



NOTICE OF SPECIAL MEETING

To: Mayor Bill Spragg

Councillors	Ward
Councillor Ron Nelson Councillor Jan-Claire Wisdom	Manoah
Councillor Ian Bailey Councillor Jan Loveday	Marble Hill
Councillor Kirrilee Boyd Councillor John Kemp Councillor Nathan Daniell	Mt Lofty
Councillor Andrew Stratford Councillor Lynton Vonow	Onkaparinga Valley
Councillor Linda Green Councillor Malcolm Herrmann	Torrens Valley

Notice is hereby given pursuant to the provisions under Section 82 of the Local Government Act 1999 that a Special meeting of the Council will be held on:

Tuesday 13 March 2018
6.30pm
36 Nairne Road, Woodside

Business of the meeting:

1. Kurna Native Title Claim Settlement

A copy of the Agenda for this meeting is supplied under Section 83 of the Act.

Meetings of the Council are open to the public and members of the community are welcome to attend. Public notice of the Agenda for this meeting is supplied under Section 84 of the Act.

Andrew Aitken
Chief Executive Officer



AGENDA FOR SPECIAL MEETING

Tuesday 13 March 2018
6.30pm
36 Nairne Road, Woodside

ORDER OF BUSINESS

Council Vision

Nurturing our unique place and people

Council Mission

Delivering activities and services which build a resilient community, sustain our built and natural environment and promote a vibrant economy

1. COMMENCEMENT

2. OPENING STATEMENT

“Council acknowledges that we meet on the traditional lands of the Peramangk and Kurna people and we recognise their connection with the land.

We understand that we do not inherit the land from our ancestors but borrow it from our children and in this context the decisions we make should be guided by the principle that nothing we do should decrease our children’s ability to live on this land.”

3. APOLOGIES/LEAVE OF ABSENCE

3.1. Apology

3.2. Leave of Absence

4. DECLARATION OF INTEREST BY MEMBERS OF COUNCIL

5. BUSINESS OF THE MEETING

5.1. Kuarna Native Title Claim Settlement

6. CLOSE SPECIAL COUNCIL MEETING

**ADELAIDE HILLS COUNCIL
SPECIAL COUNCIL MEETING
Tuesday 13 March 2018
AGENDA BUSINESS ITEM**

Item: 5.1

Originating Officer: David Waters, Director Community and Customer Service

Responsible Director: David Waters, Director Community and Customer Service

Subject: Kurna Native Title Claim Settlement

For: Decision

SUMMARY

The State of South Australia ("State") and the Kurna Yerta Aboriginal Corporation ICN 4043 RNTBC ("Kurna"), propose to settle the current Native Title Claim (NTC) prior to the trial scheduled to commence on 9 April 2018.

The State and Kurna have agreed on the terms of the settlement which is captured in a consent determination lodged with the Federal Court on 9 March 2018 (*Appendix 1*).

As a registered respondent to the Kurna NTC, the Council must determine whether or not it consents to the settlement as set out in the consent determination. Should consent be withheld by any respondent, the matter may proceed to a full trial, which is not a desired outcome for either the State or the Kurna.

The purpose of this report is to seek the Council's decision on whether or not to consent to the settlement as set out in the consent determination.

RECOMMENDATION

Council resolves:

1. That the report be received and noted.
 2. That the Council:
 - a. as regards the land under its care, control and management, is satisfied that its interests in the land identified in Schedule 3 of the consent determination attached as *Appendix 1* are properly preserved by the terms of the proposed settlement of the Kurna Native Title Claim; and
 - b. provided that the list of parcels and interests in Schedule 3 of the consent determination remains unchanged from the version attached as *Appendix 1* and provided that any other provisions which affect Local Government interests remain unchanged from that version, is satisfied with the terms of, and consents to, the consent determination.
 3. That the Chief Executive Officer be, and is hereby, authorised to instruct legal counsel to make a submission for and on behalf of the Council to the Federal Court in these terms.
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1. GOVERNANCE

➤ Strategic Management Plan/Council Policy

Goal 2 Activities and opportunities to connect
Strategy 2.1 We recognise and respect Aboriginal culture and the descendants of our first people. We will implement a Reconciliation Action Plan

While the matter under consideration is not strictly part of the Council's cultural awareness activities, the determination of native title can have profound significance to Aboriginal people and in many respects is a formal recognition of their rights and customs.

➤ Legal Implications

Native title is the name Australian law gives to the traditional ownership of land and waters that have always belonged to Aboriginal people according to their traditions, laws and customs. Following the introduction of the Commonwealth *Native Title Act 1993*, resulting from the High Court Mabo judgement, Aboriginal people are now able to seek recognition of their native title to land. Importantly, native title cannot exist over land which has been validly granted by the Government (e.g. freehold land) and land used for public works such as roads, schools and hospitals. Thus, native title effectively only applies to Crown land.

Native title does not affect any existing rights of tenure and use of reserves for their declared purpose. Native title does, however, confer certain rights on the title holders and these are described in the native title determination.

For native title to be established, claimants must lodge a native title application over an area (the determination area). The claim is ultimately determined through either a contested Federal Court hearing or a settlement detailed in a consent determination made by the Federal Court.

In the case of the Kurna NTC, the State and the Kurna have both agreed to settle the claim through a consent determination rather than a contested hearing.

As a listed respondent to the claim, Adelaide Hills Council must determine and advise the Court whether or not it consents to the consent determination. Importantly, because native title only affects Crown Land, it is a matter for the State Government and not the Council, to respond to and either contest, accept or negotiate native title claims.

➤ Risk Management Implications

The provision of consent to the proposed consent determination will assist in mitigating the risk of:

The Council's position being challenged in Court, leading to significant legal costs being incurred.

Inherent Risk	Residual Risk	Target Risk
Extreme (3A)	Extreme (3A)	Low

As suggested in the legal advice (**Appendix 2**), withholding consent will trigger a full Federal Court trial, in which case it is highly likely that the State and the Kurna could join against the Council and the Council could be exposed to very high legal costs. This report explains why it is not considered necessary to withhold consent, and thereby eliminate this risk altogether.

➤ **Financial and Resource Implications**

The Administration does not expect there to be any financial implications to Council arising from the settlement of the Kurna NTC if Council consents to the settlement proposed in the consent determination.

If the Council withholds consent however, the Council will need to become active in court proceedings, which will necessitate significant legal costs. Indeed, if the matter continues to trial, the State and the Kurna claimants may join in action against the Council, the Council could be required to pay the full costs of the trial which has been estimated to be in the millions of dollars.

➤ **Customer Service and Community/Cultural Implications**

For Aboriginal people, “native title is a property right which reflects a relationship to land which is the very foundation of Indigenous religion, culture and well-being” (Australian Human Rights Commission). Native title acknowledges the rights of Aboriginal people to be on land and undertake certain activities as listed in the determination.

➤ **Environmental Implications**

Not applicable.

➤ **Engagement/Consultation conducted with Council Committee, Regional Subsidiary, Advisory Group, the Administration and Community**

Council Committees: Not applicable.
Advisory Groups: Not applicable.
Administration: Manager Property Services.
Community: Not applicable.

2. BACKGROUND

The Kurna NTC was originally filed in October 2000. It covered 1,680km² of land comprising the metropolitan Adelaide area, areas north to Broughton, areas south to Cape Jervis and much of the land near and within the Adelaide Hills. Indeed, the claim area covered most of the Adelaide Hills Council district. Through negotiation with the State, the final determination area is somewhat smaller, although it still covers the same extent within the Adelaide Hills Council district. A map showing the determination area is contained in the consent determination (**Appendix 1**) (refer External Boundary of Determination Area Mapsheet 1).

Much of the 17 years since the claim was filed has been taken up in the applicants preparing their case, the State preparing its response and various legal arguments. Council Members will also be aware of the (now defunct) Indigenous Land Use Agreement which was negotiated between the claimants and a number of affected Councils in anticipation of the claim being determined.

No native title claim has ever been lodged over land in the Adelaide Hills Council district outside of the determination area for the Kurna NTC, nor has a counter claim been made over any part of the Kurna NTC area within the district by people of any other Aboriginal Nation.

3. ANALYSIS

Although the Kurna NTC was listed to go to a contested hearing before the Federal Court on 9 April 2018, in recent weeks the State and the Kurna have determined to settle the matter through a consent determination.

The Council has long recognised that both the Kurna and Peramangk have connections to land across the district. The determination of native title has the effect of formalising native title rights on particular parcels of land and extinguishing native title on all other parcels within the determination area. The determination of the Kurna NTC does not affect the rights and obligations conferred by the *Aboriginal Heritage Act 1988*.

Although it may be perceived otherwise, the determination does not mean that Aboriginal people of other Nations do not have a cultural connection to land within the determination area, nor does it mean that the Council cannot recognise that connection. The determination does, however, effectively rule out any future native title claims within the determination area.

The matter before the Council is not about determining whether or not native title should be determined in favour of the Kurna, but rather it is about whether the Council has any concerns regarding native title being determined over the specific parcels of land in which the Council has an interest and whether the determination adequately protects the existing use and rights the Council has over those parcels.

The parcels of Crown Land over which the Council has care and control and are proposed to be determined as having native title are shown in the following table:

Parcel Identifier	Hundred	General Area	Other interests (Council with care, control & management)
U C H105500S1464	Noarlunga	Mylor	Parklands, Hampton Rd (Adelaide Hills Council)
U n H105500S1467	Noarlunga	Mylor	Parklands (Adelaide Hills Council)
C H105500S1471	Noarlunga	Mylor	Water Reserve, Vogt Road (Adelaide Hills Council)
i H105500S1595	Noarlunga	Mylor	Water Reserve (Adelaide Hills Council)
M e H105500S3932	Noarlunga	Mylor	Parklands, [Not sporting grounds, etc that are on the same Crown Record] (Adelaide Hills Council)
m H105700S393	Para Wirra	Kersbrook	Recreation Reserve, Parking Bay on South Para Road (Adelaide Hills Council)
e r s H105700S426	Para Wirra	Kersbrook	Roadway at northern end. Conservation Heritage Agreement under s23 <i>Native Vegetation Act 1991</i> in progress (Adelaide Hills Council)
a r e H105700S490	Para Wirra	Kersbrook	Water Reserve, Powerline Easement to Electranet Pty Ltd (Adelaide Hills Council)

Council Members are referred to the following map sheets in the proposed determination (**Appendix 1**) for the particulars:

- For the boundary of the determination area with the district, see External Boundary of Determination Area Mapsheet 9 of 20
- For the particular parcels of land under care and control of the Adelaide Hills Council which will be determined as having native title, see Native Title Land Mapsheets 3, 5, 6, 7 and 8.

In the short space of time available since advice of the proposed settlement was provided, the Administration has worked with legal counsel to ensure the Council's existing interests in the subject parcels of land will be preserved under any native title determination.

The Administration does not consider there to be any appreciable hindrance to any current or proposed use of the parcels arising from the determination of native title.

Legal advice received in relation to this matter is contained in **Appendix 2** and is reasonably self-explanatory. Suffice to say, the legal advice strongly suggests the Council provide consent.

The Administration is aware that the City of Mitcham is also considering this matter on 13 March 2018, in relation to Crown Land under its care and control which is subject to the proposed settlement. Most Councils in the determination area are unaffected as the number of parcels subject to native title are relatively few.

4. OPTIONS

Council has the following options:

I. Consent to the proposed determination (recommended)

The Council's interests in the Crown land which is in its care, control and management and which will have native title recognised upon it, have been secured in the terms of the settlement. As such there is no appreciable adverse impact of the proposed determination upon the Council.

II. Withhold consent (not recommended)

Given that the State is consenting to the determination (as will be numerous other respondents from a range of sectors and industries), to withhold consent in spite of this broad support would require a fairly persuasive explanation to the Court and other parties. Further, if the Council still maintained its opposition despite almost certain criticism from the Court, then this would stop the consent determination, and create a full-scale native title trial for which it is possible that the Council would have to pay the costs.

III. Withdraw as a respondent (not recommended)

Withdrawal as a respondent would deprive the Council of its rights under proposed Order 4 of the Kurna determination regarding applying to the Court to determine the location and boundaries and effect on native title of public works on native title land.

5. APPENDICES

- (1) Draft consent determination
- (2) Legal advice concerning the proposed consent determination (letters dated 3 March 2018 and 8 March 2018)

Appendix 1

Draft Consent Determination

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

.....
.....
.....
.....
.....
.....

(Name of Party/ies)

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:

.....
Signature

.....
Name

.....
Firm

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

DRAFT MINUTES OF CONSENT DETERMINATION

The Applicant and the Respondent to this proceeding have reached agreement on the terms of orders of the Federal Court of Australia in relation to the Determination Area.

The terms of the agreement are that each party consents to the making of orders and a determination of native title in the terms that follow.

Pursuant to Order 4 of the Orders made on 7 March 2018, the Applicant and the First Respondent sign that agreement.



.....
Tim Campbell
Campbell Law
Solicitor for the Applicant

Dated: 9/3/18



.....
Peter Tonkin
Crown Solicitor's Office
Solicitor for the First Respondent
Dated:

Filed on behalf of (name & role of party)	State of South Australia First Respondent		
Prepared by (name of person/lawyer)	Peter Tonkin		
Law firm (if applicable)	Crown Solicitor's Office		
Tel	08 8207 1691	Fax	08 8204 9576
Email	Peter.tonkin@sa.gov.au		
Address for service (include state and postcode)	45 Pirie Street ADELAIDE SA 5000		

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

JUDGE: **MORTIMER J**

DATE OF ORDER: **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 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.
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.

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 Kurna 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..

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 Kaurua persons, are
 - i. spouses of Kaurua 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
 - (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;
 - 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;
 - 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 *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.

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.

