Mooringe Avenue - Stop 14 & 15 North side – Morphett Road - Stop 15D West side – Morphett Road - Stop 15D & 15A East side – Rowells Road - Stop 13A West side – All Bus Stops along Everard Avenue have been upgraded. <p>Bus Stop 11 and 12 Ashley Street (Northern side) will be upgraded to DDA Standards and indented to allow free-flow traffic along Ashley Street. The works are anticipated to commence late April 2018.</p>

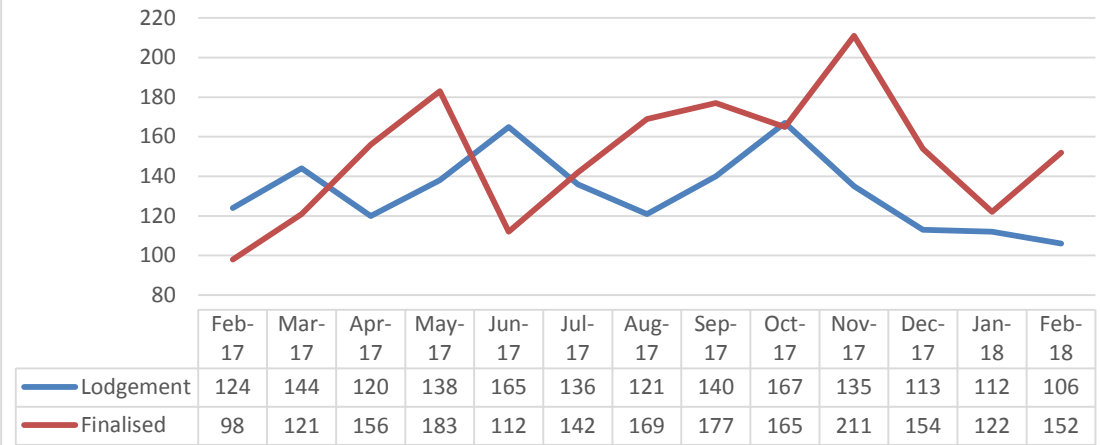
<p>Blackspot project - Stonehouse Avenue/Morphett Road</p>	<p>The roundabout upgrade proposal for the junction of Stonehouse Avenue/Morphett Avenue has been approved by the State Blackspot Program for funding. Funding of \$293,334 will be contributed by DPTI as part of the total project cost of \$440,000.</p> <p>A concept plan of the upgrade has been completed by Traffic Consultants and is now being assessed internally to determine cost and service implications.</p>
<p>Blackspot project - Albert Street/George Street</p>	<p>The proposed threshold treatment for the Albert Street/George Street intersection has been submitted to DPTI for funding approval. The project is currently under consideration by DPTI and funding commitment is yet to be determined.</p>
<p>Marion Road Planning Study - Grade separation of Marion Road from the intersection of Anzac Highway to Cross Road</p>	<p>The project is to undertake planning for the upgrade of Marion Road. The planning work will look at the grade separation of Marion Road from the intersection of Anzac Highway to Cross Road, grade separation of Marion Road from the tramline to Cross Road and a tramline overpass of Marion Road and Cross Road.</p> <p>The study is managed by DPTI and conducted by SMEC Holdings Pty Ltd. It aims at identifying and assessing options to improve traffic flow and road safety along Marion Road between Anzac Highway and Cross Road, which incorporates the Anzac Highway and Cross Road intersections, and the Glenelg Tramway corridor level crossings on Marion Road and Cross Road.</p> <p>The study is scheduled to occur in April 2018. It is only a planning study with no funding commitment for implementation at this stage. The project team intends to do a limited community and stakeholder engagement. Beyond the planning study, there would be further community and stakeholder engagement should DPTI receive funding commitments for design and construction.</p> <p>DPTI's project team will meet with key Council staff to discuss the study regarding social and community impacts, adjacent developments and traffic issues. The meeting is scheduled on Friday 23 March 2018 at DPTI's office.</p>
<p>Property and Facilities</p>	
<p>Weigall Oval Masterplan and Facility Development</p>	<p>Site works are continuing to deliver the stage 1 component of the upgrade of the facilities. Works are scheduled for completion in June 2018.</p> <p>A further update was provided to the Community Facilities General Committee Meeting on 27 March 2018. This report advised Committee Members that Council's consultants have developed preliminary plan concepts for the proposed clubroom building. Endorsement of the concept was sought prior to undertaking further consultation with the lessee/licensee stakeholders.</p>

Lockleys Oval Masterplan and Facility Development	<p>A number of amendments were made to the previous plans for the proposed shared clubroom building following the implementation of requested amendments during the lessee/licensee stakeholder meeting.</p> <p>The tender was placed on the Tenders SA website on 2 March 2018 with an initial closing date of 27 March. The tender close has now been extended to 10 April 2018 to tender addendums.</p>
Apex Park Masterplan and Facility Development	<p>The advance works to the greater upgrade of Apex Park Reserve for the construction of the replacement stormwater culvert from Burbridge Road (including a section along Burbridge Road) to the wetland has now been completed.</p> <p>The procurement process and review of submissions is continuing for Stage 1 works. These delays are due to the complexity of the project incorporating the changes and improvements to the open space/wetlands area and the upgrade to the drainage network.</p> <p>A further update will be provided to the Community Facilities General Committee Meeting on 27 March 2018.</p>
Camden Oval Masterplan and Facility Development	<p>The project to supply and install the senior synthetic soccer pitch has commenced and the majority of the sub base preparation has been completed. Project completion is scheduled for June 2018.</p> <p>Tenders closed for the procurement process for the greater project on 21 March. Tender review and assessment is underway.</p>
Cummins House	<p>The National Trust has been appointed to the role of Caretaker/Manager of Cummins House for the period 1 April 2018 until 31 December 2018.</p> <p>Discussions in regard to the possible acquisition of the property by Council from the State Government are shortly to commence following recent notification from the State Government that it has undertaken all necessary preliminary internal processes.</p>
Kings Reserve Masterplan	<p>A further report detailing the updates to the Masterplan will be presented at a future Urban Services Committee.</p>
Torrensville Bowling Club	<p>The Torrensville Bowling Club (TBC) has executed the new ground lease. The club is expecting to commence works in July/August 2018.</p> <p>The improvements to the local drainage within Kings Reserve, namely the construction of a wetland/water feature, continues to progress and is scheduled to be completed during June 2018.</p>
Thebarton Theatre Complex	<p>Matters relating to the request for grant of a new lease and consideration of the business plan (for upgrade of the Theatre) have been put on hold to be discussed at a future workshop to be held by the Elected Members following the Urban Services Committee meeting of 6 March 2018.</p> <p>The electrical and structural works upgrade program for 2017/2018 is continuing within the theatre and is expected to be completed in May 2018.</p>

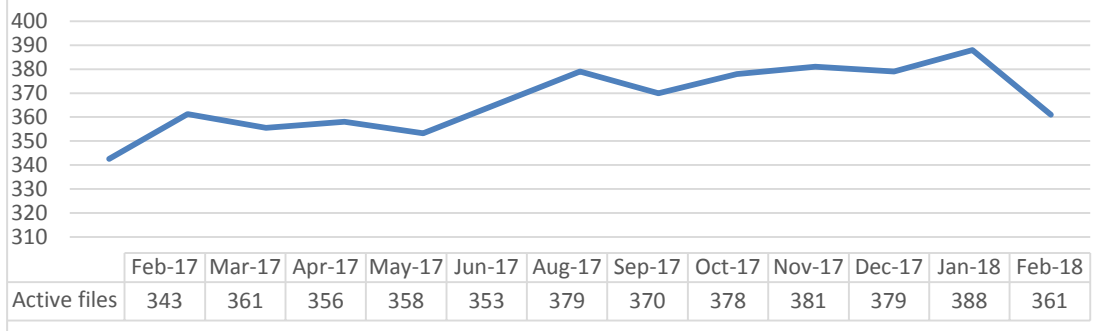
Civil and General Maintenance			
Monthly Update	Concrete, Block Paver & Asphalt Footpath/Dr Crossover	840m ²	
	Kerbing & Water table / Invert	56m	
	Road Repairs	515m ²	
	Graffiti Removal	Council property	17 locations (152m ²)
		Private property	102 locations (491m ²)
Bus stops		3 locations (10m ²)	
Drainage and Cleansing Services			
Monthly Update	Pump Station inspections	Chippendale	Completed
		Shannon	Completed
		Riverway	Completed
		West Beach	Completed
		Duncan Laneway	Completed
	Illegal Rubbish Dumping	7.6	
Road Sweepers	149t		
Horticulture Services			
Monthly Update	Trees Pruned	540	
	Removals	16	
	Weed Control (Reserves, Verges, Traffic Islands)	1265L	
	<p>London Plane Trees on Sir Donald Bradman Drive - Fungal Disease (<i>Fusarium solani</i>) Update</p> <p>The fungal disease affecting the London Planes within the Cowandilla and Hilton areas has been under a maintenance trunk drenching spray program since March 2017. The trees are treated every three weeks between September and April to increase their ability to defend against the onset of attack by the disease.</p> <p>All the trees identified as infected were last removed in February 2017 and City Operations has not encountered/identified any new outbreaks to date. It is the intention of City Operations to establish a healthy growing environment so that no further outbreaks are encountered and, once we are confident it is under control, then investigate replacement species and possible alternative planting locations.</p> <p>City Operations continues to collaborate with specialists, relevant agencies and other Local Government Authorities, to get a better understanding on how to contain and possibly control the spread of the disease to the best of its ability.</p>		

Development Assessment

Development Applications

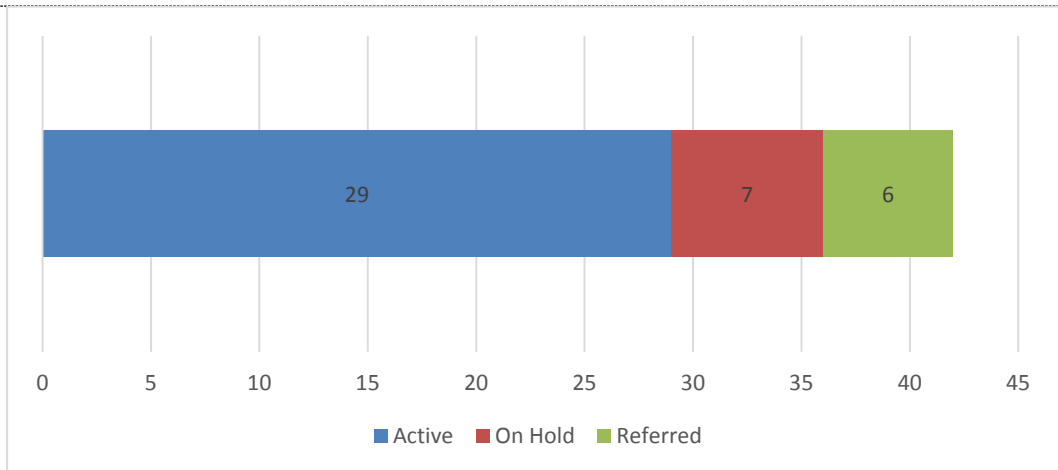


Active files
Development Approval



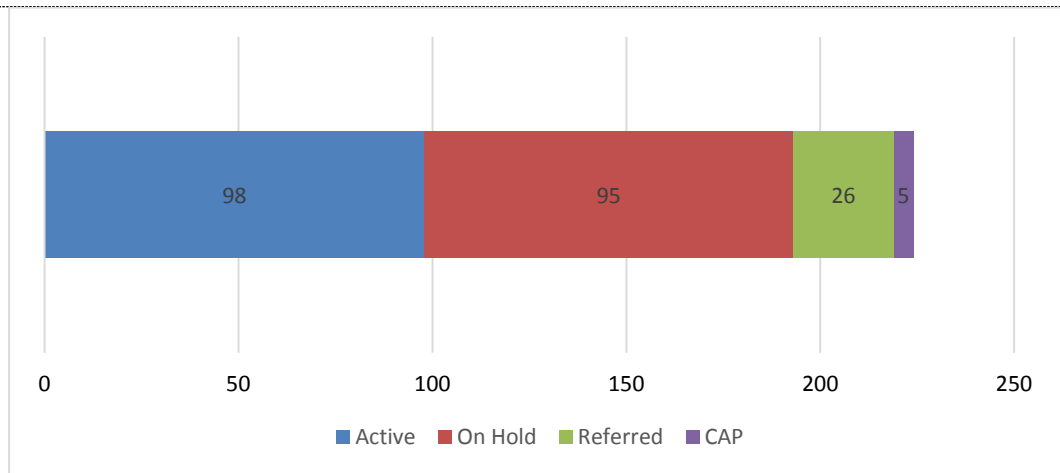
Active files shows all development applications that have been lodged with Council but are yet to receive a decision, it includes applications for Development Plan Consent, Building Rules Consent and Land Division Consent.

Current Applications
Building Rules Consent



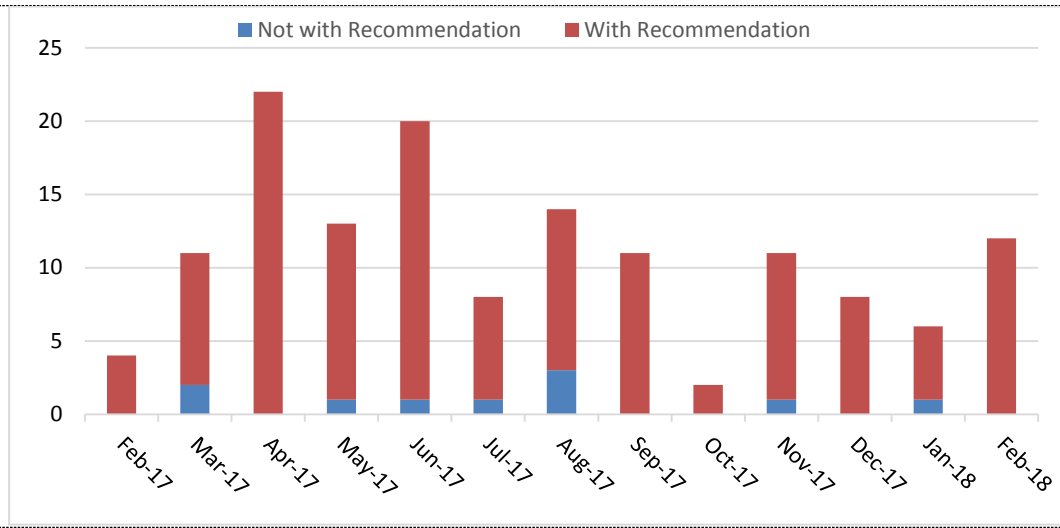
Building Rules Consent, is the process where applications are assessed against the Building Code of Australia (BCA), not all applications are assessed against the BCA (e.g. land divisions, tree removals) and some are only assessed against the BCA.

Current Applications
Development Plan Consent

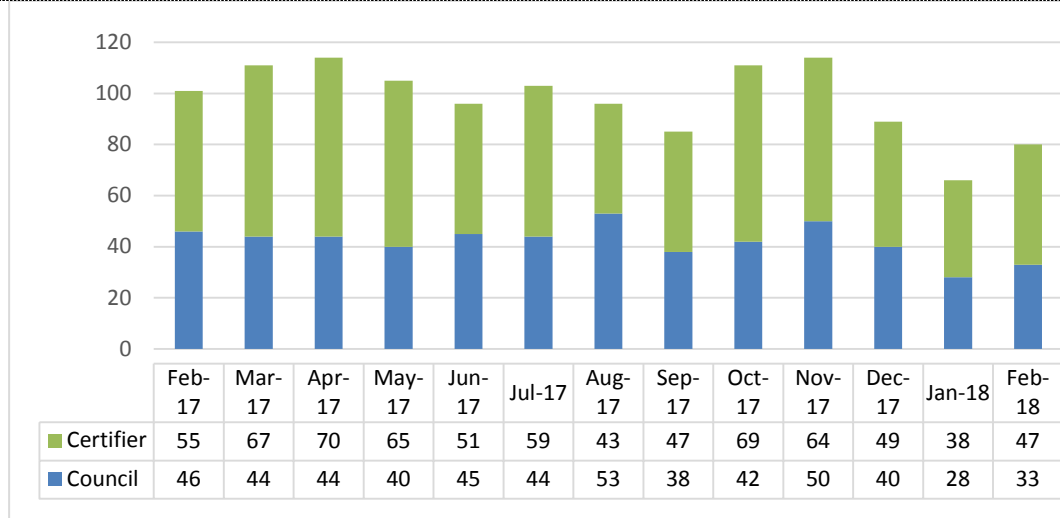


Development Plan Consent, is the process where applications are assessed against the City of West Torrens Development Plan (DP) not all applications are assessed against the DP (e.g. Residential Code and Building Rules only) and some are only assessed against the DP (eg land divisions, tree removals).

Council Assessment Panel Decision

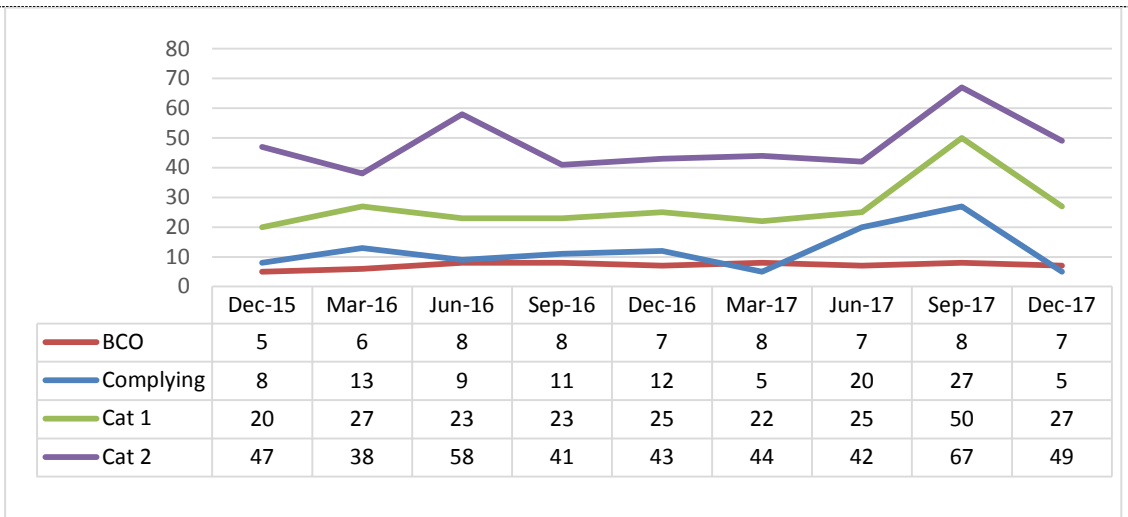


Building Rules Consent issued
By Relevant Authority



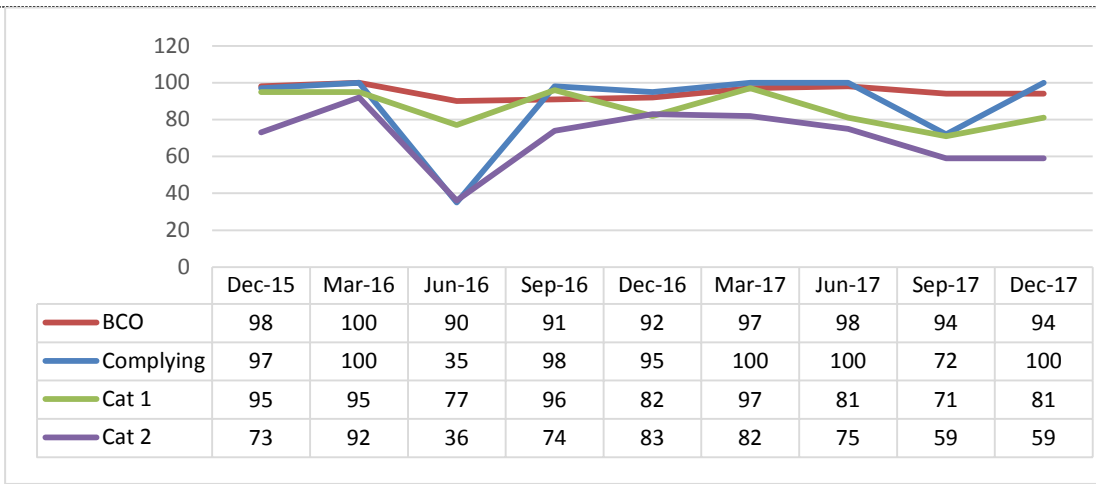
Not all Building Rules Consents are assessed by Council, about half are assessed by private assessors known as Private Certifiers, these privately certified assessments still need to be registered and recorded with Council.

Median Assessment Timeframes



Maximum Statutory Timeframes are as follows:
 Building Code Only (BCO) - 20 days
 Complying - 30 days Category 1 - 60 days Category 2 - 60 days

Percentage of DAs that met Statutory Timeframes



Maximum Statutory Timeframes are as follows:
 Building Code Only (BCO) - 20 days
 Complying - 30 days Category 1 - 60 days Category 2 - 60 days

Compliance

Month/Year	No of Actions Received	Actions Resolved within the month	Actions Resolved from previous months	Total Ongoing Actions	Section 84 Issued	Section 69 Issued	New Actions with ERD Court	Resolved Actions with ERD Court	Total ongoing Actions with ERD Court	Section 51 Clearances
Feb17	11	7	0	60	-	-	-	-	2	5
Mar17	27	24	8	55	-	-	-	-	2	10
Apr17	10	5	7	53	-	-	-	-	2	7
May17	13	9	10	47	1	-	-	1	1	18
Jun17	16	6	0	57	-	-	-	-	1	13
Jul17	9	7	5	43	-	-	-	1	0	18
Aug17	18	12	2	49	-	-	-	-	-	20
Sept17	28	24	13	40	-	-	-	-	-	12
Oct17	25	14	8	50	2	-	-	-	-	14
Nov17	21	10	0	58	-	-	1	-	1	22
Dec17	24	17	3	50	-	-	-	-	1	7
Jan18	15	12	2	55	1	-	-	-	1	11
Feb18	24	16	8	55	1	-	1	-	2	19

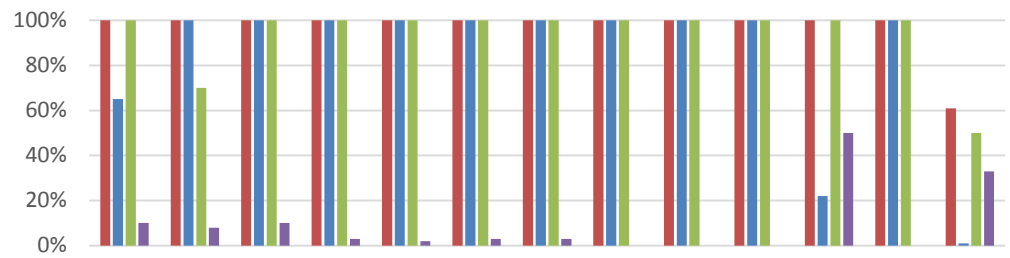
Compliance actions include investigating potential use of properties for activities that haven't been approved, buildings being constructed without the required approvals, checking of older buildings that may be becoming structurally unsound.

Sec 84 notices are the first stage of prosecution for unapproved development.

Sec 69 notices are the first stage of prosecution for unsafe buildings.

Sec 51 clearances, refers to the final check of properties with approval to subdivide, this is where we give the all clear for new Certificates of Title to be issued.

Building Inspections

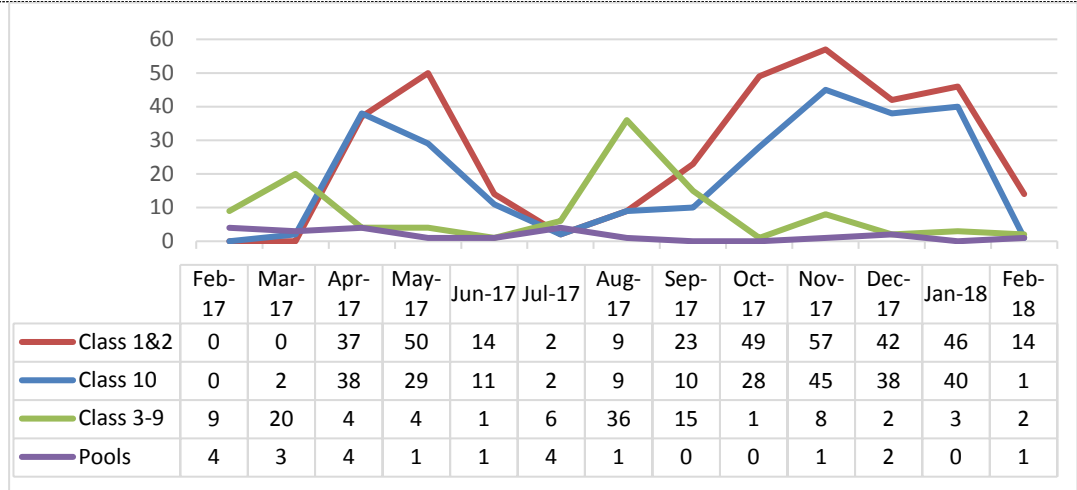


	Feb-17	Mar-17	Apr-17	May-17	Jun-17	Jul-17	Aug-17	Sep-17	Oct-17	Nov-17	Dec-17	Jan-18	Feb-18
■ Class 1&2	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	61%
■ Class 3-9	65%	100%	100%	100%	100%	100%	100%	100%	100%	100%	22%	100%	1%
■ Class 10	100%	70%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	50%
■ Pools	10%	8%	10%	3%	2%	3%	3%	0%	0%	0%	50%	0%	33%

The Development Act and Council's Building Inspection Policy requires that a minimum number of approved buildings are inspected for compliance with their associated Development Approval documentation. In addition there is a requirement to undertake a pool safety inspection upon all swimming pools approved for construction. Class 1 & 2 refers to houses and units, Class 3-9 refers to commercial, industrial and community buildings, Class 10 refers to verandahs, sheds, fences etc. Where 100% of inspections have not been met in a month the requirement is rolled over to the next month until all required inspections have been undertaken.

NOTE: Only successful inspections are recorded, failed inspections are listed for re-inspection including Swimming Pools.

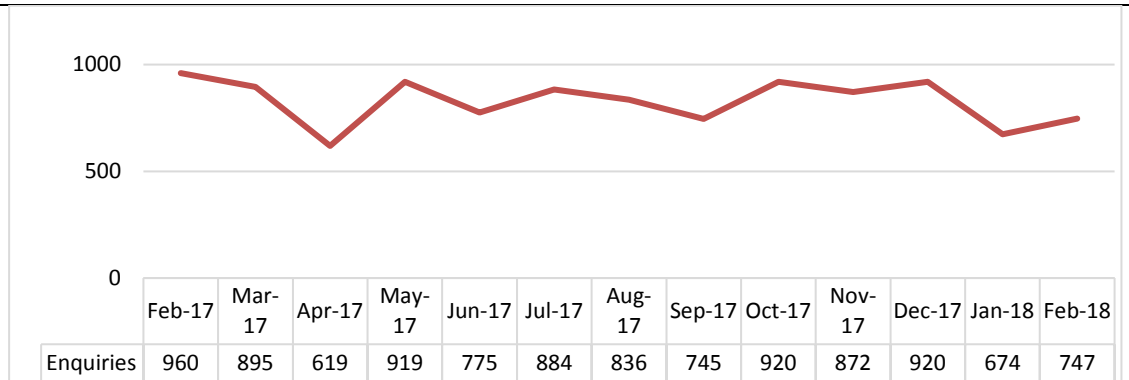
Actual Satisfactory Building Inspections Undertaken



The Development Act and Council's Building Inspection Policy requires that a minimum number of approved buildings are inspected for compliance with their associated Development Approval documentation. In addition there is a requirement to undertake a pool safety inspection upon all swimming pools approved for construction. Class 1 & 2 refers to houses and units, Class 3-9 refers to commercial, industrial and community buildings, Class 10 refers to verandahs, sheds, fences etc. Where 100% of inspections have not been met in a month the requirement is rolled over to the next month until all required inspections have been undertaken.

NOTE: Only successful inspections are recorded, failed inspections are listed for re-inspection

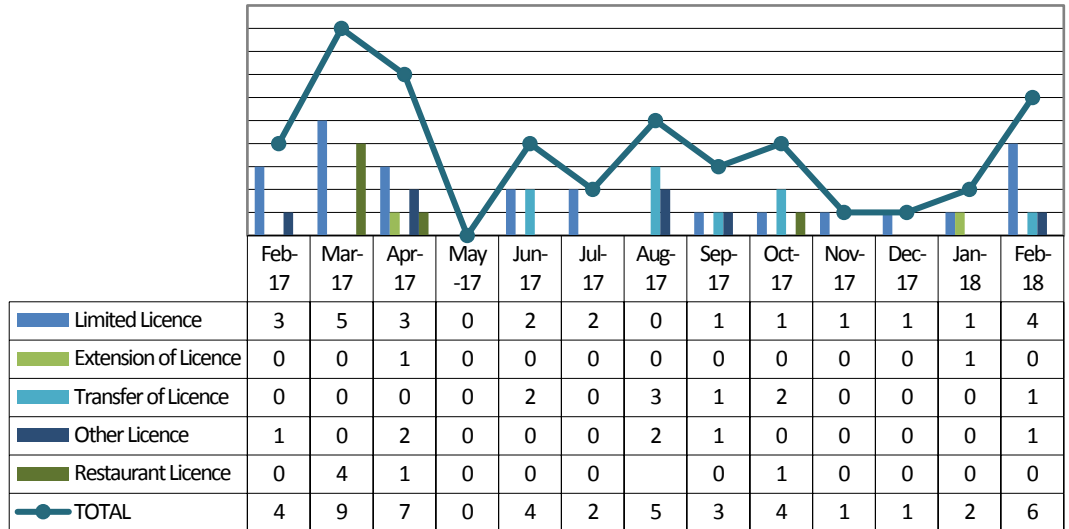
ePathway Online Development Application Enquiries



Since 2011, people have been able to check the progress of their own development applications or check the history of development applications via the internet on Council's website.

Liquor Licences

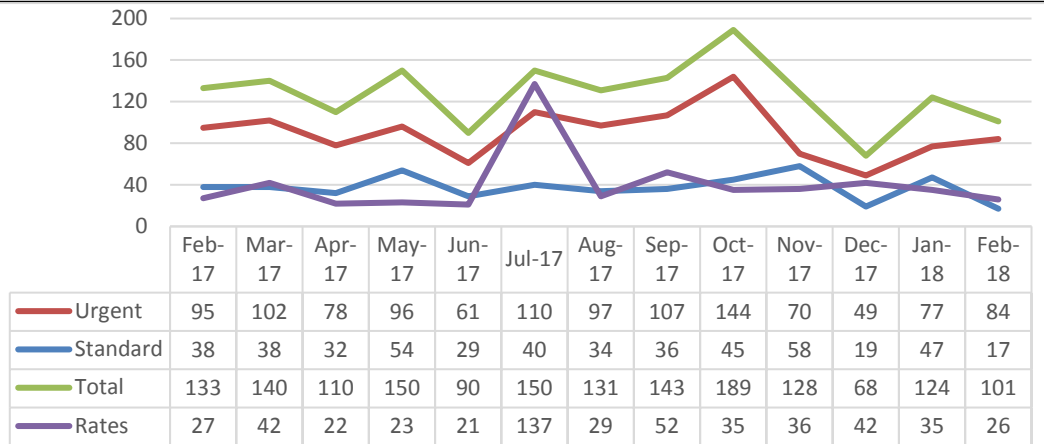
Licence Applications



When an application is lodged with the State Government's Office of Liquor & Gambling (OLG), it is also required to be referred to Council for our comment. The proposals are handled in accordance with our Liquor Licensing Policy, and Limited Licence applications are referred to the relevant Ward Councillors for their comment prior to feedback being sent to the OLG.

Section 12 Searches

Section 12 Searches



When a property is purchased, the purchasers are provided with a Form 1 (commonly known as cooling off paperwork) Council contributes to this Form 1 with a Section 12 Certificate, the certificate provides the potential purchaser with all relevant known history for the property. Prior to settlement on the property the relevant Conveyancer will also request a Rates statement from Council to ensure the appropriate rates payments are made by the purchaser and the vendor (seller).

Attachments

Nil

12 MEETING CLOSE

INDEX

1 Meeting Opened 1

2 Present 1

3 Apologies 1

4 Disclosure Statements 1

5 Confirmation of Minutes..... 1

6 Communications by the Chairperson..... 1

7 Questions with Notice 1

Nil

8 Questions without Notice..... 1

9 Motions with Notice..... 1

Nil

10 Motions without Notice..... 1

11 Governance Reports..... 2

11.1 Kurna Native Title Claim Judgement 2

11.2 Legislative Progress Report - March 2018..... 30

12 Meeting Close 31

1 MEETING OPENED**2 PRESENT****3 APOLOGIES****4 DISCLOSURE STATEMENTS**

Committee Members are required to:

1. Consider Section 73 and 75 of the *Local Government Act 1999* and determine whether they have a conflict of interest in any matter to be considered in this Agenda; and
2. Disclose these interests in accordance with the requirements of Sections 74 and 75A of the *Local Government Act 1999*.

5 CONFIRMATION OF MINUTES**RECOMMENDATION**

That the Minutes of the meeting of the Governance Committee held on 6 March 2018 be confirmed as a true and correct record.

6 COMMUNICATIONS BY THE CHAIRPERSON**7 QUESTIONS WITH NOTICE**

Nil

8 QUESTIONS WITHOUT NOTICE**9 MOTIONS WITH NOTICE**

Nil

10 MOTIONS WITHOUT NOTICE

11 GOVERNANCE REPORTS

11.1 Kurna Native Title Claim Judgement

Brief

This report presents the Kurna Native Title judgement of the Federal Court.

RECOMMENDATION

The Committee recommends to Council that the Kurna Native Title Claim Judgement report be received.

Introduction

Over the years, the Committee has been presented with regular reports on the progress of the Kurna Native Title Claim (Claim) through the Native Title Tribunal/Federal Court. This Claim generally incorporates the greater Adelaide Region, including the whole of the City of West Torrens and was lodged on 25 October 2000.

As reported to the March 2018 Committee meeting, the first stage of a two state trial was due to commence in April 2018 to determine the Claim. However, both the Kurna and the State Government agreed to settle the Claim prior to the commencement of this trial. The settlement agreement has since been presented to the Court in order for it to make a consent determination on the Claim and that the terms of the settlement satisfied the Court.

Correspondence has subsequently been received from Council's lawyers in this matter, Norman Waterhouse, providing the Court's consent determination. This is presented to the Committee for its information along with other associated documents.

Discussion

The correspondence received from Norman Waterhouse included the following documents:

1. Correspondence re Conclusion of Native Title Claim Proceedings (**Attachment 1**)
2. Court judgement - Kurna Native Title Claim (**Attachment 2 - under separate cover**)
3. State and Kurna Settlement Submissions (**Attachment 3**)
4. Councils' consent order (**Attachment 4**)

These four documents detail the judgement of the Claim by the Court along with the Submissions of the Kurna and State Government with respect to the Claim determination as well as the consent order of all councils involved in the Claim to the determination of the Claim.

The judgement grants native title to the Kurna of the area detailed in **Attachment 2 (under separate cover)** which comprises some 3,500 square kilometres of southern South Australia, effectively from Myponga Beach in the south to the Light River in the north and extending to the hills in the east.

More information including the longitude and latitude of various points of the Claim boundary are included in **Attachment 2 (under separate cover)**. The judgement also formally extinguishes native title in the overwhelming majority of land and waters within the Claim/determination area, including in West Torrens, as reported to the March 2018 meeting of the Governance Committee.

The Claim settlement negotiations between the State and Kurna included the development of a Kurna People's Settlement Indigenous Land Use Agreement (ILUA). The determination of the Claim will only take effect when this ILUA is registered. While it has yet to be viewed, the ILUA is not expected to impact or bind West Torrens.

Conclusion

The registration of the Kurna People's Settlement ILUA will finalise the Kurna Native Title Claim determination by the Federal Court, which grants native title to the Kurna across 3,500km² of southern South Australia including the City of West Torrens, and extinguishes native title in West Torrens along with the majority of land and waters within the whole of the Claim area.

As this concludes the matter, it is not expected that any future reports will be required to be presented to the Committee.

Attachments

- 1. Correspondence re conclusion of native title claim proceedings**
- 2. Court Judgement - Kurna Native Title Claim (under separate cover)**
- 3. State and Kurna Settlement Submissions**
- 4. Councils' Consent Order**



PRIVATE AND CONFIDENTIAL

By email:

Ref: NLJM0246830F05168587

22 March 2018

Ms Pauline Korista
District Council of Mount Barker
PO Box 54
MOUNT BARKER SA 5251

Dear Pauline

Kaurna Native Title Claim – Consent determination, and the future

1. We refer to our previous correspondence in relation to this matter, including our letter of 8 March 2018.

Consent determination has been made

2. We confirm that, consistent with the Court timetabling orders enclosed with our letter of 8 March 2018, the Kaurna Native Title Claim was resolved by way of a consent determination in the Federal Court of Australia on 21 March 2018. We confirm our attendance at that hearing.
3. In the immediate lead up to this hearing, there were various procedural events which we attended to and observed, including three separate objections from Aboriginal persons/groups (one from within the Kaurna, one from the Ramindjeri, and one from a Peramangk man), fixing of co-ordinate issues in the determination document, resolving the Council's status in the proceedings, and resolving issues of absentee respondents. Each of these matters had the potential to delay the overall proceeding, but we confirm that all matters were dealt with in a way which caused no ultimate delay to the consent determination.

Documents

4. Dozens of documents were filed in the final fortnight of the proceeding. We do not propose to enclose those all here, but we are happy to provide any documents or explanation of matters upon request. We do, however, provide some key documents.
5. Importantly, the **enclosed** signed determination document was filed, indicating the Council's consent to the Kaurna determination of native title (we have included only the lodgement and signature pages and have left off the annexure due to file size, but can provide the full document upon request).

- 2 -

22 March 2018

6. The final version of the consent determination is the Judgment of the Federal Court, which is a public document and which, at the time of writing, we expect to be published on the Federal Court website shortly. While a draft version was previously supplied to you, please note that strictly the version with holds the force of law is the Judgment of the Federal Court. We also **enclose** the Joint Submissions filed by the Applicant and the State in support of the consent determination. This is an important document which outlines the main historical, anthropological and legal considerations which underpin the consent determination.

Status of Kurna

7. Now that the consent determination has been made, there is no longer a Kurna 'native title claim'. Kurna native title recognition has moved from being a mere 'claim' to being the subject of a binding Court determination. Strictly speaking, the determination does not 'take effect' until the Indigenous Land Use Agreement between the Kurna and the State which accompanies the consent determination (this document does not involve any Council) is registered by the National Native Title Tribunal. However, the determination of native title has nevertheless been made, and is, to all intents and purposes irreversible.
8. As discussed in our earlier correspondence, the precise terms of the determination are such that there is no adverse impact whatsoever upon the Council from a native title perspective.
9. We confirm that this concludes Federal Court proceeding SAD6001/2000, and so we will close our file in relation to this proceeding and the related discovery application. We thank the Council for its instructions over the course of this proceeding, and trust that we have discharged both our role to keep the Council appropriately advised and informed of the progression of the proceeding and our role to raise and protect the Council's interests along the way. We congratulate the Council in finally resolving this matter, after varied attempts and almost 20 years.
10. Moving forward, we propose to open a file to monitor heritage matters regarding the Kurna. The reason behind this suggestion is that the next logical step for the Kurna is, at some stage, to set up a 'Recognised Aboriginal Representative Body' (**RARB**) under the new provisions of the *Aboriginal Heritage Act 1988* (SA). The matter of RARB status was discussed in our letter of 21 February 2018. It would be appropriate to update the Council about developments in this regard. However, any appointment of a Kurna entity as a RARB will for technical legal reasons almost certainly need to wait until the registration of the determination ILUA. That will not occur for a number of months. Further, the appointment of a Kurna RARB would then not occur for some further months still.

Please instruct if you do not want to us to open this file. Otherwise, we will open it, and we again confirm our expectation that there will be no activity on that file for some time. We conclude by repeating our appreciation of the Council's instructions in this matter. It has been a privilege to represent Local Government in the Kurna proceeding.

Yours faithfully
Norman Waterhouse



Nick Llewellyn-Jones
Principal
Direct Line: (08) 8210 1269
e-mail: nllewellyn-jones@normans.com.au

CZA\REPORT BACK LETTER - CONCLUSION OF PROCEEDINGS 22 MARCH 2018.DOCX

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 9/03/2018 6:00:51 PM ACDT and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged:	Submissions
File Number:	SAD6001/2000
File Title:	Garth Agius & ors on behalf of the Kurna People and The State of South Australia & ors (Kurna Peoples)
Registry:	SOUTH AUSTRALIA REGISTRY - FEDERAL COURT OF AUSTRALIA



A handwritten signature in blue ink, appearing to read 'Warwick Soden'.

Dated: 13/03/2018 9:11:23 AM ACDT

Registrar

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



No. SAD 6001 of 2000

Federal Court of Australia
 District Registry: South Australia
 Division: General

GARTH AGIUS and others named in the Schedule

Applicant

STATE OF SOUTH AUSTRALIA and others named in the Schedule

Respondent

Submissions of the Applicant and the First Respondent for the Kaurna Native Title Claim
 Consent Determination

Dated: 9 March 2018

A handwritten signature in blue ink, appearing to read 'S. Hoffman'.

Signed by Sarah Hoffman
 For Crown Solicitor of South Australia
 Solicitor for the First Respondent

A handwritten signature in blue ink, appearing to read 'Tim Campbell'.

Signed by Tim Campbell
 Solicitor for the Applicant

Filed on behalf of (name & role of party) The State of South Australia
 Prepared by (name of person/lawyer) Peter Tonkin
 Law firm (if applicable) Crown Solicitor's Office
 Tel 08 8207 1816 Fax 08 8204 9576
 Email peter.tonkin@sa.gov.au
Address for service Level 6/45 Pirie Street
 (include state and postcode) ADELAIDE SA 5051

1. This document explains the basis upon which the Applicant and the State of South Australia (**State**) submit that orders should be made in this proceeding pursuant to s 87 of the *Native Title Act 1993* (Cth) (**NTA**) in the terms of the filed Draft Order (**Consent Determination**).
2. The terms of the Consent Determination have been agreed by the solicitors for all other represented parties to the proceeding and Order 7 of the Court made on 7 March 2018 requires each respondent party (other than the State) to either seek leave to withdraw as a party or to file a signed copy of the Consent Determination.

The Application

3. The Kaurna native title claim was first lodged with the Court on 25 October 2000. The claim has been amended on two occasions, first in July 2001, and recently on 8 March 2018. Among other things, the latter amendment was to remove the portion of the claim area that is seaward of Lowest Astronomical Tide and to amend the apical ancestors forming the foundation of the claimant group. The proposed Consent Determination covers only the area landward of the Lowest Astronomical Tide.

The Determination Area

4. The determination area covers approximately half of the claim area, being about 3,500 square kilometres of southern South Australia. The southern boundary of the determination area is a line from Myponga Beach at its most south-western point then north-easterly to the peak of Mount Compass. The eastern boundary is the existing claim boundary until it meets the Light River in the north with the extension of the centre line of the Light River to the sea forming the northern boundary. The Lowest Astronomical Tide (except where it falls outside the original claim boundary) is now the western boundary of the determination area. Under the proposed settlement, the amended claim in relation to all areas outside of these boundaries is to be dismissed.

Tenure

5. A full tenure assessment has not been conducted in this matter. However, between them, the parties had given substantial consideration to the tenure history. That assessment had been deferred due to the fact that the preliminary questions to be tried at the trial scheduled to commence on 3 April 2018 were to deal only with connection issues. It has, however, always been clear to all parties that the intensive settlement of the Adelaide plains and its surrounds resulted in the early extinguishment of the vast majority of native title in the region. The cost of determining precisely each and every parcel over which

native title has not been extinguished was estimated to be in excess of \$3 million and to be a process which would take approximately 5 years to complete with the resources likely to be available to the State.

6. As part of the State and the Applicant reaching agreement to settle the entire matter, intense and targeted work has been performed to locate parcels within the determination area that have not been subject to extinguishing acts which wholly extinguish native title rights and interests. For the purposes of the consent orders, final agreement has been reached by the parties as to the effect on native title of the various tenures granted and acts done in the determination area. The consent orders record all areas over which native title will be recognised. The parties agree that, notwithstanding any position which may subsequently come to light with regard to any parcel elsewhere in the determination area, the entire balance of that area is to be determined, once and for all, not to be subject to any native title.

Settlement

7. This matter has not been approached under the State's Consent Determination Policy¹ due to the way in which this action has progressed. The parties were, until November 2017, solely preparing for trial of the initial questions relating to connection at sovereignty and since. From that time, the State and the Applicant conducted extensive negotiations in Adelaide through solicitors and counsel in the lead up to the commencement of trial. The negotiations were conducted on a confidential and 'without prejudice' basis.
8. Save for one potential future claim (described below), agreement has now been reached in relation to all Kurna native title matters in the State, including the State's compensation liability under the NTA. For this reason, the parties have recorded the settlement in two documents: the filed proposed Consent Determination and a Settlement Indigenous Land Use Agreement (the **Kurna Settlement ILUA**).
9. As part of the settlement, the Kurna People agree not to bring any further native title determination application or compensation application, save, if so advised, for a possible claim in the future over the sea immediately to the west of the proposed determination area.

Native Title Act requirements

¹ *Consent Determinations in South Australia: A Guide to Preparing Native Title Reports* (2004) Crown Solicitor's Office.

10. The expression native title, or native title rights and interests, is defined in the NTA at s 223 as:

...the communal, group or individual rights and interests of Aboriginal peoples ... in relation to land or waters, where:

- (a) the rights and interests are possessed under the traditional laws acknowledged, and the traditional customs observed, by the Aboriginal peoples ...; and
- (b) the Aboriginal peoples ..., by those laws and customs, have a connection with the land or waters; and
- (c) the rights and interests are recognised by the common law of Australia.

11. Sub-section 223(1) of the NTA has been considered extensively by the High Court, most notably in *Yorta Yorta Aboriginal Community v Victoria* (2002) 214 CLR 422 (*Yorta Yorta*). Subsequently, several Federal Court judges have summarised the relevant principles, including in *Risk v Northern Territory* (2007) 240 ALR 75; [2006] FCA 404 (*Risk*).²

12. A threshold requirement for a successful native title determination application is that the evidence shows that there is a recognisable group or society that presently recognises and observes traditional laws and customs in relation to the determination area. In defining that group or society, the following must also be evident:

- a. that they are, or are part of, a society united in and by their acknowledgement and observance of a body of accepted laws and customs;
- b. that the present-day body of accepted laws and customs of the society, in essence, is the same body of laws and customs acknowledged and observed by the ancestors of the claimants or a permissible adaptation thereof; and
- c. that the acknowledgement and observance of those laws and customs has continued substantially uninterrupted by each generation since sovereignty and that the society has continued to exist throughout that period as a body united in and by its acknowledgment and observance of those laws and customs.³

13. Section 225 NTA provides that a determination of native title is:

² *Far West Coast Native Title Claim v State of South Australia (No 7)* [2013] FCA 1285 at [36].

³ *Risk* at [8] of the summary. See further discussion generally in *Yorta Yorta* at [49] - [56], and [86]-[89] and in *Risk* at [802] - [811].

a determination whether or not native title exists in relation to a particular area (the **determination area**) of land or waters and, if it does exist, a determination of:

- (a) who the persons, or each group of persons, holding the common or groups rights comprising the native title are; and
- (b) the nature and extent of the native title rights and interests in relation to the determination area; and
- (c) the nature and extent of any other interests in relation to the determination area; and
- (d) the relationship between the rights and interests in paragraphs (b) and (c) (taking into account the effect of this Act); and
- (e) to the extent that the land or waters in the determination area are not covered by a non-exclusive agricultural lease or a non-exclusive pastoral lease - whether the native title rights and interests confer possession, occupation, use and enjoyment of that land or waters on the native title holders to the exclusion of all others.

14. Section 94A of the NTA requires that a determination made by the Court must set out details of the matters mentioned in s 225 of the NTA.

Consent Determinations

15. For the Court to make the determination of native title by consent, as proposed, it must be satisfied in the terms of s 87 of the NTA.⁴ Importantly, a determination pursuant to s 87 does *not* require the Court to engage in any assessment of the merits of the relevant native title determination application, nor to make any finding or form any opinion, that the consent determination would be supported by the evidence filed up until the time of the determination. There is no 'prima facie case' test. As explained below, the evidence filed to date is relevant only to — if necessary — an assessment of whether the State is acting rationally in accepting the proposed consent determination.
16. Section 87 of the NTA empowers the Court to make orders by consent which determine native title without a hearing where the following conditions have been satisfied:
 - a. agreement is reached between the parties on the terms of an order of the Federal Court in relation to the proceedings (s 87(1)(a)(i));

⁴ *Far West Coast Native Title Claim v South Australia* [2013] FCA 1285 at [11].

- b. the terms of the agreement, in writing signed by or on behalf of the parties, are filed with the Court (s 87(1)(b));
 - c. the Court is satisfied that an order in, or consistent with, those terms would be within the power of the Court (s 87(1)(c)); and
 - d. the Court considers it appropriate to make the orders sought (s 87(1A)).
17. In determining whether the proposed orders are appropriate, a Court will have regard to the following:
- a. whether all parties likely to be affected by an order have had independent and competent legal representation;⁵
 - b. whether the rights and interests that are to be declared in the determination are recognisable by the law of Australia or the State in which the land is situated;⁶
 - c. that all of the requirements of the NTA are complied with.⁷
18. These submissions address, in particular, the requirements of ss 223 and 225 of the NTA and the appropriateness of making an order pursuant to s 87 NTA.

Agreement of the Parties and the State's Role

19. This Court has made comment in recent times as to the appropriate standards to be applied by parties who resolve claims by agreement and without trial. In *Lander v State of South Australia*,⁸ Mansfield J observed:

The focus of the Court in considering whether the orders sought are appropriate under s 87 is on the making of the agreement by the parties. In *Lovett on behalf of the Gunditjmara People v State of Victoria* [2007] FCA 474 North J stated at [36]-[37] that:

The Act [Native Title Act] is designed to encourage parties to take responsibility for resolving proceeding without the need for litigation. Section 87 must be construed in this context. The power must be exercised flexibly and with regard to the purpose for which the section is designed.

⁵ *Munn for and on behalf of the Gungari People v State of Queensland* (2001) 115 FCR 109 at [29].

⁶ *Ibid* at [31].

⁷ *Ibid* at [32].

⁸ [2012] FCA 427, [11].

In this context, when the court is examining the appropriateness of an agreement, it is not required to examine whether the agreement is grounded on a factual basis which would satisfy the Court at a hearing of the application. The primary consideration of the Court is to determine whether there is an agreement and whether it was freely entered into on an informed basis: *Nangkiriny v State of Western Australia* (2002) 117 FCR 6; [2002] FCA 660, *Ward v State of Western Australia* [2006] FCA 1848. Insofar as this latter consideration applies to a State party, it will require the Court to be satisfied that the State party has taken steps to satisfy itself that there is a credible basis for an application: *Munn v Queensland* (2001) 115 FCR 109; [2001] FCA 1229.

Therefore, the Court does not need to embark on its own inquiry of the merits of the claim made in the application to be satisfied that the orders sought are supportable and in accordance with the law: *Cox on behalf of the Yungngora People v State of Western Australia* [2007] FCA 588 at [3] per French J. However, it might consider that evidence for the limited purpose of being satisfied that the State is acting in good faith and rationally: *Munn for and on behalf of the Gunggari People v State of Queensland* (2001) 115 FCR 109 at [29]-[30] per Emmett J. See also *Smith v State of Western Australia* (2000) 104 FCR 494 at [38] per Madgwick J:

State governments are necessarily obliged to subject claims for native title over lands and waters owned and occupied by the State and State agencies, to scrutiny just as carefully as the community would expect in relation to claims by non-Aborigines to significant rights over such land.

20. In *Nelson v Northern Territory of Australia*,⁹ Reeves J made the following comments:

It is appropriate to make some comments about the difficult balance a State party needs to strike between its role in protecting the community's interests, including the stringency of the process it follows in assessing the underlying evidence going to the existence of native title, and its role in the native title system as a whole, to ensure that it, like the Court and all other parties, takes a flexible approach that is aimed at facilitating negotiation and achieving agreement. In *Lovett* North J commented:

...There is a question as to how far a State party is required to investigate in order to satisfy itself of a credible basis for an application. One reason for the often inordinate time taken to resolve some of these cases is the overly demanding nature of the investigation conducted by State parties. The scope of these investigations demanded by some

⁹ (2010) 190 FCR 344; [2010] FCA 1343 (8 December 2010) at [12]-[13].

States is reflected in the complex connection guidelines published by some States.

The power conferred by the Act on the Court to approve agreements is given in order to avoid lengthy hearings before the Court. The Act does not intend to substitute a trial, in effect, conducted by State parties for a trial before the Court. Thus, something significantly less than the material necessary to justify a judicial determination is sufficient to satisfy a State party of a credible basis for an application. The Act contemplates a more flexible process than is often undertaken in some cases.

I respectfully agree with North J in these observations. In my view, it would be perverse to replace a trial before the Court with a trial conducted by a State party respondent and I do not consider that is what is intended by the provisions of s 87 of the Act.

21. The focus of s 87 is on the making of an agreement by the parties and this reflects the importance placed by the NTA on mediation and agreement as the primary means of resolving native title applications.¹⁰ The resolution of proceedings, without the need for a hearing, is also consistent with the overarching purpose of the Court's civil practice and procedure as set out in s 37M of the *Federal Court of Australia Act 1976* (Cth), which is to facilitate the just resolution of disputes according to law and as quickly, inexpensively and efficiently as possible.
22. In the context of the State agreeing to resolve this matter by consent, it is also important to have regard to the fact that the Applicant and the State, through competent legal representation, are satisfied that a consent determination is appropriate in the terms set out in the filed Consent Determination.

Principles for Negative Determination

23. In *Badimia*,¹¹ the Full Court upheld the making of a negative determination over land in Western Australia. The Court stated:

Whether it is appropriate to proceed to consider the making of a negative determination will depend in part on the reasons why a claimant application has failed. It will depend in part also upon the extent to which, if at all, competing

¹⁰ *Lovett on behalf of the Gunditjmarra People v State of Victoria* [2007] FCA 474 at [36]. See also *Freddie v Northern Territory* [2017] FCA 867 at [16]-[17] (Mortimer J).

¹¹ *CG (Deceased) on behalf of the Badimia People v State of Western Australia* (2016) 240 FCR 466 [2016] FCAFC 67 (North, Mansfield, Reeves, Jagot and Mortimer JJ).

claimant applications have been heard at the same time. If the Court is satisfied that all the potentially competing claimants for the recognition of native title in respect of the claim area have participated in the hearing, and all have failed, a negative determination could be made if the Court is satisfied that there is no native title that can be recognised and protected. If that is not the case, the Court will no doubt consider whether, despite the notice of the claimant application given pursuant to s 66, there are reasons for notice of the prospect of a negative determination being given to some other person or persons, or indeed to the native title representative body for the particular area. Given that a negative determination is, as we have pointed out, a determination in rem, it is important that the court carefully consider such matters before it can be satisfied, on the balance of probabilities, that no native title right or interests exist in relation to a particular area.¹²

24. In *Wyman v State of Queensland*,¹³ the Full Court upheld the making of a negative determination over land in central Queensland that had been subject to overlapping claims by three claimant groups. The Full Court affirmed the general importance of finality, a principle underscored, but not limited, by the requirements of s 22 of the *Federal Court Act 1976 (Cth)*.
25. The Full Court in *Wyman* also noted that the overlapping claims had been on foot for many years and that no other group had asserted a claim to any part of the overlap area. Having excluded the three claimant groups, the evidence did not enable any inference to be drawn that any other group might have such a claim.¹⁴ The Full Court considered in those circumstances *'it was appropriate, if not inevitable that a negative determination should have been made once each of the three claims failed on the basis that they did, and there was no suggestion there was any other group traditionally associated with the overlap area the subject of the claims.'*¹⁵
26. In the very recent decision of *Weribone v State of Queensland*,¹⁶ Rares J made a negative determination over land in south-eastern Queensland. Importantly for present purposes, his Honour made the order, not after trial, but pursuant to a consent determination. His Honour stated that this order was appropriate *'because it will provide substantial certainty as to the land title status to all persons, including the State, with legal or equitable*

¹² *CG (Deceased) on behalf of the Badimia People v State of Western Australia* (2016) 240 FCR 466 [2016] FCAFC 67 [66] (North, Mansfield, Reeves, Jagot and Mortimer JJ).

¹³ (2015) 235 FCR 464 [2015] FCAFC 108 (North, Barker and White JJ).

¹⁴ (2015) 235 FCR 464 [2015] FCAFC 108 [498] (North, Barker and White JJ).

¹⁵ (2015) 235 FCR 464 [2015] FCAFC 108 [501] (North, Barker and White JJ).

¹⁶ [2018] FCA 247 (Rares J).

*interests in the land and waters in the claim area.*¹⁷ It noted that there was ‘*real public benefit in finality of litigation and in the Court giving the public and the parties certainty in respect of rights to, and interests in, real property.*’¹⁸

Review of the Evidence by the Applicant and the State

27. Both the Applicant and the State have carefully reviewed the evidence filed to date, with the assistance of expert anthropologists, solicitors, and counsel. The Applicant and the State both accept that, taken on its face, the evidence provides a credible and rational basis for a reasonable person to accept the proposed consent determination.
28. The Applicant’s evidence filed in this matter to date consists of several detailed reports, anthropological, genealogical and historical, by Associate Professor Neale Draper, Associate Professor Robert Foster and Dr Skye Krichauff, experts engaged by the Applicant.
29. The conclusions in the reports are based on the individual experts’ assessment of the historical and ethnographic literature relating to the area and its surrounds, as well as information gathered during interviews with native title claim group members. In the case of Associate Professor Draper such information has been gathered over decades of frequent contact with the Kurna People.
30. The Court also received oral and written preservation evidence from four members of the native title claim group in 2013 and 2014. Further, the Applicant has filed outlines of proposed evidence from twelve lay witnesses, each members of the claim group. These witnesses offer contemporary evidence that they form part of a recognisable society that presently recognises and observes traditional laws and customs through which they enjoy a connection to the land in the determination area. The Court has repeatedly observed that lay evidence can be preferred, as more reliable and persuasive, over the evidence of anthropologists or anthropological sources.¹⁹
31. The State responded to some of²⁰ this material through reports prepared by anthropologist, Dr Lee Sackett, and ethno-historian, Mr Tom Gara. Dr Sackett is a consultant anthropologist with substantial professional and academic experience, both

¹⁷ [2018] FCA 247 [27] (Rares J).

¹⁸ [2018] FCA 247 [28] (Rares J).

¹⁹ *Narrier v Western Australia* [2016] FCA 1519 at [318], *De Rose v South Australia* (2003) 133 FCR 325 at [264]-[265]

²⁰ Not all of the Applicant’s filed material has been the subject of a filed response, owing to settlement of the action being reached before the State was due to file all of its responding evidence.

generally and with regard to native title. Tom Gara is a historian who has extensive knowledge of the Kaurna and the Adelaide area.

32. The reports were exchanged between the Applicant and the State and discussed at an initial conference of experts facilitated by the Court was held in late 2017. It is acknowledged that the views of the experts differed quite widely.
33. A further expert report and several witness statements were served after the conference and have also informed the settlement negotiations between the principal parties.
34. At the completion of the *without prejudice* discussions, the State considered that, on the flexible, credible/rational basis test referred to at paragraphs 19 and 20 above, there was sufficient evidence to justify a consent determination of native title in relation to the proposed determination area (being approximately one-half of the claim area), in the terms of the filed draft Consent Determination.
35. While subsequent discussions and negotiations took place between the Applicant and the State in relation to the area seaward of the Lowest Astronomical Tide, the Applicant ultimately chose to amend the claim to remove that area, indicating that a future claim may possibly be lodged. The State raised no objection to the amendment of the claim, and says nothing about any future claim.

The relevant society for the purposes of section 223 of the NTA

36. The members of the native title claimant group identify themselves as the traditional owners of the determination area because its members are descended from those who had ties to this area at Settlement (1836). In turn, it is reasonably inferred that those ties were inherited from those Aboriginal persons who had ties to this area at sovereignty (1788).
37. The experts all agree that, at sovereignty, Aboriginal people lived in the determination area, whether made up of one or more groups.²¹ From Settlement, these people were collectively known as the 'Adelaide Tribe'. The evidence supports the conclusion, on the flexible, credible/rational basis referred to above in paragraphs 19 and 20 above, that the 'Adelaide Tribe', whether they were made up of one group or many, resided in and occupied the determination area. As explained below, the Applicant and the State accept that, for the purposes of this consent determination, the Kaurna People are the traditional descendants of the Adelaide Tribe.

²¹ Propositions 1 and 3, Report of the Expert's Conference, 4 and 5 December 2017.

The relationship between the claim group's society and the society in the Determination Area at sovereignty

38. The relevant date of sovereignty for this area is 26 January 1788. Consistent with the native title jurisprudence concerning the inferences which may be drawn from observed occupation at first contact, the State is prepared to infer at-sovereignty connection from the earliest records of contact, which were mainly from 1836 onwards.
39. The evidence suggests that membership of the contemporary Kurna society generally depends upon a person having a parent who was a member of that society (which, at Settlement, was the Adelaide Tribe society or some larger grouping of Aboriginal people). There is evidence of commonalities between the laws and customs associated with the Kurna claim area and those of the groupings further to the north and north-west. The society also granted membership to Aboriginal children who, although not Kurna/Adelaide Tribe by birth, were adopted by members of the society and brought up as members of the society.
40. The available evidence is rationally capable of being read as showing that the agreed apical ancestors had native title rights and interests in parts of the determination area at the time of Settlement. The claimants' genealogies show descent lines from those ancestors to the current claimants.

Particular Apical Ancestors

41. The State has accepted, for the purposes of this consent determination, that some of the apical ancestors identified by the Applicant which, the State's experts consider, on balance, were unlikely to have been Kurna People. The basis for such acceptance, bearing in mind the flexible, credible/rational basis articulated earlier, is that those apical ancestors are supported by the evidence of the members of the claim group themselves and also by Associate Professor Draper's expert views. The inclusion of some of those ancestors was also supported by Dr Krichauff. Whether or not those views would prevail at any trial is neither here nor there; all that the Court needs to be satisfied of, is that there is a rational basis for the State to agree with the Applicant as to the description of the claim group in respect of which a consent determination might be made.
42. However, it may be observed that not all Apical Ancestors identified by the Applicant have been accepted, for the purposes of a consent determination, by the State. Three have not been accepted. A brief explanation follows.

- (a) In relation to Mother of Alice Miller, the historic record is exceptionally sparse and those claim group members who identify this apical ancestor tend to prefer to identify other apical ancestors (i.e. they have more than one Kaurna apical ancestor, and Mother of Alice Miller is a second preference).
 - (b) In relation to Mother of Sarah Taikarabbie, the historic record identifies her overwhelmingly as Ngarrindjeri and this apical ancestor is not supported by a significant depth of evidence from claim group members (unlike, for example, Kudnarto).
 - (c) In relation to Eli Bews or Bewes, the expert evidence overwhelmingly identifies this person as being not an *apical* ancestor, regardless of his tribal affiliation.
43. In all those circumstances, the Applicant has accepted that defining the claim group to exclude the descendants of those three people is appropriate.
44. In relation to Kudnarto, it is relevant to point out that, over many years, representatives of the State have accepted her descendants as Kaurna people in a range of different contexts. Uncle Lewis O'Brien, a very senior Aboriginal man, has been the principal public face of the Kaurna people for many years. This includes at numerous official functions and occasions. He is not a claimant in relation to any other native title claim.

Has there been substantially uninterrupted observance of traditional laws and customs since sovereignty?

45. After settlement of the Province of South Australia, and establishment of the City of Adelaide, many Aboriginal people from surrounding areas were drawn to the city. Subsequently, by reason of government policies, most Aboriginal people were moved away from the claim area to reserves on Eyre and Yorke Peninsulas and at the mouth of the River Murray.
46. Although the Kaurna identity, and that label specifically, only became significant in a contemporary sense from the 1970s onwards, the claimants maintain that their society continued in existence well before then through their parents, grandparents, and great-grandparents, particularly at Point Pearce (Yorke Peninsula), Poonindie (Eyre Peninsula) and Point McLeay (mouth of the River Murray). It is not at all uncommon in native title cases for group labels to change over time and to be a matter of controversy.
47. A consent determination can be made without the necessity of strict proof and direct evidence of each issue as long as inferences can plausibly be made. The parties submit

that, in the circumstances of a consent determination, it is appropriate to focus on credible contemporary expressions of traditional laws and customs and pay less regard to any laws and customs that may have ceased. For the purposes of a consent determination, the State is prepared to infer that such contemporary expressions are sourced in the earlier laws and customs, on the basis that it is inherently unlikely that such contemporary expressions are recent inventions.²²

48. The State has borne in mind the fact that the original Aboriginal custodians of this particular land were affected in a unique way by the settlement of Adelaide and its surrounds as a capital city and that the Applicant represents a group that has held, and will continue to hold into the future, recognition by the State and by many in the community as representing those original inhabitants and the current traditional owners of the area.
49. The evidence of the Applicant's lay witnesses and the anthropological connection report of Dr Draper provides some evidence that the claimants' behaviour is to a sufficient extent regulated or influenced by laws and customs which have been handed down from previous generations, including:
- Kinship and obligations to kin;
 - Proscription of marriage with those that were too close;
 - The significance of gender restrictions, in particular in relation to restricted cultural knowledge;
 - Authority structures where elders and senior men and women with cultural knowledge and experience are respected with regard to certain issues;
 - Dreaming and other stories and the ongoing transmission of those stories by elders to younger generations;
 - Learning styles which remain part of an oral culture embedded in a system of respect for elders and knowledgeable senior people;
 - Family totems and related cultural obligations;
 - Sacred sites, including restricted men's and women's sites;
 - Ceremonial activity, including burial rituals and the smoking ceremony.

Other laws and customs for which there is contemporary evidence include:

²² *Sampi v Western Australia* (2010) 266 ALR 537; [2010] FCAFC 26 at [65].

- Expectations about appropriate and respectful behaviour when visiting country for cultural business;
 - Physically maintaining and protecting sites of significance; and
 - Beliefs and fears of spiritual forces relating to the land, people, and animals.
50. Though there are obvious limits to how far the facts of one case can be relevant to another case, the success of the claimants in *Croft v State of South Australia (No 2)* [2016] FCA 724 demonstrates that claimants can succeed in claims to areas where the impact of colonisation was high and that colonisation occurred long ago. This case related to land and waters on Eyre Peninsula in southern South Australia.
51. Given this background, the flexible approach encouraged by the NTA and the Court and the shared desire of the State and the Applicant to avoid what could have been an extremely divisive and damaging trial, the State is prepared to accept there being sufficient ongoing connection by traditional laws and customs of those identifying as Kaurna with the determination area. Specifically, the State is prepared to infer that the pre-sovereignty normative society has continued to exist throughout the period since sovereignty. While there has been inevitable adaptation and evolution of the laws and customs of that society, it should be inferred that the society today (as descendants of those placed in the area in the earliest records) acknowledges and observes a body of laws and customs which is substantially the same normative system as that which existed at sovereignty.

Connection to the Determination Area by traditional laws and customs

52. It is a requirement for a successful determination application that the claimants show that they follow traditional laws and customs which are connected to the land, and which give rise to rights and responsibilities in relation to that land. Therefore, it is not 'connection' to the land in the abstract that must be considered, but the content of the traditional laws and customs; the nature and extent of the connection with the land required or provided under those laws and customs and the relationship between the laws and customs and rights or interests in land.
53. The available evidence shows that a number of members of the claim group have maintained a fairly active presence on the land in the determination area, and have knowledge of the cultural and physical landscape of the area. For many years, members of the claim group have played an active role in providing cultural guidance concerning the application of Aboriginal heritage legislation and concerning the repatriation of burial

remains. Evidence is given of a number of cultural and religious sites in the determination area associated with various dreaming stories and of claimants performing ritual and ceremonial activities associated with those sites.

54. The evidence is that there are restrictions upon both knowledge, and access to places of significance in the claim area, along both gender and seniority lines. It is clear that there is knowledge that is regarded as exclusively men's business or exclusively women's business. There are also rules about restrictions upon access to land. There is evidence from Kaurna men that they cannot access certain women's sites and from Kaurna women about having to avoid certain places that are related to men's law.
55. Evidence was provided of transmission by parents and grandparents of cultural knowledge, both physical and spiritual, to younger generations both on and off the claim area.
56. While the experts disagree on the extent to which there has been a sufficiently continuous transfer of that law and custom (rather than a reinvigoration of the original society), on consideration of all the material, and for the purposes of the settlement, the State and its experts are prepared to accept that the native title claim group's traditional laws and customs give them a connection to the determination area, and that such connection has continued substantially uninterrupted since sovereignty.
57. One aspect to this acceptance might be further elaborated. It is trite that, because connection is intertwined with traditional law and custom, it is not necessary for the claim group to physically occupy or use the determination area in order to have a connection to it.²³ It is sufficient to establish a 'spiritual' connection. On the flexible, credible/rational basis referred to earlier, the State accepts (for the purposes of this consent determination) that the claim group has a spiritual connection to the determination area, notwithstanding the fact that: (a) the determination area has been settled and developed so as to physically exclude members of the claim group from the vast majority of the determination area, and (b) in almost all cases ancestors of the present claim group members lived for substantial periods outside the determination area.
58. Put another way, there is sufficient evidence of:

²³ *AB (dec'd) (on behalf of the Ngarla People) v State of Western Australia (No 4)* (2012) 300 ALR 193; [2012] FCA 1268 at [99]; *Croft on behalf of the Barngarla Native Title Claim Group v South Australia* (2015) 325 ALR 213; [2015] FCA 9 at [71].

- (a) claim group members having learnt, by traditional means, traditional knowledge about their country and its traditional attributes and their obligations and entitlements in relation to that country; and
- (b) claim group members giving effect to their traditional laws and customs in relation to the determination area;

that there is a flexible, credible/rational basis for the State to accept continued connection up until the present day.

The relationship between the traditional laws and customs of the relevant society and the rights and interests claimed by the Applicant

- 59. The rights and interests to be recognised are set out in paragraph 12 of the Consent Determination agreed by the parties. They will only be recognised over the limited number of parcels in Schedule 3 to the Determination, meaning that the vast majority of respondents will not be affected by the native title being recognised.
- 60. The rights and interests are consistent with the rights and interests that would have been observed traditionally. They are also consistent with rights recognised by the Federal Court in determinations elsewhere in South Australia.²⁴
- 61. For the purposes of a settlement, the State and its experts are prepared to accept that the native title rights and interests claimed arise from the native title holders' traditional laws and customs and that they have evolved from the native title rights and interests as they were likely to have been at sovereignty.

Section 225 NTA

- 62. Section 225 NTA governs what the Consent Determination must include. The Applicant and the State submit that the Consent Determination complies with each requirement of that section.
- 63. The Consent Determination describes the external boundaries of the determination area (Schedule 1) and sets out with particularity those areas where native title exists (**Native Title Land**) (paragraph 9) and those areas where native title is extinguished (paragraph 10).

²⁴ See, for example, the recent determination made in favour of the Ngarrindjeri People, whose determination area adjoins the Kaurna claim area: *Sumner v State of South Australia* [2017] FCA 1514, paragraph 10 of the determination.

64. For the purposes of s 225(a) NTA, paragraph 11 of the Consent Determination defines the group of native title holders and the criteria by which they have group membership.
65. For the purposes of s 225(b) NTA, paragraph 12 of the Consent Determination sets out the nature and extent of the native title rights and interests in the determination area. Paragraphs 13 to 15 set out the general limitations on their exercise. Paragraph 10 and Schedule 4 state that no other native title exists in the determination area.
66. For the purposes of s 225(c) NTA, Paragraph 16 of the Consent Determination sets out the nature and extent of other interests in the Native Title Land.
67. For the purposes of s 225(d) NTA, paragraph 17 of the Consent Determination describes the relationship between the native title rights and interests in Paragraph 12 and those other rights and interests set out in paragraph 16.
68. For the purposes of s 225(e) NTA, the native title rights and interests recognised in the Determination are non-exclusive.

Negative Determination

69. The claim has been on foot for many years. Apart from the Ramindjeri, no other claim group has lodged a claim over the claim area in this time. While the Ramindjeri lodged a claim in 2010 over the southern portion of the Kurna claim area, that claim was struck out in 2014²⁵ and no further claim has been made. The Ramindjeri are respondents to these proceedings.
70. The Ramindjeri application was dismissed on the motion of the State. It is noteworthy that the Ramindjeri application overlapped with significant parts of both the Ngarrindjeri claim (which has since been the subject of a consent determination) and the Kurna claim. In the course of giving his reasons, Mansfield J said:

The second observation is prompted by the table completed at the Box Factory Meeting. It is obviously the case that a number of those present, at least those who described their country, were more focused on a smaller geographical area than the Ramindjeri claim area in the vicinity of the Murray River Mouth and the Coorong. Some of the extracted historical research suggests that is the tribal area of the Ramindjeri People. Again, that is not a prejudgment of the issue, but an observation about some of the material presently before the Court.²⁶

The Ramindjeri are not an active participant in the present proceedings.