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

Schedules

SCHEDULE 1 – Location of and areas comprising the Determination Area

Kaurna Peoples

External Boundary Description

Commencing at a point Longitude 138.348510 East, Latitude 34.586086 South [being a point on Lowest Astronomical Tide], then north-easterly in a straight line to the intersection of the centreline of the Light River estuary with the edge of the mangroves at 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

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

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 in a straight line to the intersection of the centreline of the Light River with Mean High Water Mark at 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 between Longitude 138.733123 East, Latitude 34.350420 South and Longitude 138.741236 East, Latitude 35.381125 South [being a point on the eastern portion of the boundary of Kaurua Peoples Native Title Claim (SAD6001/2000)]. Then generally south-easterly, 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

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

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

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 its intersection with Lowest Astronomical Tide at Longitude 138.387715 East, Latitude 35.371280 South. 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 between Longitude 138.471767 East, Latitude 34.788494 South and Longitude 138.469978 East, Latitude 34.785741 South [being a point on the western portion of the boundary of Kurna Peoples Native Title Claim (SAD6001/2000)]. Then north-westerly in a straight line to coordinate point Longitude 138.469978 East, Latitude 34.785741 South then north-westerly in a straight line towards coordinate point Longitude 138.469293 East, Latitude 34.782299 South to its intersection with Lowest Astronomical Tide [being along a portion of the western portion of the boundary of Kurna 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 between Longitude 138.483887 East, Latitude 34.751241 South and Longitude 138.485313 East, Latitude 34.750288 South [being a point on the western portion of the boundary of Kurna 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
138.469978	34.785741
138.485313	34.750288
138.485731	34.749977

138.486045	34.749799
138.489722	34.747342
138.490255	34.747236
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 a portion of the western portion of the boundary of Kurna Peoples Native Title Claim (SAD6001/2000)]. Then north-westerly in a straight line to its intersection with Lowest Astronomical Tide at Longitude 138.501626 East, Latitude 34.742782 South. 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 138.414137 East, Latitude 34.656095 South and Longitude 138.416233 East, Latitude 34.652958 South [being a point on the western portion of the boundary of Kurna Peoples Native Title Claim (SAD6001/2000)]. 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
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
138.376933	34.610557

then north-westerly in a straight line towards coordinate point Longitude 138.376838 East, Latitude 34.610454 South to its intersection with Lowest Astronomical Tide [being along a portion of the western portion of the boundary of Kurna 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.

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

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.

SCHEDULE 2 - Maps

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

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Department of Planning, Transport & Infrastructure SA
7 November 2017

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Kaurna Peoples Determination Area

**External boundary of
Determination Area**

Mapsheets 1 of 20



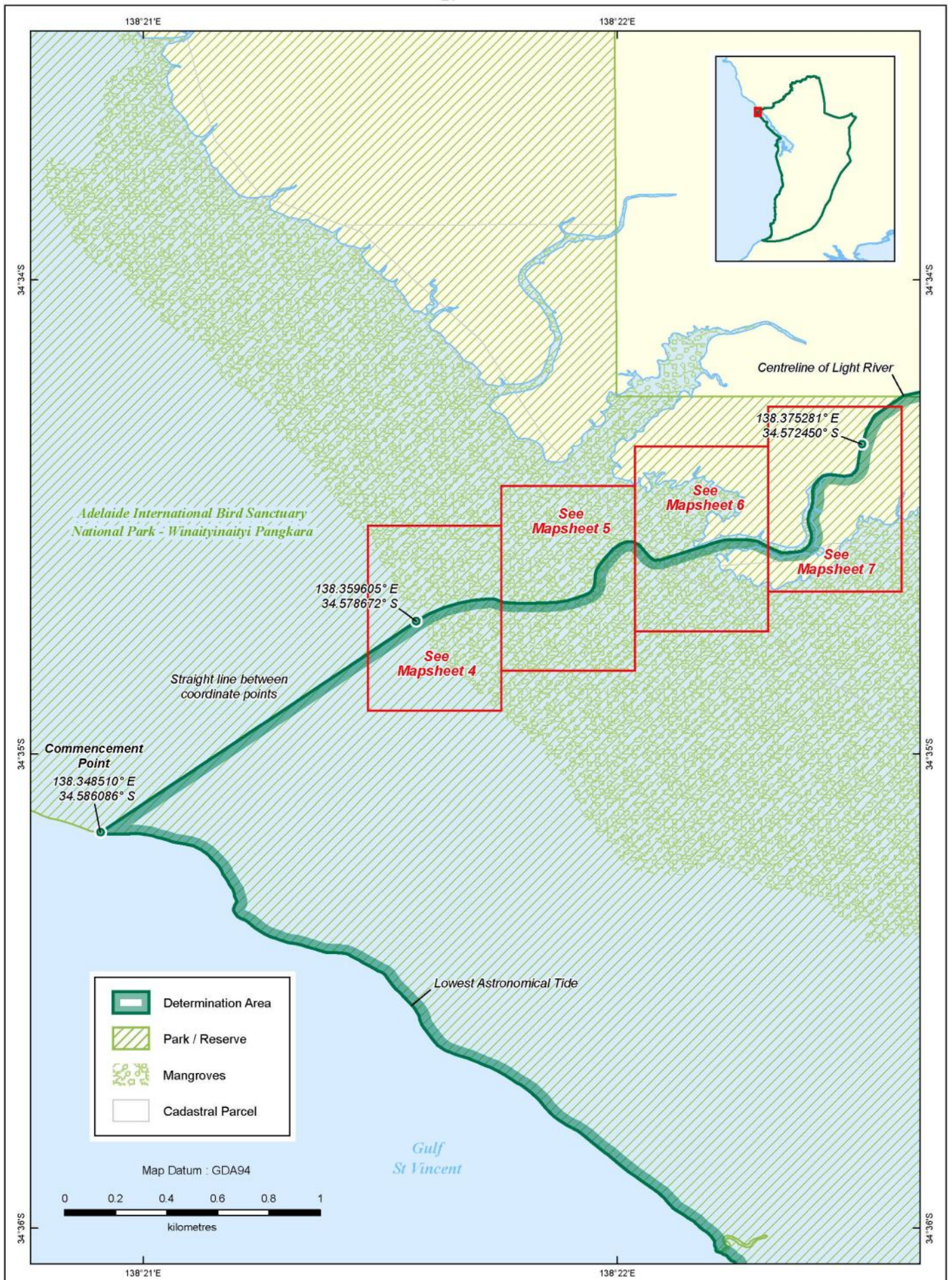


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Kaurna Peoples Determination Area
External boundary of Determination Area
Mapsheet 2 of 20





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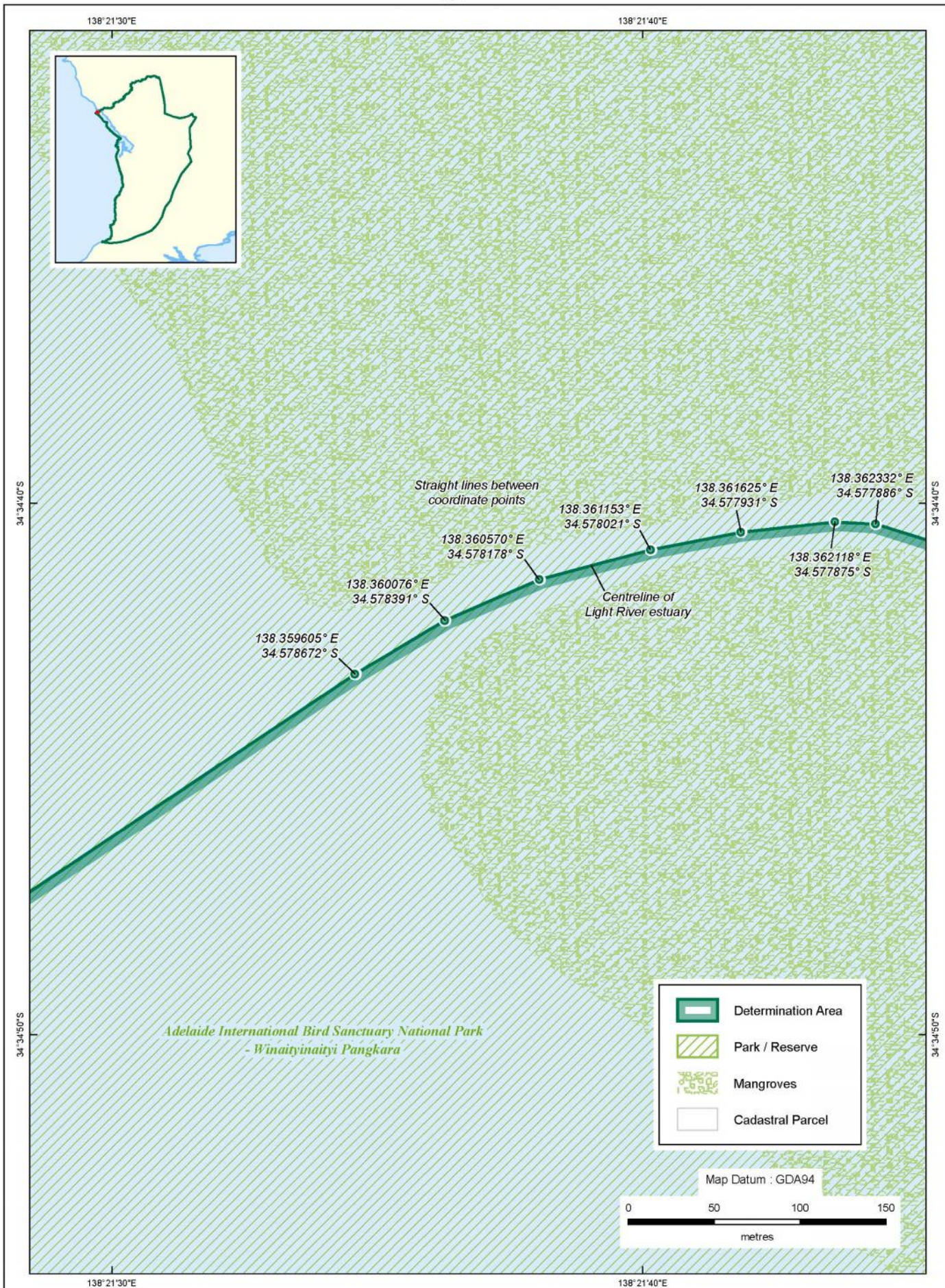
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**Kaurna Peoples Determination Area
External boundary of
Determination Area**

Mapsheets 3 of 20



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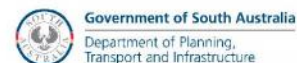


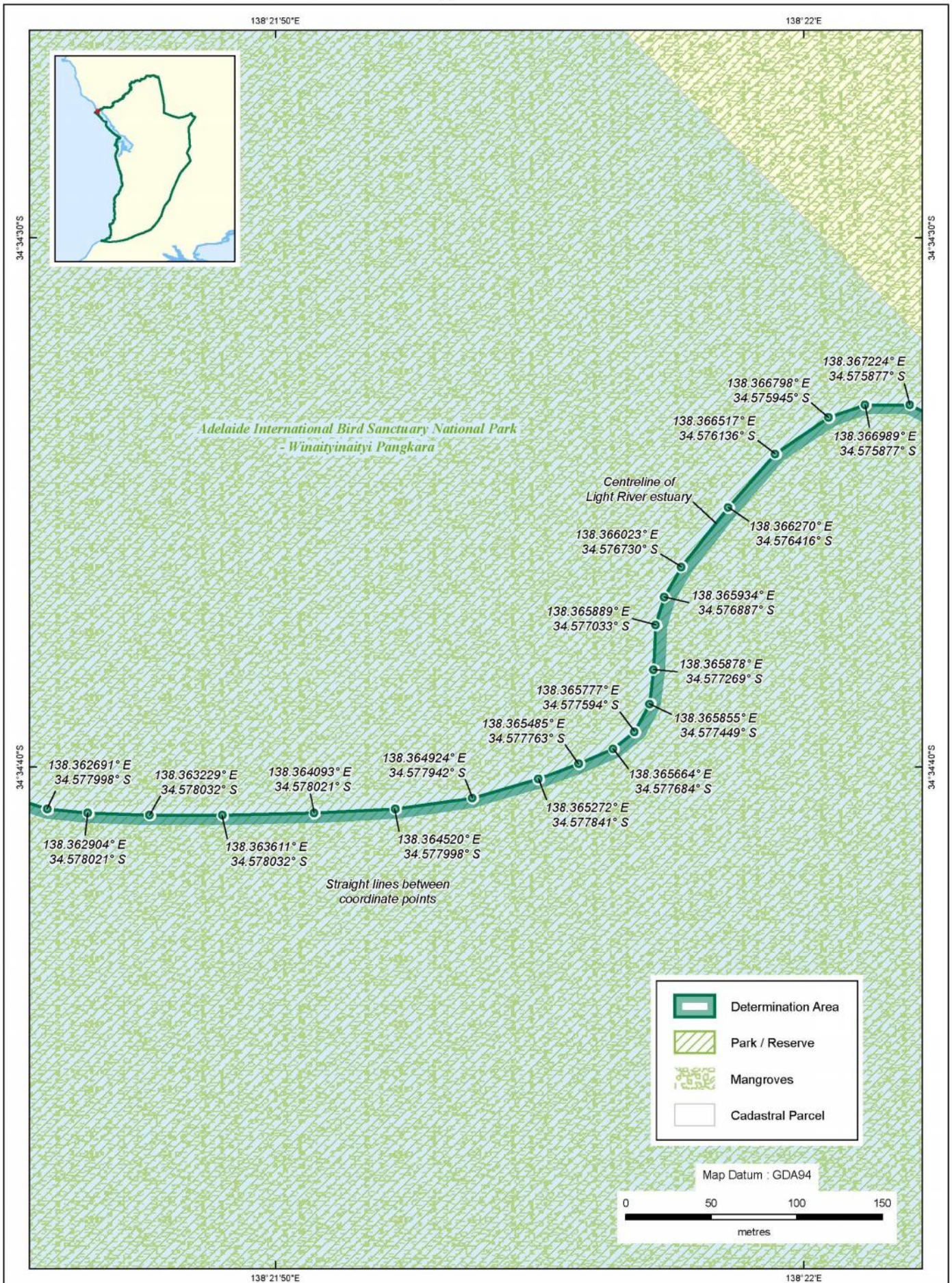
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Kaurna Peoples Determination Area
External boundary of
Determination Area
Mapsheet 4 of 20





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Kaurna Peoples Determination Area
External boundary of
Determination Area

Mapsheets 5 of 20





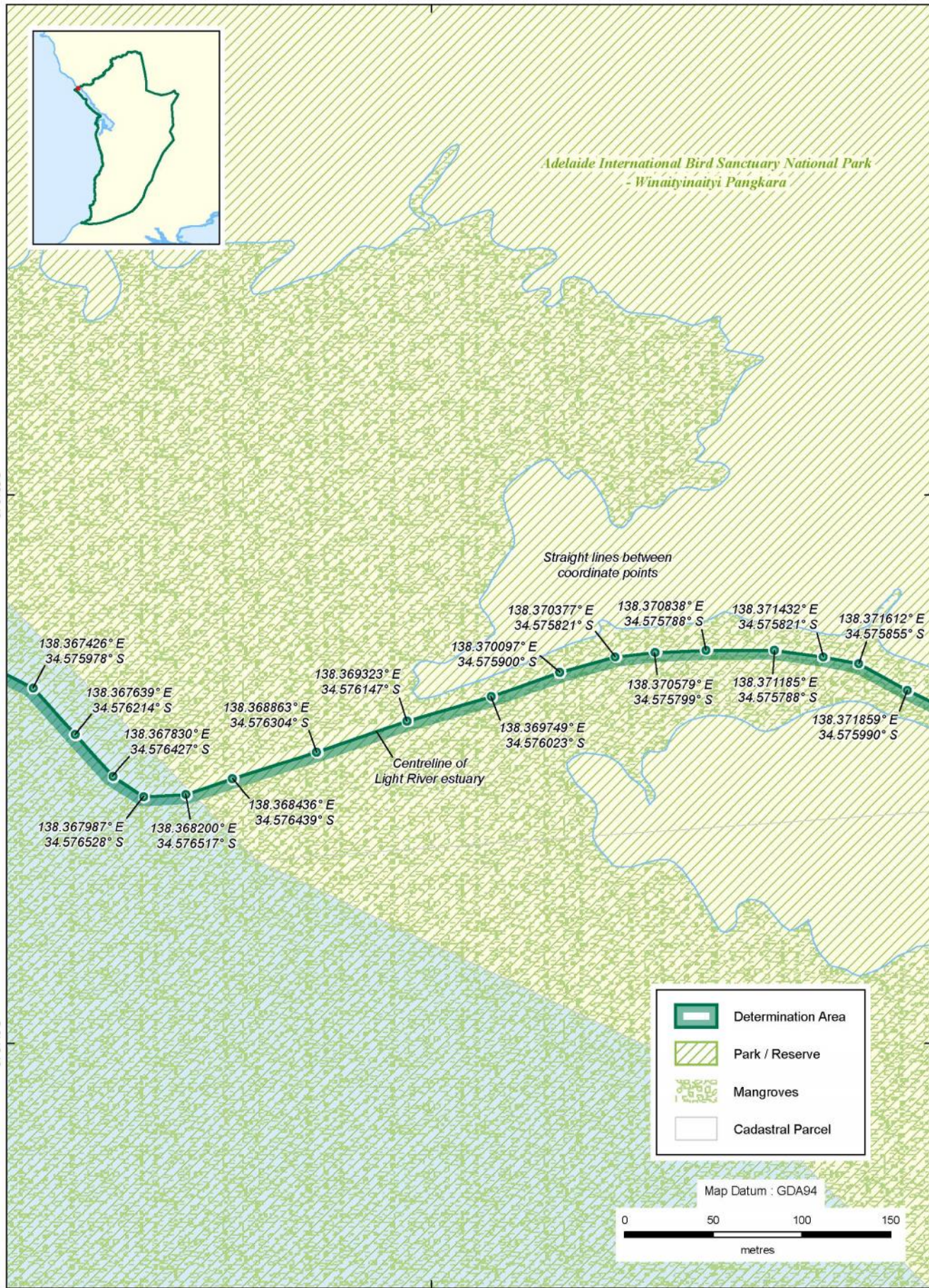
Adelaide International Bird Sanctuary National Park
- Winaitiyaityi Pangkara

34°34'30"S

34°34'40"S

34°34'30"S

34°34'40"S



138.367426° E
34.575978° S

138.367639° E
34.576214° S

138.367830° E
34.576427° S

138.367987° E
34.576528° S

138.368200° E
34.576517° S

138.368863° E
34.576304° S

138.368436° E
34.576439° S

138.369323° E
34.576147° S

138.370097° E
34.575900° S

138.369749° E
34.576023° S

138.370377° E
34.575821° S

138.370838° E
34.575788° S

138.370579° E
34.575799° S

138.371432° E
34.575821° S

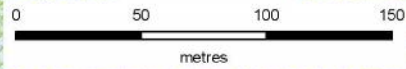
138.371185° E
34.575788° S

138.371859° E
34.575990° S

138.371612° E
34.575855° S

	Determination Area
	Park / Reserve
	Mangroves
	Cadastral Parcel

Map Datum : GDA94



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

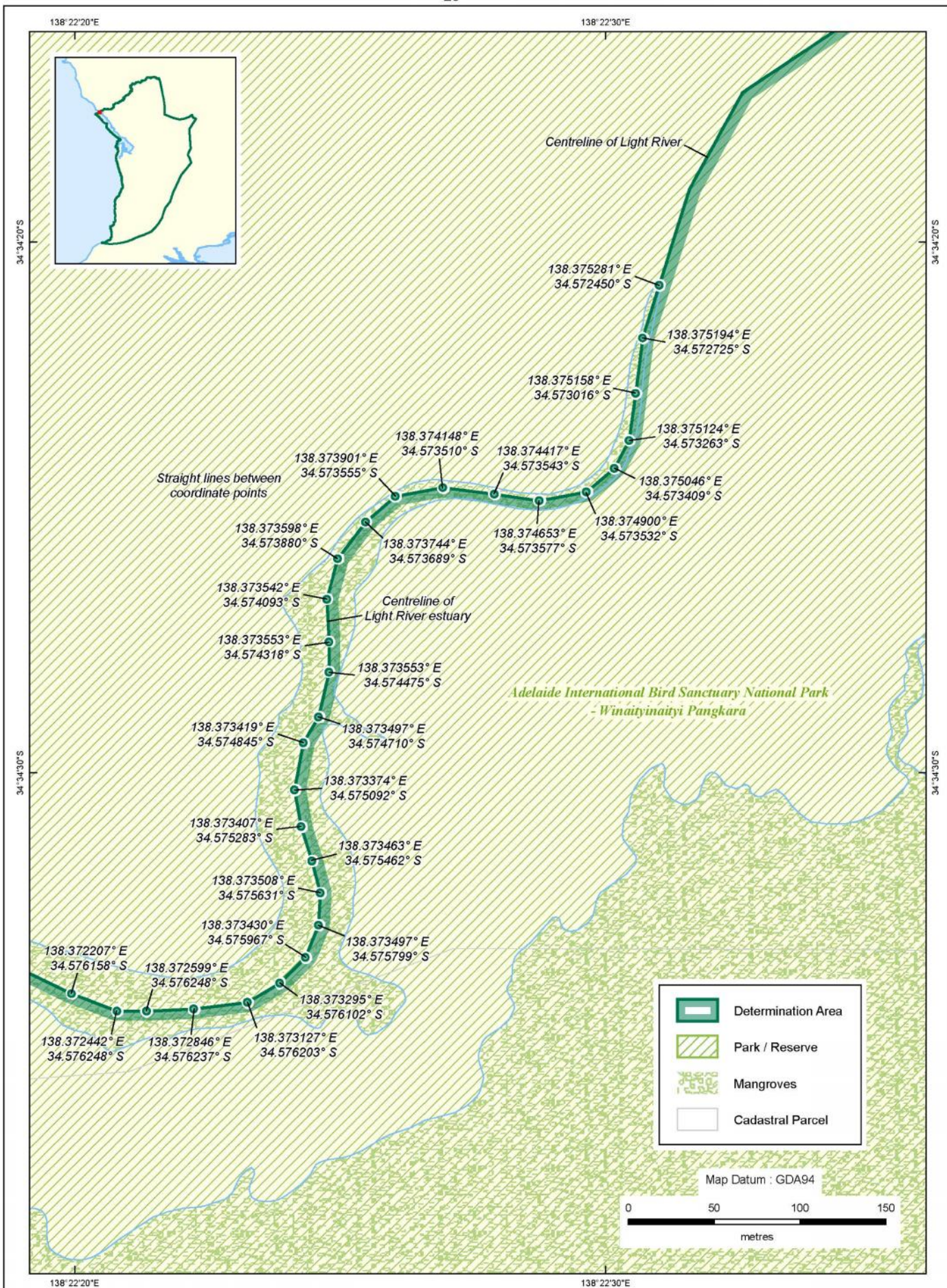
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Kaurna Peoples Determination Area
External boundary of
Determination Area

Mapsheet 6 of 20





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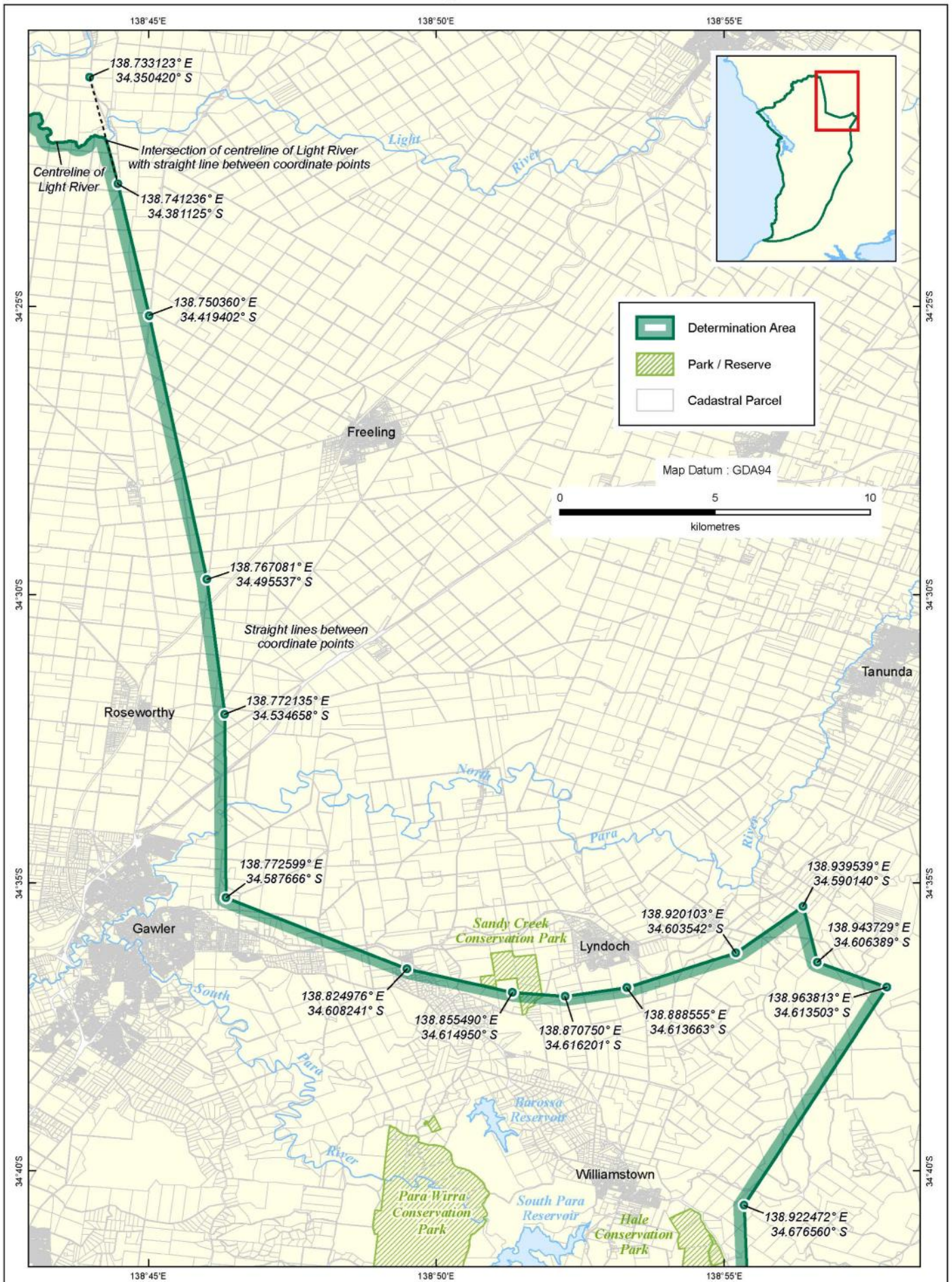
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Kaurna Peoples Determination Area
External boundary of
Determination Area