²⁵ *Walker v State of South Australia* [2014] FCA 962.

²⁶ *Walker v State of South Australia* [2014] FCA 962 [62].

71. In these circumstances, the State and the Applicant submit that there is no credible basis to infer that any other group might have an interest in the determination area and that it is appropriate for the Court to make a negative determination over the balance of the determination area.
72. That position is to be contrasted with those portions of the claim area to the immediate north and south of the determination area where the State and the Applicant propose only that the claim be dismissed, thus preserving the potential for a future claim by other claimant groups.
73. In the south, there is some evidence to suggest the traditional country of the Ramindjeri, centred on Encounter Bay, might have extended some way north into the southern part of the Kaurna claim area. In the north, the neighbouring Narungga, Nukunu or Ngadjuri groups might conceivably claim traditional connection to areas in the north of the claim area which are adjacent to areas already claimed by them.
74. While not accepting the existence of evidence *establishing* such claims, the State and the Applicant submit that in the circumstances it would not be appropriate for the Court to make a negative determination that forecloses the making of future claims outside the determination area.

Section 87 NTA

75. Given the large area of negative determination, some former respondents have, appropriately, withdrawn as parties rather than signed the proposed consent determination. The terms of the Consent Determination have been agreed by the solicitors for all other represented parties to the proceeding and Order 7 of the Court made on 7 March 2018 requires each respondent party (other than the State) to either seek leave to withdraw as a party or to file a signed copy of the Consent Determination.
76. Signatories include those with interests in the Native Title Land including Local Government Councils, Telstra Corporation Limited, SA Power Networks, and Epic Energy South Australia Pty Ltd.
77. On the basis of the evidence submitted to and assessed by the State, as outlined in these submissions, it is submitted that it is appropriate, and within its power, for the Court to make orders pursuant to s 87 of the NTA.

Representation

78. All of the parties to the Consent Determination, with the possible exception of the Ramindjeri Heritage Association (if that Association remains a party), have had independent and competent legal advice in the proceedings.

Extinguishment

79. Schedule 3 to the Consent Determination lists the parcels where native title is recognised in the determination area. Schedule 4 describes those items and areas in the determination area where native title is agreed not to exist. In this determination, this schedule does not list every such parcel as there are more than 700,000 of them. Instead, it describes the entire area with the exception of the Native Title Land as not being subject to any native title.

The Kurna Settlement ILUA

80. Immediately following the making of the Determination, the State, the Applicant and the nominated native title holding body, Kurna Yerta Aboriginal Corporation ICN 4043, will execute the Kurna Settlement ILUA. This ILUA provides for compensation and benefits in full and final settlement of the State's existing compensation liability pursuant to the NTA in relation to the determination area, and a process for the undertaking of future acts by the State on native title land within the determination area.
81. The Consent Determination and the ILUA are co-dependant on each other in that the State would not be prepared to enter either on its own (and the Applicant accepts that this is appropriate). For this reason, the Consent Determination as proposed only comes into effect once the ILUA has been successfully registered on the NNTT's Register of ILUAs.
82. In the event that the ILUA is not registered within 6 months of the date of the making of the Determination, the Consent Determination provides for liberty to apply to the Court.

Conclusion

83. The NTA encourages the resolution, by agreement, of claims for determinations of native title. For the reasons set out above, the State and the Applicant consider that the Consent Determination, in conjunction with the Kurna Settlement ILUA, is appropriate and should be made in this proceeding.
84. The effect of the Determination is such that a very large number of the respondents to this claim will not be affected by it (save for having confirmation either that there is no native title, or that the claim has been dismissed as concerns their interests).

21

85. By signing the Agreement under s 87 of the NTA, the other parties to the proceeding have indicated their agreement. The Court is respectfully asked to make the determination of native title.

Dated: 9 March 2018

NOTICE OF FILING

This document was lodged electronically in the FEDERAL COURT OF AUSTRALIA (FCA) on 14/03/2018 12:13:56 PM ACDT and has been accepted for filing under the Court's Rules. Details of filing follow and important additional information about these are set out below.

Details of Filing

Document Lodged: Non-Prescribed Notice/Request
File Number: SAD6001/2000
File Title: Garth Agius & ors on behalf of the Kurna People and The State of South Australia & ors (Kurna Peoples)
Registry: SOUTH AUSTRALIA REGISTRY - FEDERAL COURT OF AUSTRALIA



Dated: 14/03/2018 1:26:25 PM ACDT

Registrar

A handwritten signature in blue ink, appearing to read 'Warwick Soden'.

Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date and time of lodgment also shown above are the date and time that the document was received by the Court. Under the Court's Rules the date of filing of the document is the day it was lodged (if that is a business day for the Registry which accepts it and the document was received by 4.30 pm local time at that Registry) or otherwise the next working day for that Registry.



SAD 6001 of 2000

BETWEEN: GARTH AGIUS AND OTHERS ON BEHALF OF THE KAURNA PEOPLES NATIVE TITLE CLAIM GROUP
Applicant

AND: STATE OF SOUTH AUSTRALIA AND OTHERS
Respondent

See Schedule 7 for the Full List of Parties

CONSENT TO NATIVE TITLE DETERMINATION

The Corporation of the City of Adelaide, Adelaide Plains Council, Alexandrina Council, The Barossa Council, The Corporation of the City of Campbelltown, City of Charles Sturt, City of Holdfast Bay, Light Regional Council, The Corporation of the City of Marion, City of Mitcham, The Corporation of the City of Norwood, Payneham & St Peters, City of Onkaparinga, City of Playford, City of Port Adelaide Enfield, City of Prospect, City of Salisbury, City of Tea Tree Gully, The Corporation of the City of Unley, City of West Torrens, and The District Council of Yankalilla hereby consent to an order being made in this proceeding pursuant to section 87 of the *Native Title Act 1993* in terms of the attached draft minutes.

Dated: 14 March 2018


.....
Signature

Nicholas Llewellyn-Jones.....
Name

Norman Waterhouse Lawyers.....
Firm

11.2 Legislative Progress Report - March 2018

Brief

This report provides an update on the status of proposed legislative changes affecting local government either dealt with in Parliament, by the Local Government Association or contained in the Government Gazette during the preceding month.

RECOMMENDATION

The Committee recommends to Council that the 'Legislative Progress Report - March 2018' be received.

Introduction

This report provides a monthly update on the progress of Bills through Parliament, using Parliament's defined stages, as well as items contained within the Government Gazette that relate to the City of West Torrens. It also contains information provided by the Local Government Association (LGA) relating to proposed amendments to legislation or other relevant matters.

Due to the caretaker period and subsequent proroguing of the State Parliament on 17 February 2018, no new amendments to legislation have been initiated since the last report to Council.

Information on the status of all Bills and Acts is available on the South Australian Legislative Tracking and the Federal Register of Legislation websites at:

<https://www.parliament.sa.gov.au/Legislation/BillsMotions/SALT/Pages/default.aspx> and/or <https://www.legislation.gov.au/>

Discussion

Recent Amendments to Legislation
<i>Nil</i>
Summary of Proposed Amendments to Legislation
<i>Nil</i>
Bills previously reported on where the status has changed
<i>Nil</i>
Bills previously reported on where the status remains unchanged
All Bills previously reported on where the status remained unchanged will need to be reintroduced to the new session of parliament for debate.

Acts Assented to but Not Yet Commenced

- The *Environmental Protection (Waste Reform) Amendment Act 2017* (Act) received Royal Assent on 14 November 2017 and was proclaimed on 28 November 2017. The operation of Schedule 2 of the Act is suspended until a subsequent proclamation.
- *Dog and Cat Management (Miscellaneous) Amendment Act 2016* was proclaimed on 19 April 2017 and is subject to a staged commencement. The first tranche of provisions came into operation on 1 July 2017 with the remaining tranche of sections commencing on 1 July 2018.
- The *Local Government (Boundary Adjustment) Amendment Act 2017* (Amendment Act) received Royal assent on 22 August 2017 and was proclaimed on 7 November 2017. The Amendment Act will come into operation on 1 January 2019 following the 2018 Local Government elections.

Further information can be found on the South Australian Legislative Tracking website.

Parliamentary Inquiries

Parking and Traffic Movement

The Parliament of South Australia's Legislative Review Committee (Committee) undertook an Inquiry into the Regulation of Parking and Traffic Movement.

The Administration provided a submission to the Legislative Review Committee on Friday 21 July 2017 and provided a copy to the LGA who prepared a submission in consultation with member councils that focused on the terms of reference.

The Committee reviewed all submissions and evidence and provided a determination to the relevant Ministers. The Committee did not receive a response from the Ministers prior to the caretaker period for the State Elections. The progression of the Inquiry will be determined at a later date by the new elected bodies.

Further information can be found on the South Australian Legislative Tracking website.

Conclusion

This report on legislative amendments is current as at 20 March 2018.

Attachments

Nil

12 MEETING CLOSE

CITY OF WEST TORRENS



ATTACHMENT

UNDER SEPARATE COVER

Governance Committee Meeting

3 April 2018

Item 11.1 Kaurna Native Title Claim Judgement

Table of Contents

11.1 Kurna Native Title Claim Judgement
Attachment 2 Court Judgement - Kurna Native Title Claim 1

FEDERAL COURT OF AUSTRALIA

Agius v State of South Australia [2018] FCA 358

File number: SAD 6001 of 2000

Judge: **MORTIMER J**

Date of judgment: 21 March 2018

Catchwords: **NATIVE TITLE** – consent determination – whether requirements of s 87 of the *Native Title Act 1993* (Cth) satisfied – requirements for negative determination – appropriate to make orders

Legislation: *Federal Court of Australia Act 1976* (Cth), ss 37M, 37N
Local Government Act 1999 (SA)
Local Government Act 1934 (SA)
National Parks and Wildlife Act 1972 (SA)
Native Title Act 1993 (Cth), ss 55, 56, 57, 61, 66, 67, 68, 85(4), 87, 87A, 94A, 223, 225, 251B

Cases cited: *Agius v State of South Australia (No 4)* [2017] FCA 361
Barkandji Traditional Owners #8 v Attorney-General of New South Wales [2015] FCA 604
Brown v Northern Territory of Australia [2015] FCA 1268
CG (Deceased) on behalf of the Badimia People v State of Western Australia [2016] FCAFC 67
Cox on behalf of the Yungngora People v State of Western Australia [2007] FCA 588
Freddie v Northern Territory [2017] FCA 867
Goonack v State of Western Australia [2011] FCA 516
Hayes on behalf of the Thalanyji People v State of Western Australia [2008] FCA 1487
Hughes (on behalf of the Eastern Guruma People) v State of Western Australia [2007] FCA 365
King on behalf of the Eringa Native Title Claim Group and the Eringa No 2 Native Title Claim Group v State of South Australia [2011] FCA 1387
Lander v State of South Australia [2012] FCA 427
Lovett on behalf of the Gunditjmarra People v State of Victoria [2007] FCA 474

Munn (for and on behalf of the Gunggari People) v Queensland [2001] FCA 1229
Peterson v State of Western Australia [2013] FCA 518
Phyball on behalf of the Gumbaynggirr People v Attorney-General of New South Wales [2014] FCA 851
Prior on behalf of the Juru (Cape Upstart) People v State of Queensland (No 2) [2011] FCA 819
Sumner v State of South Australia (Ngarrindjeri Native Title Claim Part A) [2017] FCA 1514
Thudgari People v State of Western Australia [2009] FCA 1334
Walker v State of South Australia [2014] FCA 962
Ward v State of Western Australia [2006] FCA 1848
Weribone on behalf of the Mandandanji People v State of Queensland [2018] FCA 247
Western Bundjalung People v Attorney-General of New South Wales [2017] FCA 992
Wurrunmurra on behalf of the Bunuba People v State of Western Australia [2015] FCA 1480
Wyman on behalf of the Bidjara People v State of Queensland [2015] FCAFC 108
Yaegl People #1 v Attorney-General of New South Wales [2015] FCA 647
Yaegl People #2 v Attorney-General of New South Wales [2017] FCA 993

Date of hearing:	Determined on the papers
Date of last submissions:	20 March 2018
Registry:	South Australia
Division:	General Division
National Practice Area:	Native Title
Category:	Catchwords
Number of paragraphs:	103
Counsel for the Applicant:	Mr T Keely, SC and Mr D Billington
Solicitor for the Applicant:	Mr T Campbell, Campbell Law

Counsel for the State of South Australia:	Mr S Whitten
Solicitor for the State of South Australia:	Mr P Tonkin, Crown Solicitor's Office
Solicitor for local councils:	Mr N Llewellyn-Jones and Mr C Alexandrides, Norman Waterhouse
Solicitor for the fishing licence holders, water licence holders and South Australian Apiarists Association Inc:	Ms A Gillam, Mellor Olsson
Solicitor for Epic Energy South Australia Pty Ltd:	Mr E Vickery, Minter Ellison
Counsel for Telstra Corporation Limited:	Did not appear
Counsel for SA Power Networks:	Did not appear

ORDERS**SAD 6001 of 2000**

BETWEEN: **GARTH AGIUS, LYNETTE CROCKER, MAUREEN WANGANEEN, GLENICE SUMNER, JOSEPH MITCHELL, GEORGINA WILLIAMS, DENNIS DAVIES, SUZANNE RUSSELL, RODNEY O'BRIEN, FRANK WANGANEEN, CECIL GRAHAM AND VINCE BUCKSKIN ON BEHALF OF THE KAURNA PEOPLES NATIVE TITLE CLAIM GROUP**
Applicant

AND: **THE STATE OF SOUTH AUSTRALIA AND OTHERS**
Respondent

See Schedule 7 for the Full List of Parties

JUDGE: **MORTIMER J**

DATE OF ORDER: **21 MARCH 2018**

Preamble

- A. Native Title Determination **Application** No. SAD 6001 of 2000 was first lodged with the Federal Court of Australia on 25 October 2000.
- B. The Application was amended in the form of the document titled Minute of Proposed Amended Native Title Determination Claimant Application (Form 1) filed on 4 July 2001 and again on 7 March 2018 (**Amended Application**).
- C. The matter was listed for trial to commence on 3 April 2018 to determine, as separate questions, whether native title exists in relation to any and what land and waters of the Kaurna claim area and, to the extent that it does, who are the persons, or each group of persons, holding the common or group rights comprising the native title and the nature and extent of the native title rights and interests.
- D. The Applicant approached the First Respondent (**State**) with a view to agreeing to settle the Amended Application without the need to proceed with the trial. Both parties have negotiated in good faith and with full advice from their legal representatives, including counsel, and experts, and have reached a compromise which is set out in an Indigenous Land Use Agreement (Kaurna Peoples' Settlement **ILUA**) and in this determination of native title. This determination will take effect

- 2 -

upon the registration of the ILUA as an Area Agreement under Subdivision C of Division 3 of Part 2 of the *Native Title Act 1993* (Cth) (**NTA**).

- E. In negotiating the settlement, the State has borne in mind the fact that the original Aboriginal custodians of land in the Determination Area were affected in a unique way by the settlement of the Province of South Australia including the City of Adelaide and its surrounds and that the Applicant represents a group that has contemporary recognition by the State as representing those original inhabitants.
- F. The parties, including the Applicant, the State and the other respondents have now reached an agreement as to the terms of a determination of native title to be made in relation to land and waters covered by the Amended Application and as to the terms of proposed orders.
- G. The Applicant and the State have carried out a broad analysis of tenure and agree that, in respect of the overwhelming majority of the land and waters within the Determination Area, native title rights and interests have been extinguished. The tenure position reflected in this Determination represents a compromise that has been agreed between the parties for the purposes of settlement.
- H. The parties acknowledge that, when the Determination takes effect, the members of the native title claim group, in accordance with the traditional laws acknowledged and the traditional customs observed by them, will be recognised as the Native Title Holders for the Native Title Land.

Being satisfied that a determination in the terms sought by the parties would be within the power of the Court and it appearing to the Court appropriate to do so:

THE COURT ORDERS THAT:

1. There be a **Determination** of native title in the Determination Area in the terms set out at paragraphs 6 to 19 below.
2. The Determination will take effect upon the ILUA being registered on the Register of Indigenous Land Use Agreements.
3. In the event that the ILUA is not registered on the Register of Indigenous Land Use Agreements within six (6) months of the date of this order, or such later time as the Court may order, the matter is to be listed for further directions.

- 3 -

4. The Applicant (prior to the Determination taking effect) or the Prescribed Body Corporate (after the Determination takes effect), the State and any other respondent have liberty to apply on 14 days' notice to a single judge of the Court:
 - (a) if that party considers that the ILUA will not be registered on the Register of Indigenous Land Use Agreements within 6 months of the date of this order;
 - (b) to establish the precise location and boundaries of any Public Works and adjacent land and waters referred to in items 2 or 3 of Schedule 4;
 - (c) to determine the effect on native title rights and interests of any Public Works as referred to in item 3 of Schedule 4.
5. Each party to the proceeding is to bear its own costs.

THE COURT DETERMINES THAT:

Interpretation & Declaration

6. In this Determination, including its schedules:
 - (a) unless the contrary intention appears, the words and expressions used have the same meaning as they are given in Part 15 of the NTA;
 - (b) "Native Title Land" means the land and waters referred to in paragraph 9 of these orders; and
 - (c) in the event of an inconsistency between a description of an area in a schedule and the depiction of that area on the maps in Schedule 2, the written description shall prevail.

Determination Area

7. Schedule 1 describes the external boundaries of the determination area (**Determination Area**).
8. To the extent that the Amended Application concerns land and waters that are outside the Determination Area, it is dismissed.

Areas within Determination Area where native title exists (Native Title Land)

9. Subject to items 1, 2, 3 and 4 of Schedule 4, native title exists in the land and waters described in Schedule 3.

- 4 -

Areas within Determination Area where native title does not exist

10. Pursuant to s 225 of the NTA, native title does not exist in relation to all of the land and waters comprised in those areas described in Schedule 4.

Native Title Holders

11. Under the traditional laws and customs of the Kaurna People the Native Title Holders are those living Aboriginal people who are the descendants (including by adoption, as defined below) of the following apical ancestors:

- i. Kudnarto
- ii. Father of Charlotte;
- iii. Father of King Rodney, known as Williamy or Tairmunda;
- iv. Nancy Mitchell;
- v. Rathoola;
- vi. Mary Monarto (also known as Mary Wilkins or Nellie Raminyemmermin);
- vii. Sam Stubbs;
- viii. Agnes Waddick (also known as Agnes Horrocks or the mother of Augusta Horrocks);
- ix. James Goldsmith;
- x. David Bews or Bewes;
- xi. Mary McCarthy (sometimes known as Mary McCarty)

and are recognised by the other Native Title Holders under those traditional laws and customs as having rights and interests in the Determination Area (collectively, **Native Title Holders**).

In the foregoing, the words ‘including by adoption’ are intended to include as Native Title Holders:

- (a) those Aboriginal persons, who were or are raised as children and as part of the families of any of the apical ancestors or their biological descendants; and
- (b) descendants of the Aboriginal persons described in (a) above.

- 5 -

Rights and Interests

12. Subject to paragraphs 13, 14 and 15, the nature and extent of the native title rights and interests in the Native Title Land are rights to use and enjoy those lands and waters, being:
- (a) the right of access to the land and waters;
 - (b) the right to live on, use and enjoy the land and waters including for ceremonial purposes;
 - (c) the right to take, use enjoy, share and exchange the resources of the land and waters including by fishing, hunting and gathering; but excluding those resources referred to in item 1 of Schedule 4;
 - (d) the right to conduct funerals and burials on the land and waters.
 - (e) the right to maintain and protect places of importance under traditional laws, customs and practices on the land and waters;
 - (f) the right to teach on the land and waters; and
 - (g) the right to be accompanied on the land and waters by those people who, though not Kaurna persons, are
 - i. spouses of Kaurna persons; or
 - ii. people required by the traditional laws and customs for the performance of ceremonies or cultural activities.

General Limitations

13. The native title rights and interests set out at paragraph 12 are for personal, domestic and communal use but do not include the right to trade in, or the commercial use of, the Native Title Land or the resources from it.
14. The native title rights and interests described in paragraph 12 do not confer possession, occupation, use and enjoyment of the land and waters on the Native Title Holders to the exclusion of others.
15. The native title rights and interests set out at paragraph 12 are subject to and exercisable in accordance with:
- (a) the traditional laws and customs of the Native Title Holders; and

- 6 -

- (b) the valid laws of the State and Commonwealth, including the common law.

Other Interests & Relationship with Native Title

16. The nature and extent of other interests in the Native Title Land are:

- (a) the interests of the Crown in right of the State of South Australia;
- (b) the interests of the Commonwealth of Australia, if any;
- (c) in relation to reserves as defined in the *National Parks and Wildlife Act 1972* (SA):
 - i. the rights and interests of the Crown in right of the State of South Australia pursuant to the *National Parks and Wildlife Act 1972* (SA); and
 - ii. the rights and interests of the public to use and enjoy those reserves consistent with the *National Parks and Wildlife Act 1972* (SA);
- (d) interests of persons to whom valid or validated rights and interests have been granted or recognised by the Crown in right of the State of South Australia or by the Commonwealth of Australia pursuant to statute or otherwise in the exercise of executive power including, but not limited to, rights and interests granted or recognised pursuant to the *Crown Land Management Act 2009* (SA), *Crown Lands Act 1929* (SA), *Native Vegetation Act 1991* (SA), *Fisheries Management Act 2007* (SA), *Natural Resources Management Act 2004* (SA), *Mining Act 1971* (SA), and *Petroleum and Geothermal Energy Act 2000* (SA), all as amended from time to time;
- (e) rights or interests held by reason of the force and operation of the laws of the State or of the Commonwealth;
- (f) the rights to access land by an employee or agent or instrumentality of the State, Commonwealth or other statutory authority as required in the performance of his or her statutory or common law duties where such access would be permitted to private land;
- (g) the rights and interests of all parties to the Indigenous Land Use Agreement listed in Schedule 5 arising by reason of that agreement;
- (h) the rights and interests of Telstra Corporation Limited (ACN 051 775 556):
 - i. as the owner or operator of telecommunications facilities within the Native Title Land;

- 7 -

- ii. created pursuant to the *Post and Telegraph Act 1901* (Cth), the *Telecommunications Act 1975* (Cth), the *Australian Telecommunications Corporation Act 1989* (Cth), the *Telecommunications Act 1991* (Cth) and the *Telecommunications Act 1997* (Cth), including rights:
 - 1. to inspect land;
 - 2. to install, occupy and operate telecommunications facilities; and
 - 3. to alter, remove, replace, maintain, repair and ensure the proper functioning of its telecommunications facilities;
 - iii. for its employees, agents or contractors to access its telecommunications facilities in and in the vicinity of the Native Title Land in performance of their duties; and
 - iv. under any lease, licence, permit, access agreement or easement relating to its telecommunications facilities within the Native Title Land;
- (i) the rights, interests and entitlements of SA Power Networks (a partnership of Spark Infrastructure SA (No.1) Pty Ltd, Spark Infrastructure SA (No.2) Pty Ltd, Spark Infrastructure SA (No.3) Pty Ltd, CKI Utilities Development Limited and PAI Utilities Development Limited) and its related and successor entities, including its rights, interests and entitlements:
- i. to exercise its entitlements and discharge its obligations as the owner and/or operator of electricity infrastructure (as defined in the *Electricity Act 1996* (SA)) (**Electricity Act**) and telecommunications facilities and infrastructure within the Native Title Land including but not limited to the existing infrastructure identified in Schedule [6] (**Existing Infrastructure**);
 - ii. to exercise its entitlements and discharge its obligations as the holder of a licence under the *Electricity Act* and/or as an electricity entity under the *Electricity Act*;
 - iii. to exercise its entitlements and discharge its obligations as the holder of a carrier licence under the *Telecommunications Act 1997* (Cth);
 - iv. to install new electricity and telecommunications infrastructure on the Native Title Land (**New Infrastructure**) and modify, maintain and repair Existing Infrastructure;

- 8 -

- v. under easements, leases or licences (whether registered, unregistered, statutory or otherwise) relating to Existing Infrastructure or New Infrastructure on the Native Title Land (**Easements**);
 - vi. to provide its employees, agents or contractors with access to Existing Infrastructure, New Infrastructure and the Easements on the Native Title Land; and
 - vii. to the extent permitted by law, to restrain any person from performing any act, or compel any person to perform any act, for the purposes of ensuring that SA Power Networks complies with its obligations under any law, including, but not limited to, excluding any person from entering an area containing Existing Infrastructure or New Infrastructure for the purposes of maintaining the safety of any person and the security and protection of such infrastructure;
- (j) the rights and interests of each relevant local government body in the Native Title Land:
- i. under the *Local Government Act 1934 (SA)* and the *Local Government Act 1999 (SA)*;
 - ii. as an entity exercising statutory powers in respect of land and waters within the Native Title Land; and
 - iii. in relation to dedicated land placed under its care, control and management pursuant to the *Crown Land Act 1929 (SA)* or the *Crown Land Management Act 2009 (SA)*
- (k) the rights and interests of Epic Energy South Australia Pty Ltd (formerly Tenneco Gas South Australia Pty Ltd) (**Epic**):
- i. as:
 - 1. holders of Pipeline Licence No. 1 (**PL1**) issued pursuant to the *Petroleum Act 1940 (SA)* on 12 March 1969 and renewed on 27 March 1990 pursuant to the *Petroleum Act 1940 (SA)* and continuing in force by the operation of clause 2 of the Schedule to the *Petroleum Act 2000 (SA)*;
 - 2. owner of the pipeline the subject thereof by virtue of having been a purchaser of the pipeline (as purchaser is defined in section 16 of the

- 9 -

Natural Gas Authority Act 1967 (SA) as amended by the *Pipelines Authority (Sale of Pipelines) Amendment Act 1995 (SA)* (**Sale Legislation**) from the former Pipeline Authority of South Australia (now the Natural Gas Authority of South Australia) pursuant to a Sale Agreement dated 30 June 1995 under the Sale Legislation; and

3. the holders of a statutory easement established by section 9 of the Sale Legislation;
 - ii. the statutory easement entitles Epic, inter alia, to install, maintain and operate the pipeline and to carry out authorised purposes including the installation, operation, inspection, extension, alteration, repair and removal of the pipeline or associated equipment and the carrying out of maintenance work on the pipeline or associated equipment;
 - iii. for Epic, its employees, agents and contractors (or any of them) to enter the Native Title Land to access Epic's rights and interests and to do all things necessary to exercise those rights and interests and perform all obligations in the vicinity of the Native Title Land in performance of their duties;
17. The relationship between the native title rights and interests in the Native Title Land that are described in paragraph 12 and the other rights and interests that are described in paragraph 16 (the Other Interests) is that:
 - (a) to the extent that any of the Other Interests are inconsistent with the continued existence, enjoyment or exercise of the native title rights and interests, the native title rights and interests continue to exist in their entirety, but the native title rights and interests have no effect in relation to the Other Interests to the extent of the inconsistency during the currency of the Other Interests;
 - (b) the existence and exercise of the native title rights and interests do not prevent the doing of any activity required or permitted to be done by or under the Other Interests, and the Other Interests, and the doing of any activity required or permitted to be done by or under the Other Interests, prevail over the native title rights and interests and any exercise of the native title rights and interests, but, subject to any application of the NTA or the *Native Title (South Australia) Act 1994 (SA)*, do not extinguish them.

- 10 -

AND THE COURT MAKES THE FOLLOWING FURTHER ORDERS:

18. The native title is not to be held on trust.
19. The Kurna Yerta Aboriginal Corporation ICN 4043 RNTBC is to:
 - (a) be the prescribed body corporate for the purposes of section 57(2) of the NTA;
and
 - (b) perform the functions mentioned in section 57(3) of the NTA after becoming the registered native title body corporate in relation to the Native Title Land.

Date that entry is stamped: 21 March 2018

District Registrar

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

- 11 -

Schedules**SCHEDULE 1 – Location of and areas comprising the Determination Area**

Kaurna Peoples

External Boundary Description

Commencing at the intersection of Lowest Astronomical Tide with Latitude 34.586086 South (approximately Longitude 138.348510 East), then north-easterly in a straight line to the intersection of the centreline of the Light River estuary with the edge of the mangroves (approximately Longitude 138.359605 East, Latitude 34.578672 South). Then generally north-easterly along the centreline of the Light River estuary generally being straight lines connecting the following coordinate points :-

Longitude East	Latitude South
138.360076	34.578391
138.360570	34.578178
138.361153	34.578021
138.361625	34.577931
138.362118	34.577875
138.362332	34.577886
138.362691	34.577998
138.362904	34.578021
138.363229	34.578032
138.363611	34.578032
138.364093	34.578021
138.364520	34.577998
138.364924	34.577942
138.365272	34.577841
138.365485	34.577763
138.365664	34.577684
138.365777	34.577594
138.365855	34.577449
138.365878	34.577269

- 12 -

138.365889	34.577033
138.365934	34.576887
138.366023	34.576730
138.366270	34.576416
138.366517	34.576136
138.366798	34.575945
138.366989	34.575877
138.367224	34.575877
138.367426	34.575978
138.367639	34.576214
138.367830	34.576427
138.367987	34.576528
138.368200	34.576517
138.368436	34.576439
138.368863	34.576304
138.369323	34.576147
138.369749	34.576023
138.370097	34.575900
138.370377	34.575821
138.370579	34.575799
138.370838	34.575788
138.371185	34.575788
138.371432	34.575821
138.371612	34.575855
138.371859	34.575990
138.372207	34.576158
138.372442	34.576248
138.372599	34.576248
138.372846	34.576237
138.373127	34.576203
138.373295	34.576102
138.373430	34.575967

- 13 -

138.373497	34.575799
138.373508	34.575631
138.373463	34.575462
138.373407	34.575283
138.373374	34.575092
138.373419	34.574845
138.373497	34.574710
138.373553	34.574475
138.373553	34.574318
138.373542	34.574093
138.373598	34.573880
138.373744	34.573689
138.373901	34.573555
138.374148	34.573510
138.374417	34.573543
138.374653	34.573577
138.374900	34.573532
138.375046	34.573409
138.375124	34.573263
138.375158	34.573016
138.375194	34.572725

Then northerly in a straight line to the intersection of the centreline of the Light River with Mean High Water Mark (approximately Longitude 138.375281 East, Latitude 34.572450 South). Then generally north-easterly along the centreline of the Light River to its intersection with a straight line connecting Longitude 138.733123 East, Latitude 34.350420 South and Longitude 138.741236 East, Latitude 35.381125 South [being a point on the eastern boundary of Kaurna Peoples Native Title Claim (SAD6001/2000)]. Then generally southerly, generally easterly and generally south-westerly in straight lines connecting the following coordinate points :-

Longitude East	Latitude South
138.741236	34.381125
138.750360	34.419402

- 14 -

138.767081	34.495537
138.772135	34.534658
138.772599	34.587666
138.824976	34.608241
138.855490	34.614950
138.870750	34.616201
138.888555	34.613663
138.920103	34.603542
138.939539	34.590140
138.943729	34.606389
138.963813	34.613503
138.922472	34.676560
138.924555	34.723554
138.930504	34.794343
138.912063	34.833605
138.922177	34.850856
138.932587	34.882979
138.871616	34.956149
138.840386	35.025153
138.821351	35.065010
138.804994	35.119737
138.777632	35.157215
138.766924	35.184579
138.754136	35.218486
138.735696	35.250015
138.716660	35.276784
138.687513	35.304148
138.645873	35.320805
138.606612	35.335082

[being along the eastern boundary of Kurna Peoples Native Title Claim (SAD6001/2000)].
Then generally south-westerly and generally westerly in straight lines connecting the following coordinate points :-

- 15 -

Longitude East	Latitude South
138.602071	35.336860
138.597571	35.338708
138.593113	35.340623
138.588700	35.342607
138.584332	35.344657
138.580012	35.346773
138.575757	35.348786
138.571305	35.350795
138.566335	35.352974
138.561080	35.354907
138.555695	35.356917
138.550438	35.358744
138.545068	35.360434
138.539662	35.362044
138.534221	35.363574
138.528748	35.365023
138.523243	35.366391
138.517709	35.367678
138.512147	35.368883
138.506560	35.370005
138.500949	35.371045
138.495316	35.372002
138.489663	35.372875
138.483991	35.373665
138.478303	35.374370
138.472600	35.374992
138.466885	35.375530
138.461158	35.375982
138.455423	35.376351
138.449680	35.376634
138.443932	35.376833

- 16 -

138.438180	35.376946
138.431664	35.376734
138.423993	35.376098
138.415579	35.375133
138.407184	35.374080
138.398808	35.372940
138.390452	35.371712

Then westerly in a straight line to the intersection of Lowest Astronomical Tide with Latitude 35.371280 South (approximately Longitude 138.387715 East). Then generally northerly along Lowest Astronomical Tide, across the mouths of any waterways flowing into Gulf St Vincent between the seaward extremities at Lowest Astronomical Tide of each of the opposite banks of each such waterway, to its intersection with a line connecting Longitude 138.471767 East, Latitude 34.788494 South and Longitude 138.469978 East, Latitude 34.785741 South [being a point on the western boundary of Kaurna Peoples Native Title Claim (SAD6001/2000)]. Then north-westerly in a straight line towards Longitude 138.469978 East, Latitude 34.785741 South, then north-westerly in a straight line towards Longitude 138.469293 East, Latitude 34.782299 South to its intersection with Lowest Astronomical Tide [being along the western boundary of Kaurna Peoples Native Title Claim (SAD6001/2000)]. Then generally north-easterly along Lowest Astronomical Tide, across the mouths of any waterways flowing into Gulf St Vincent between the seaward extremities at Lowest Astronomical Tide of each of the opposite banks of each such waterway, to its intersection with a straight line connecting Longitude 138.483887 East, Latitude 34.751241 South and Longitude 138.485313 East, Latitude 34.750288 South [being a point on the western boundary of Kaurna Peoples Native Title Claim (SAD6001/2000)]. Then generally north-easterly and generally easterly in straight lines connecting the following coordinate points :-

Longitude East	Latitude South
138.485313	34.750288
138.485731	34.749977
138.486045	34.749799
138.489722	34.747342
138.490255	34.747236

- 17 -

138.490651	34.746986
138.492561	34.746317
138.493703	34.746122
138.496253	34.745445
138.499803	34.744995
138.502065	34.744853
138.502853	34.744919

[being along the western boundary of Kurna Peoples Native Title Claim (SAD6001/2000)]. Then north-westerly in a straight line to the intersection of Lowest Astronomical Tide with Latitude 34.742782 South (approximately Longitude 138.501626 East). Then generally north-westerly along Lowest Astronomical Tide, across the mouths of any waterways flowing into Gulf St Vincent between the seaward extremities at Lowest Astronomical Tide of each of the opposite banks of each such waterway, to its intersection with a straight line between Longitude 138.413708 East, Latitude 34.656737 South [being a point on the western boundary of Kurna Peoples Native Title Claim (SAD6001/2000)] and Longitude 138.416233 East, Latitude 34.652958 South. Then generally north-easterly, generally northerly and generally north-westerly in straight lines connecting the following coordinate points :-

Longitude East	Latitude South
138.416233	34.652958
138.416899	34.651647
138.417306	34.650981
138.417538	34.650479
138.418044	34.648953
138.418356	34.648448
138.418497	34.647737
138.420599	34.644590
138.420219	34.643975
138.419405	34.642790
138.418556	34.640886
138.416644	34.641266
138.413670	34.641019

- 18 -

138.410270	34.640449
138.409643	34.640269
138.409033	34.640196
138.407124	34.639736
138.404451	34.638867
138.400779	34.636814
138.398599	34.635234
138.396436	34.633388
138.395491	34.631974
138.394972	34.631423
138.391457	34.625983
138.390621	34.621782
138.390513	34.621701
138.389239	34.620957
138.386790	34.619037
138.385642	34.618020
138.385514	34.617937
138.384257	34.616746
138.379456	34.613538
138.378941	34.612953
138.377938	34.611813
138.377165	34.610812

Then north-westerly in a straight line towards Longitude 138.376838 East, Latitude 34.610454 South to its intersection with Lowest Astronomical Tide [being along the western boundary of Kaurna Peoples Native Title Claim (SAD6001/2000)]. Then generally north-westerly along Lowest Astronomical Tide, across the mouths of any waterways flowing into Gulf St Vincent between the seaward extremities at Lowest Astronomical Tide of each of the opposite banks of each such waterway, to the point of commencement.