Mapsheet 7 of 20



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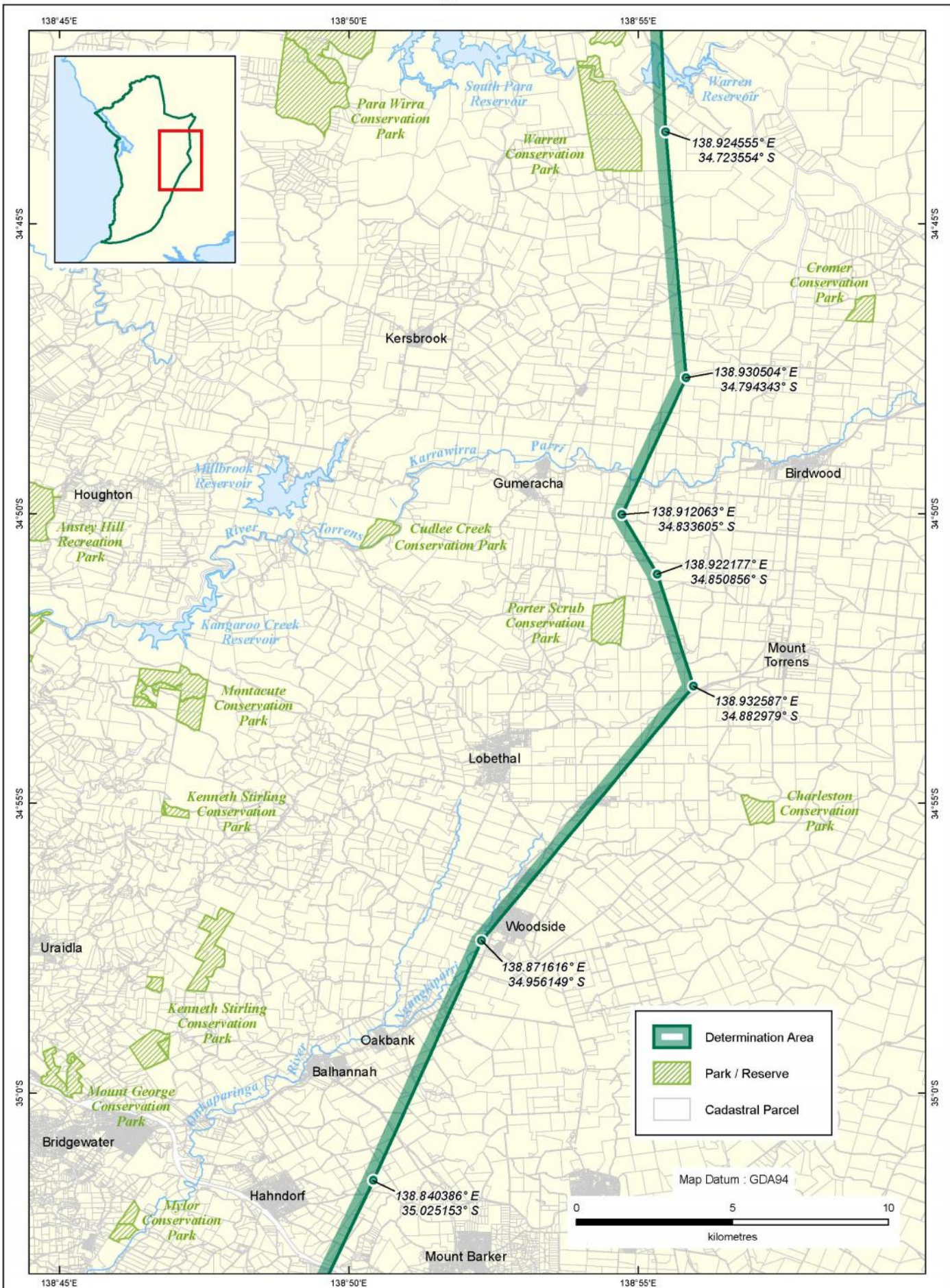
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Karna Peoples Determination Area
External boundary of
Determination Area
Mapsheet 8 of 20



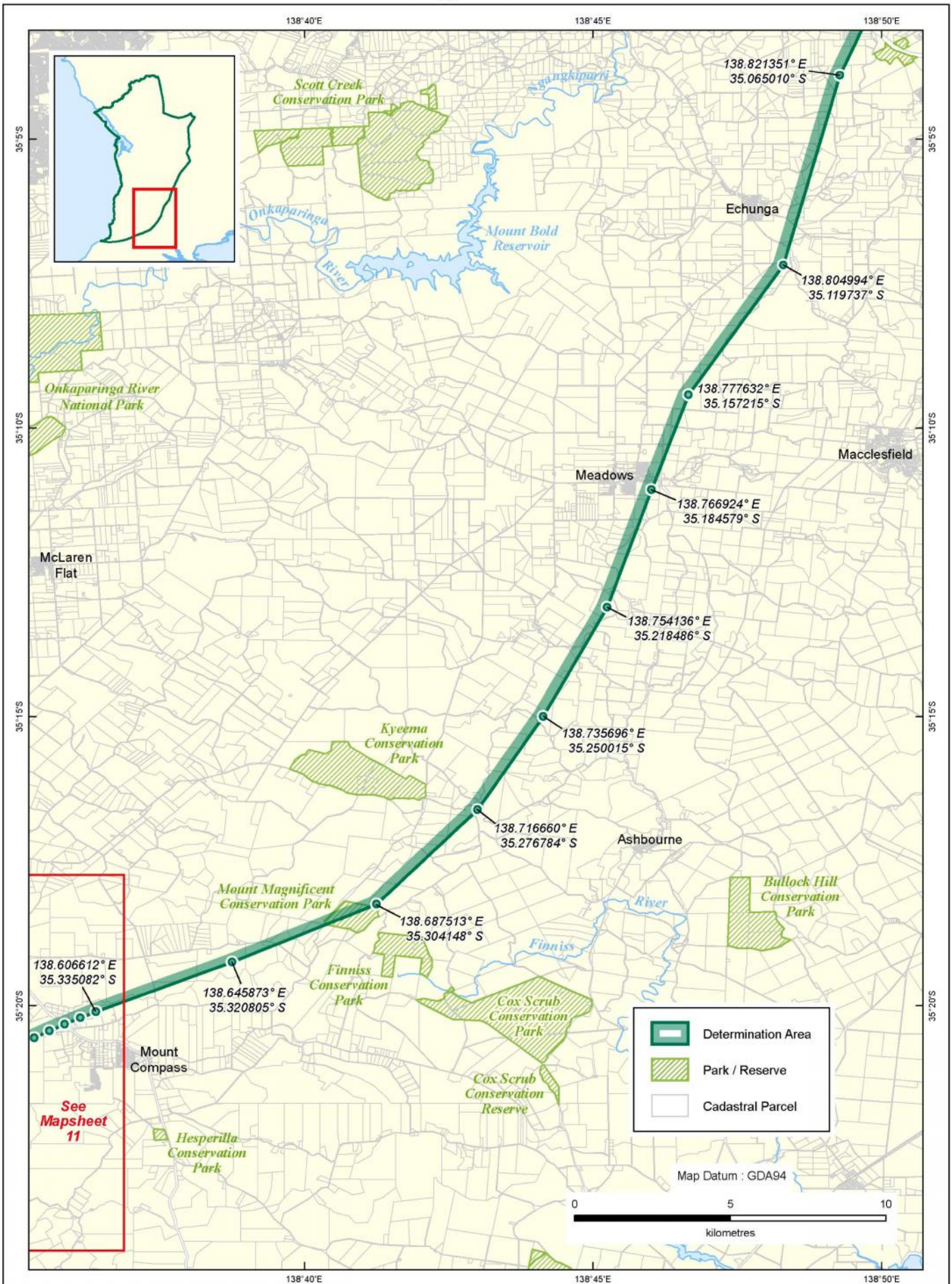


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Kurna Peoples Determination Area
External boundary of
Determination Area
Mapsheet 9 of 20





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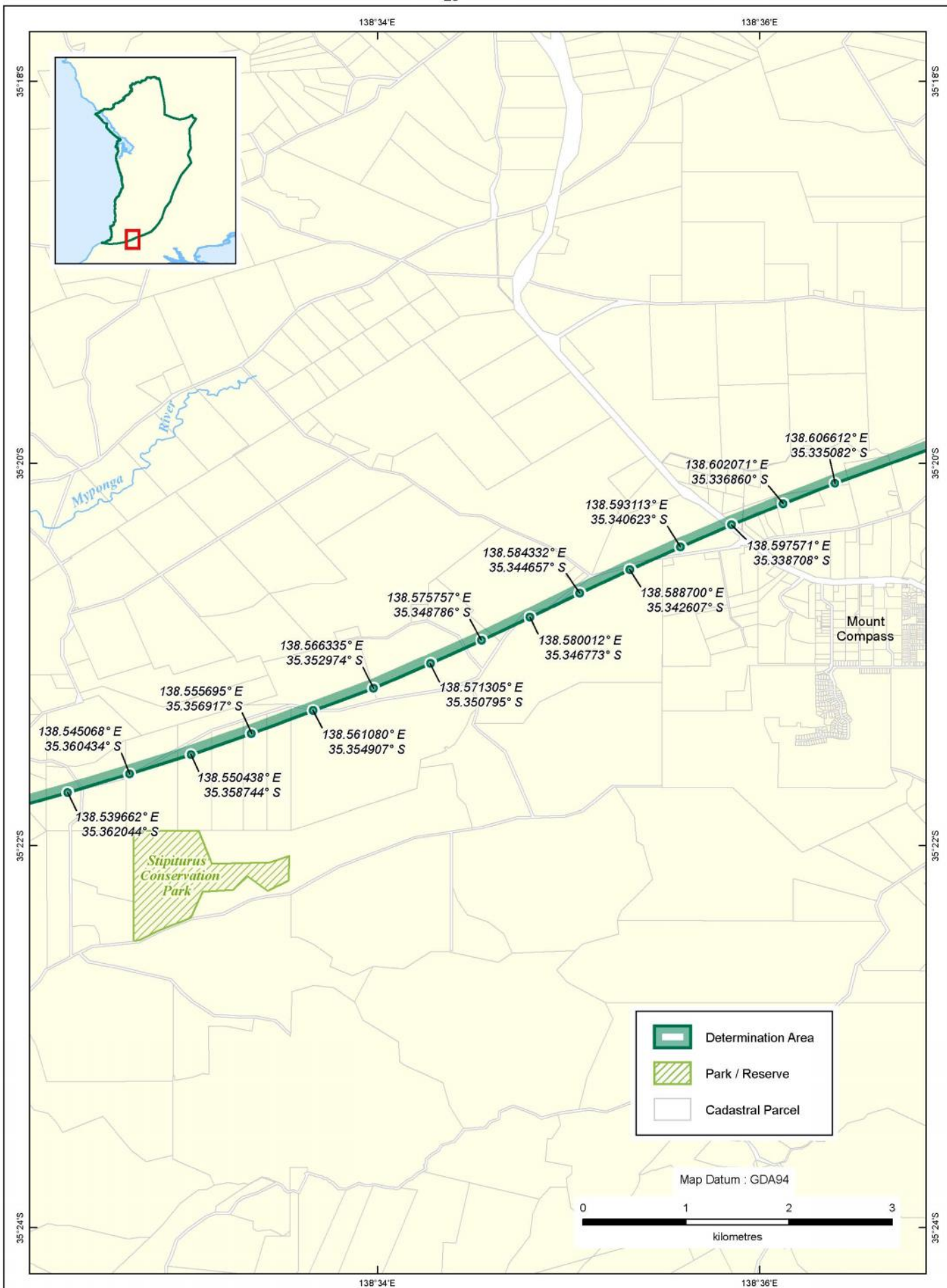
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**Kaurna Peoples Determination Area
External boundary of
Determination Area**

Mapsheet 10 of 20



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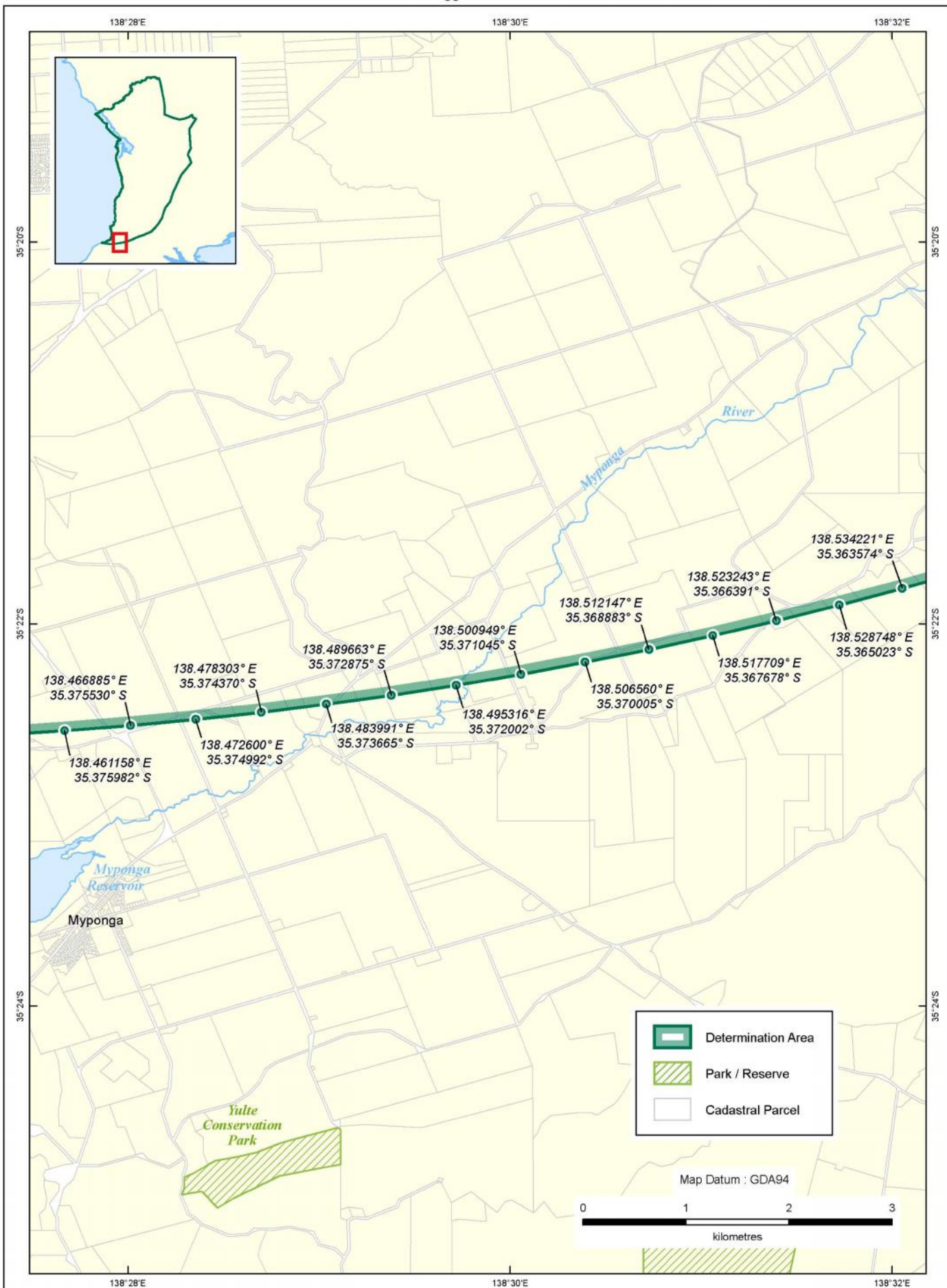
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**Kaurna Peoples Determination Area
 External boundary of
 Determination Area**