Reference datum :-

Geographical coordinates are referenced to the Geocentric Datum of Australia 1994 (GDA94), in decimal degrees.

- 19 -

Data reference and source

Topographic features referenced to Department of Environment, Water and Natural Resources, South Australia topography data as at February 2018.

Lowest Astronomical Tide as defined by Geoscience Australia Coastline Information Capture Program Australia 2016.

Use of Coordinates

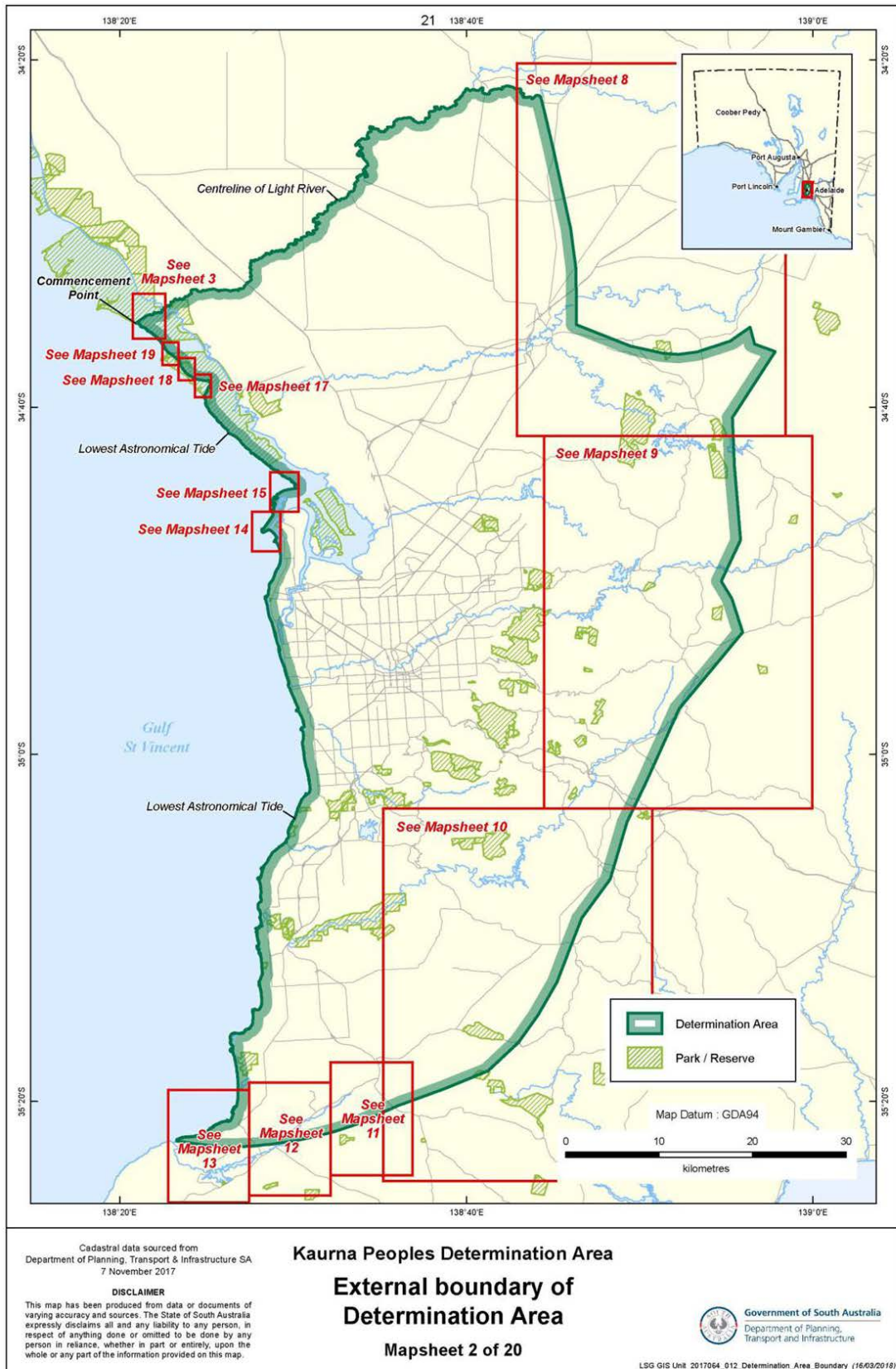
Where coordinates are used within the description to represent cadastral or topographical boundaries or the intersection with such, they are intended as a guide only. As an outcome of the custodians of cadastral and topographical data continuously recalculating the geographic position of their data based on improved survey and data maintenance procedures, it is not possible to accurately define such a position other than by detailed ground survey.

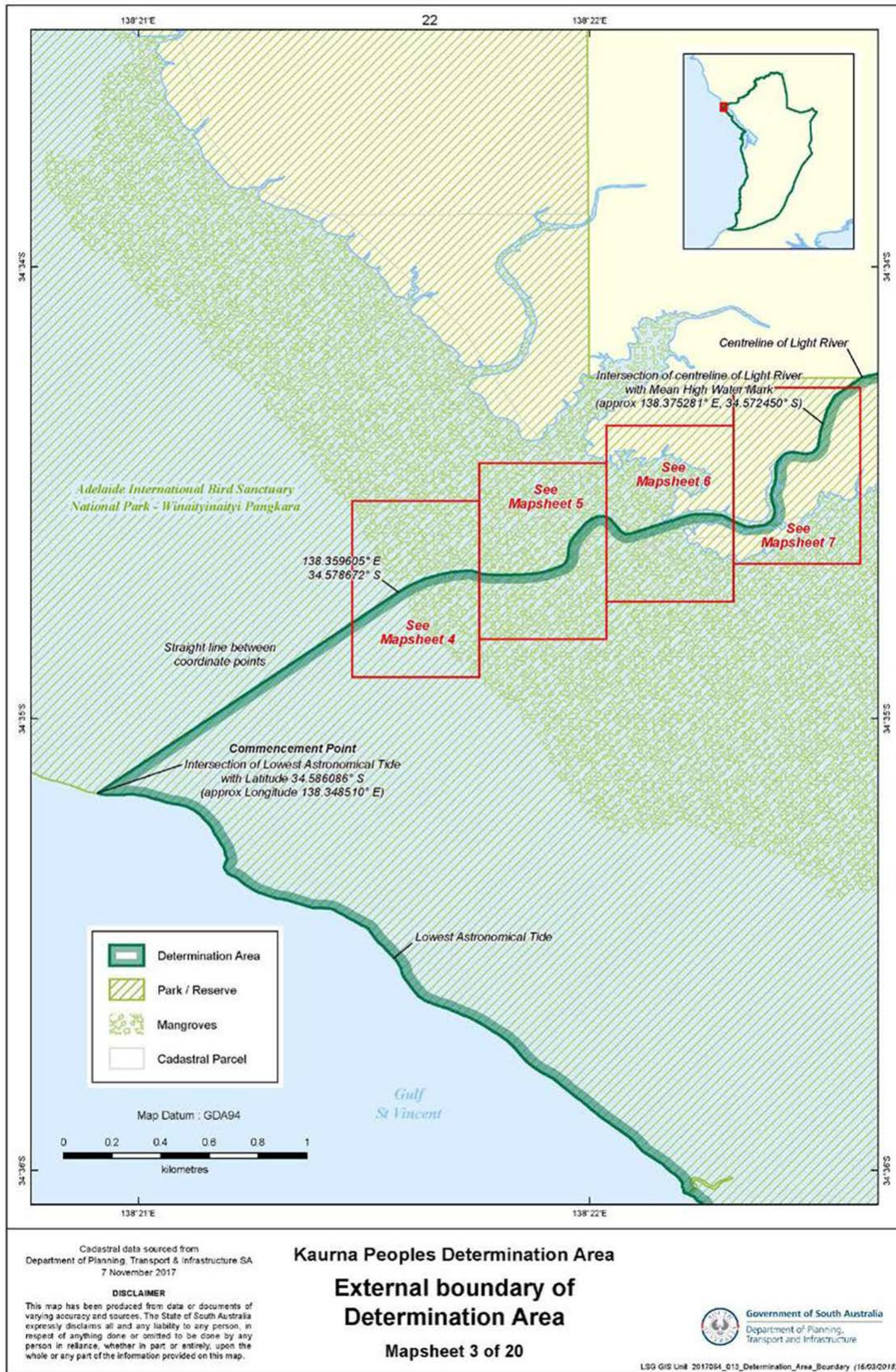
- 20 -

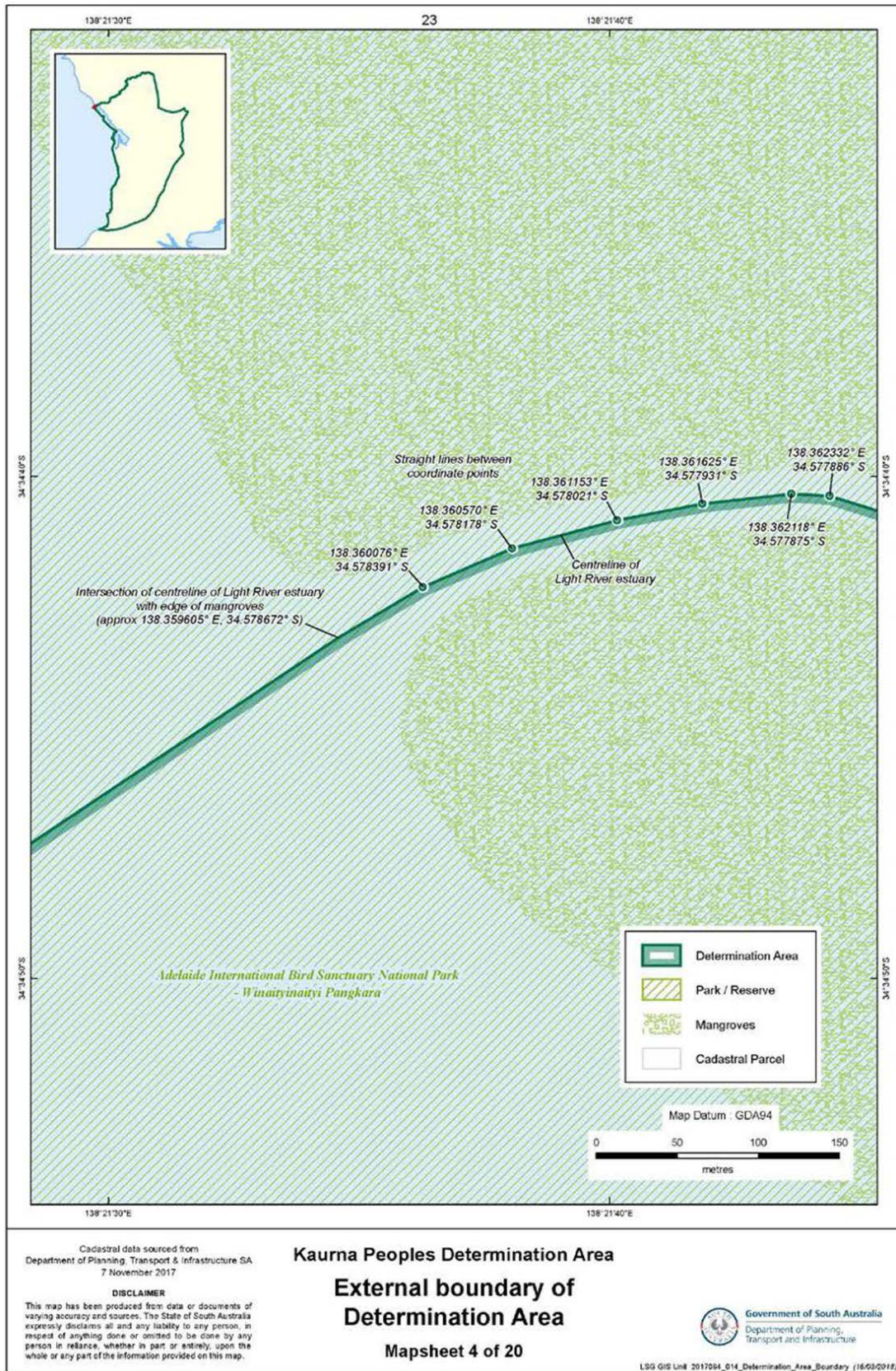
SCHEDULE 2 - Maps

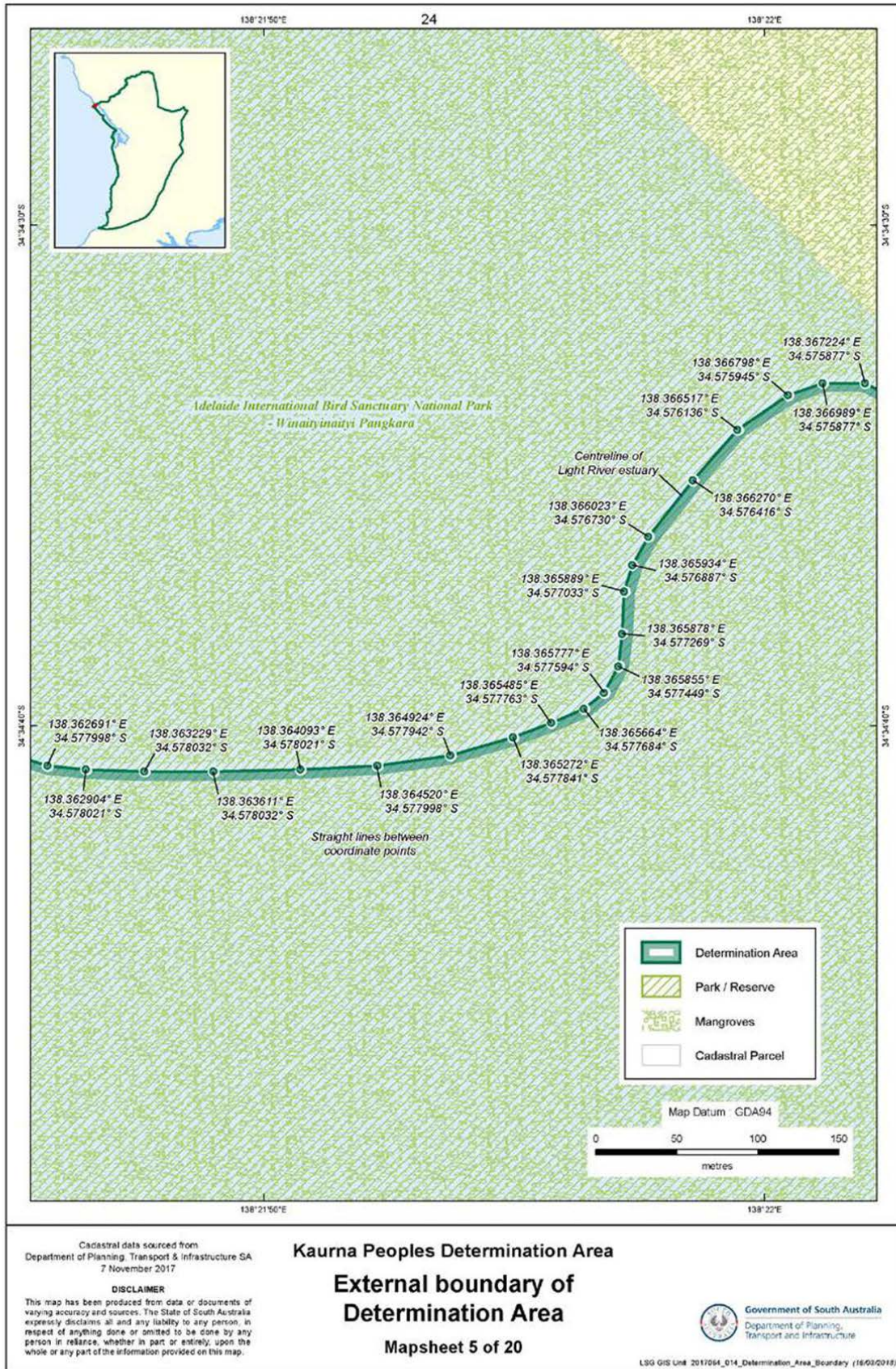
Part A: Map of the External Boundaries of the Determination Area

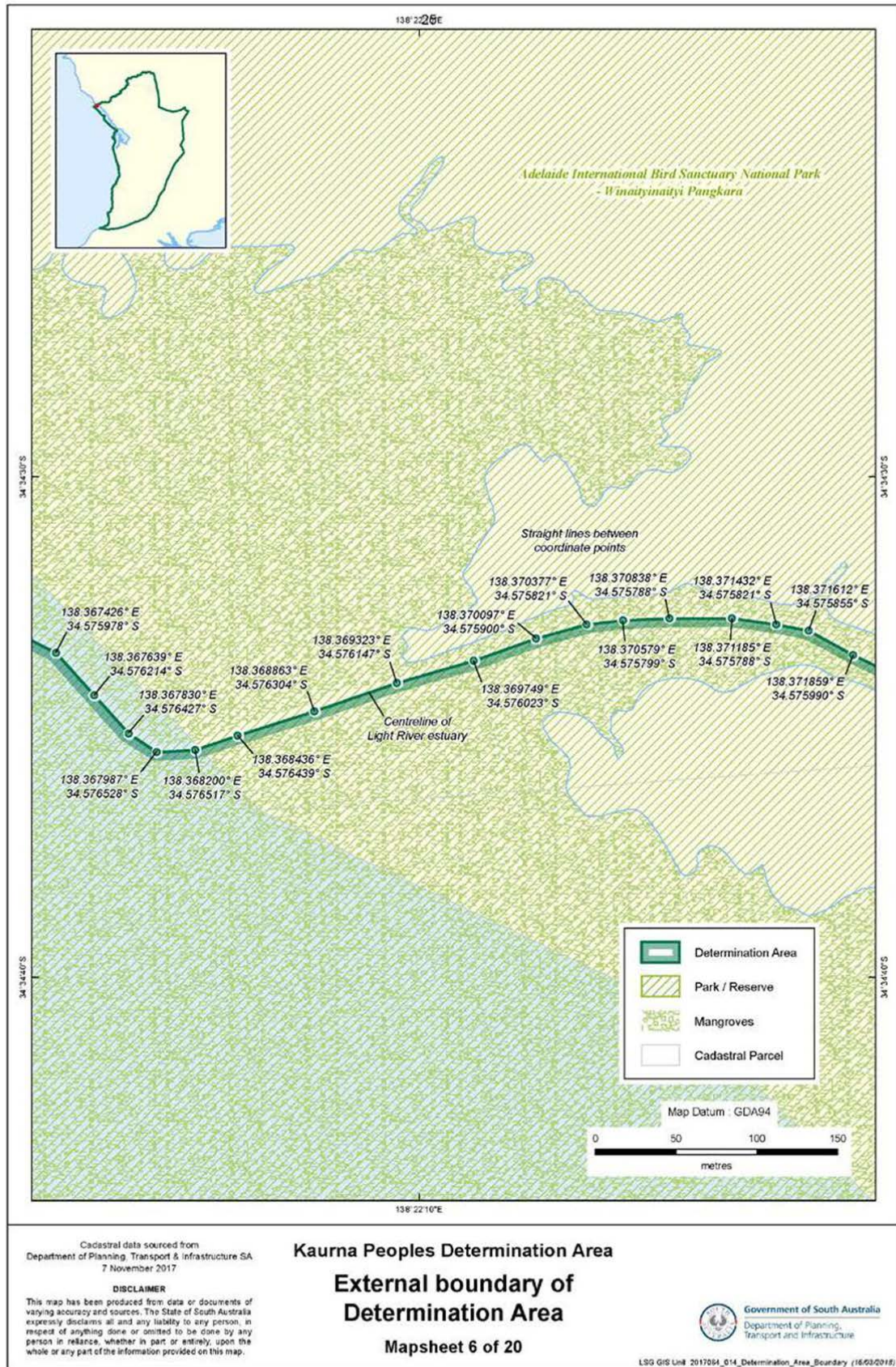


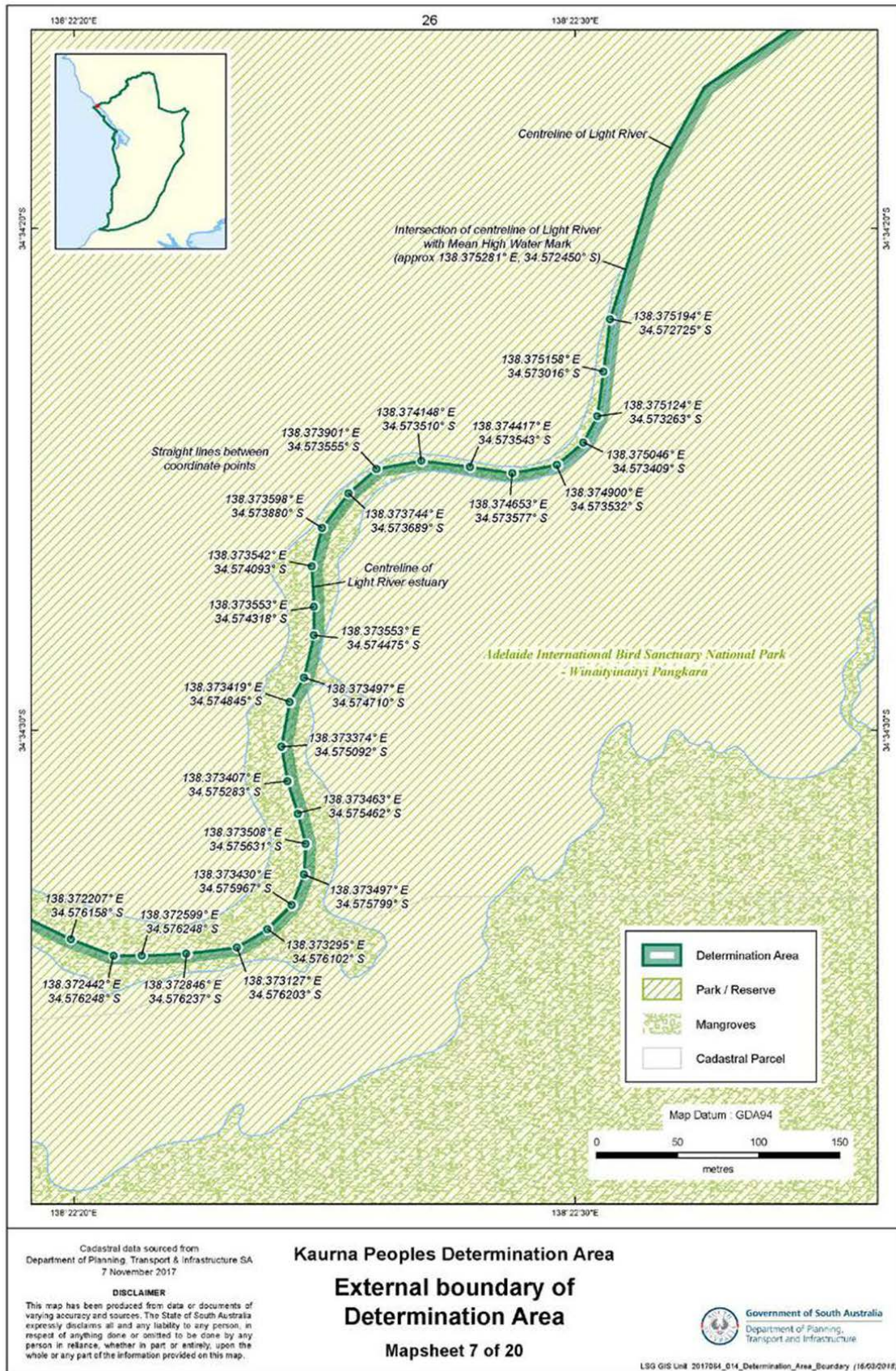












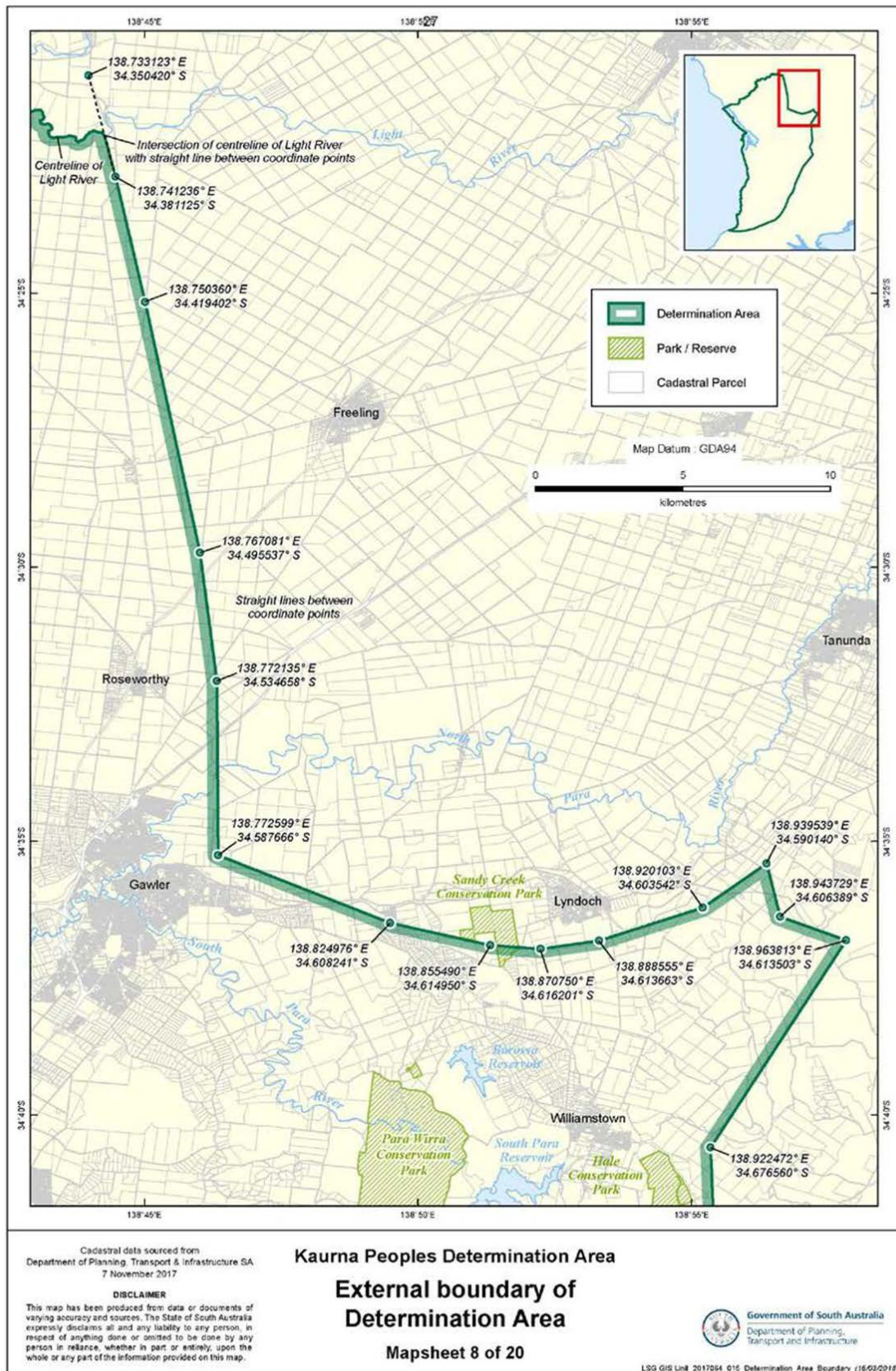
Cadastral data sourced from Department of Planning, Transport & Infrastructure SA 7 November 2017

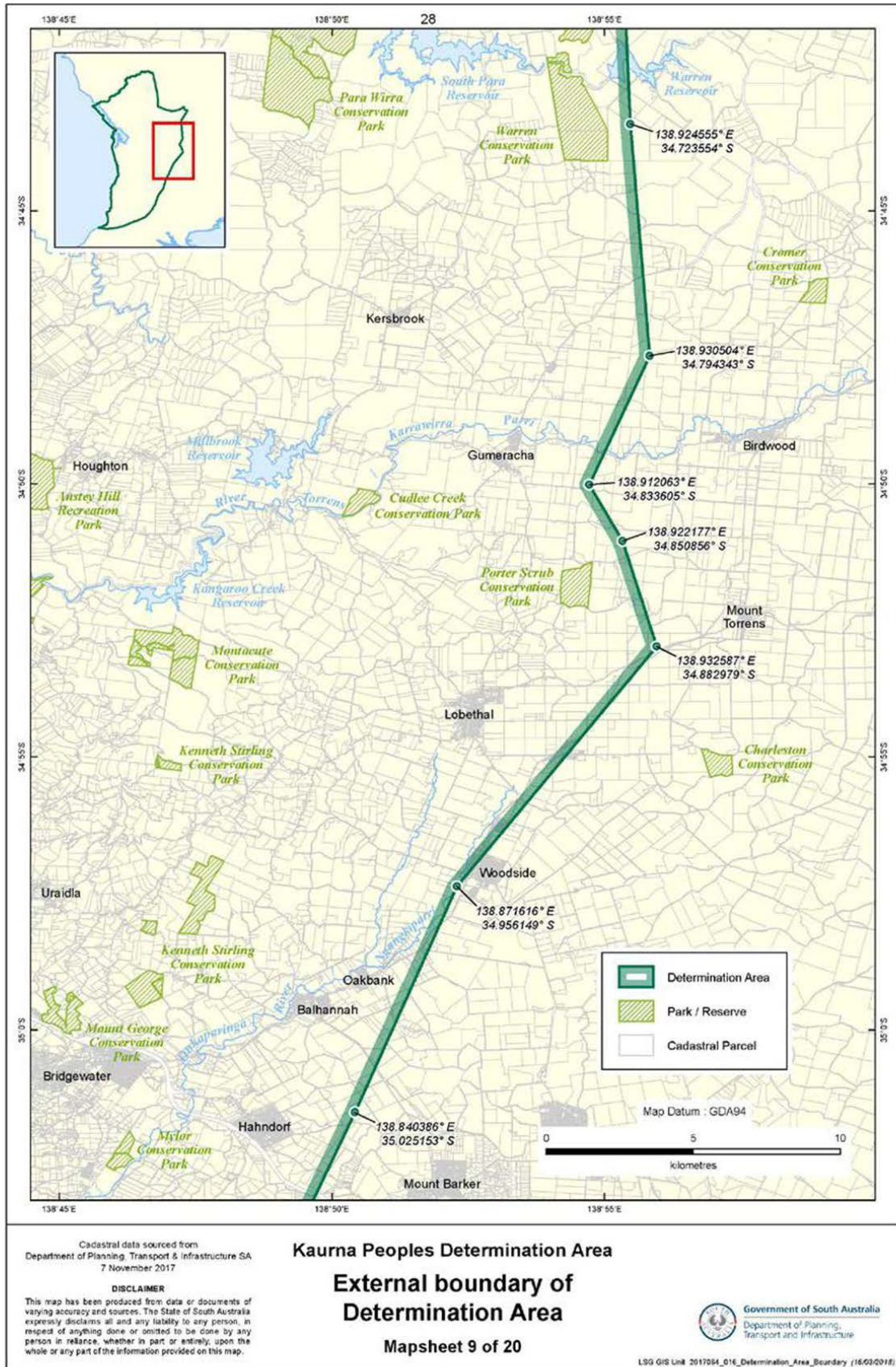
DISCLAIMER
 This map has been produced from data or documents of varying accuracy and sources. The State of South Australia expressly disclaims all and any liability to any person, in respect of anything done or omitted to be done by any person in reliance, whether in part or entirely, upon the whole or any part of the information provided on this map.

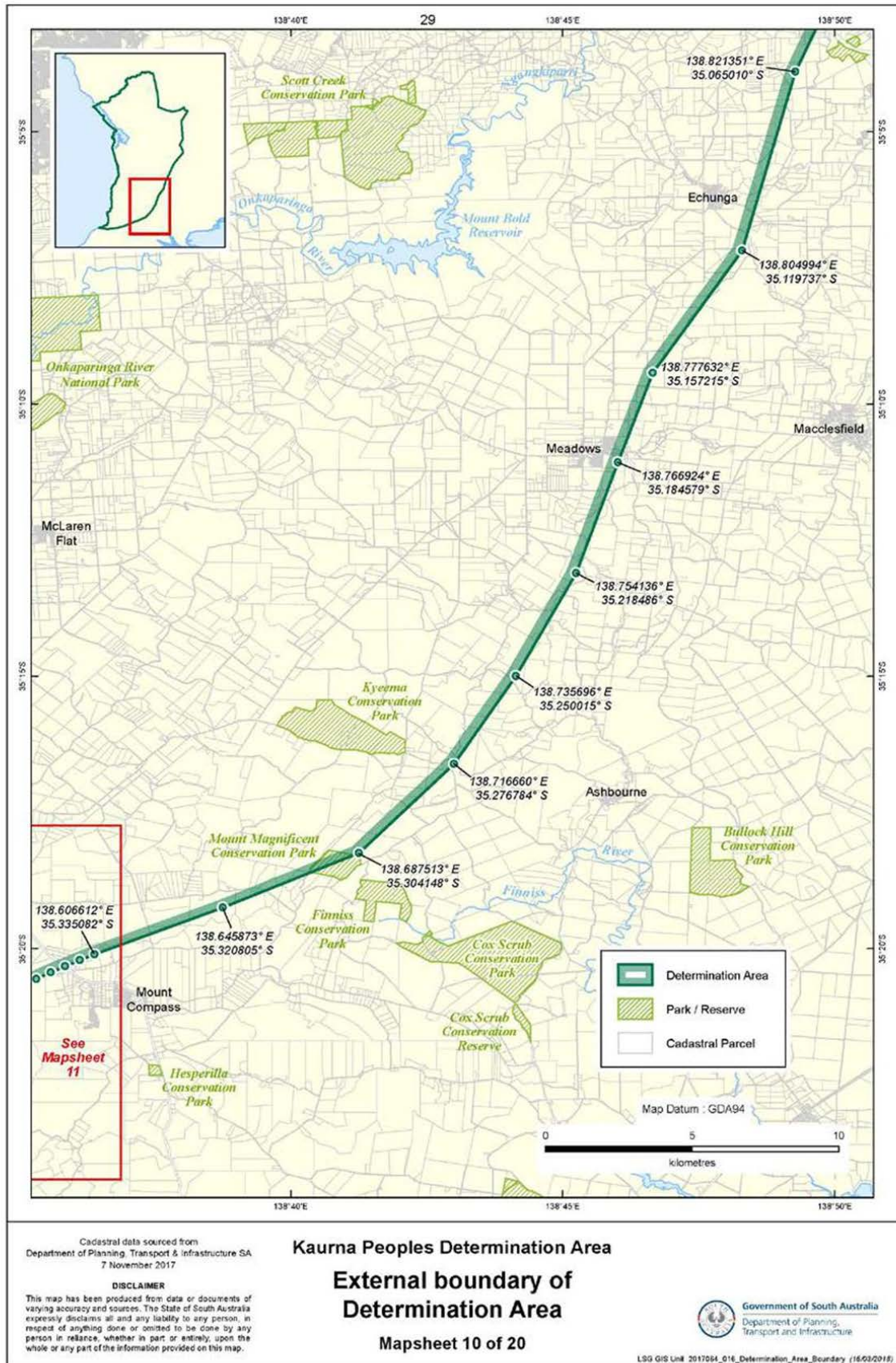
Kaurna Peoples Determination Area
External boundary of
Determination Area
 Mapsheet 7 of 20

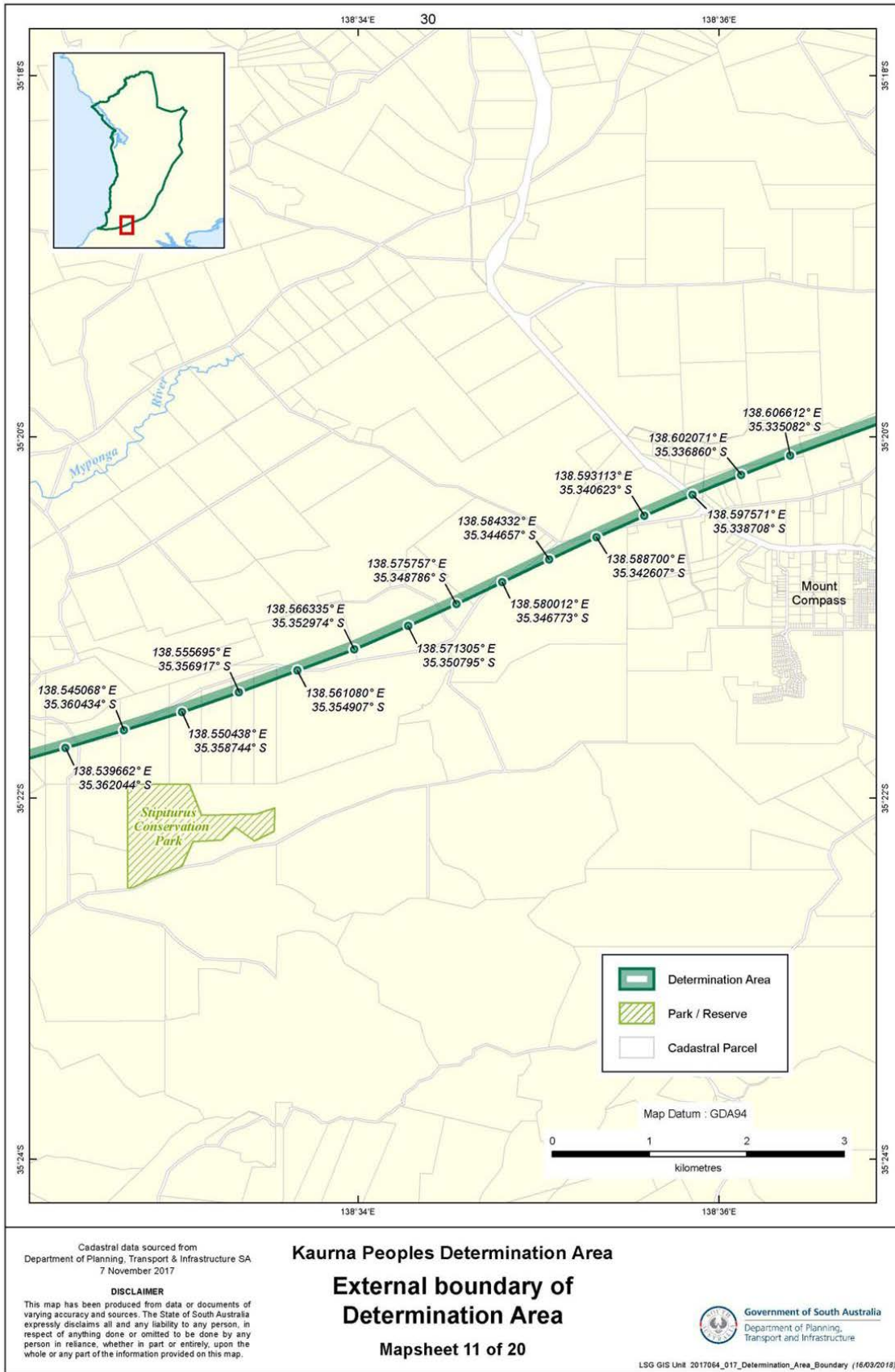


LSG GIS Unit 2017094_014_Determination_Area_Boundary (16/03/2018)











Cadastral data sourced from Department of Planning, Transport & Infrastructure SA 7 November 2017

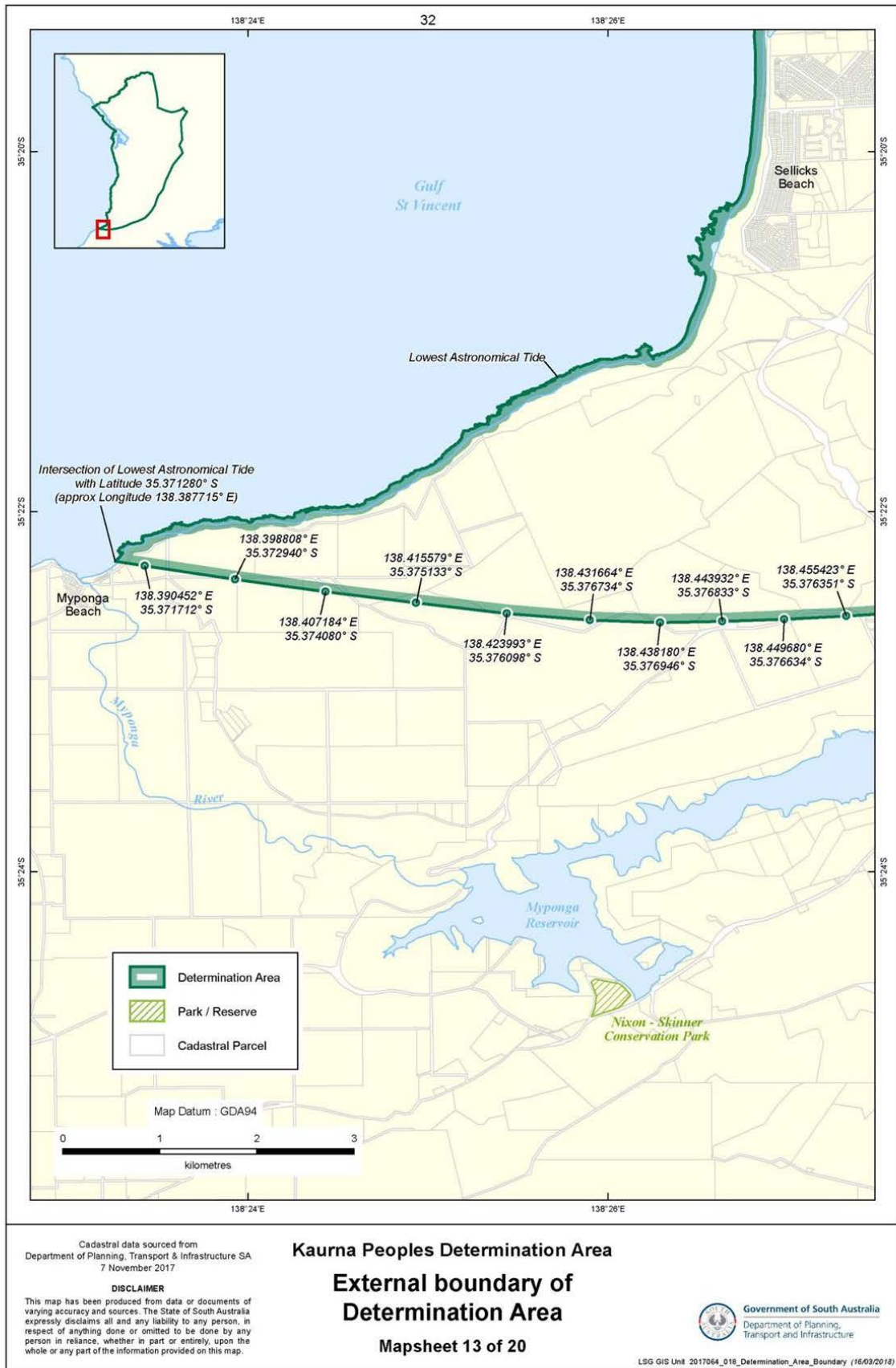
DISCLAIMER
 This map has been produced from data or documents of varying accuracy and sources. The State of South Australia expressly disclaims all and any liability to any person, in respect of anything done or omitted to be done by any person in reliance, whether in part or entirely, upon the whole or any part of the information provided on this map.

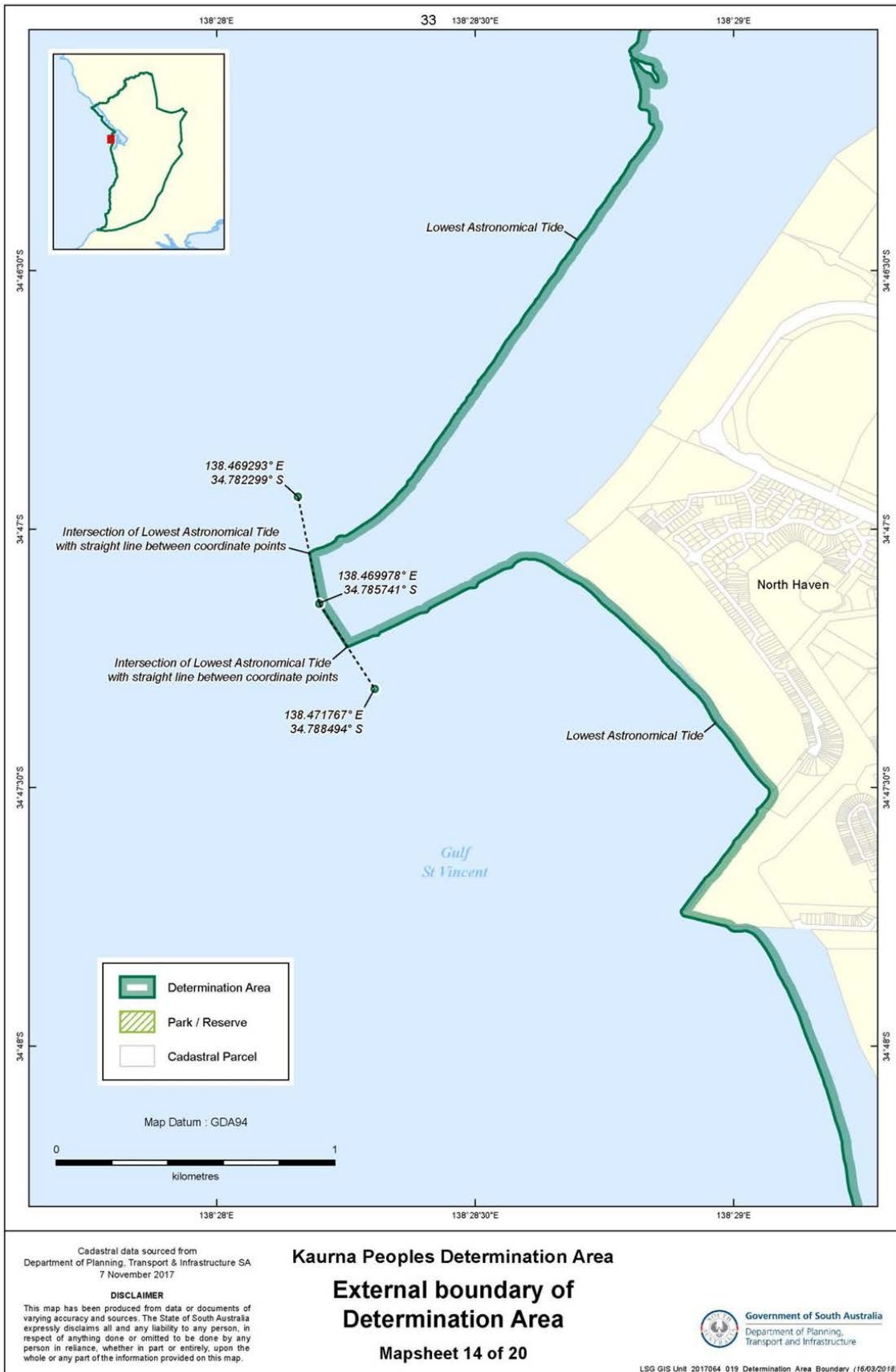
Kaurana Peoples Determination Area
External boundary of
Determination Area

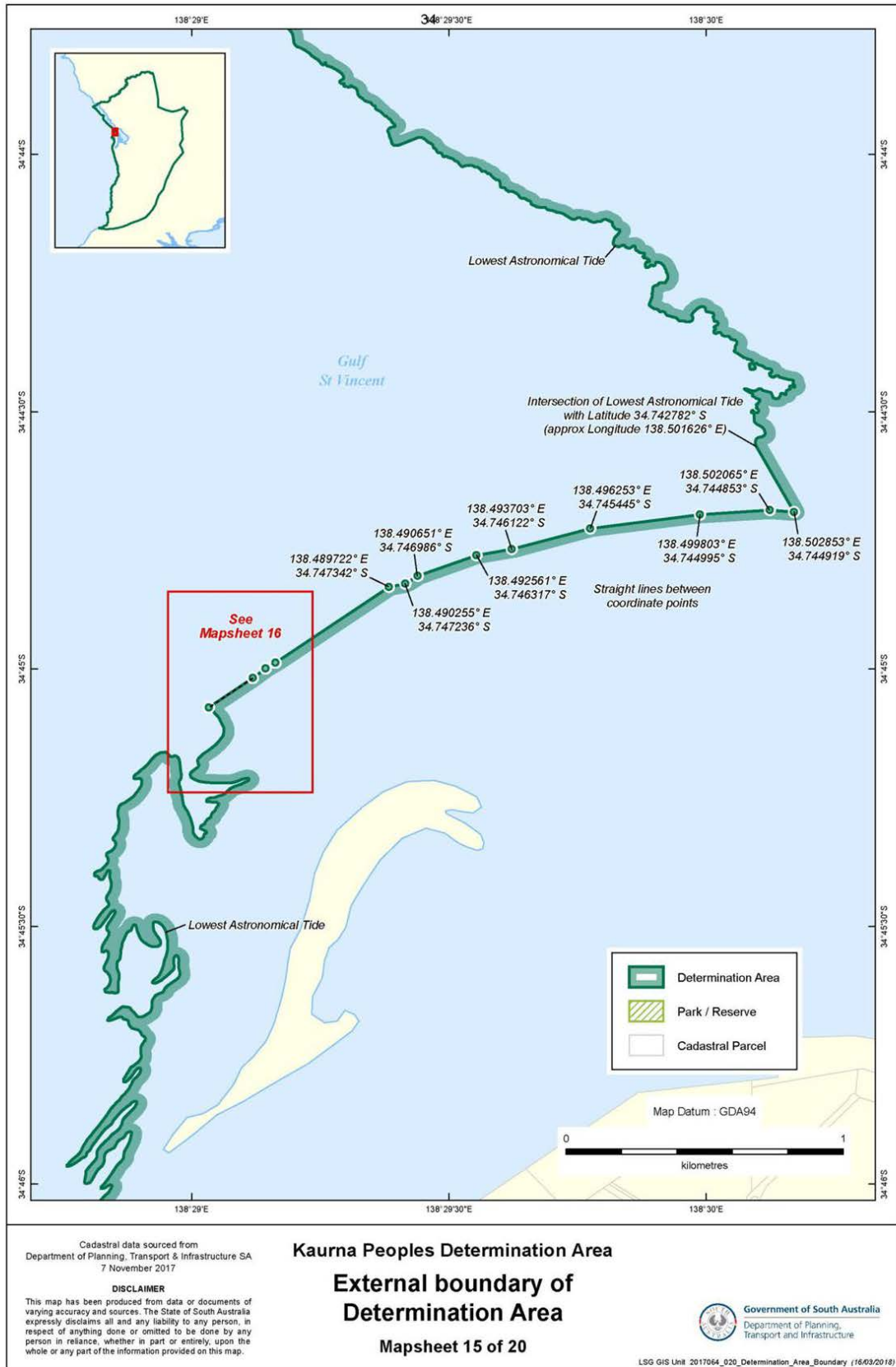
Mapsheets 12 of 20

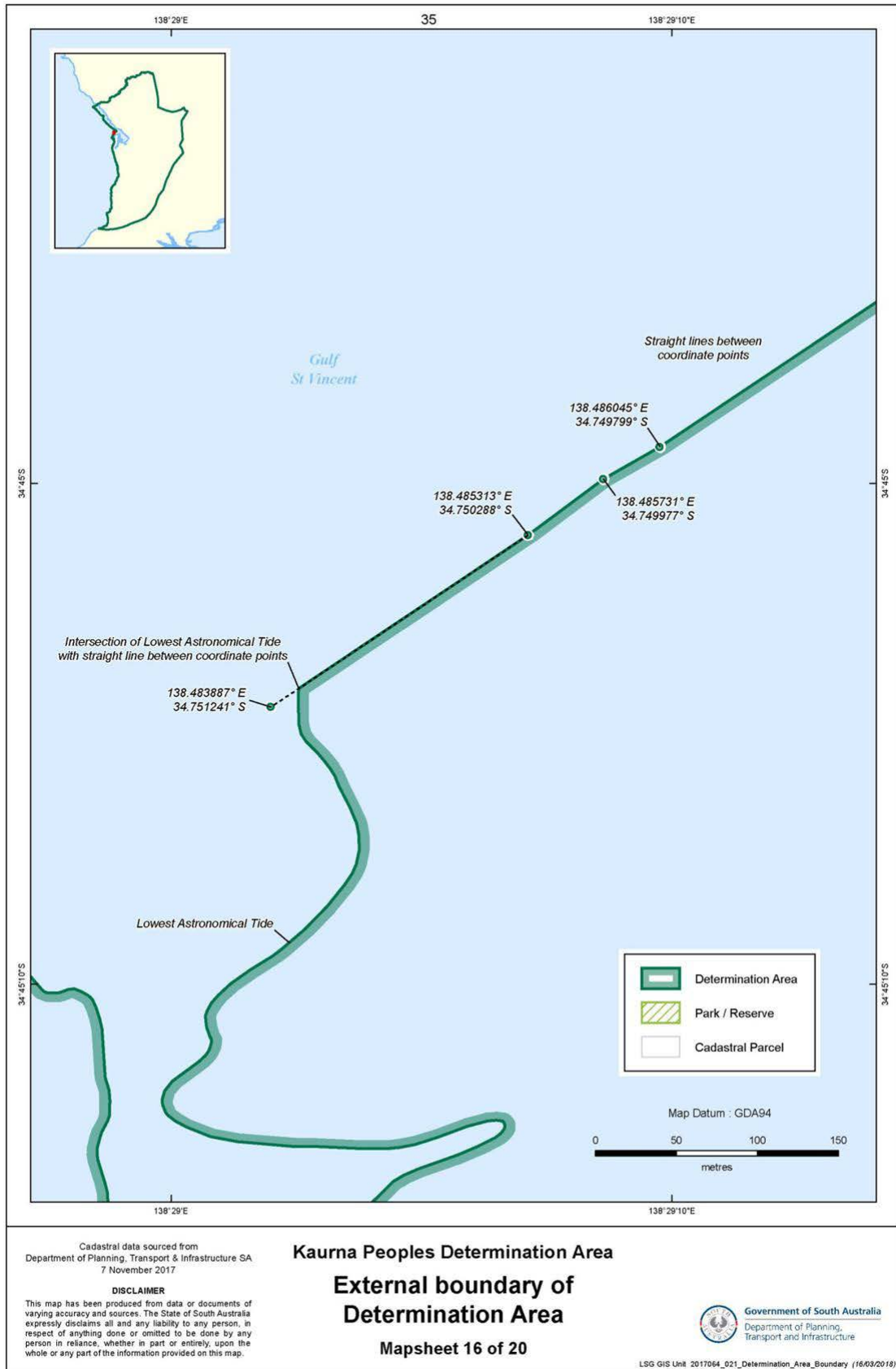


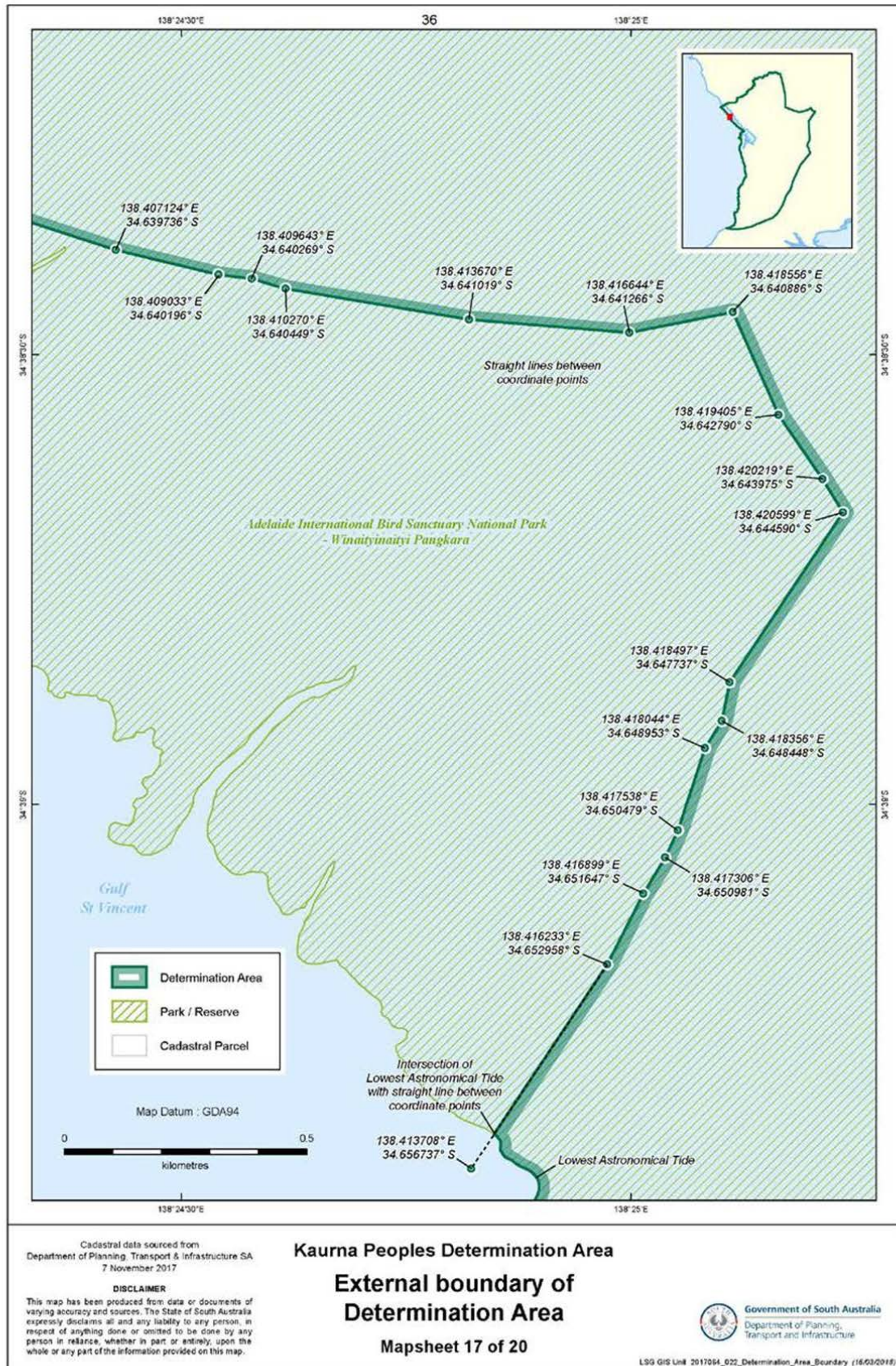
LSG GIS Unit 2017064_017_Determination_Area_Boundary (16/03/2019)