Mapsheets 11 of 20





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**Kaurna Peoples Determination Area
External boundary of
Determination Area**

Mapsheets 12 of 20





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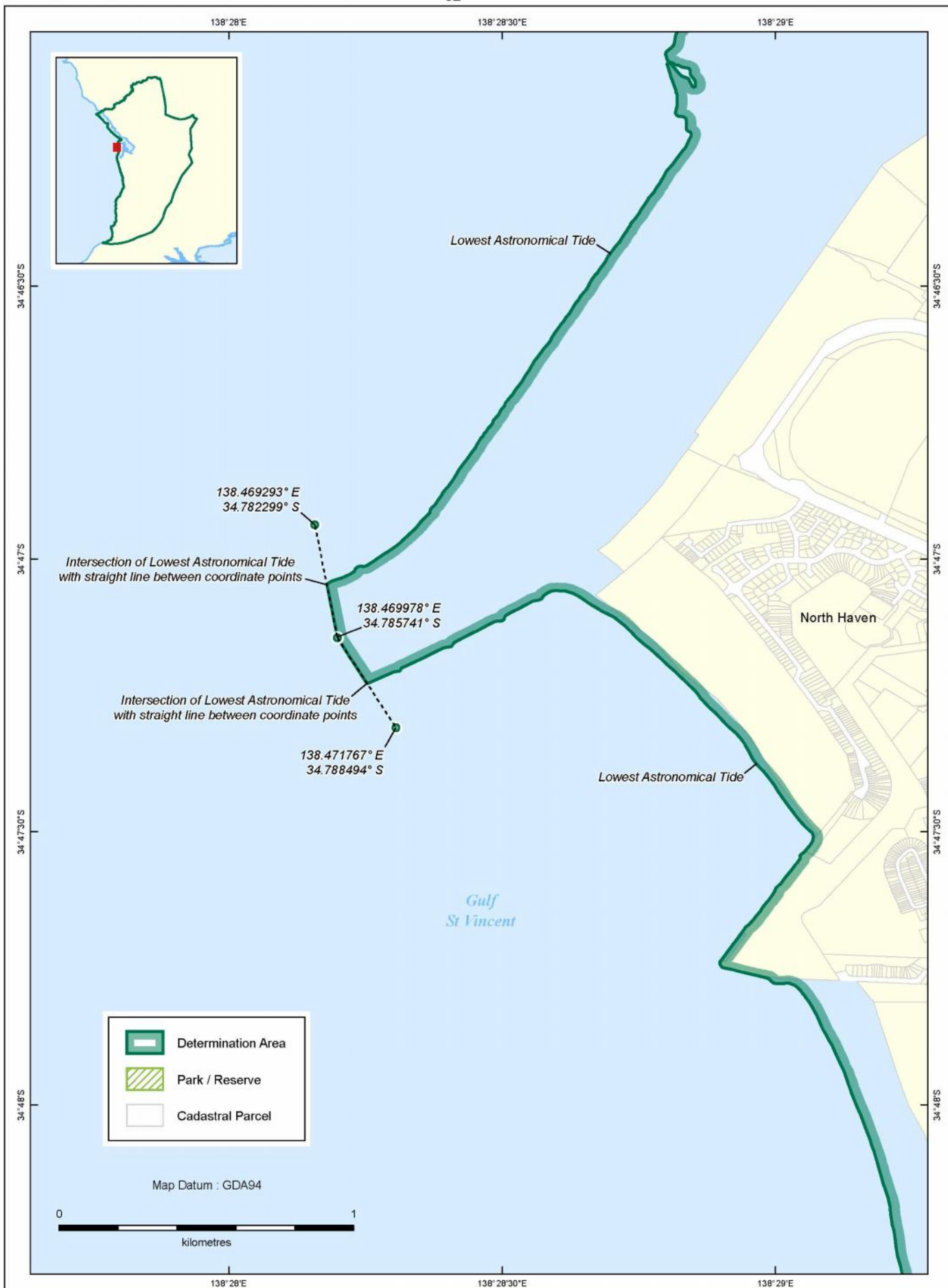
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Kaurna Peoples Determination Area
External boundary of
Determination Area

Mapsheet 13 of 20



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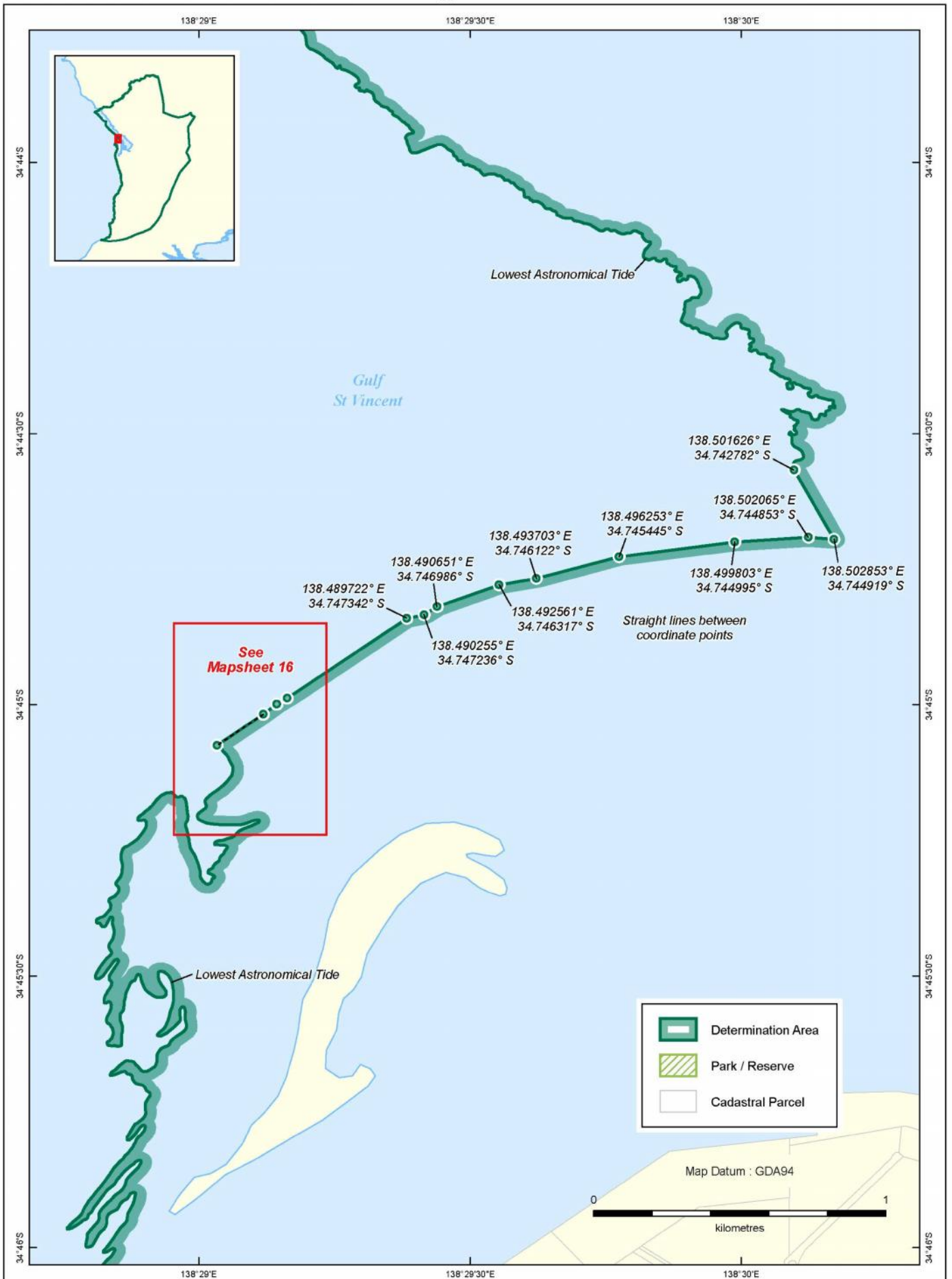
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Kaurna Peoples Determination Area
External boundary of
Determination Area

Mapsheet 14 of 20



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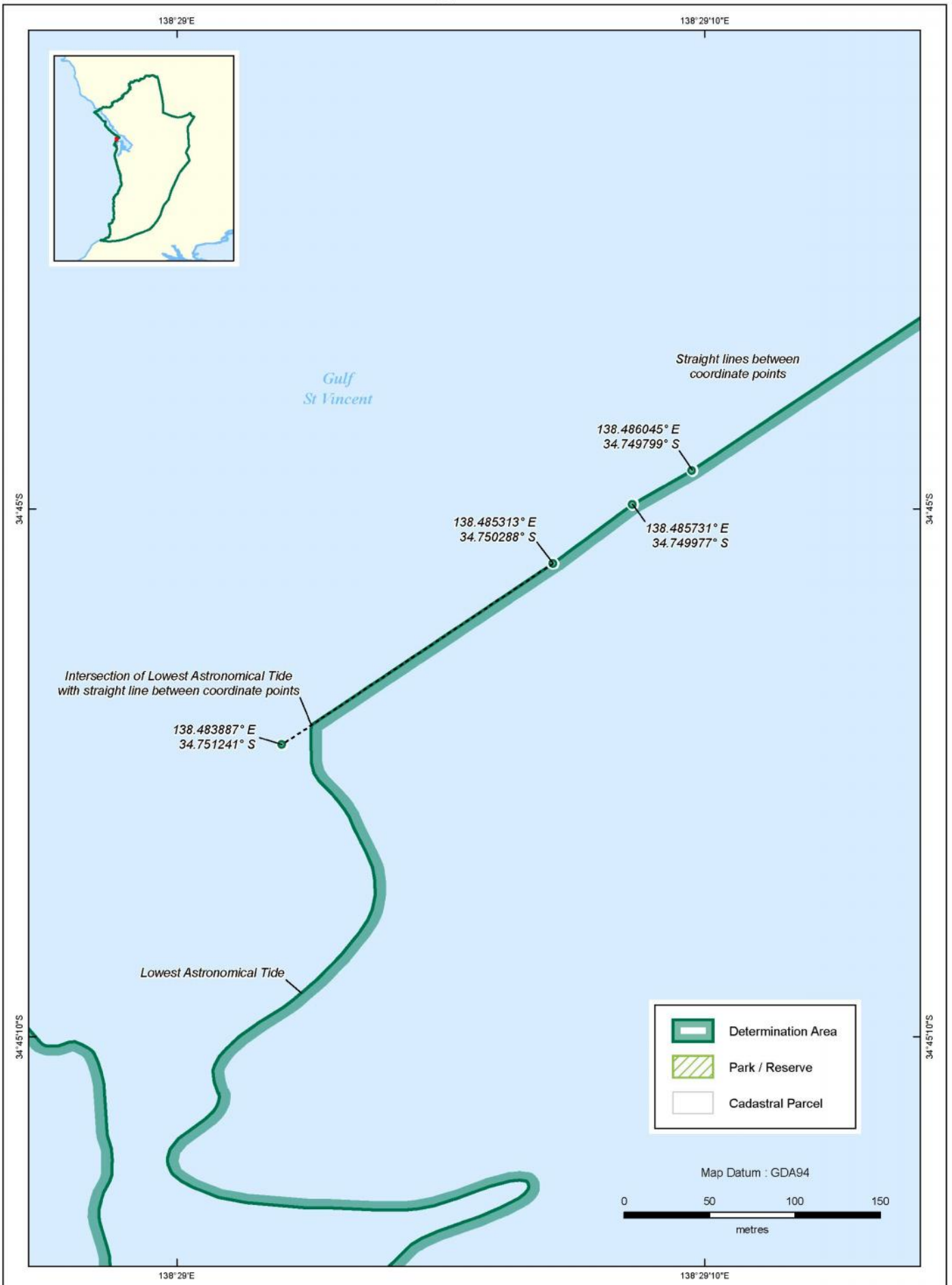
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Kaurna Peoples Determination Area
External boundary of
Determination Area