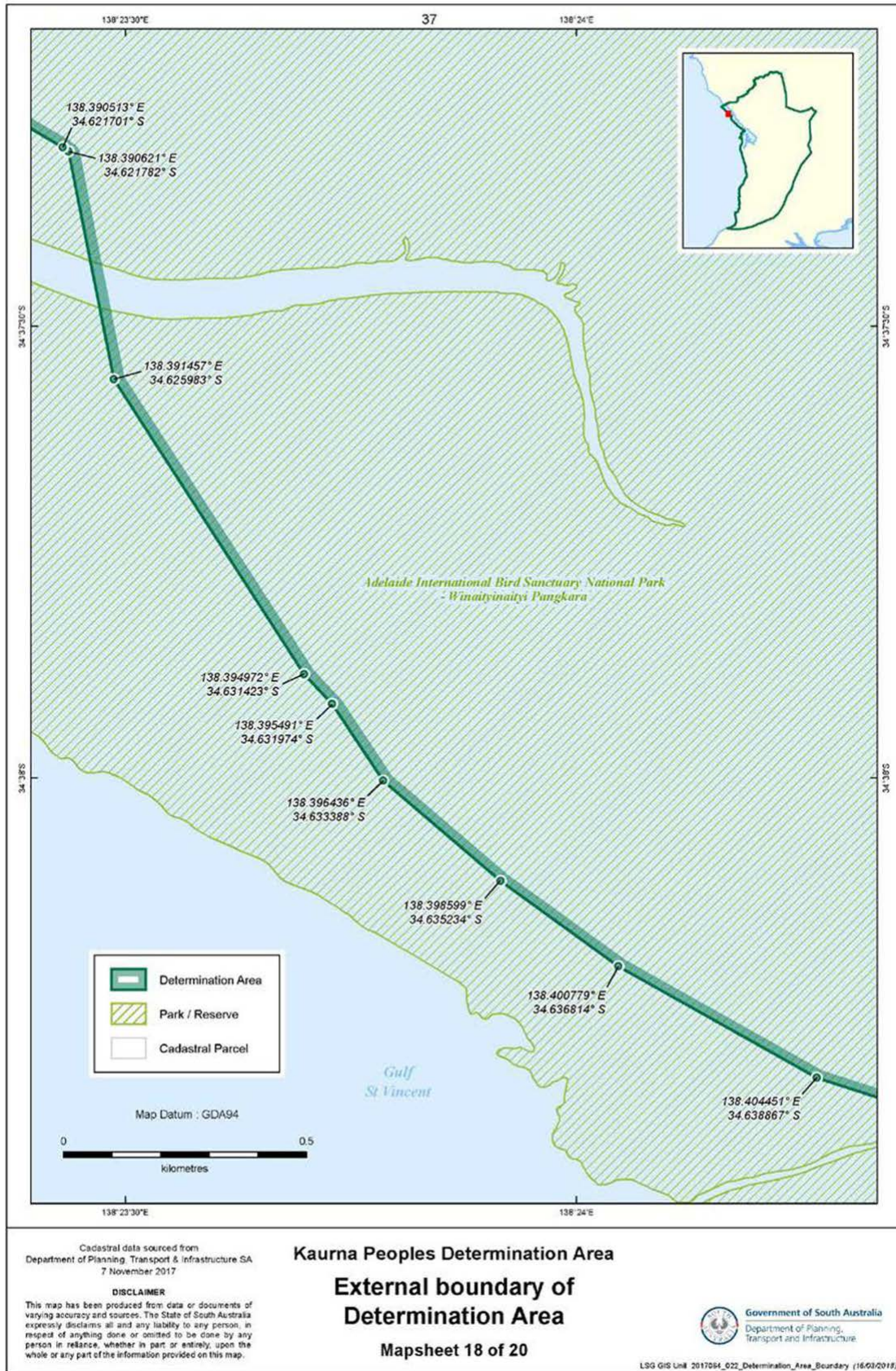


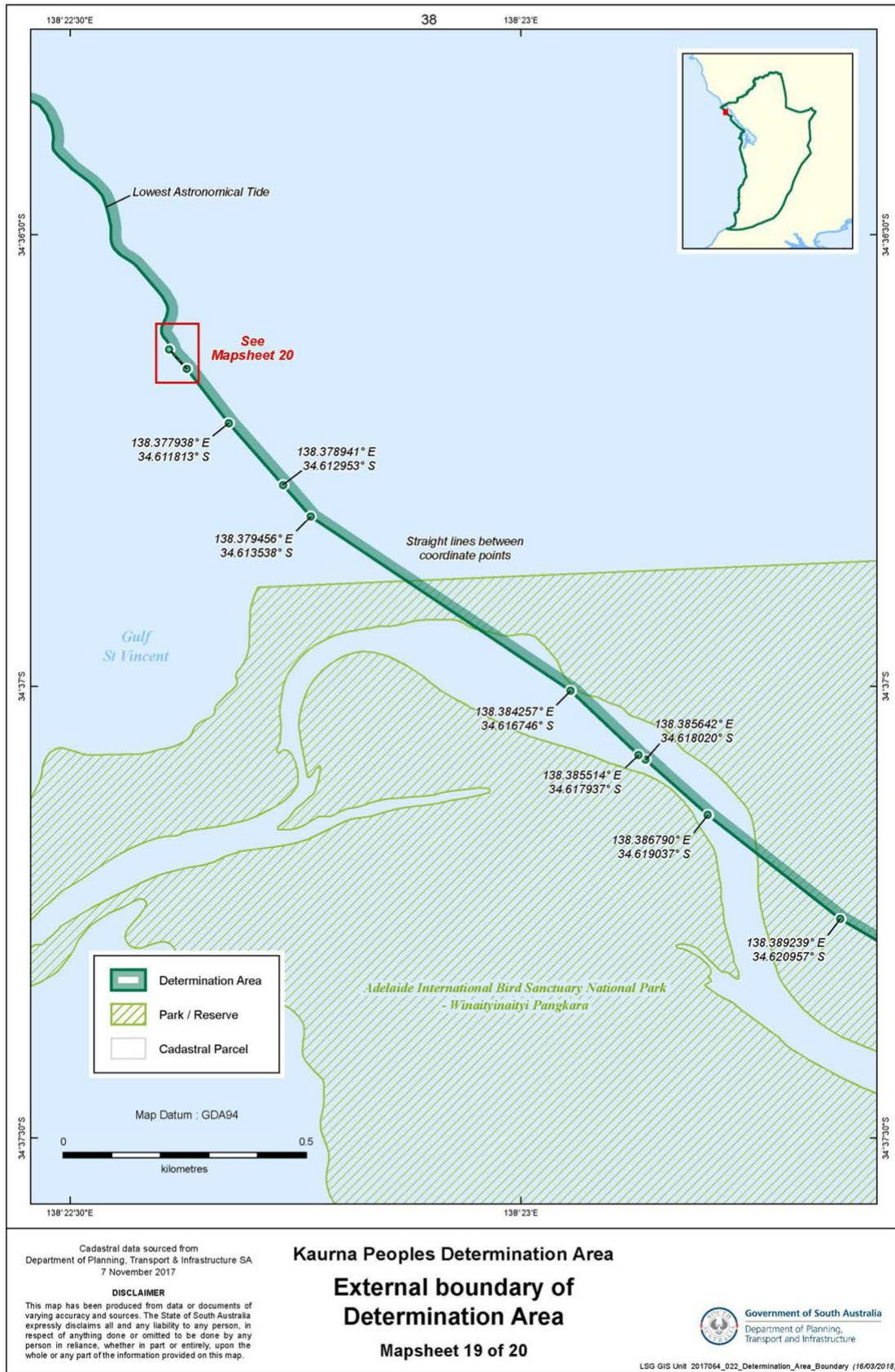


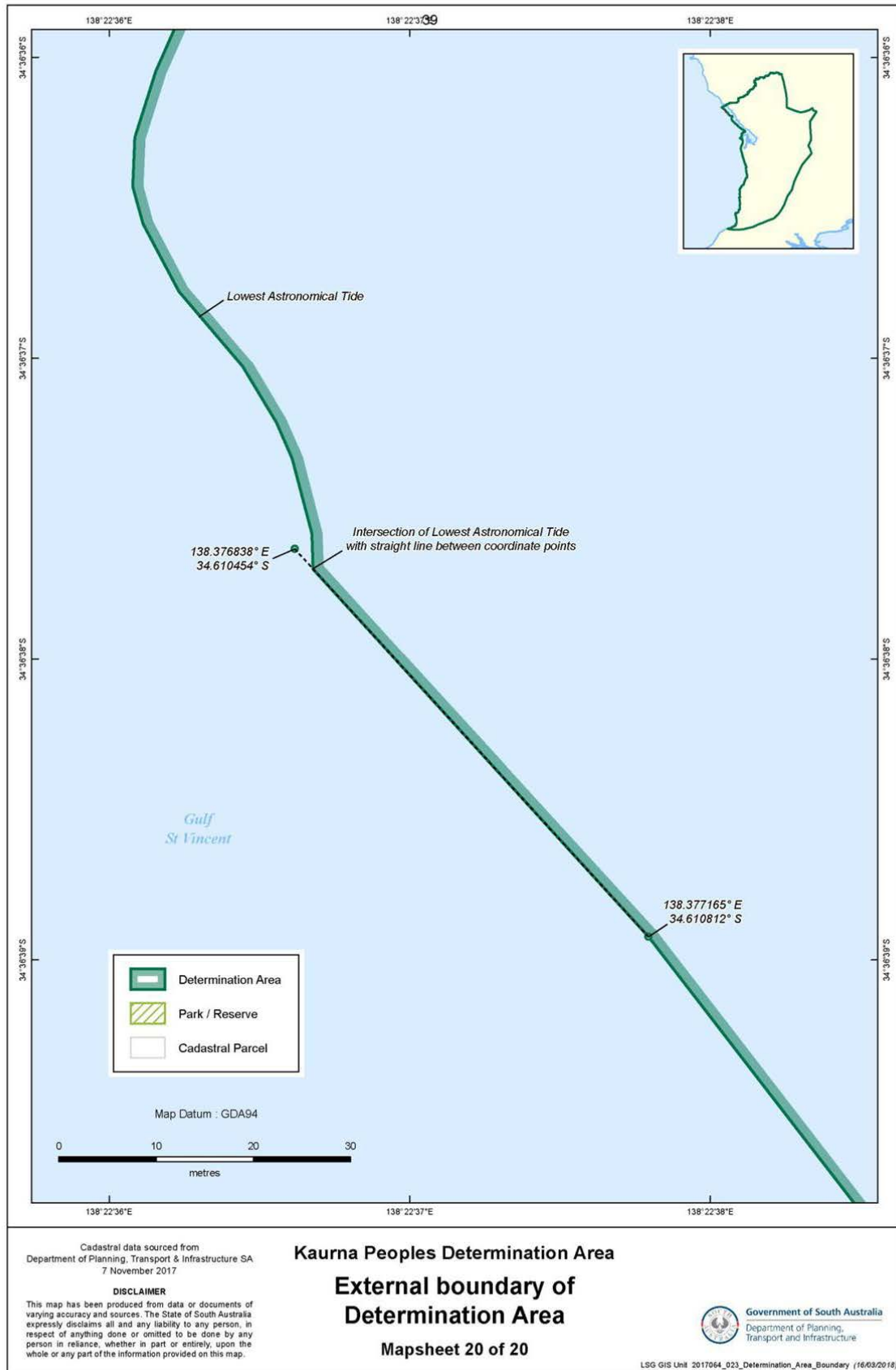








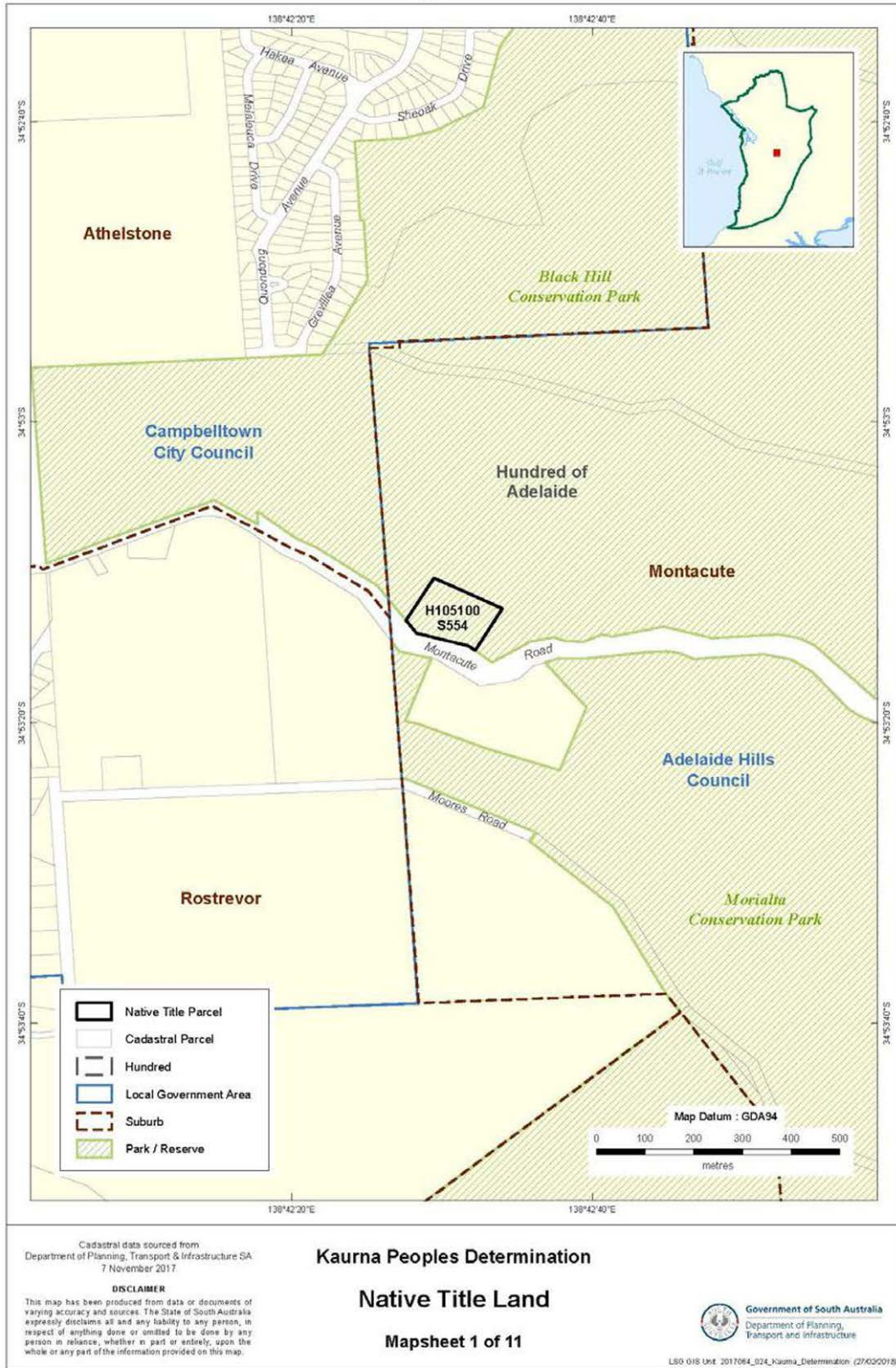


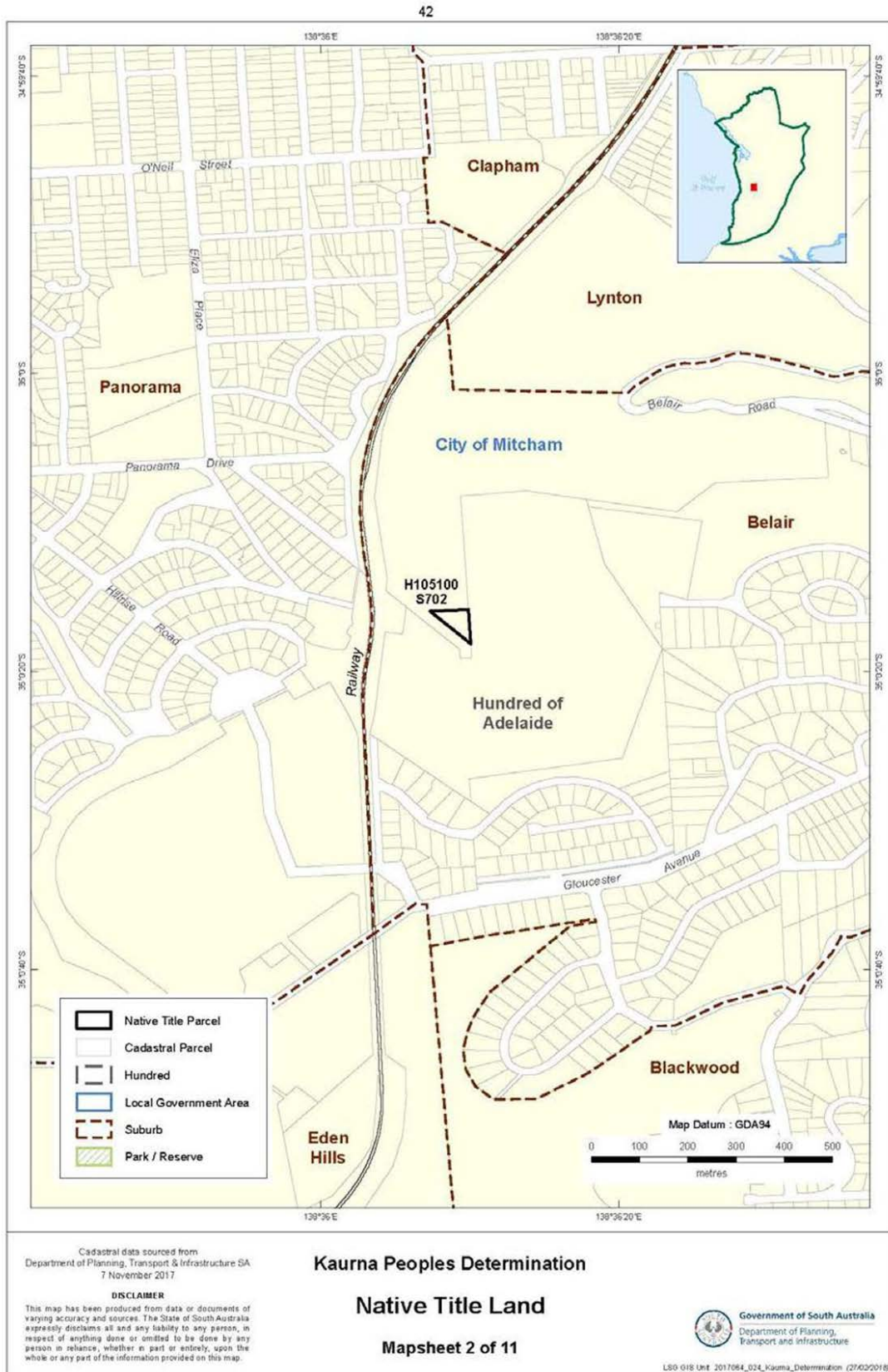


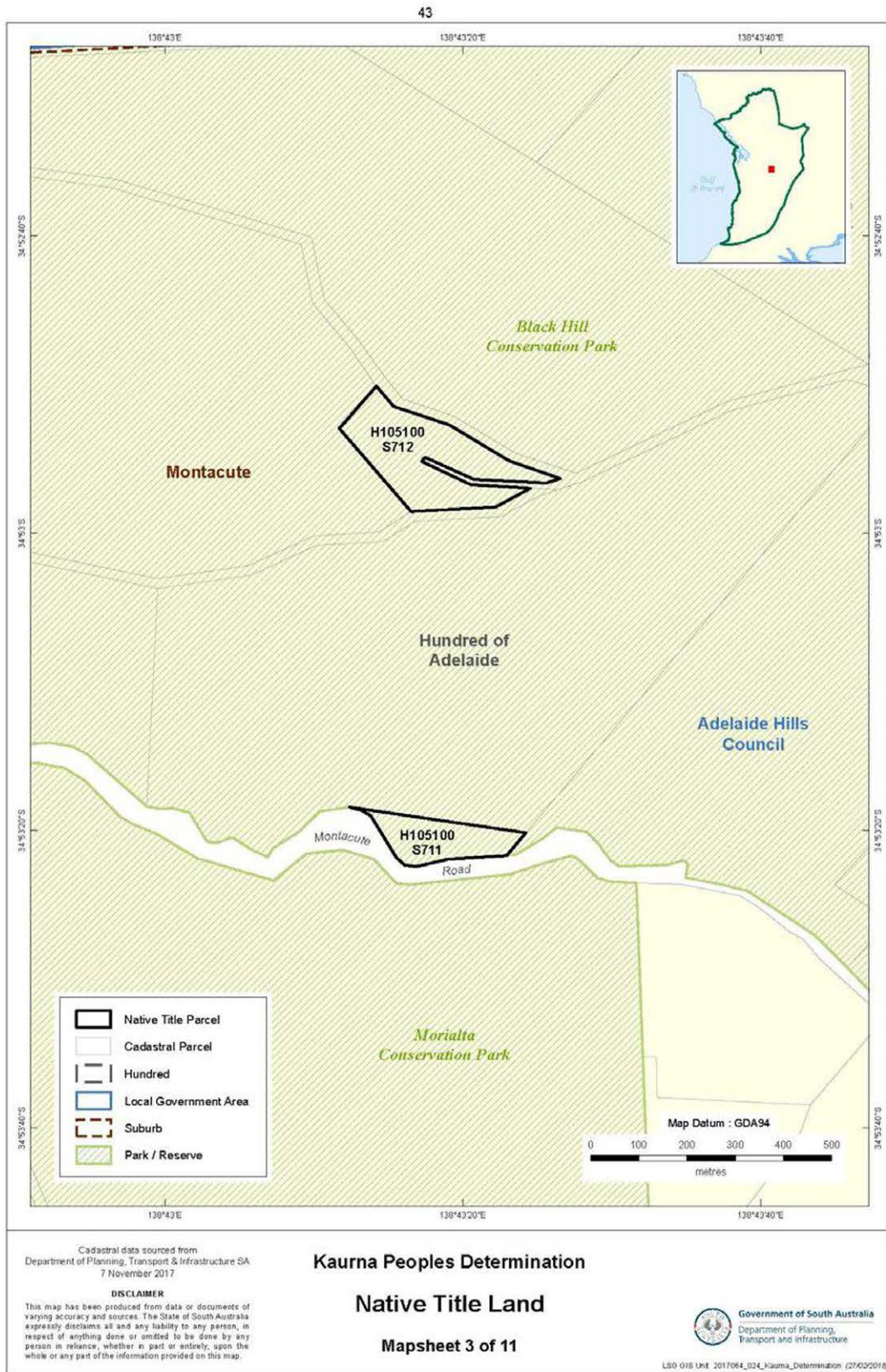
40

SCHEDULE 2 - Maps

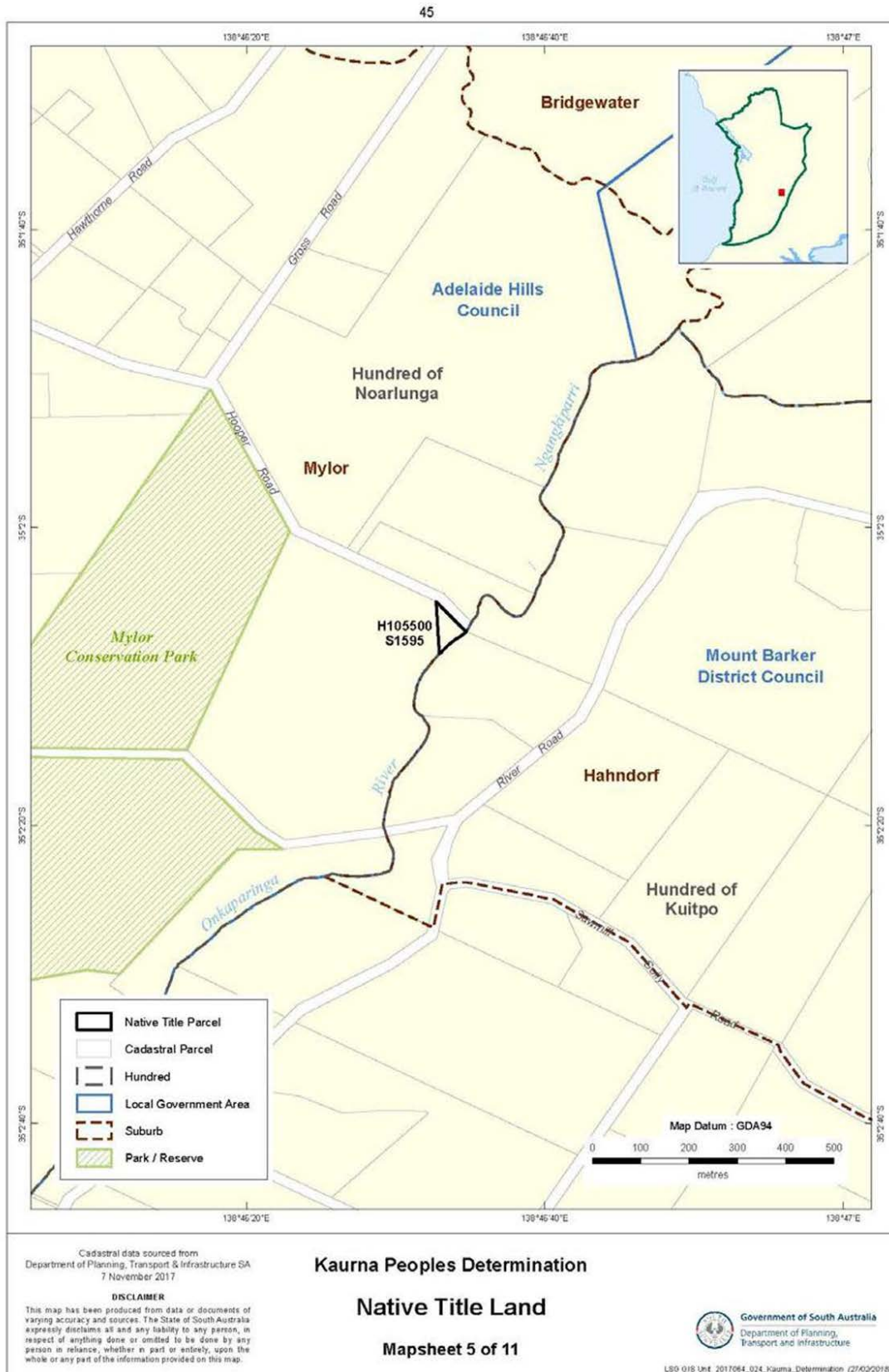
Part B: Maps depicting Native Title Land

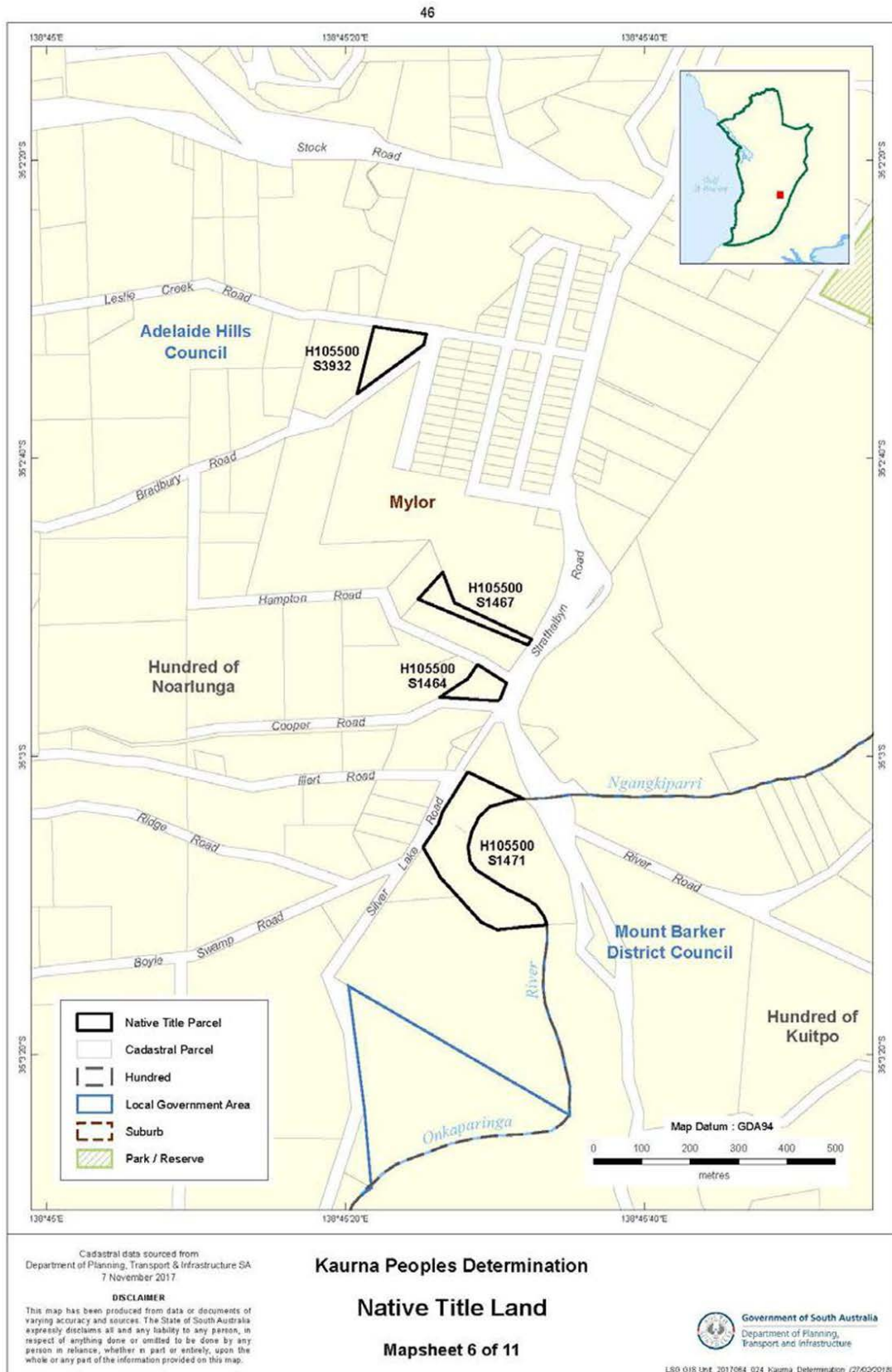


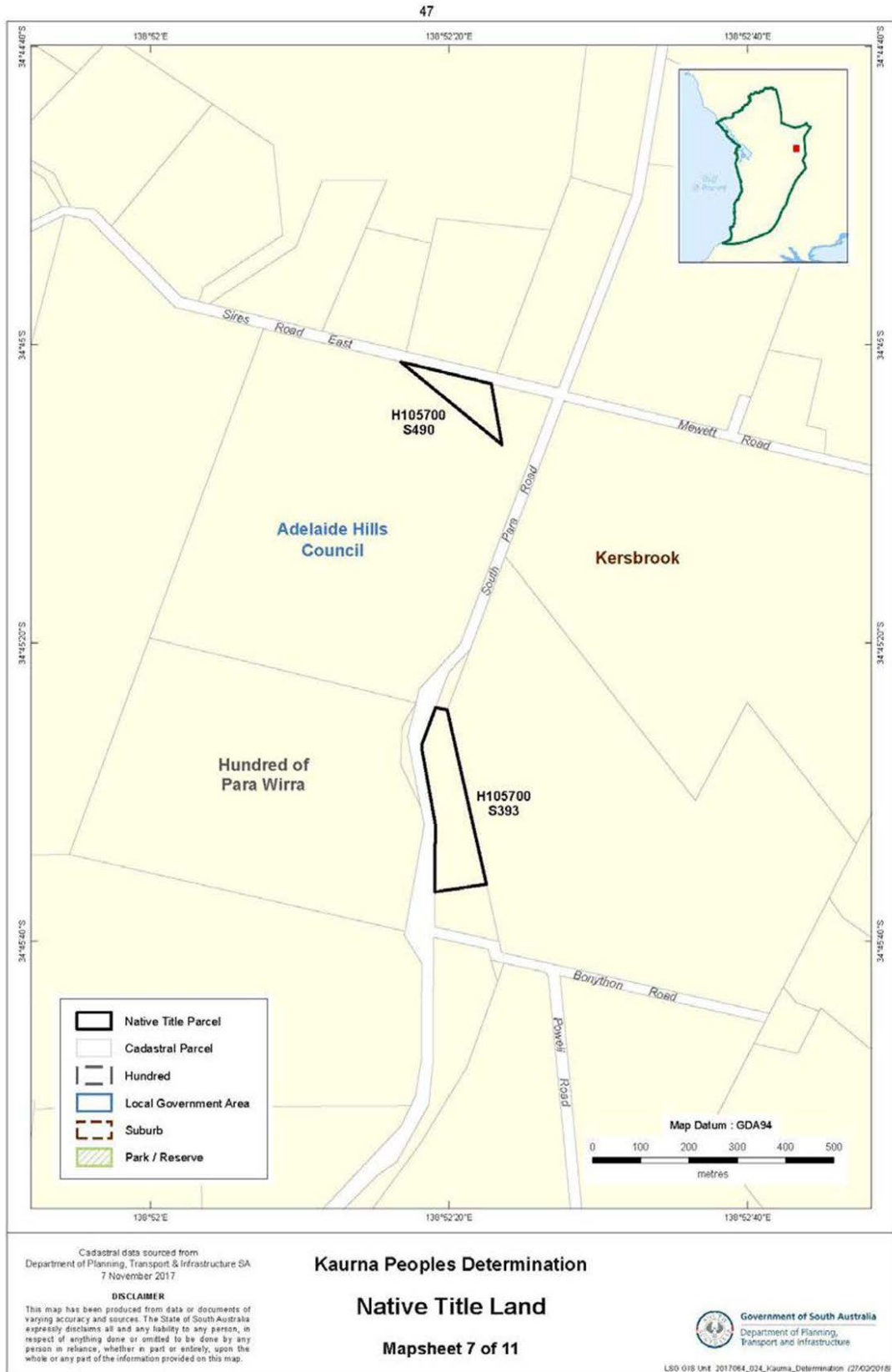


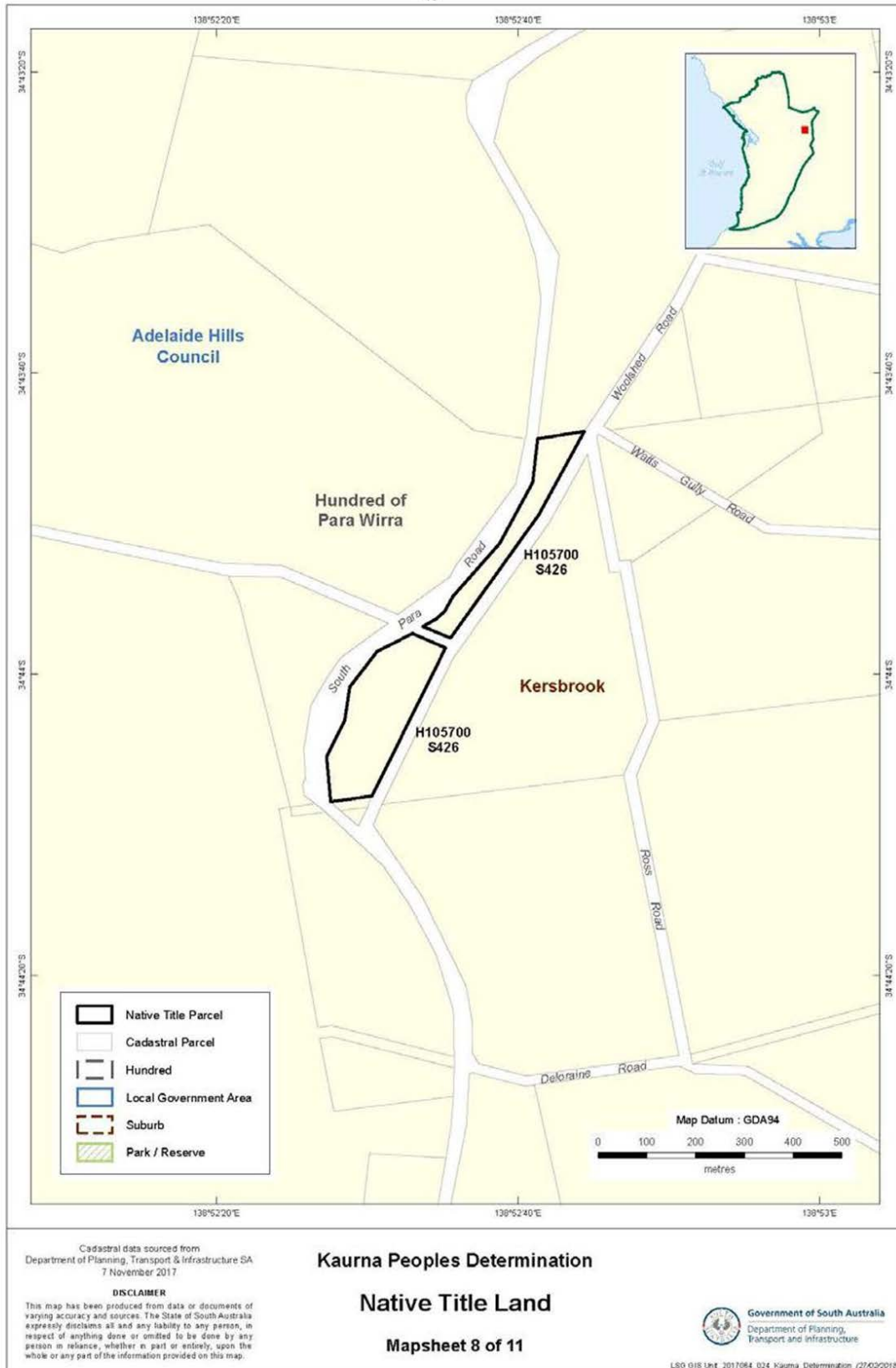


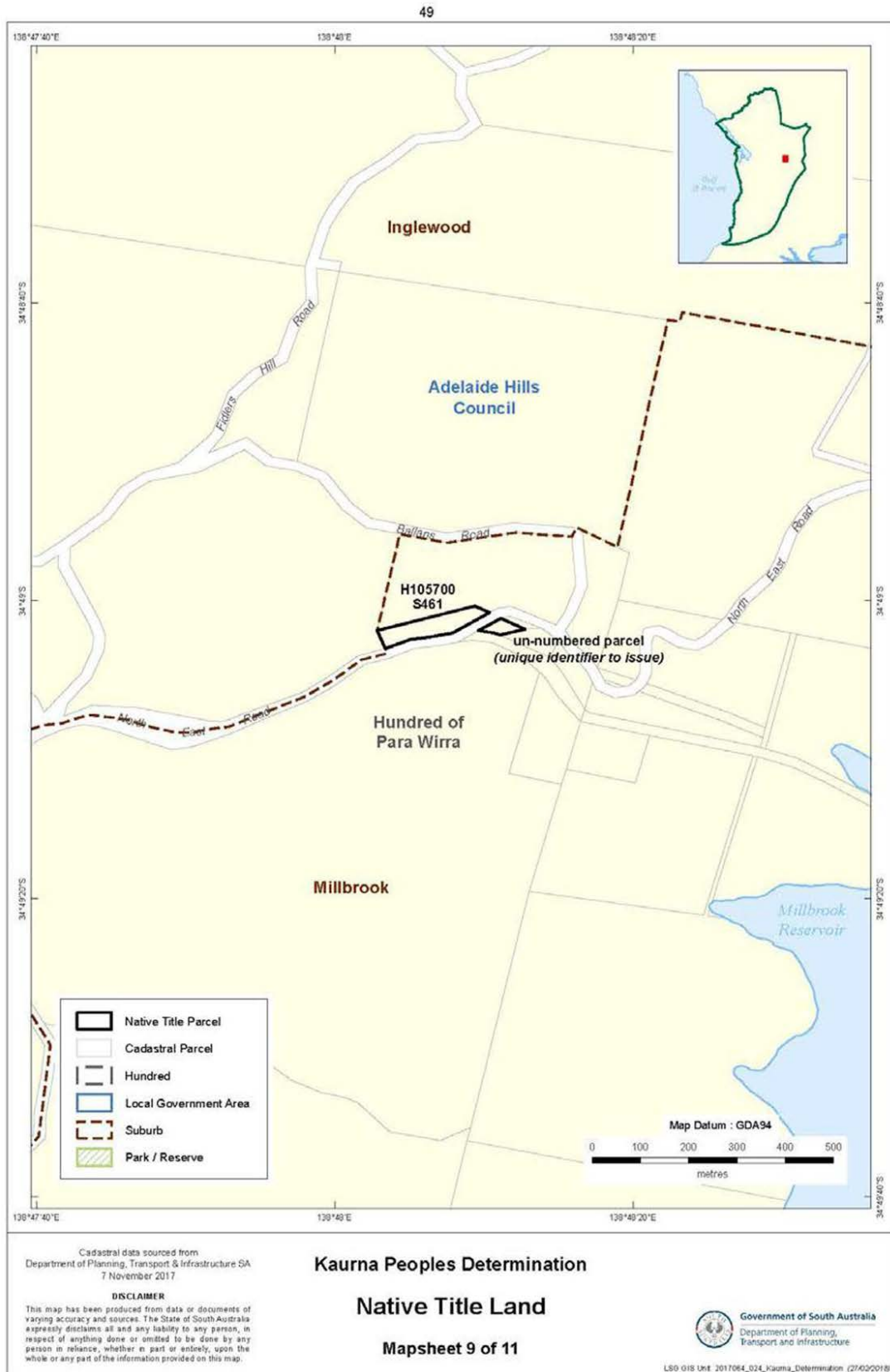














Cadastral data sourced from
 Department of Planning, Transport & Infrastructure SA
 7 November 2017

Kaurna Peoples Determination

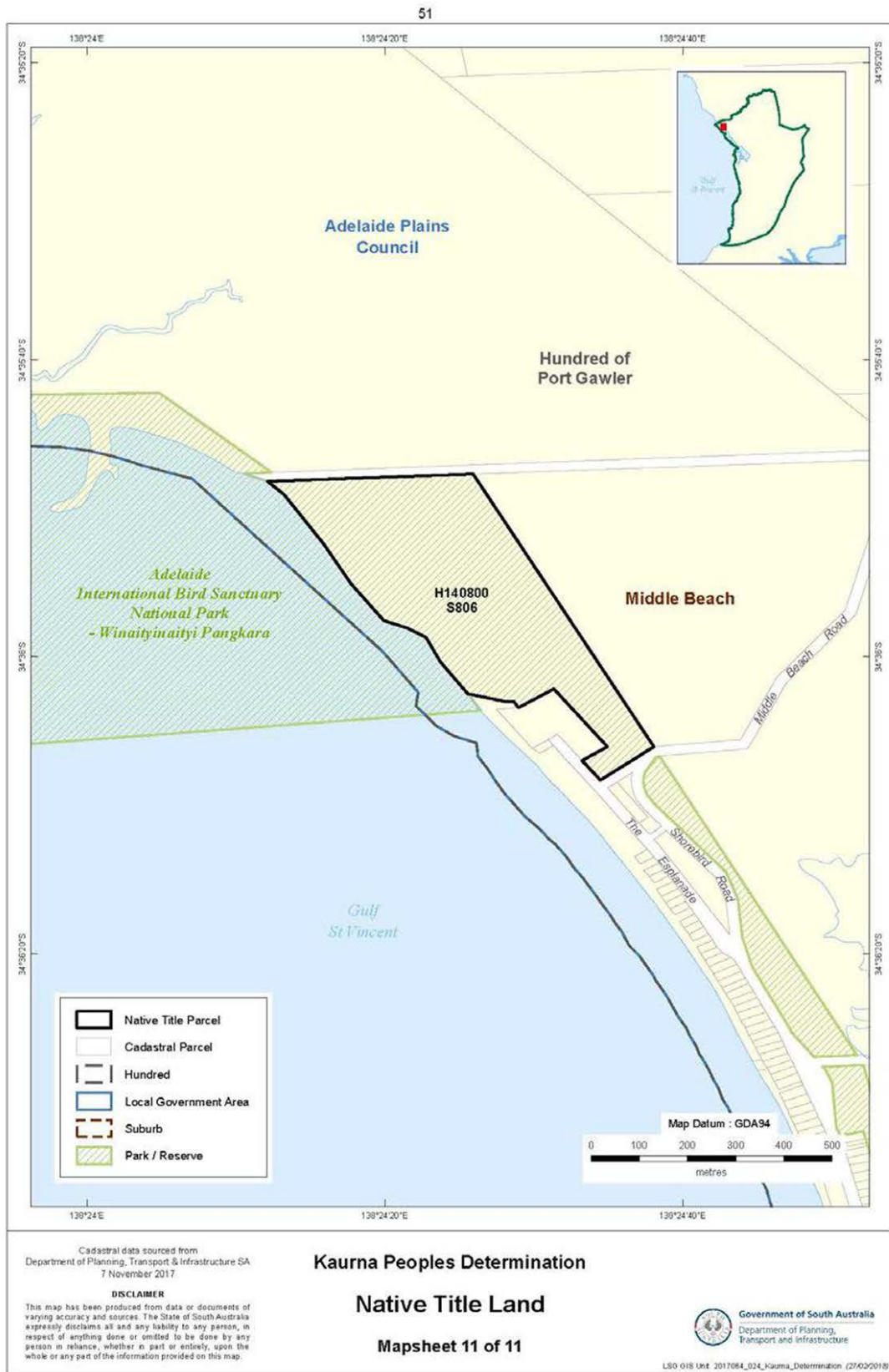
Native Title Land

Mapsheet 10 of 11

DISCLAIMER
 This map has been produced from data or documents of varying accuracy and sources. The State of South Australia expressly disclaims all and any liability to any person, in respect of anything done or omitted to be done by any person in reliance, whether in part or entirely, upon the whole or any part of the information provided on this map.



LSO 018 UH1 2017064_024_Kaurna_Determination (27/02/2018)



SCHEDULE 3 – Land and waters where native title exists (Native Title Land)

Note: Please refer to Schedule 2 Part B for further detail where a portion of a parcel is indicated.

Parcel Identifier	Hundred	General Area	Other interests (Council with care, control & management)
H105100S554	Adelaide	Black Hill Conservation Park	Conservation Park
H105100S702	Adelaide	Portion of Sleeps Hill Quarry site	Public Bike Trail, Waterworks easement over southern portion. (City of Mitcham)
H105100S711	Adelaide	Black Hill Conservation Park	Conservation Park
H105100S712	Adelaide	Black Hill Conservation Park	Conservation Park, Black Hill Track, Trig Point
H105200S340	Barossa	Williamstown	Reserve, Gas Pipeline on south west boundary
H105500S1464	Noarlunga	Mylor	Parklands, Hampton Rd (Adelaide Hills Council)
H105500S1467	Noarlunga	Mylor	Parklands (Adelaide Hills Council)
H105500S1471	Noarlunga	Mylor	Water Reserve, Vogt Road (Adelaide Hills Council)
H105500S1595	Noarlunga	Mylor	Water Reserve (Adelaide Hills Council)
H105500S3932	Noarlunga	Mylor	Parklands, [Not sporting grounds, etc that are on the same Crown Record] (Adelaide Hills Council)
H105700S393	Para Wirra	Kersbrook	Recreation Reserve, Parking Bay on South Para Road (Adelaide Hills Council)
H105700S426	Para Wirra	Kersbrook	Roadway at northern end. Conservation Heritage Agreement under s23 <i>Native Vegetation Act 1991</i> in progress (Adelaide Hills Council)
H105700S461	Para Wirra	Millbrook	Water Reserve, Bush For Life site with ongoing land management activities such as weed control, access tracks, fencing
H105700 Unique identifier to issue - See Mapsheet 9 of 11	Para Wirra	Millbrook	Water Reserve, Bush For Life site with ongoing land management activities such as weed control, access tracks, fencing
H105700S467	Para Wirra	Humbug Scrub	Water Reserve, Vehicle track on western side, Annual Licence 17134 to SA Power Network for Powerlines

2

H105700S490	Para Wirra	Kersbrook	Water Reserve, Powerline Easement to Electranet Pty Ltd (Adelaide Hills Council)
H140800S806	Port Gawler	Middle Beach	Adelaide International Bird Sanctuary National Park, Any encroachment by adjacent Caravan Park, Annual Licence 22105 for pump, pipeline and walking trail

SCHEDULE 4 - Areas where native title do not exist

1. Native title rights and interests do not exist in:
 - (a) minerals as defined in section 6 of the *Mining Act 1971* (SA);
 - (b) petroleum, as defined in section 4 of the *Petroleum and Geothermal Energy Act 2000* (SA);
 - (c) a naturally occurring underground accumulation of a regulated substance as defined in section 4 of the *Petroleum and Geothermal Energy Act 2000* (SA), below a depth of 100 metres from the surface of the earth;
 - (d) a natural reservoir, as defined in section 4 of the *Petroleum and Geothermal Energy Act 2000* (SA), below a depth of 100 metres from the surface of the earth;
 - (e) geothermal energy, as defined in section 4 of the *Petroleum and Geothermal Energy Act 2000* (SA) the source of which is below a depth of 100 metres from the surface of the earth.

For the purposes of this item 1 and the avoidance of doubt:

- (f) a geological structure (in whole or in part) on or at the earth's surface or a natural cavity which can be accessed or entered by a person through a natural opening in the earth's surface, is not a natural reservoir;
- (g) thermal energy contained in a hot or natural spring is not geothermal energy as defined in section 4 of the *Petroleum and Geothermal Energy Act 2000* (SA);
- (h) the absence from this Order of any reference to a natural reservoir or a naturally occurring accumulation of a regulated substance, as those terms are defined in section 4 of the *Petroleum and Geothermal Energy Act 2000* (SA), above a depth 100 metres below the surface of the earth or geothermal energy the source of which is above a depth of 100 metres below the surface of the earth is not, of itself, to be taken as an indication of the existence or otherwise of native title rights or interests in such natural reservoir, naturally occurring accumulation of a regulated substance or geothermal energy.

2. Native title rights and interests have been extinguished in the areas of Native Title Land covered by Public Works (including the land and waters defined in section 251D of the NTA) which were constructed, established or situated prior to 23 December 1996 or commenced to be constructed or established on or before that date.
3. Public Works constructed, established or situated after 23 December 1996 on Native Title Land have had such effect as has resulted from Part 2, Division 3, of the NTA.
4. Native title rights and interests have been extinguished over all roads which have been delineated in a public map pursuant to section 5(d)(ii) of the *Crown Lands Act 1929* (SA) or section 70(3) or (4) of the *Crown Land Management Act 2009* (SA) or which have otherwise been validly established pursuant to South Australian statute or common law.
5. Native title rights and interests do not exist over any land and waters within the Determination Area other than those parcels listed at Schedule 3.

SCHEDULE 5- Details of Indigenous Land Use Agreements in the Determination Area

Kaurna Peoples Native Title Settlement ILUA

SCHEDULE 6 – Existing interests of SA Power Networks

CONDUCTORS

Asset Type	Operating Voltage	Parcel ID	Title Ref	Hundred Name
Overhead Low Voltage Conductor	433V	H105500S1471	CR5753/712	NOARLUNGA
Overhead Low Voltage Conductor	433V	H105500S3932	CR6143/903	NOARLUNGA
Overhead Low Voltage Conductor	433V	H105700S467	CR5744/248	PARA WIRRA
Overhead High Voltage Conductor	11KV	H105700S467	CR5744/248	PARA WIRRA

TRANSFORMERS

Parcel ID	Title Ref	Hundre	TF Type	Asset Type	Input	Output
------------------	------------------	---------------	----------------	-------------------	--------------	---------------

5

		d Name			Voltage	Voltage
H105700S46 7	CR5744/24 8	PARA WIRRA	Pole Mounted	Pole Mounted Transformer	11KV	433V

SCHEDULE 7

No: (P)SAD6001/2000

Federal Court of Australia

District Registry: South Australia

Division: General

NATIVE TITLE ACTION FILED BY KAURNA NATIVE TITLE CLAIM

Applicant: LYNETTE CROCKER

Applicant: MAUREEN WANGANEEN

Applicant: GLENICE SUMNER

Applicant: JOSEPH MITCHELL

Applicant: GEORGINA WILLIAMS

Applicant: DENNIS DAVIES

Applicant: SUZANNE RUSSELL

Applicant: RODNEY O'BRIEN

Applicant: FRANK WANGANEEN

Applicant: CECIL GRAHAM

Applicant: VINCE BUCKSKIN

Respondent: CITY OF CHARLES STURT

Respondent: CAMPBELLTOWN CITY COUNCIL

Respondent: BAROSSA COUNCIL

Respondent: ALEXANDRINA COUNCIL

Respondent: ADELAIDE PLAINS COUNCIL

Respondent: CITY OF PLAYFORD

Respondent: CITY OF MARION

Respondent: CITY OF HOLDFAST BAY

Respondent: CITY OF PORT ADELAIDE ENFIELD

Respondent: CITY OF ONKAPARINGA

Respondent: CITY OF MITCHAM

Respondent: ADELAIDE CITY COUNCIL

Respondent: DISTRICT COUNCIL OF YANKALILLA

Respondent: COUNCIL OF THE CITY OF PROSPECT

Respondent: CORPORATION OF THE CITY OF NORWOOD, PAYNEHAM & ST
PETERS

Respondent: CITY OF WEST TORRENS

Respondent: CITY OF TEA TREE GULLY

Respondent: CITY OF SALISBURY

Respondent: LIGHT REGIONAL COUNCIL

Respondent: CORPORATION OF THE CITY OF UNLEY

Respondent: AMBRO PTY LTD

Respondent: GINA BATTISTELLA

Respondent: GIANNI BATTISTELLA

Respondent: UNIVERSITY OF ADELAIDE, VICE-CHANCELLOR

Respondent: FRANK WOLFGANG BARONS
Respondent: FRANCES MARGARET BARONS
Respondent: PAULINE ANN BARKER
Respondent: MAUREEN MARGARET BARKER
Respondent: DAVID JOHN BARKER
Respondent: BRIAN CHARLES BARKER
Respondent: ROGER JOHN APPLEBEE
Respondent: LORRAINE FLORENCE APPLEBEE
Respondent: ANGELO NOMINEES PTY LTD
Respondent: A & V BERGAMIN PTY LTD
Respondent: A.S.C. LTD
Respondent: JON CAMERON-HILL
Respondent: MARIA CARPINELLI
Respondent: BETHANY CHRISTIAN SCHOOL
Respondent: BFG INVESTMENTS PTY LTD ACN 067 925 562
Respondent: DENNIS BOTTIN
Respondent: PAUL BOTTIN
Respondent: FRANK CALVARESI
Respondent: BRUNO CALVARESI
Respondent: C & I CIROCCO NOMINEES PTY LTD
Respondent: VENNETTA MILLIE BRUS
Respondent: RUBY EDITH BRUS
Respondent: ALLEN ALFRED BRUS
Respondent: MALVINA BRAZZALOTTO
Respondent: FRANCO BRAZZALOTTO
Respondent: LINA BRAZZALOTTO
Respondent: BOWTHORPE PTY LTD
Respondent: FRANCESCO CARBONE
Respondent: ZOFIA BOTTIN
Respondent: SUSAN LEE BOTTIN
Respondent: ROBERT BOTTIN
Respondent: HORST BEIER
Respondent: CARMELA CARRIERA
Respondent: ANTONIO CARUSO
Respondent: LINDA MARJORIE CARUSO
Respondent: ROCCO CARUSO
Respondent: DOMINIC CATANZARITI
Respondent: TIMOTHY BRIAN CAWTE
Respondent: CDZ PTY LTD
Respondent: GIUSEPPE CERAVOLO
Respondent: DESMOND JOHN CHASTON
Respondent: PAMELA MARY CIAMPA
Respondent: DOMENICO CIRILLO
Respondent: MARIO CIRILLO
Respondent: ROBERT CIRILLO
Respondent: JOHN LEONARD COLLINS
Respondent: JOSEPHINE CONDINA
Respondent: VINCENZO CONDINA

Respondent: COOPAROO PROPRIETORS PTY LTD
Respondent: TANIA COOPER
Respondent: CORIOLE PTY LTD
Respondent: GRANT STEPHEN CUNDY
Respondent: JOHN CLARK
Respondent: D & R DERUVO & SONS P/L
Respondent: ROBERT FALLINS
Respondent: STEPHEN DANIEL
Respondent: SUSAN JOYCE DANIEL
Respondent: A DATSOPOULOS
Respondent: DATSOS INVESTMENTS PTY LTD
Respondent: DANIELLE RAFFAELE DE IESO
Respondent: SALVATORE DE IESO
Respondent: FILIPPO DELUCA
Respondent: ANTONIO DI FABIO
Respondent: GIUSEPPE DI FABIO
Respondent: MARIA MICHELA DI FABIO
Respondent: VITTORIO DI FAVA
Respondent: ALFREDO DIMASI
Respondent: GIUSEPPINA DIMASI
Respondent: E & I DI FAVA NOMINEES
Respondent: ELANDES NOMINEES P/L
Respondent: ADELE ANN ELLIOTT
Respondent: LYDON GRANTLEY ELLIOTT
Respondent: PETER JOHN EMERY
Respondent: F & A NOTO & SONS PTY LTD
Respondent: ANGELO D'ALOIA
Respondent: LUIGI FELTRIN
Respondent: GEORGE FRANGOS
Respondent: MARY FRANGOS
Respondent: DOMENICA GASPARINI
Respondent: GIAN NOMINEES
Respondent: MONICA ANNE HAMILTON-BRUCE
Respondent: MOSTYN WILLIAM HANCOCK
Respondent: SHIRLEY RAYLENE HANCOCK
Respondent: HELEN GRANT HARDY
Respondent: HARTLEY LEWIS NOMINEES P/L
Respondent: JOHN RICHARD HUEY-WILLIAMS
Respondent: KATHRYN THERESE HUEY-WILLIAMS
Respondent: INGHAMS ENTERPRISES PTY LIMITED (ACN 008 447 345)
Respondent: CHRISTINE ANNE IULIANO
Respondent: GUERINO IULIANO
Respondent: J CANNIZZARO
Respondent: P CANNIZZARO
Respondent: LUCIANA JAKSA
Respondent: LAURA ANN FELL
Respondent: ROBERT FELL
Respondent: DOREEN MAY JAMES

Respondent: PETER JAKSA
Respondent: TREVOR WAYNE LINKE
Respondent: LIMAVADY PTY LTD
Respondent: THOMAS LIAPIS
Respondent: ZELJKO LESAN
Respondent: VERONICA LESAN
Respondent: MARGARET ANNE LEDSEN
Respondent: SYDNEY RONALD KYLOH
Respondent: KOTHYNAYAGIAMALL KUHAN
Respondent: KINGSTON 153 PTY LTD
Respondent: GREGORY STEPHEN KEANE
Respondent: FREDERICK FRANCIS KEANE
Respondent: FORTINI KASDALIS
Respondent: ARTHUR KASDALIS
Respondent: KYRIAKOS KARAPAS
Respondent: KYRIAKI KARAPAS
Respondent: PATRICIA JOSEPHINE JOHNSON
Respondent: HAROLD JAMES JOHNSON
Respondent: HANNA JANISZEWSKI
Respondent: MALCOLM EDWARD JAMES
Respondent: CARMELA LOGOZZO
Respondent: MICHAEL JOHN MCGREGOR MAYBANK
Respondent: BRIAN LESLIE MARSCHALL
Respondent: ADRIAN MARSCHALL
Respondent: TARQUINIO MARCOIONNI
Respondent: JOE MARCOIONNI
Respondent: MARCOIONNI. DESOLINA
Respondent: DAVID MARCOIONNI
Respondent: PASQUALE MARCIANO
Respondent: PAOLO MARCIANO
Respondent: STAVROS MANOLAS
Respondent: TAMMY MAMMONE
Respondent: GIACONDA MAMMONE
Respondent: ANTONIO MAMMONE
Respondent: ANGELO MAMMONE
Respondent: MALCOLM LEWIS NOMINEES P/L
Respondent: ILARIO MAIOLO
Respondent: VYIANNE MAE MAHON
Respondent: FERGUS GARTH MAHON
Respondent: COSIMO LOGOZZO
Respondent: CHRISTINE MARIE MAYBANK
Respondent: CRAIG MCPHEE
Respondent: SUSAN BETH MERCORELLA
Respondent: CRISTINA MERENDA
Respondent: FRANK MERENDA
Respondent: GIUSEPPE MERENDA
Respondent: MARIA MERENDA
Respondent: ROSS MERENDA

Respondent: GLORIA AILEEN MILTON
Respondent: WILLIAM EDWARD MILTON
Respondent: MINH HO DO
Respondent: MITOLO HOLDINGS PTY LTD
Respondent: GUISEPPE MONDELLO
Respondent: MORGOLD PTY LTD
Respondent: NEBAT PTY LTD
Respondent: BARRYMORE DOUGLAS NICOL
Respondent: MARGARET DAWN NICOL
Respondent: FRANCESCO SALVATORE NOTO
Respondent: OLINGA PTY LTD
Respondent: FRANCIS D'ARENBERG OSBORN
Respondent: ROWEN FREDERICK OSBORN
Respondent: CELINE THERESE PARKINSON
Respondent: R & G MERENDA PTY LTD
Respondent: PAMELA M REINCKE
Respondent: PETER PORROVECCHIO
Respondent: ANNETTE MARIA PORROVECCHIO
Respondent: PETER POLSON
Respondent: ILARIO PISCIONERI
Respondent: CLAUDIO PISCIONERI
Respondent: MICHAEL ANTHONY PICARD
Respondent: ANNE PICARD
Respondent: PIBROCH PTY LTD
Respondent: PATRICIA LESLEY PERKINS
Respondent: EDWARD GEORGE PERKINS
Respondent: PENRICE SODA PRODUCTS PTY LTD
Respondent: DOMENIC PELLICONE
Respondent: CARMELA PELLICONE
Respondent: ANTONIO PELLICONE
Respondent: TIMOTHY JOSEPH PARKINSON
Respondent: JOHN LAWRENCE PARKINSON
Respondent: ROSA REVERUZZI
Respondent: MARIO REVERUZZI
Respondent: MARISA POZENEL
Respondent: ERIO SPRINGHETTI
Respondent: MICHAEL FRANCIS SKIPPER
Respondent: PAUL BERNARD SHIRVINGTON
Respondent: CAROLYNE MARGARET SHIRVINGTON
Respondent: TANIA SEMAK
Respondent: LJUBOMIR SEMAK
Respondent: MARY ELIZABETH HELEN SCHULZE
Respondent: FRANK JOHN VINCENT SCHULZE
Respondent: SANCTUARY FARM CHILD CARE CENTRE & KINDERGARTEN
Respondent: BEVERLEY KATHLEEN RUSSELL
Respondent: JOYLEEN RUMP
Respondent: JAMES D RUMP
Respondent: VINCENZO RUGGIERO

Respondent: SALVATORE RUGGIERO
Respondent: ANNA RUGGIERO
Respondent: JILL ROHRLACH
Respondent: GEOFFREY ROHRLACH
Respondent: RIDENTI NOMINEES PTY LTD
Respondent: CVETA STEVANOVIC
Respondent: LEONARDO SCINTO
Respondent: CARMELA SCINTO
Respondent: ELIZABETH TRIMBOLI
Respondent: PETER TSIROS
Respondent: GRAHAM JOHN TUCKER
Respondent: DIANNA VINICKY
Respondent: GEORGE D VINICKY
Respondent: MILOSAVA VINICKY
Respondent: NICHOLAS VINICKY
Respondent: MARGARET ANNE WALLACE
Respondent: DARREN A WATERS
Respondent: ELIZABETH A WATERS
Respondent: WICKHAM ESTATE PTY LTD
Respondent: ZERELLA HOLDINGS PTY LTD
Respondent: TOMISLAV STEVANOVIC
Respondent: MARK GILBERT STOECKEL
Respondent: SUZANNE CECILE STOECKEL
Respondent: LOUY STOYANOFF
Respondent: LEONARD CLARENCE SUGARS
Respondent: CHANH MINH TANG
Respondent: ANTONIO TRIMBOLI
Respondent: BARTHOLOMEW BRETT BUTSON
Respondent: SHAYNE MICHAEL FITZGERALD
Respondent: ROBERT JOHN BUTSON
Respondent: MERVYN JOHN CAMP
Respondent: RUSSELL EDWIN BOORD
Respondent: PAUL ADRIAN FIMERI
Respondent: GRAHAM GORDON FILMER
Respondent: JEFFREY JOHN DALE
Respondent: WALTER PHILIP COOPER
Respondent: EPIC ENERGY SOUTH AUSTRALIA PTY LTD
Respondent: DONALD GEORGE FEAST
Respondent: DAVID FARADAY GILL
Respondent: SHANNON MAUREEN GILL
Respondent: TAO MINH TANG
Respondent: CLINTON DUANE ZERELLA
Respondent: STEWART JOHN BUTSON
Respondent: RICHARD CHARLES EDWARD CROSER
Respondent: TONY KINGDON
Respondent: ROBERT JOHN HARDING
Respondent: JEFFREY M HOW
Respondent: PETER LAGOUDAKIS

Respondent: ALAN ROBERTSON
Respondent: PETER YOUNG
Respondent: HENRY RICHARD WESTLAKE
Respondent: JEFFREY PAUL WAIT
Respondent: KYM BRYAN MALLYON
Respondent: GRAHAM MARK TAPLEY
Respondent: ANNE ELIZABETH TAPLEY
Respondent: ALLAN JOHN SUTER
Respondent: BRIAN K MUNDY
Respondent: MAZRON PTY LTD
Respondent: SIMON FREDERIC MANNERS
Respondent: MAURICE MANNERS
Respondent: ROBERT TYRER PENNINGTON
Respondent: BRENTON E TYRRELL
Respondent: TONY FRANC LUKIN
Respondent: STEPHEN YOUNG
Respondent: SOUTH AUSTRALIAN APIARISTS ASSOCIATION INC
Respondent: TELSTRA CORPORATION LIMITED
Respondent: HAHNS CULLEY & SONS
Respondent: WILDCATCH FISHERIES SA INC
Respondent: SA POWER NETWORKS (FORMERLY KNOW AS ETSA UTILITIES)

REASONS FOR JUDGMENT

MORTIMER J:

- 1 With the trial in this matter due to start in a matter of weeks, approximately one month ago the applicant and the State of South Australia reached agreement on the terms of a draft consent determination and Indigenous Land Use Agreement (ILUA). The parties to this application now seek a consent determination under the *Native Title Act 1993* (Cth) that native title exists over a part of the area originally claimed by the applicant, together with a determination that native title does not exist over the balance of the area, save for those parts in the north and south that are to be dismissed.
- 2 This will be the first time that there has been a positive determination of native title over any area within the area of an Australian capital city. The claim by the Kaurna has a long and difficult history, some key aspects of which I will set out below. However, these reasons for judgment are given on an occasion when it is more appropriate to focus on the positive outcome the parties have reached, than to rehearse the difficult path to today in too much detail.
- 3 The consent determination application is supported by joint submissions made on behalf of the applicant and the State of South Australia. There has been some opposition to the proposed determination, and it will be necessary to refer to that opposition in the course of these reasons.
- 4 For the reasons I set out below, I am satisfied it is appropriate for the Court to make the orders sought, and that it is within the power of the Court to do so.

The claim, the history of the proceeding, the proposed agreement and determination

- 5 The main parties to this application are:
 - (a) the Applicant;
 - (b) the State of South Australia;
 - (c) holders of commercial fishing interests within the claim area;
 - (d) Telstra Corporation Limited;
 - (e) SA Power Networks;
 - (f) holders of water licences within the claim area;

- 2 -

- (g) twenty seven local councils;
- (h) Epic Energy South Australia Pty Ltd;
- (i) the South Australian Apiarists Association Inc;
- (j) St John Ambulance Australia SA Inc;
- (k) Airservices Australia;
- (l) Commonwealth of Australia;
- (m) Ramindjeri Heritage Association; and
- (n) South Australian Native Title Services Ltd.

6 Pursuant to orders made on 7 March 2018, fourteen respondents sought leave to withdraw as a party to the proceeding. That leave was granted. All remaining respondents have now indicated their consent to the orders agreed to between the applicant and the State. Prior to withdrawing, the Ramindjeri Heritage Association objected to the orders. I deal with this objection below. I also deal with an application filed by Mr Michael Coughlan on 19 March 2018, seeking to be joined as respondent party to the proceeding.

7 The original application pursuant to s 61 of the Native Title Act was filed in October 2000. I traced the history of the proceeding until early 2016 in my reasons in *Agius v State of South Australia (No 4)* [2017] FCA 361 at [10]–[42]. As I noted in those reasons, during those 16 years there were considerable periods of inactivity, and non-compliance with the Court’s orders, which were designed to achieve some progress in the proceeding. In March 2016, White J made a number of orders expressly designed to ensure some progress was made towards the filing of material on connection so that discussion on whether a consent determination could be made could be substantively progressed. The connection material was not provided in compliance with those orders, and I discuss the reasons given for this and my view of these reasons in *Agius (No 4)* at [46]–[50]. Further hearings ensued, with White J continuing to attempt to progress this proceeding, and meeting resistance based on continued claims of inadequate funding – a reason his Honour rejected in terms I set out in *Agius (No 4)* at [68].

8 On 11 November 2016, White J made a series of orders and directions designed to prepare this matter for trial on connection as a separate question, with the trial scheduled to commence on 3 April 2018 for a period of six weeks. The proceeding was transferred into my docket in March 2017, and it has been case managed towards trial from that point, although it

- 3 -

is fair to say the rocky road this proceeding has travelled in the past has continued while it has been in my docket. However it is also fair to say that as it became clear that the Court would insist the trial go ahead at least as to critical aspects of connection, the applicant and the applicant's legal representatives began to work diligently and with renewed focus towards production of the necessary evidentiary material for such a trial.

- 9 At the time agreement was reached, the proceeding was more or less on track for the trial on aspects of connection to start on 3 April 2018. One experts' conference had been convened by Registrars Colbran and Parkyn late in 2017, and another was scheduled for 14 and 15 March 2018. Therefore, there is a substantial amount of evidentiary material before the Court at the time of this determination, including multiple expert reports on various aspects of connection. This includes oral and written preservation evidence from four members of the native title claim group which was taken by Mansfield J in 2013 and 2014, and outlines of proposed evidence from twelve claim group members. The applicant also filed expert reports (anthropological, genealogical and historical) by Associate Professor Neale Draper, Associate Professor Robert Foster and Dr Skye Krichauff. The State in turn had filed expert reports by Dr Lee Sackett (anthropological) and Mr Tom Gara (ethno-historical).
- 10 I will draw on some of that material in my description below of the connection of the Kaurna people to the country of the claim area.
- 11 The application for a determination by consent was formally made on 9 March 2018, although it had been foreshadowed to the Court approximately two weeks earlier, at a case management hearing on 22 February 2018. The Court was informed that the applicant and the State had been in discussion about a possible consent determination since late 2017. On 7 March 2018, orders were made vacating the trial on the basis that the parties' agreement was about to be formalised with an application under s 87.
- 12 The parties other than the applicant and the State were not provided with any proposed consent determination material until the time of the case management hearing on 22 February 2018. Thus, those parties were placed in a somewhat awkward position of having to decide very quickly whether to agree or not to the proposed determination. This caused difficulties for parties such as the local councils, and the commercial fishing association, in particular, in terms of their legal representatives obtaining necessary

- 4 -

instructions. All those parties acted responsibly and promptly in attempting to co-operate with what was a very tight timeline pursued by the applicant and the State.

- 13 The original s 61 application has been amended twice – first in July 2001, and then very recently in early March 2018, to reflect the terms of the determination to be sought by consent. The 2018 amended application changed (and reduced) the number of identified apical ancestors and removed a claim to the sea to the west of the land boundary of the claim (north of Myponga Beach and south of the Light River) and to the western half of Lake Bumbunga.
- 14 The amended claim area comprises the most heavily populated area of the State of South Australia, including the city of Adelaide. It covers approximately 7,000 square kilometres and stretches from south of Rapid Bay to approximately Redhill in the north. The eastern boundary of the claim area runs parallel with the crest of the Mt Lofty Ranges and extends north into the Barossa Valley. The western boundary has as its natural marker the coastline of the Gulf St Vincent.
- 15 However, the determination area itself covers only approximately half of the claim area. The southern boundary of the determination area is a line from Myponga Beach at its most south-western point, then north-easterly to the peak of Mount Compass. The eastern boundary follows the amended claim boundary referred to above until it meets the Light River in the north. The extension of the centre line of the Light River to the sea forms the northern boundary of the area to be determined. The Lowest Astronomical Tide (except where it falls outside the original claim boundary) is the western boundary of the area to be determined. Any land and water outside this determination area is to be dismissed. A map is attached to the Court's determination and orders, but will also be attached to these reasons for judgment as a separate annexure (Annexure A). This map is indicative only, and shows the determined area, with the area to be dismissed shaded yellow. It is not the Court's official record of the determined area. The official record is constituted by the co-ordinates set out in Schedule 1 to the Court's orders.
- 16 The joint submissions make the following statement (at [35]) about the claim boundary amendments concerning the sea to the west of the land boundary:

While subsequent discussions and negotiations took place between the Applicant and the State in relation to the area seaward of the Lowest Astronomical Tide, the Applicant ultimately chose to amend the claim to remove that area, indicating that a future claim may

- 5 -

possibly be lodged. The State raised no objection to the amendment of the claim, and says nothing about any future claim.

17 The term “lowest astronomical tide” is not defined in the orders, but is a reference to the lowest predicted tidal level under average meteorological conditions and under any combination of astronomical conditions.

18 Although at the time agreement was reached, there remained many outstanding issues in dispute between the experts, there were a number of matters on which the experts had agreed either at the first experts’ conference, or through their respective reports.

19 It is not in dispute that at sovereignty, Aboriginal people lived in the claim area and, from the time of white settlement, became collectively called the “Adelaide Tribe”. They may have been made up of one, or more than one, group or groups. In the joint submissions, the applicant and the State accept the Kurna People are the traditional descendants of the “Adelaide Tribe”. The joint submissions recognise that the claim group’s identification as “Kurna” is a more a recent phenomenon – specifically arising during the 1970s. However, the joint submissions also recognise that claim group members trace their society back through their parents, grandparents, and great-grandparents, particularly at Point Pearce (Yorke Peninsula), Poonindie (Eyre Peninsula) and Point McLeay (mouth of the River Murray). The Court accepts that the use of the name “Kurna” need not be proven to be one that can be traced back to sovereignty nor proven to have been used continually since that time. It is not at all uncommon in native title cases for group labels to change over time and to be a matter of controversy.

20 I deal below in more detail with the evidence about connection to land, continuity and identified apical ancestors, and what the State has been prepared to accept.

21 A determination is sought only in relation to non-exclusive native title rights and interests, and only in relation to a limited number of parcels of land, seventeen parcels to be precise. They are set out in Schedule 3 to the proposed determination. An indicative map is also attached to these reasons for judgment as a separate annexure (Annexure B), showing the approximate location of each of these parcels in the determination area. Again, this map is not the Court’s official record of the determined area. The official record is constituted by the co-ordinates set out in Schedule 1 to the Court’s orders.

22 In relation to those seventeen parcels of land, the following rights and interests are identified:

- 6 -

- (a) The right of access to the land and waters;
- (b) The right to live on, use and enjoy the land and waters including for ceremonial purposes;
- (c) The right to take, use, enjoy, share and exchange the resources of the land and waters including by fishing, hunting and gathering, but excluding those resources referred to in item 1 of Schedule 4 of the orders;
- (d) The right to conduct funerals and burials on the land and waters;
- (e) The right to maintain and protect places of importance under traditional laws, customs and practices on the land and waters;
- (f) The right to teach on the land and waters; and
- (g) The right to be accompanied on the land and waters by those people who, though not Kaurna persons, are:
 - (i) spouses of Kaurna people; or
 - (ii) people required by traditional law and customs for the performance of ceremonies or cultural activities.

23 Those rights are expressed to be for personal, domestic and community use, and to not include the right to trade in, or the commercial use of, the land covered by the determination, or resources in that land.

24 The proposed determination also recognises other rights and interests in respect of the claim area, such as: the rights and interests of the public to use and enjoy reserves consistent with the provisions of the *National Parks and Wildlife Act 1972 (SA)*; the rights and interests of Telstra Corporation Limited as owner and operator of telecommunications facilities within the claim area; the rights and interests of SA Power Networks (and its related and successor entities) to discharge its obligations as the owner and operator of electricity infrastructure within the claim area; the rights and interests of each relevant local government body within the claim area under the *Local Government Act 1934 (SA)* and the *Local Government Act 1999 (SA)*; and the rights and interests of Epic Energy South Australia Pty Ltd in relation to its ownership and operation of a major gas pipeline within the claim area.

25 As I noted at the start of these reasons, a core component of the agreement reached is that part of the area claimed will be dismissed, and that there will be a determination that native title does not exist in any part of the claim area other than the seventeen parcels specified in

- 7 -

Schedule 3 to the determination, and to which I have referred at [21] above. I return to the principles applicable to the making of a determination that native title does not exist below.

- 26 The claim group has held several information and authorisation meetings to consider whether a consent determination should be pursued and then ultimately, the terms of the consent determination. On 23 October 2017, the prospect and nature of a consent determination was discussed at an applicant's meeting and again at an authorisation meeting on 25 November 2017. At the October 2017 meeting, the applicant instructed its legal representatives to investigate a possible consent determination with the State. On 20 December 2017, a meeting of the applicant unanimously instructed its lawyer to continue negotiating a consent determination. A further meeting of the applicant was held on 31 January 2018. At an authorisation meeting on 18 February 2018, the terms of the consent determination and an ILUA were presented and discussed. The meeting resolved, by majority, to settle and finalise the claim by consent and ILUA, that Kurna Yerta Aboriginal Corporation (KYAC) would act as the prescribed body corporate, and that the chair of KYAC was authorised to sign on behalf of the applicant for the purposes of performing any functions under the Native Title Act and the ILUA.
- 27 Three objections have been raised to the matter being resolved by consent. The first was by a member of the applicant, Ms Georgina Williams, and the second was by the Ramindjeri Heritage Association. The third was by Mr Michael Coughlan, who filed an application to be joined as a respondent party on 19 March 2018, two days prior to the date of the consent determination.
- 28 Ms Williams is one of the individuals who, jointly, comprise the applicant in the Kurna application. She is a respected senior member of the claim group. Ms Williams notified the Court that she objected to the proposed determination, and sought to be heard about her objection. I granted leave for Ms Williams to appear at two case management hearings in February and March 2018, so that she could explain her position in open Court. It was clear from Ms Williams' submissions that she cares deeply about the protection of her culture, and about her family history. Ms Williams was critical of the compressed time frame in which the claim group had been asked to make decisions about the proposed consent determination and its terms, given that the trial was so close and the matter otherwise would have been progressing to a trial. Ms Williams informed the Court she felt she had not had a sufficient chance to consider all the material she needed to consider to make a decision. She did not

- 8 -

- agree with the proposal to surrender native title over certain areas, and did not agree with the applicant's claims to other areas being dismissed. She also objected to the failure to include Mullawirraburka as an apical ancestor of the Kaurna people through her fathers' fathers' mother "Emma". It was apparent from the evidence that Ms Williams had made her position known at the authorisation meeting on 18 February 2018.
- 29 Having heard what Ms Williams had to say, I gave directions enabling Ms Williams to have an opportunity to consider the expert material compiled by the applicants and the responding expert material filed by the State. I also ordered that Ms Williams be provided with assistance from the South Australian Native Title Services (SANTS) to help her understand the basis upon which the claim group had decided to resolve this matter and not continue with the trial that was listed for April 2018. I directed an affidavit be filed on behalf of SANTS deposing to an outline of the topics to be dealt with between Ms Williams and the SANTS lawyer, so that the Court could be satisfied Ms Williams had had relevant matters explained to her. That affidavit was duly filed, as was other affidavit material from Mr Campbell, deposing to the steps taken by him and by counsel to inform all individuals constituting the applicant, including Ms Williams, about the proposed terms of agreement, as well as deposing to specific steps taken to deal with Ms Williams' inquiries and concerns.
- 30 I am satisfied on the evidence that Ms Williams has had an adequate opportunity to understand the nature and terms of the evidence on connection, to understand the risks attending a contested trial, and to understand the nature and content of the proposed agreement (including the ILUA) which has led to the consent determination. I am also satisfied she has had an opportunity to be informed about the content of the proposed determination. What Ms Williams has chosen to focus on during these opportunities, and how much she has been prepared to accept, are matters for her. The Court also offered Ms Williams an opportunity to seek to withdraw as a person who, jointly, comprises the applicant. She informed the Court that she wished to remain as a member of the applicant, and that she remains opposed to the making of this determination.
- 31 While the Court has had regard to the objections raised by Ms Williams and her submissions, the views expressed by Ms Williams are not ones that prevent the consent determination being made. It is unfortunate that, at this late stage, there is a significant difference of opinion between members of the applicant, and (it would appear) between at least some members of the claim group. However, the claim group has determined to resolve this matter by consent,

- 9 -

and has made that resolution in accordance with processes set out in s 251B of the Native Title Act. The process adopted, pursuant to s 251B(b), was a majority decision-making one. Accordingly, the majority view must prevail. I am satisfied based upon the evidence before the Court that the settlement of this proceeding was properly authorised and considered by the claim group.

32 The Ramindjeri Heritage Association (RHA), a respondent party, also raised an objection to the matter being resolved by consent. The RHA sent an email communication to the Court on 15 March 2018 to object to the determination on the basis that the determination area will include land south of the River Torrens, which it identifies as Ramindjeri country. It is necessary to relate some of the history of the Ramindjeri Association becoming a party to the proceeding, and what has occurred since then.

33 Mr Lance Walker as chair of the RHA lodged a notice of intention to become a party to the application on 18 December 2001. On 3 October 2003, RHA was formally joined as respondent party by order of the Court. On 19 May 2004, Mr Walker (and not the RHA) filed a notice of motion seeking to strike out the Kaurna native title claim, in the following terms. The application sought to strike out the claim area:

...east of a line Fullarton Road, Hampstead and Main North Road north to Gawler, West of a line Tapleys Hill Road – North to Pelican Point, South of Brownhill Creek/Goodwood or Wirraparringa as I believe the Kaurna have no establishable pankarra or land ownership links to the hills country to the east and south of the Adelaide Plains.

34 The application was subsequently withdrawn on 13 October 2004 on the basis that the RHA wished to put forward a positive case for a Ramindjeri claim to native title over the area identified, and to continue to oppose the Kaurna people's claim. It maintained that no orders should be made that the Kaurna people have native title over the area it identified as Ramindjeri land.

35 On 8 September 2005, Mansfield J made an order that the Registrar seek the pro bono assistance of a lawyer for Mr Walker. This assistance was limited to advising Mr Walker as to whether he, or the Ramindjeri, or the RHA should proceed to make a claim for native title, the relevant procedural steps to be taken and to assist in drafting the documents to be filed in relation to such an application. Mr Walker received pro bono legal assistance over several years. Mansfield J made a mediation referral to the National Native Title Tribunal on 5 September 2008 in relation to the:

- 10 -

...nature and extent of the issues arising between the applicants and the Ramindjeri People, including as expressed by the respondent party the Ramindjeri Heritage Association

36 The mediation was unsuccessful and was terminated in 2012.

37 In 2010 (that is, before the mediation process was terminated), Mr Walker lodged a native title application on behalf of the Ramindjeri, which overlapped with both the southern portion of the Kaurna claim area and with parts of an adjoining claim made by the Ngarrindjeri people. The Ngarrindjeri claim was recently determined by consent. Neither Mr Walker nor the RHA were named as respondents to this claim, and as I set out below Sally Walker (who was contended to be an apical ancestor for the Ramindjeri) was identified as one of the apical ancestors on the Ngarrindjeri claim. In 2014, on the application of the State (supported by the applicant and the Ngarrindjeri people) Mansfield J dismissed the whole of the 2010 Ramindjeri native title claim on the basis that it was not properly authorised: *Walker v State of South Australia* [2014] FCA 962. His Honour said at [84]:

In my view, those considerations point to a clear conclusion that Mr Walker has no reasonable prospect of demonstrating at a full hearing of the Ramindjeri application that he was duly authorised by all the persons who would constitute the group rights of the Ramindjeri People (whether as a separate native title claim group or as a subgroup of the Ngarrindjeri People) to bring the Ramindjeri claim on their behalf as required by s 225 and 251B. Indeed, in my view, he has no prospect of establishing that. I also consider that Mr Walker has no reasonable prospect of establishing that there was a decision of all the persons who may hold native title rights and interests over the Ramindjeri claim area as Ramindjeri People to bring the claim.

38 Since around 2010, when the native title application by Mr Walker on behalf of the Ramindjeri was filed, neither the RHA, nor any individual Ramindjeri people have played an active role in the Kaurna native title claim, including in relation to the trial. There was no appeal from Mansfield J's decision. The RHA did not file a notice indicating that it wished to take an active part in the trial, despite orders to this effect having been made by White J in December 2016. The RHA has not filed any evidence, lay or expert, in the proceeding, nor subsequently sought to become an active party to challenge the claims of the Kaurna people.

39 There are some further relevant matters. Mr Walker passed away in 2015. The written objection communicated to the Court came from Ms Vivienne Greenshields and Ms Christine Walker, on behalf of the RHA. The basis of the objection – that the country south of the Torrens River is Ramindjeri country – is the same basis as the claim made by Mr Walker in 2010 that was dismissed by Mansfield J for lack of proper authorisation. I note that lack of proper authorisation for a claim is not any mere technicality. Authorisation by an identifiable

- 11 -

claim group (or, at least, a majority of an identifiable claim group) is the method the Native Title Act prescribes so that the Court and all affected parties can be satisfied that there is a group of indigenous people, who together claim to be the holders of native title rights and interests in particular land and/or waters, and are putting forward a claim which is capable of falling within the terms of s 223 of the Native Title Act. In the Ramindjeri application, Mansfield J was not satisfied that Mr Walker had any such authorisation from the Ramindjeri people, although he clearly purported to represent a group of his own extended family.

40 Taking into account both Mansfield J's decision in 2014, and the fact that neither the RHA, nor any Ramindjeri people have taken an active part in this proceeding, it may have been difficult for the RHA to maintain that some or all Ramindjeri people hold native title rights and interests over any part of the determination area, or have native title rights and interests which will be adversely affected by either a dismissal or a negative determination over parts of the determination area. Nevertheless, the objection had been made and could not be dismissed summarily, especially given the parties proposed a determination be made that no native title exists over a large part of the claim area.

41 The objection from the RHA prompted an interlocutory application by the applicant, seeking to remove the RHA as a party to the proceeding. The purpose of that course appeared to be so that the objection could not hold up the consent determination, because (the argument appeared to be) if the Ramindjeri (through the RHA, assuming for present purposes it is representative of the Ramindjeri) were not a party, then their objection to the determination could not impede the orders being made. It is necessary to make it clear that there has been no endorsement by the Court of that line of argument.

42 The applicant's removal application was filed (and served on some respondents) very late on Friday 16 March 2018. Material in support of the application was filed and served on Saturday 17 March 2018. None of these documents had been accepted by the Court because they were filed outside hours, but nevertheless, given the urgency of the situation, the Court notified the parties on Saturday 17 March 2018 that a hearing would be convened at 2.15 pm on Monday 19 March 2018, to deal with the Ramindjeri objection, and the applicant's interlocutory application.