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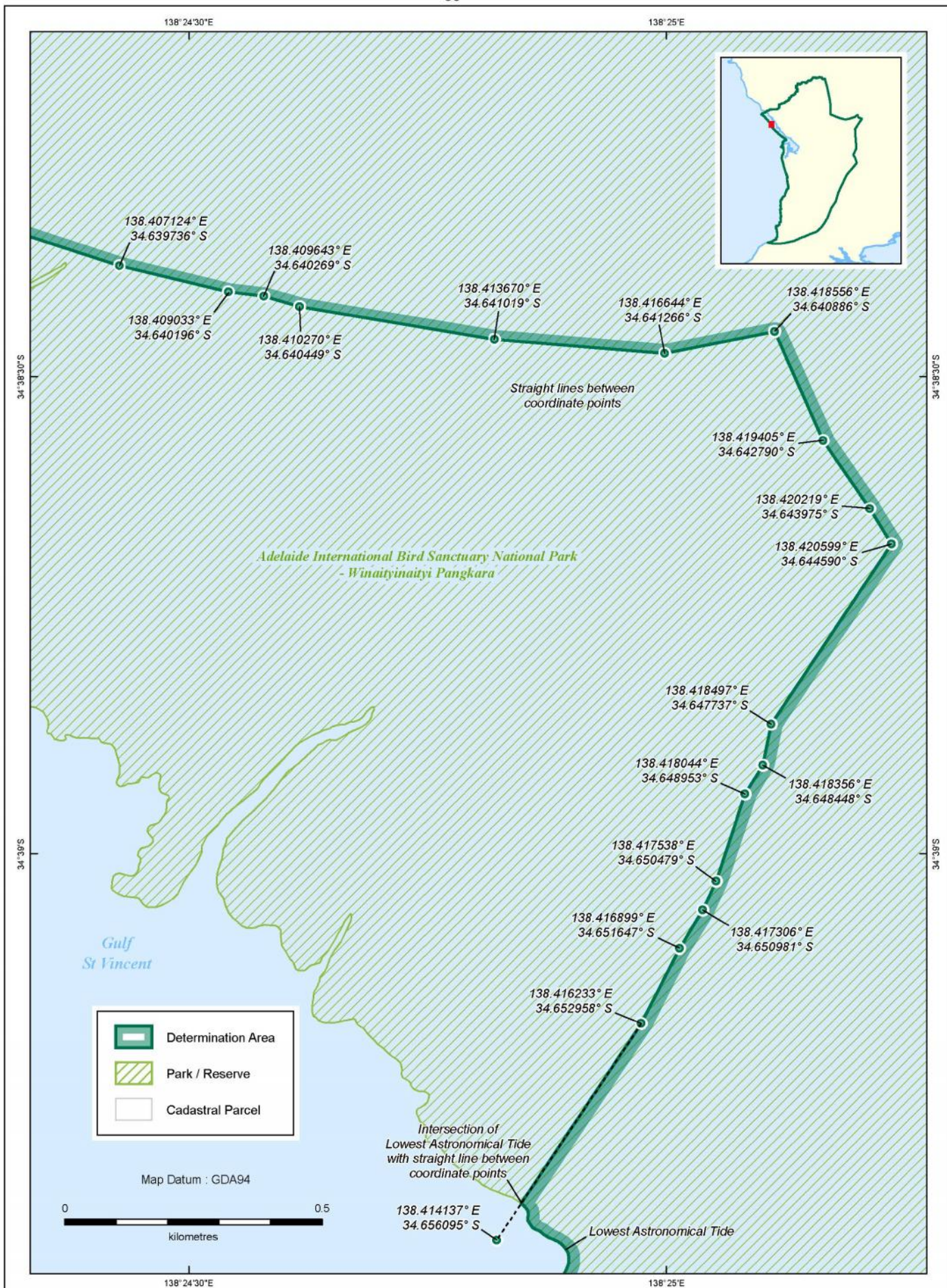
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Kurna Peoples Determination Area

External boundary of Determination Area

Mapsheet 16 of 20





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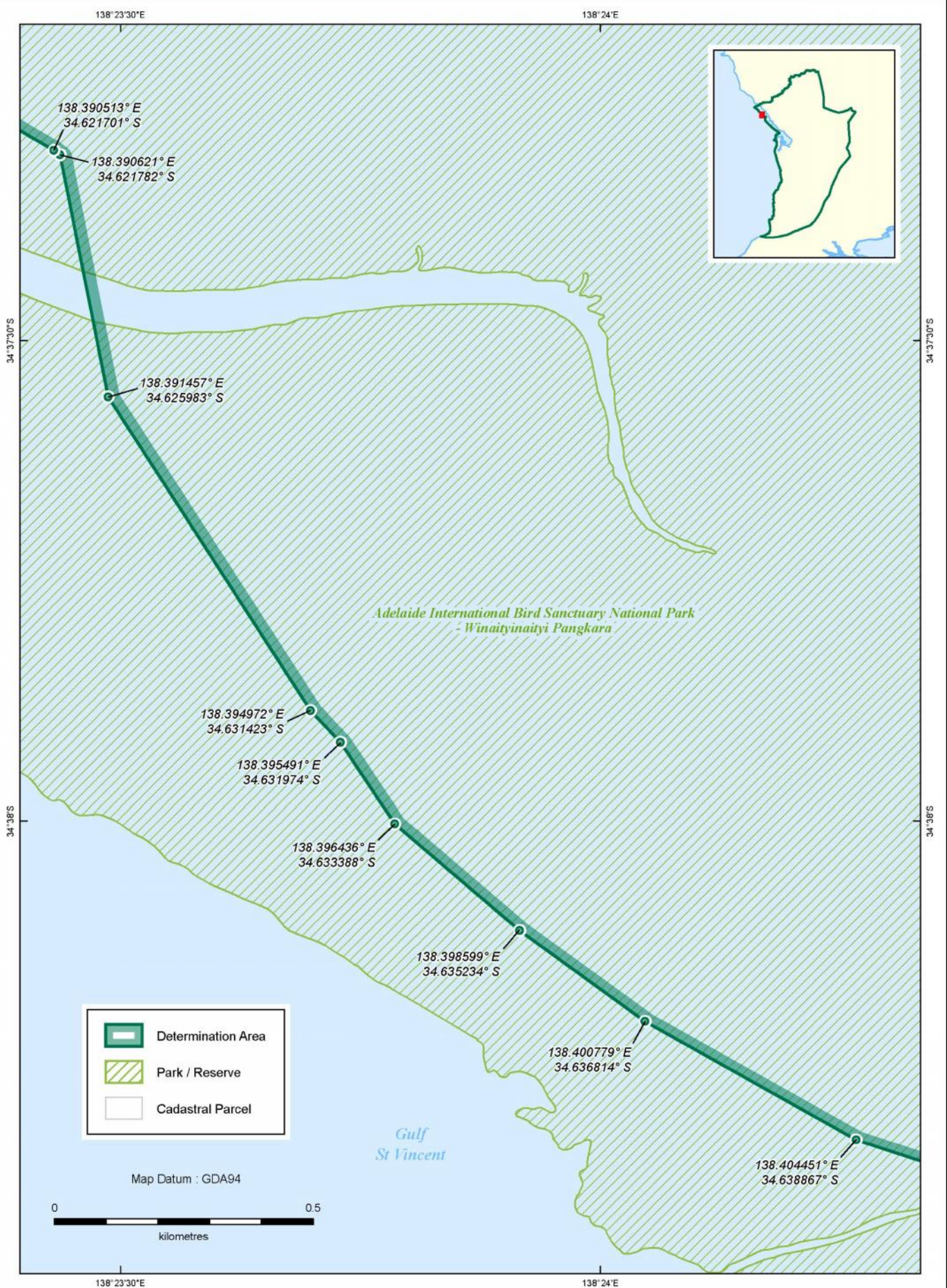
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**Kaurna Peoples Determination Area
External boundary of
Determination Area**

Mapsheets 17 of 20





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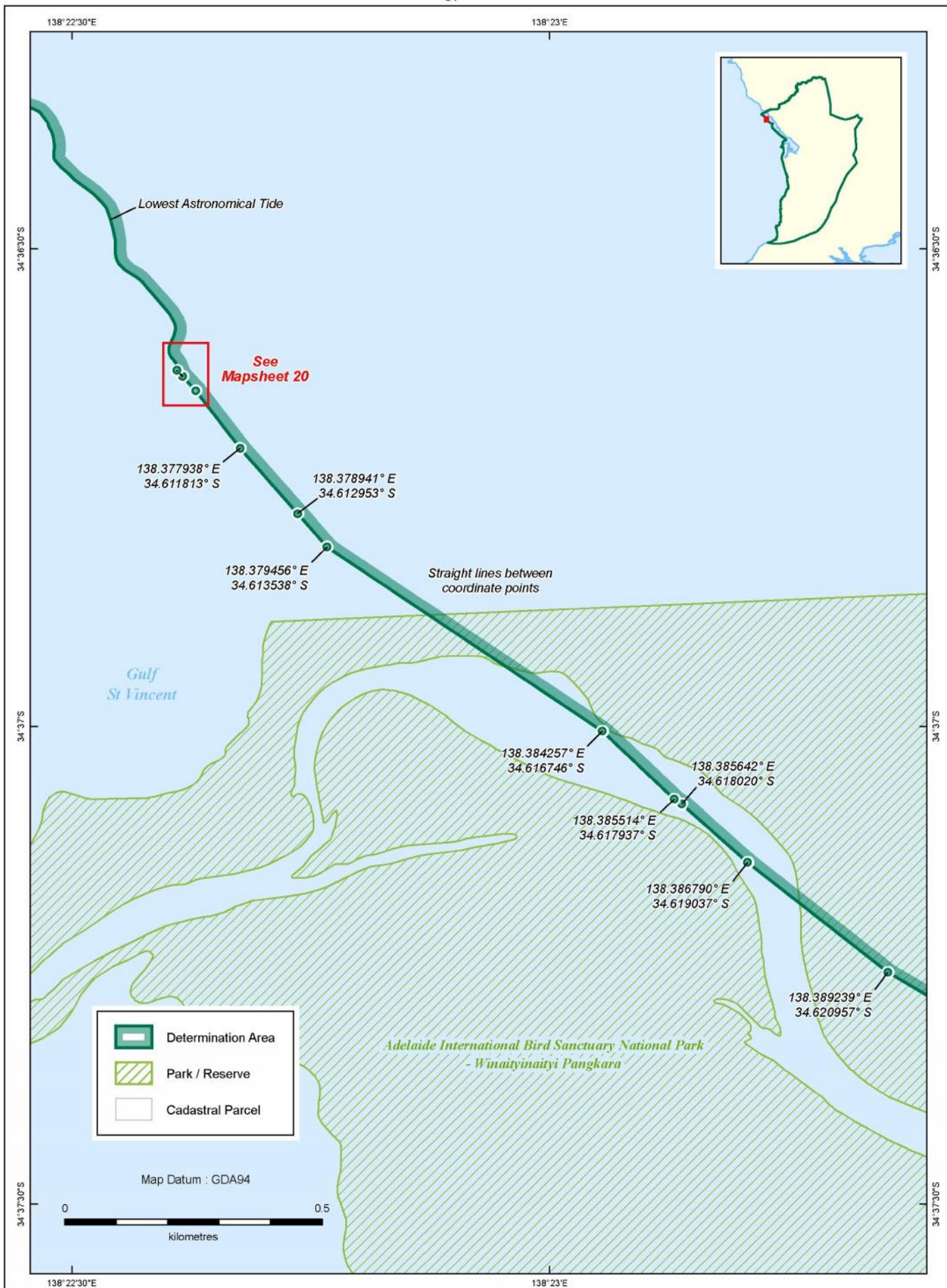
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**Kaurna Peoples Determination Area
External boundary of
Determination Area**

Mapsheets 18 of 20



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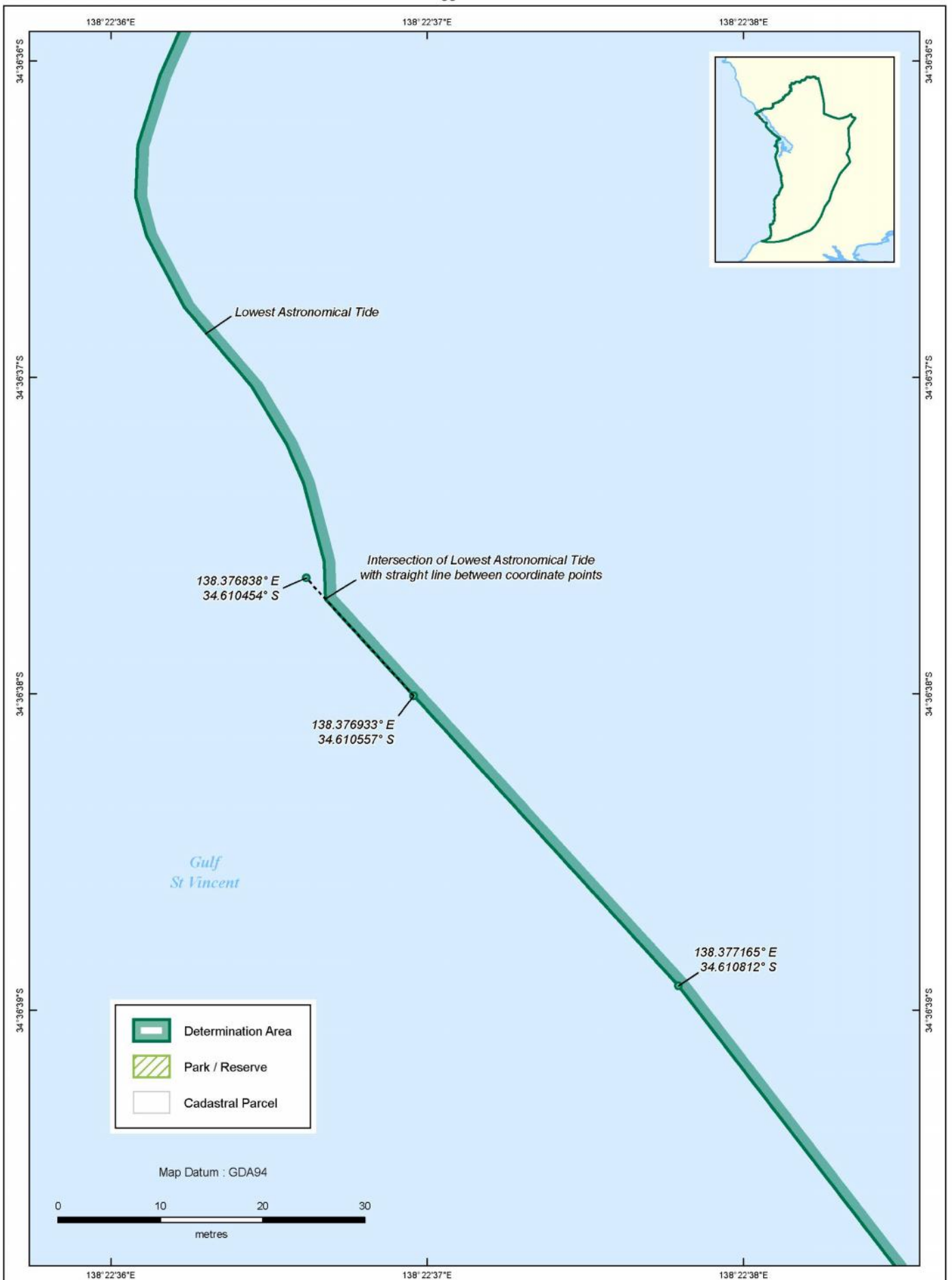
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**Kaurna Peoples Determination Area
 External boundary of
 Determination Area**

Mapsheet 19 of 20



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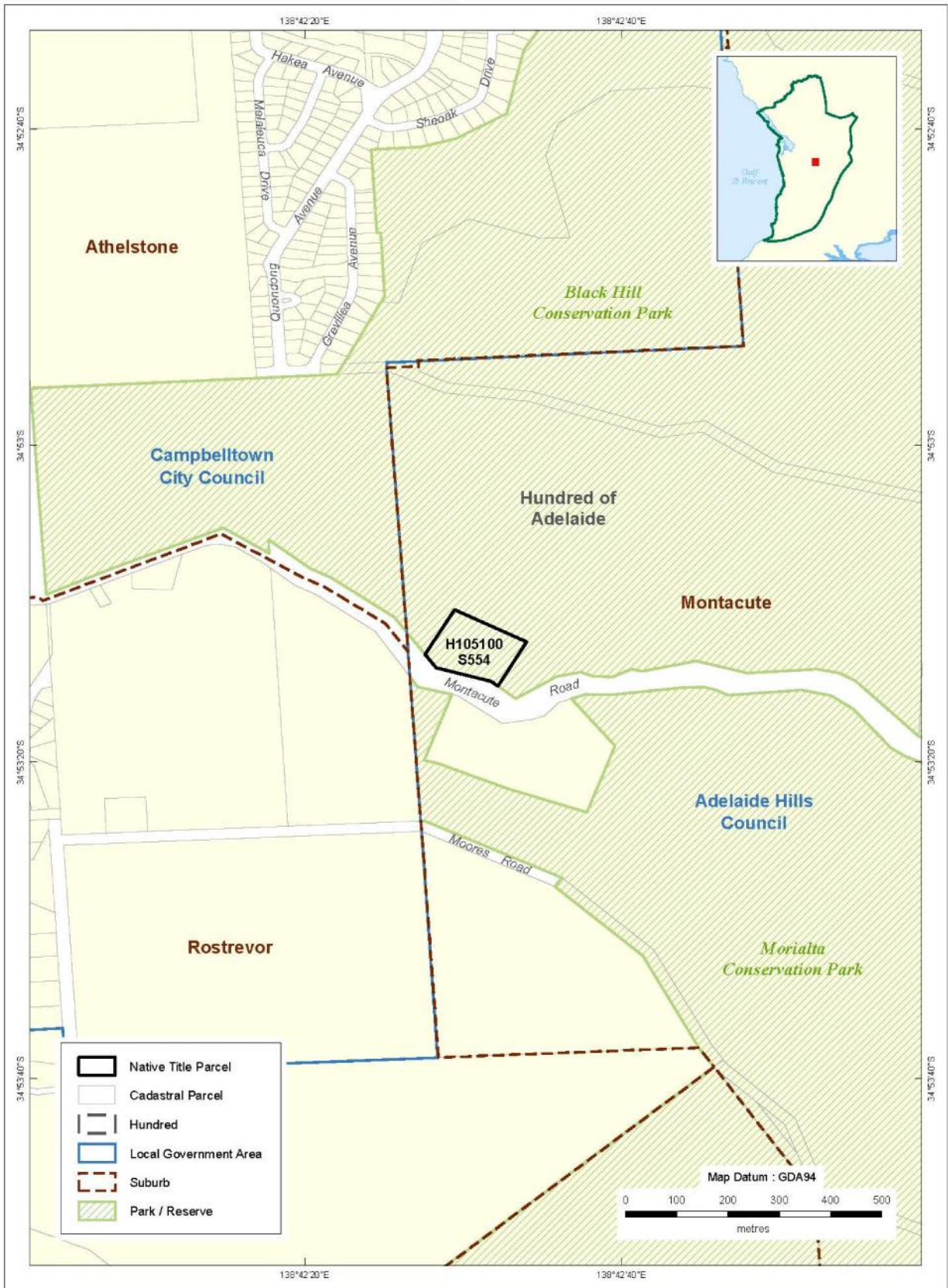
Kaurna Peoples Determination Area
External boundary of
Determination Area

Mapsheets 20 of 20



SCHEDULE 2 - Maps

Part B: Maps depicting Native Title Land



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Kaurna Peoples Determination

Native Title Land

Mapsheets 1 of 11



Government of South Australia
Department of Planning,
Transport and Infrastructure

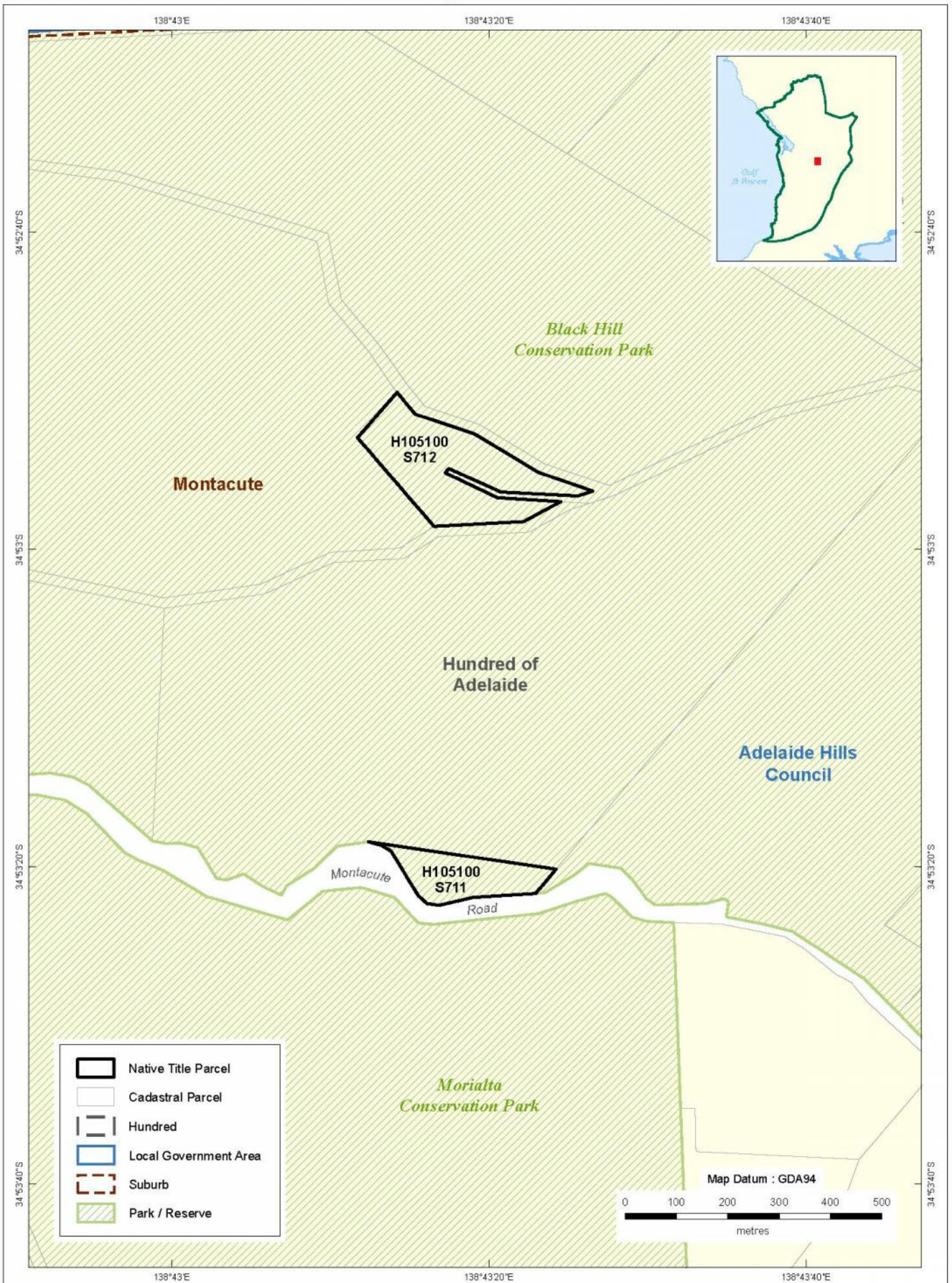


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Kaurna Peoples Determination
Native Title Land
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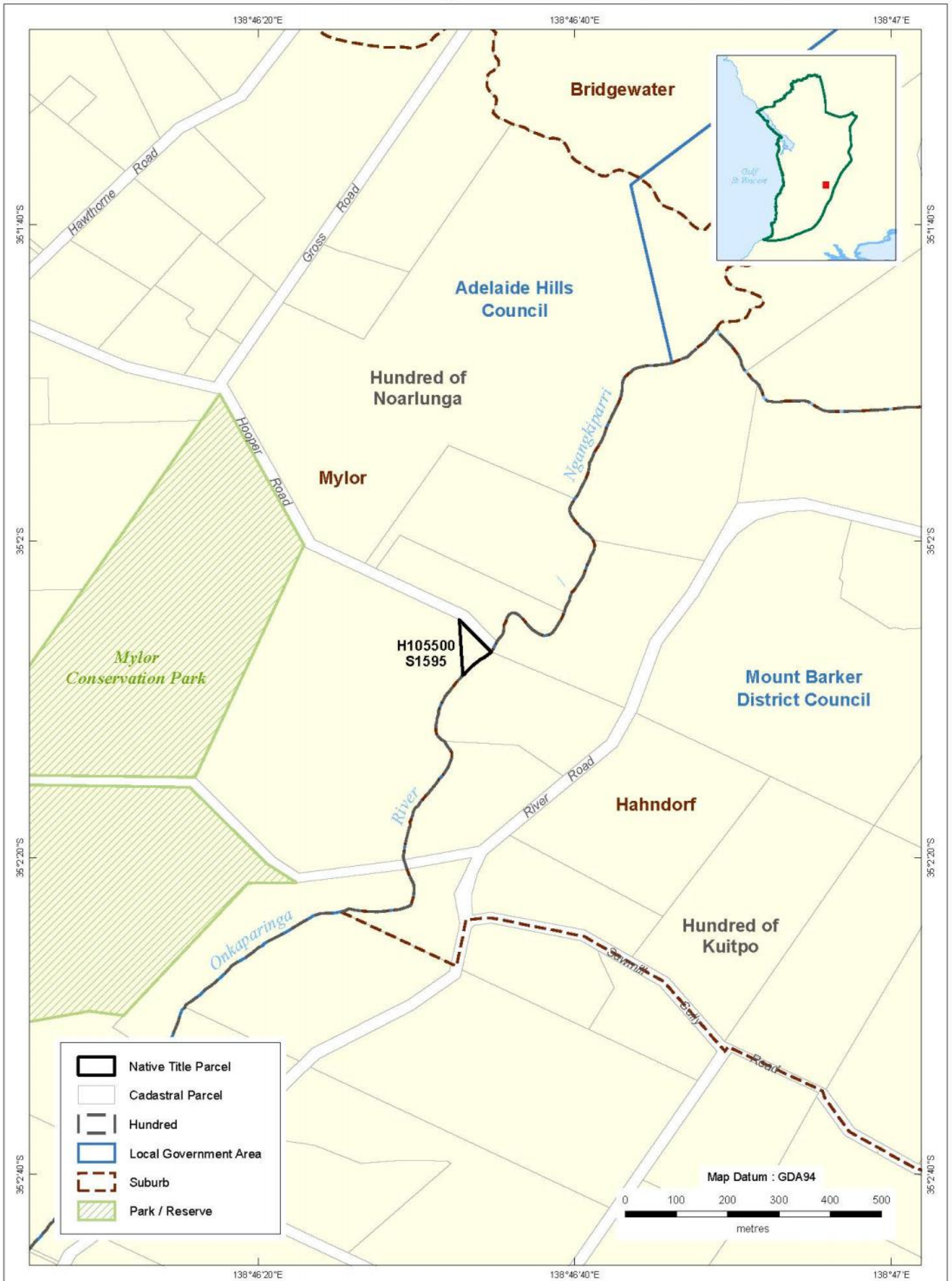
Kaurna Peoples Determination