43 In the early evening of Sunday 18 March 2018, the Court was informed that the Ramindjeri (through the RHA) sought leave to withdraw as a party. A notice to that effect, signed by

- 12 -

Ms Vivienne Greenshields and Ms Christine Walker, was sent to the other parties and forwarded to the Court. This withdrawal should, I am satisfied, also be taken as a withdrawal of the objection of the RHA (and the Ramindjeri people it represents) to the consent determination.

44 The hearing on 19 March 2018 was accordingly vacated, and the interlocutory application did not need to be pressed by the applicant.

45 The objections did not, however, end there, despite the proposed consent determination being only two days' away.

46 On 19 March 2018, Mr Michael Hunter Coughlan filed an interlocutory application seeking to be joined as a respondent to the proceeding. In his supporting affidavit, Mr Coughlan states that he is a Peramangk person descended from an ancestor identified as "Buffalo", and a woman known by her tribal group "Korolde". Mr Coughlan claims that the country of the Peramangk people overlaps with parts of the eastern portion of the Kaurna determination area, including around Mylor, where some of the seventeen parcels of land subject to a positive determination are located. Both the applicant and the State opposed the joinder application. The remaining parties informed the Court they would abide its decision.

47 The application was heard in the afternoon of 20 March 2018. Mr Coughlan appeared in person at the hearing and was given the opportunity to set out the basis for his interests, how these interests may be affected by a determination in the proceeding and why it is in the interests of justice to join him as a party. Mr Coughlan explained that although he was aware of the Kaurna native title claim, he was unaware that it had moved from a contested proceeding to a determination by consent. He reaffirmed his desire to become a respondent party to protect his cultural authority, and also his assertion that country to the east of the Mount Lofty ridgeline is Peramangk country. If joined as a party, Mr Coughlan confirmed he would oppose the consent determination and take an active part in any trial that may subsequently occur, including agitating claims that portions of the claim area along the eastern boundary are Peramangk country.

48 As I have noted, in support of its opposition to Mr Coughlan's joinder application, the applicant read four affidavits. Collectively, these affidavits reveal that in May 2001, a meeting was held between the Kaurna and Peramangk to consider native title boundaries, and an agreement was reached which is reflected in the current Kaurna claim boundary. This

- 13 -

evidence also revealed that Mr Coughlan has for many years been aware of the Kaurna intentions and aspirations in native title. The affidavits also outline the manner in which the various information and authorisation meetings were publicised.

49 The State also read an affidavit of Peter Tonkin, affirmed on 20 March 2018, which stated that this was the first time Mr Tonkin had heard of any Peramangk person claiming native title within the boundary of the Kaurna claim. This, I note, is after the Kaurna claim has been on foot for more than 17 years. Mr Tonkin's affidavit also annexed minutes of a meeting of the City of Mitcham Council held in May 2009 where Mr Coughlan himself is recorded as presenting a welcome or "Statement of Acknowledgement" of the traditional ownership of the country on which the meeting was held as Kaurna. Mr Coughlan is described in the minutes of meeting as a descendant of the Peramangk and Ngarrindjeri peoples. Mr Tonkin also deposes to attending a meeting on 19 March 2015 at which Mr Coughlan was also present. The meeting notes attached to Mr Tonkin's affidavit record Mr Coughlan as stating that he is Peramangk and the current Vice President of the Peramangk Heritage Association. Finally, Mr Tonkin's affidavit attaches an extract of Dr Lee Sackett's report filed on 21 November 2017 that concludes "[i]n my view, the woefully little that is said to be known regarding the Peramangk means that it would be a mistake to factor them into any equation."

50 Since the evidence from the applicant and the State was in substantive respects contrary to Mr Coughlan's affidavit evidence, and also sought to put a different complexion on his claims, the applicant – quite properly - sought leave to cross-examine Mr Coughlan so that these differences could be put to him and he could have an opportunity to respond to them. I granted that leave. The State did not cross examine Mr Coughlan, but generally supported the approach taken by the applicant. During his cross examination, Mr Coughlan acknowledged that he has been aware of his Peramangk identity since the early 1990s, and contended that he is culturally the most senior person among the Peramangk group. Mr Coughlan also acknowledged that "Buffalo and his wife" have been recognized as apical ancestors in the recent Ngarrindjeri consent determination: *Sumner v State of South Australia (Ngarrindjeri Native Title Claim Part A)* [2017] FCA 1514, although he stated his view is that this inclusion in the Ngarrindjeri determination is incorrect.

51 At the conclusion of the evidence, and after the submissions of the applicant and the State, I adjourned the hearing temporarily so that, at the Court's request, SANTS could provide Mr Coughlan with assistance in understanding the implications of his application, the basis upon

- 14 -

which the applicant and the State objected to it, and to answer any queries he may have. This assistance was duly provided, and the Court expresses its gratitude to Ms Bianca Lena for her assistance to the Court and to Mr Coughlan in this respect. Mr Coughlan then made final submissions to the Court.

52 Late in the afternoon of 20 March 2018, immediately after the hearing, I dismissed Mr Coughlan's application to be joined as a respondent to the proceeding. I indicated I would provide reasons for that order in the determination reasons.

53 I accept that the joinder application Mr Coughlan made is sincere and is based on information he has discovered through his own inquiries and research. I accept that the timing of the application largely resulted from his recent discovery that this proceeding had moved from a contested trial to a consent determination, which included both a negative and a positive determination over parcels of country he considers – at a presently rather broad and undefined level - he has an affiliation with. However, the sincerity of his views and his application is not sufficient for joinder, especially not at the time the application was made. There are multiple interests that the Court must balance under s 84(5) of the Native Title Act. I accept that he was only made aware recently that the claim may be resolved by consent, however Mr Coughlan has been aware of the Kaurna native title claim for some time, indeed well over a decade. Until two days ago, neither Mr Coughlan nor any other Peramangk person or the Peramangk people had objected to the Kaurna claim by either seeking to be joined as a respondent, or by filing a native title claim on behalf of the Peramangk people over any area of the Kaurna claim area, and in particular over the land around the eastern boundary. In contrast, there is evidence that the Peramangk and the Kaurna had many years ago agreed to the eastern boundary of the Kaurna claim, as it was set out in the Kaurna native title application.

54 There is no evidence that Mr Coughlan consulted other Peramangk people prior to filing his application, or that he and other Peramangk people plan to, or are working together to, file a native title claim on their own behalf. There is no evidence in the material filed of a Peramangk society, as opposed to the contemporary claims of Mr Coughlan. The State has accepted "Buffalo and his wife" as apical ancestors in the Ngarrindjeri determination, and is satisfied that the determination in this matter will not defeat the native title claim of another group. I am not satisfied that Mr Coughlan has an interest that may be affected by a determination of native title. I am also not satisfied that it is in the interests of justice to join

- 15 -

Mr Coughlan as a party, which would have the inevitable effect of the consent determination not proceeding, and the trial resuming. Mr Coughlan's joinder would have had the effect of disputing a process which clearly pursues the objectives of both the Native Title Act and ss 37M and 37N of the Federal Court Act, as I explain elsewhere in these reasons. The Court *might* exercise its discretion to permit such a disruption in compelling circumstances where the new and countervailing native title claims have a firm evidentiary foundation (especially where a negative determination was sought), but that is not this situation.

55 For these reasons, I dismissed Mr Coughlan's joinder application.

Section 87 and the Court's function

56 There are three preconditions to an exercise of power under s 87 of the Native Title Act. They are:

- (a) the lapse of the specified notification period under s 66 (s 87(1));
- (b) the parties have reached agreement on the terms of orders relating to the proceedings, and matters arising out of those terms (s 87(1)(a)); and
- (c) the parties have reduced their agreement to writing, the agreement has been signed by or on behalf of the parties, and it has been filed with the Court (s 87(1)(b)).

57 In the present application, the notification period ended many years ago, there is agreement between the parties of the matters in s 87(1)(a) and that agreement has been reduced to writing and filed with the Court, in the form of the proposed orders and determination.

58 Where those preconditions exist, as they do in relation to the present application, the Court has jurisdiction under s 87(1A) of the Native Title Act to make orders in the form filed by the parties, or consistent with that form. Before it can make such an order, the Court must be satisfied of two matters:

- (a) first, that the orders as filed or proposed are "within the power of the Court" to make: s 87(1)(c).
- (b) second, that the orders filed or proposed are "appropriate": s 87(1A).

59 In order to be satisfied that the orders sought are within the power of the Court, consideration must be given to other restrictions or requirements in the Native Title Act. For example, the

- 16 -

area covered by the orders must not overlap with any other application for determination of native title (s 67(1)); similarly, the area covered by the orders cannot have been the subject of a previously approved determination of native title (s 68). Further, the orders sought will only be within power if they set out the details of the matters required by s 225 (see s 94A) and if they concern rights and interests which the Australian common law is able to recognise (s 223(1)(c)). There are no such impediments to the making of the determination sought by the parties in this proceeding.

Whether it is appropriate to make the orders sought

60 The requirement that the Court be satisfied the order is “appropriate” is present in both s 87 and s 87A of the Native Title Act. It is common ground the applicable principles are the same, although I note there may be circumstances where, because s 87A concerns only part of a claim area, other matters about the appropriateness of the proposed determination may arise.

61 I set out my approach to the question of “appropriateness”, and the Court’s function, in *Freddie v Northern Territory* [2017] FCA 867, and some of what I set out below is taken from those reasons for judgment.

62 As the joint submissions note, the Court’s function under ss 87 and 87A is quite different from its function in a contested application for a determination of native title, and this difference has been confirmed in many authorities of this Court: in particular see *Lovett on behalf of the Gunditjmarra People v State of Victoria* [2007] FCA 474 at [36] (North J), which has been endorsed many times. See also *Thudgari People v State of Western Australia* [2009] FCA 1334 at [25] (Barker J); *Goonack v State of Western Australia* [2011] FCA 516 at [25]-[26] (Gilmour J) and in relation to s 87A; *Wurrunmurra on behalf of the Bunuba People v State of Western Australia* [2015] FCA 1480 at [27] (Barker J). In *Lander v State of South Australia* [2012] FCA 427 at [11], and by reference to *Lovett*, Mansfield J emphasised that the focus of the Court under s 87 is on the making of the agreement by the parties. That fact assumes some particular importance in this proceeding, as the joint submissions correctly recognize.

63 The Court’s function where there is agreement as to a determination of native title, and its discretion, must also be understood in the context of the Native Title Act’s emphasis on negotiation and alternative dispute resolution, whereby one particular object of the Native

- 17 -

Title Act is to resolve claims to native title without judicial determination in a contested proceeding: see *Munn (for and on behalf of the Gunggari People) v Queensland* [2001] FCA 1229; 115 FCR 109 at [28] (Emmett J). I note in this context that the Preamble to the Act envisages that:

A special procedure needs to be available for the just and proper ascertainment of native title rights and interests which will ensure that, *if possible, this is done by conciliation* and, if not, in a manner that has due regard to their unique character.

(Emphasis added.)

- 64 The concept of “appropriateness” in s 87(1A) also recognises that the determination made by the Court is one made as against the whole world, and not just between the parties to the proceeding: *Cox on behalf of the Yungngora People v State of Western Australia* [2007] FCA 588 at [3] (French J). The rights conferred are enduring legal rights, proprietary in nature and in recognising them through a determination, the Court must be conscious of their character. The nature of the rights informs considerations such as the clarity of the terms of the determination (as to the claim area, the nature of the native title rights and interests and the manner of affectation on other proprietary interests); the need for appropriate notification and then the free and informed consent of all parties; and finally the State’s agreement that there is a credible and rational basis for the determination proposed.
- 65 The discretionary evaluation of whether orders are appropriate is a wide one, but the Court must focus on the individual circumstances of each proposed determination: see *Hayes on behalf of the Thalanyji People v State of Western Australia* [2008] FCA 1487 at [18] (North J). That focus is also particularly important in this proceeding, where the agreement has come at a particular stage of the proceeding, and there is a range of evidence, not all of it supportive of the applicant’s case at its highest.
- 66 The exercise of the judicial power in ss 87 and 87A of the Native Title Act does not only occur in the context of that legislation. It also occurs in the context of the Court’s jurisdiction as a whole, and its foundational legislation, the *Federal Court of Australia Act 1976* (Cth), and in particular s 37M and s 37N of that Act. In exercising the discretion under s 87, the Court should pursue the objectives set out in those sections of the Federal Court Act, of promoting “just resolution of disputes, according to law, and as quickly, inexpensively and efficiently as possible”. In a series of decisions, Jagot J has emphasized these matters: see *Barkandji Traditional Owners #8 v Attorney-General of New South Wales* [2015] FCA 604 at

- 18 -

[12]; also *Phyball on behalf of the Gumbaynggirr People v Attorney-General of New South Wales* [2014] FCA 851 at [1] and [9] and *Yaegl People #1 v Attorney General of New South Wales* [2015] FCA 647 at [9]-[10]; *Western Bundjalung People v Attorney General of New South Wales* [2017] FCA 992 at [3]-[11] and *Yaegl People #2 v Attorney General of New South Wales* [2017] FCA 993.

67 In this proceeding, the pursuit of the objectives of ss 37M and 37N is in my opinion especially relevant to the appropriateness of the making of a consent determination. This proceeding was only a month away from a six week trial, which would have used a tremendous amount of public resources and funds, not to mention being a prolonged and intense experience for claim group members. That trial would not have decided all issues in dispute, because it was to deal only with certain aspects of connection. Even if successful on the matters stated by White J for decision by the Court, the applicant would have needed to prove a range of other matters at a later date. There may have been an appeal, whichever way the initial trial was decided. There is also the issue of the extent of extinguishment of native title in land such as that included in the claim area. The hurdles for the Kaurna people were considerable indeed. On any view, an agreement leading to a consent determination, even one where limited native title rights are granted, is an outcome which advances the objectives in s 37M and 37N more than the delay and uncertainty accompanying the litigation of the applicant's claims.

68 Since the determination made by the Court must include the matters set out in s 225 of the Native Title Act, there must be some probative material against which the Court can assess whether those matters can be stated in a determination. The principal source will be the parties' agreed position put to the Court in the proposed orders and determination setting out the matters required by s 225, together with (in this case), joint submissions. In this proceeding, there is no agreed statement of facts as contemplated by s 87(8).

69 There is no need to provide the Court with all of the evidence of the primary facts substantiating native title. Again, that is because the premise of s 87, and the Native Title Act's emphasis on conciliation, is that the parties have freely and on an informed basis come to an agreement: see *Hughes (on behalf of the Eastern Guruma People) v State of Western Australia* [2007] FCA 365 (at [9]) (Bennett J), cited with approval in *Peterson v State of Western Australia* [2013] FCA 518 at [22] (McKerracher J). See also *Ward v State of Western Australia* [2006] FCA 1848 at [8].

- 19 -

70 In *Brown v Northern Territory of Australia* [2015] FCA 1268 at [23], Mansfield J described the task to be undertaken by the Court in the following way:

The Court is not required to embark upon an inquiry as to the merits of the claim to be itself satisfied that the orders are supported and in accordance with law: *Cox on behalf of the Yungngora People v State of Western Australia* [2007] FCA 588 at [3] per French J. However, the Court will consider evidence for the limited purpose of determining whether the State has made a rational decision and is acting in good faith: *Munn for and on behalf of the Gunggari People v State of Queensland* (2001) 115 FCR 109 at [29]-[30] per Emmett J.

71 The Court is entitled to rely on the processes established by a State (or Territory) for the assessment of claims to native title and, without abdicating its task of determining that the matters set out in s 225 are present in a particular application, is entitled to proceed on the basis that the State (or Territory) has made a reasonable and rational assessment of the material to which it has access in deciding to enter into an agreement: see, in relation to a similar point with respect to s 223 of the Act: *King on behalf of the Eringa Native Title Claim Group and the Eringa No 2 Native Title Claim Group v State of South Australia* [2011] FCA 1387 at [21] (Keane CJ).

72 The State comes to an agreement under s 87 or s 87A only after discharging its public responsibilities to ensure the agreement is in the interests of the community it represents. The indigenous people of South Australia are of course part of the community whose interests the State considers. As Jagot J said in *Yaegl #2* at [16]:

it would be wrong to conceive of the State's duty as one of protecting the public interest as if the public interest excluded the legitimate interests of native title claimants; claimants are part of the community for which the State is responsible and to whom it owes its duties and to conceive of the public interest as if it were in opposition to native title rights and interests is contrary to the provisions of the NTA, particularly the stated object in the Preamble.

73 It seems to me that, in agreeing to this consent determination, the State of South Australia has appropriately understood the point made by Jagot J in *Yaegl #2*.

74 The State must nevertheless be satisfied there is a sufficient basis to put forward the agreement to the Court as one which is capable of satisfying the requirements of s 225 of the Native Title Act. Agreement may be reached on behalf of the State (or Territory), and other parties, without the level of proof required in a contested application. Inherent in parties' agreement to resolve claims by settlement rather than litigation, as in other areas of the law, is a willingness to abide by an outcome without the exhaustive and detailed investigation that accompanies a trial of contested issues of fact and law. The public interest in an outcome of

- 20 -

this kind is considerable: see *Prior on behalf of the Juru (Cape Upstart) People v State of Queensland (No 2)* [2011] FCA 819 at [26] (Rares J).

- 75 The joint submissions highlighted the references in the authorities to the State's consent being based on material that is "credible", so that its decision to consent and accept a claim can be characterized as "rational". As the joint submissions suggest, there is some latitude for the State in this process. The flexibility which is inherent in a negotiated outcome means that the threshold the State imposes on the available evidentiary material may be affected by a wide range of considerations. There would be nothing impermissible, to take a hypothetical example, in a State taking into account that the difficulties for claim group members in supplying detailed evidence on some matters may have been affected by the State's own historical processes and policies of removal of indigenous people from their lands and from their families. If the State were satisfied, having assessed the applicant's material and its own sources, that a general account was credible, there would be no legal impediment to the State relying on such general material as part of the foundation of its consent to a determination under s 87. Much will depend on the individual circumstances of each claim.
- 76 In this proceeding, the State has taken a responsible and measured approach, taking proper account of the objectives of the Native Title Act, and giving due recognition to the damaging effects of dispossession, removal and family disruption on how claim group members in the position of the Kaurna people can prove their claims. It is appropriate to extract in full three paragraphs from the joint submissions which demonstrate that approach (at [47], [48] and [51] respectively):

A consent determination can be made without the necessity of strict proof and direct evidence of each issue as long as inferences can plausibly be made. The parties submit that, in the circumstances of a consent determination, it is appropriate to focus on credible contemporary expressions of traditional laws and customs and pay less regard to any laws and customs that may have ceased. For the purposes of a consent determination, the State is prepared to infer that such contemporary expressions are sourced in the earlier laws and customs, on the basis that it is inherently unlikely that such contemporary expressions are recent inventions.

The State has borne in mind the fact that the original Aboriginal custodians of this particular land were affected in a unique way by the settlement of Adelaide and its surrounds as a capital city and that the Applicant represents a group that has held, and will continue to hold into the future, recognition by the State and by many in the community as representing those original inhabitants and the current traditional owners of the area.

...

Given this background, the flexible approach encouraged by the NTA and the Court and the shared desire of the State and the Applicant to avoid what could have been an extremely

- 21 -

divisive and damaging trial, the State is prepared to accept there being sufficient ongoing connection by traditional laws and customs of those identifying as Kaurna with the determination area. Specifically, the State is prepared to infer that the pre-sovereignty normative society has continued to exist throughout the period since sovereignty. While there has been inevitable adaptation and evolution of the laws and customs of that society, it should be inferred that the society today (as descendants of those placed in the area in the earliest records) acknowledges and observes a body of laws and customs which is substantially the same normative system as that which existed at sovereignty.

(citations omitted)

- 77 The emphasis in the authorities is on the position of the State, because of its general obligations to the community as a whole, and because of the availability of resources necessary to evaluate any proposed agreement. However, it is also to be expected that other parties whose agreement is necessary would approach the question of giving their consent through a prism that looks for a credible and rational basis for an agreed determination, without adhering to the rigour and standard of proof necessary in a contested trial.

The balance struck between the seventeen parcels and the negative determination over the rest of the claim area

- 78 The joint submissions appropriately acknowledged that this proposed determination comes at a time before any full assessment of tenure had been undertaken. What has occurred is that the applicant and the State have taken a pragmatic and constructive approach to identifying parcels of land over which a grant could be made, and the applicant and the claim group have then chosen not to persist in what would have been a long and complicated process of seeing if there was any further land which could have been the subject of a grant of native title (assuming the remaining matters under s 223 had been proven).
- 79 The joint submissions described the compromise in the following terms:

A full tenure assessment has not been conducted in this matter. However, between them, the parties had given substantial consideration to the tenure history. That assessment had been deferred due to the fact that the preliminary questions to be tried at the trial scheduled to commence on 3 April 2018 were to deal only with connection issues. It has, however, always been clear to all parties that the intensive settlement of the Adelaide plains and its surrounds resulted in the early extinguishment of the vast majority of native title in the region. The cost of determining precisely each and every parcel over which native title has not been extinguished was estimated to be in excess of \$3 million and to be a process which would take approximately 5 years to complete with the resources likely to be available to the State.

As part of the State and the Applicant reaching agreement to settle the entire matter, intense and targeted work has been performed to locate parcels within the determination area that have not been subject to extinguishing acts which wholly extinguish native title rights and interests. For the purposes of the consent orders, final agreement has been reached by the parties as to the effect on native title of the various tenures granted and acts done in the

- 22 -

determination area. The consent orders record all areas over which native title will be recognised. The parties agree that, notwithstanding any position which may subsequently come to light with regard to any parcel elsewhere in the determination area, the entire balance of that area is to be determined, once and for all, not to be subject to any native title.

80 The contents of these submissions amply illustrate the considerable benefits of a negotiated outcome in a complex claim such as this one.

A negative determination: applicable principles and conclusion

81 A negative determination can be made if the Court is satisfied that “there is no native title that can be recognised and thus protected”: see *CG (Deceased) on behalf of the Badimia People v State of Western Australia* [2016] FCAFC 67; 240 FCR 466 (North, Mansfield, Reeves, Jagot and Mortimer JJ) at [66]. In *Badimia*, the Full Court emphasised the particular care needed before the making of a negative determination, especially in relation to the Court’s satisfaction there are no other potential claimants for the recognition of native title over the claim area. However, there are examples of a negative determination being made (and upheld on appeal) where there were overlapping claims and none of the claimant groups established native title: see *Wyman on behalf of the Bidjara People v State of Queensland* [2015] FCAFC 108; 235 FCR 464 (North, Barker and White JJ).

82 In *Weribone on behalf of the Mandandanji People v State of Queensland* [2018] FCA 247, Rares J made a negative determination of native title under s 87 of the Act. There was no positive determination over any part of the claim area in that proceeding. That determination was made shortly before a trial of the claim was due to start, but in circumstances where the State and the applicant had both agreed to a negative determination.

83 At [21], Rares J described some of the circumstances which led his Honour to be satisfied that such a determination was appropriate, including the applicant and the State having the benefit of advice from experienced senior counsel, solicitors and expert anthropologists, before taking the decision. His Honour also referred to the endorsement to that course given by the claim group as a whole. Finally, his Honour referred at [21] to the divergence in the expert evidence to be presented.

84 Each of those features is present in the Kurna people’s proceeding. I have referred earlier to the significant hurdles to be faced by the Kurna people if this claim were to be subjected to a full trial. Those hurdles may have been surmounted, or they may not: but either way there would not have been a final outcome for at least another two years. In the face of a great deal

- 23 -

of evidence having been gathered, the claim group as a whole decided, in February 2018, to endorse the proposed determination, in both its negative and positive parts. The group also decided to accept an ILUA which has been proposed, and which forms a separate part of the agreement between the parties. Of course, an ILUA is not a legal precondition to a determination under s 87 or s 87A, but nor are parties precluded from deciding, on a full, free and informed basis, to include one as part of their agreement.

85 One of the benefits of a negative determination was identified by Rares J in *Weribone* at [27]:

Moreover, I am satisfied that the negative determination that the parties have agreed is appropriate. That is because it will provide substantial certainty as to the land title status to all persons, including the State, with legal or equitable interests in the land and waters in the claim area. That certainty, as is the case in respect of all consent and final determinations of native title is, of course, subject to the possibility of a future application for a variation or revocation of that determination made under s 13(1)(b), if events subsequently occur that cause the determination no longer to be correct or the interests of justice require its variation or revocation (s 13(5)).

86 In relation to land such as that covered by the claim in this proceeding, the benefit of certainty to other holders of proprietary interests is considerable.

87 The applicant and the State submit that no other claim group has lodged a claim over the claim area since the claim was filed in 2001, apart from the Ramindjeri. I have dealt above with the native title application by the Ramindjeri, the position of the Ramindjeri Heritage Association as an inactive respondent to this proceeding, and finally the withdrawal of the RHA as a respondent. I have also dealt above with the application by Mr Coughlan, who asserts Peramangk heritage, to be joined as respondent to the proceeding.

88 I am satisfied that it is unlikely any other claim group exists which could make a case, in another proceeding, for a positive determination in respect of the limited portions in the claim area that have not been subject to acts extinguishing native title. I accept that the Court can be satisfied there is no other group which may hold native title rights and interests in the area to be covered by the negative determination. I am also satisfied that a negative determination over those parts of the determination area except for the seventeen parcels identified in Schedule 3 of the determination, will provide certainty to all those with proprietary interests in the claim area, and will resolve the question of native title claims over the land encompassing the city of Adelaide on a final basis. There is a public interest in finality of that kind.

- 24 -

89 Further, I am satisfied it is appropriate to dismiss the remaining parts of the claim area rather than make a negative determination. In the south, there is some evidence to suggest the traditional country of another group or groups may have extended into the southern part of the Kurna area as claimed. In the north, based on the evidence before the Court, the traditional country of other groups may also extend into areas in the north of the claim area, adjacent to the areas they already claim. The dismissal of the Kurna claim will not prevent claims by other groups over these areas.

The Kurna people, the identified apical ancestors, and Kurna traditional law and custom in connection with country in the claim area

90 Although as I have noted, it is no part of the Court's function under s 87 to assess and make findings about the matters set out in s 223 of the Native Title Act, nevertheless, it is this determination, and these reasons for judgment, which will stand as the permanent record for the claim group of the judicial recognition of their native title rights. Since that is the case, it is in my opinion appropriate to say something about the Kurna people and their country, as revealed in the evidence before the Court.

91 The material before the Court includes expert anthropological, genealogical and historical reports. The views of the experts differed widely. The Court had previously received oral and written preservation evidence from four members of the claim group in 2013 and 2014. The applicant has also filed outlines of proposed evidence from twelve lay witnesses who offer contemporary evidence that they form part of a recognisable society that acknowledges and observes traditional laws and customs through which they enjoy a connection to the land in the determination area.

92 The original Aboriginal custodians of land in the determination area were affected in a unique way by the settlement of the Province of South Australia, including the city of Adelaide and its surrounds. After the settlement of the Province of South Australia and establishment of the city of Adelaide, by reason of government policies, most Aboriginal people were moved away from the determination area to reserves on the Eyre and Yorke Peninsulas and at the mouth of the River Murray. Many Aboriginal people from surrounding areas were drawn to the city of Adelaide. At sovereignty, Aboriginal people lived in the determination area. From settlement, these people were known as the "Adelaide Tribe" and they resided in and occupied this area. The Kurna people are the traditional descendants of the Adelaide Tribe. Membership of the contemporary Kurna society generally depends on a person having a

- 25 -

parent who was a member of the Adelaide Tribe or some larger grouping of Aboriginal people. The society also granted membership to Aboriginal children who were adopted members of the society and brought up as members of the society. The claim group (as amended in 2018) comprises persons who are descendants (including by adoption) of Kudnarto; Father of Charlotte; Father of King Rodney, known as Williamy or Tairmunda; Nancy Mitchell; Rathoola; Mary Monarto (also known as Mary Wilkins or Nellie Raminyemmermin); Sam Stubbs; Agnes Waddick (also known as Agnes Horrocks or the mother of Augusta Horrocks); James Goldsmith; David Bews or Bewes; and Mary McCarthy (sometimes known as Mary McCarty), and who are recognised by the other native title holders under traditional laws and customs as having rights and interests in the determination area.

- 93 The claim group's beliefs and behaviour are regulated or influenced by laws and customs handed down from previous generations, including the significance of gender restrictions, dreaming and other stories and the ongoing transmission of those stories by elders to younger generations, and sacred sites, including restricted men's and women's sites. One of the most widely recognised Kaurna dreaming stories is Tjilbruke Dreaming, which is one of the Kaurna creation mythologies. The basis of the Tjilbruke Dreaming is the betrayal and murder of Tjilbruke's nephew Kulutuwi by scheming relatives, and Tjilbruke's subsequent pursuit and punishment of the killers and their accomplices. The geographic range of the creation mythology extends from the southern end of the Fleurieu Peninsula east of Cape Jervis, northwards along the entire coastline to the Lefevre Peninsula at the mouth of the Port River and inland across the Adelaide Plains, particularly at Warriparinga on the Sturt River at Marion and along the western Mt Lofty Ranges from Mt Hayward in the south, north to Brechungung.
- 94 An example of restrictions upon both knowledge and access to places of significance in the claim area is in relation to Ngankiparri (Onkaparinga River). There are mythologies associated with the River and it is also historically significant, as its banks served as living and refuge places for women, ceremony and initiation places for both men and women, and there were several routes that passed along and across the river, with associated meeting, camping and burial places. It is a culturally sensitive and highly significant ethnographic site for Kaurna women in particular.

- 26 -

95 For many years, members of the claim group have played an active role in providing cultural guidance concerning the application of Aboriginal heritage legislation and concerning the repatriation of burial, and reburial of human remains. The Greenfields village and burial mound situated at the rear of an olive oil processing factory on Greenfields Drive in the northern Adelaide suburbs and the Seaford Rail Bridge Cemetery site, where seventeen traditional burials were disturbed, recovered and reburied are notable in this regard.

96 Members of the claim group also attest to carrying out other activities in the claim area, including hunting, fishing, collecting flowers, fruit and fresh water, cooking and teaching.

97 The Court accepts that while there has been inevitable adaption and evolution of the laws and customs of the Kaurna people, an inference can be drawn that the pre-sovereignty normative society has continued to exist, and that Kaurna people today acknowledge and observe a body of laws and customs which is substantially the same normative system as that which existed at sovereignty, and connected the Kaurna people to the determination area.

Nomination of a prescribed body corporate

98 Either at the time of making an approved determination of native title, or as soon as practicable after having done so, pursuant to s 55 of the Native Title Act the Court must make such determinations as are required by ss 56 and 57 of the Native Title Act, relating to whether the native title is to be held on trust and if so by whom (s 56) or whether a prescribed body corporate will perform the non-trustee functions as set out in s 57(3) of the Native Title Act. In the present case, paragraph [18] of the proposed consent determination is to the effect that the native title is not to be held on trust.

99 The s 87 agreement signed by the parties seeks a determination that the Kaurna Yerta Aboriginal Corporation ICN 4043 be the prescribed body corporate for the purpose of s 57(2) to perform the functions set out in s 57(3). That nomination is supported by two affidavits of Timothy Maxwell Campbell affirmed 20 and 22 February 2018. Mr Campbell deposes that at a meeting of the claim group on 18 February 2018, the Kaurna Yerta Aboriginal Corporation was nominated by the applicant to be their prescribed body corporate. Accordingly, the Court determines that the Kaurna Yerta Aboriginal Corporation is to be the prescribed body corporate for the purpose of s 57(2) and that it is to perform the functions set out in s 57(3) of the Native Title Act.

- 27 -

Conclusion

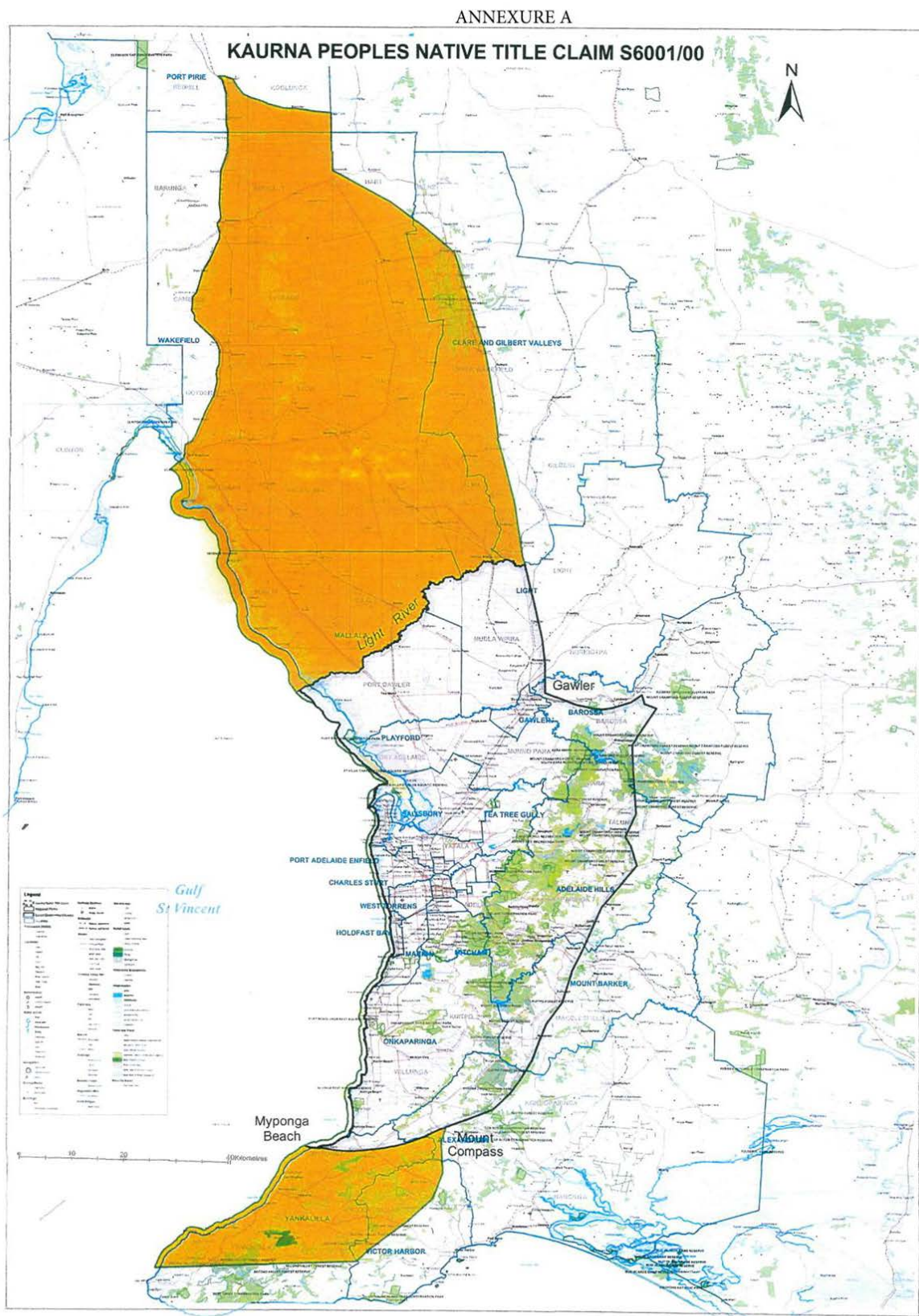
- 100 The Kaurua people and the State are to be congratulated on reaching agreement in this claim. The other respondent parties have, appropriately, accepted the position taken by the State, and they are to be congratulated for that constructive approach.
- 101 The sustained efforts of Mansfield J and White J in attempting to bring this claim to a resolution should be acknowledged.
- 102 The Court also acknowledges the substantial efforts of Registrar Colbran and Registrar Parkyn in the case management of this proceeding and, over the last 18 months or so in particular, in focusing the parties' attention, through mediation and expert conferences, on the real issues in dispute. I have no doubt their efforts contributed to this outcome. The Court's native title work could not be effectively conducted without the tremendous assistance the judges receive from their registrars in this practice area.
- 103 There will be orders in the form sought.

I certify that the preceding one hundred and three (103) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Mortimer.



Associate:

Dated: 21 March 2018



ANNEXURE B



DISCLAIMER
This map has been produced from data or documents of varying accuracy and sources. The State of South Australia expressly disclaims all and any liability to any person, in respect of anything done or omitted to be done by any person in reliance, whether in part or entirely, upon the whole or any part of the information provided on this map.

Kurna Peoples Determination Area



LSG GIS Unit 2017064_026 (18/03/2018)