Native Title Land

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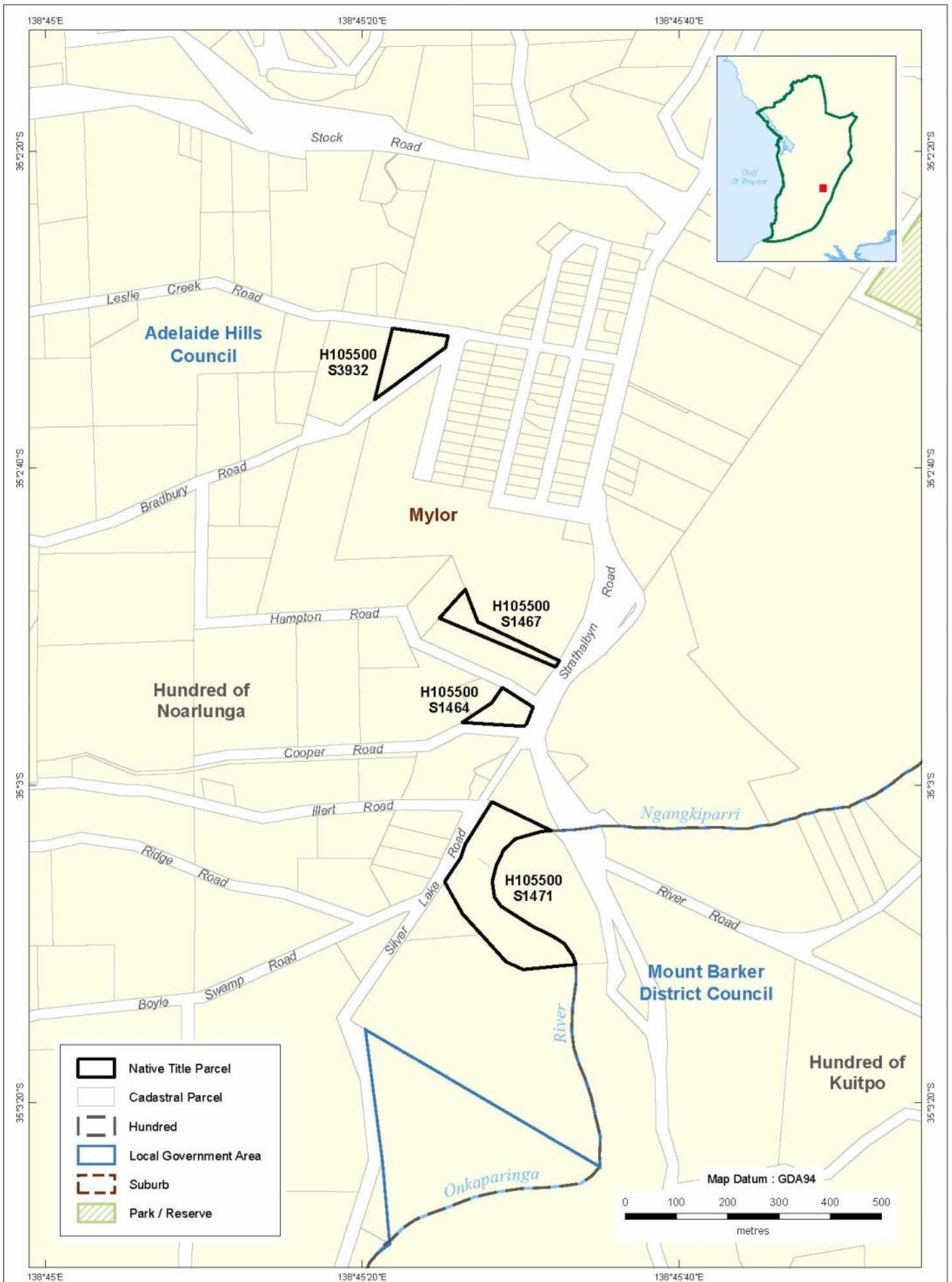
Kaurna Peoples Determination

Native Title Land

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Kurna Peoples Determination

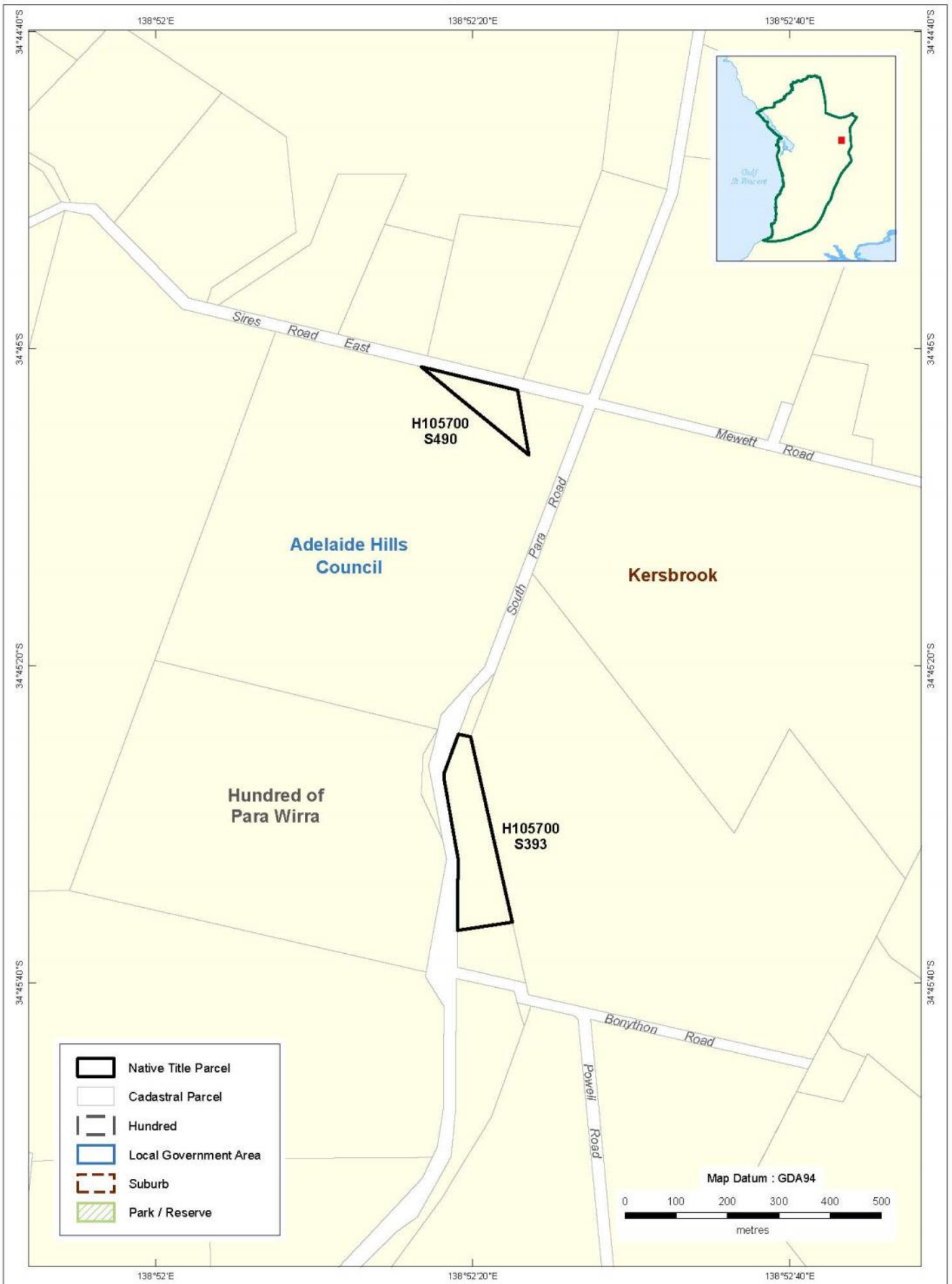
Native Title Land

Mapsheet 6 of 11

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 7 November 2017

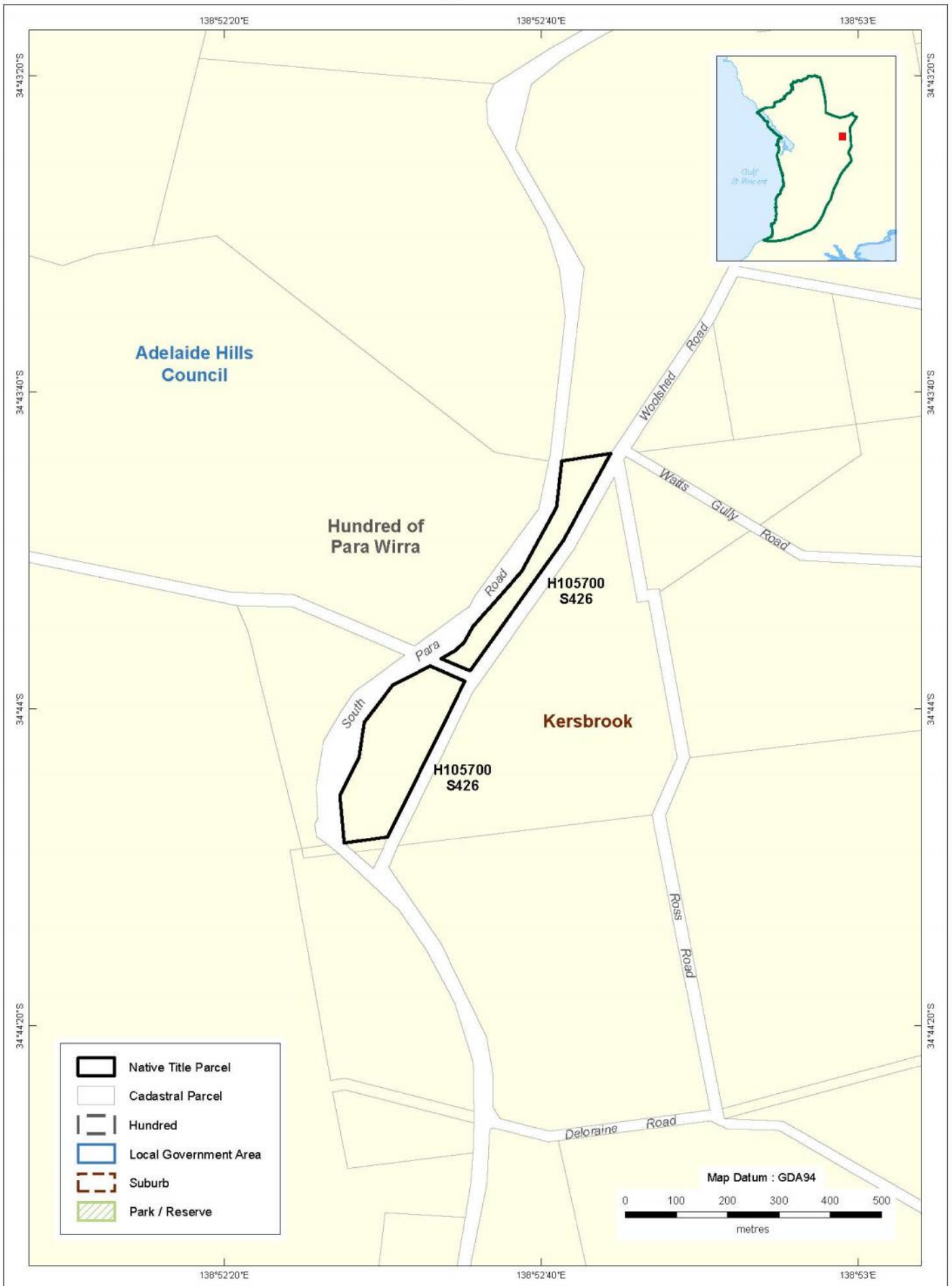
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Karna Peoples Determination

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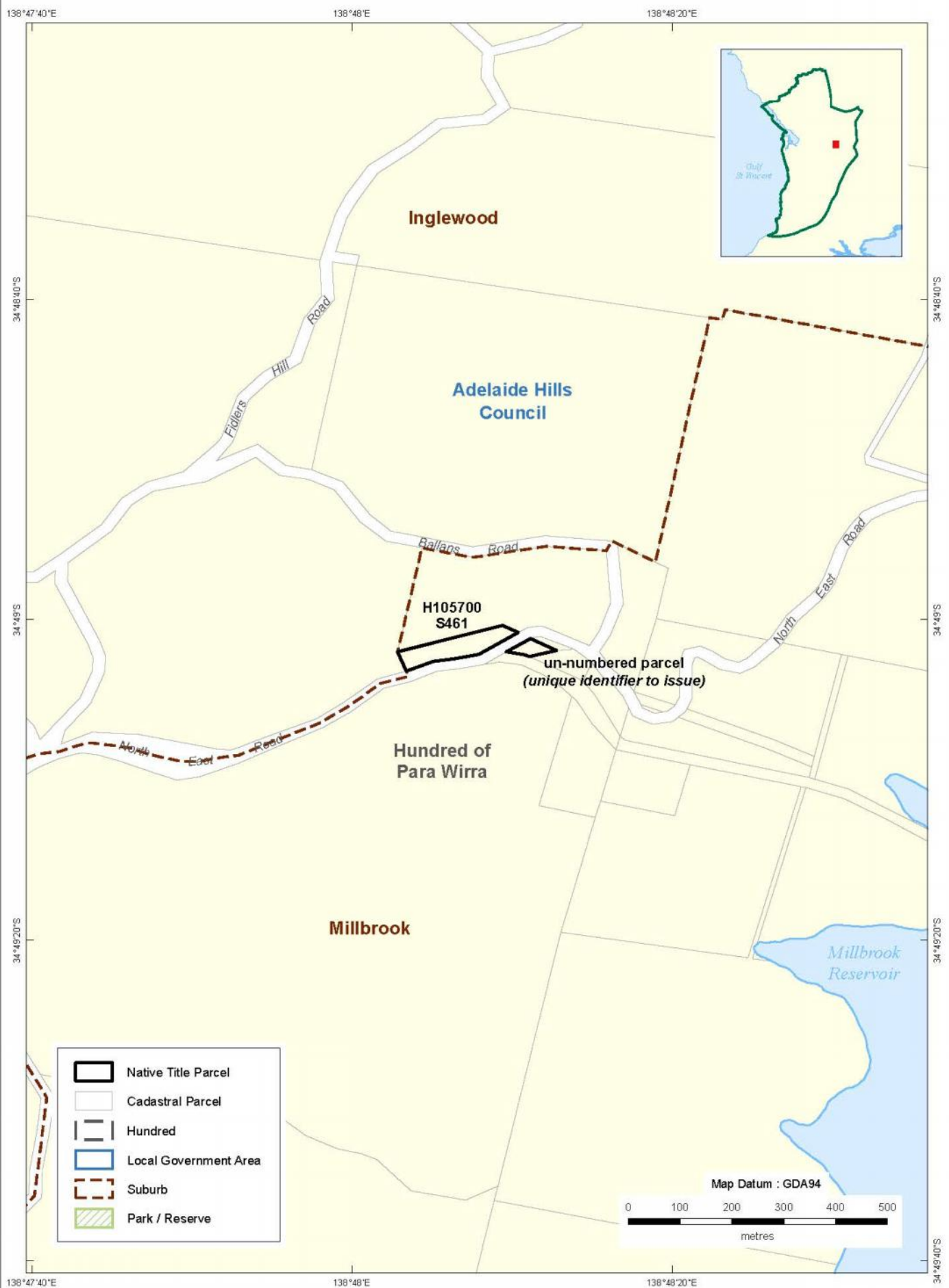
Kaurna Peoples Determination

Native Title Land

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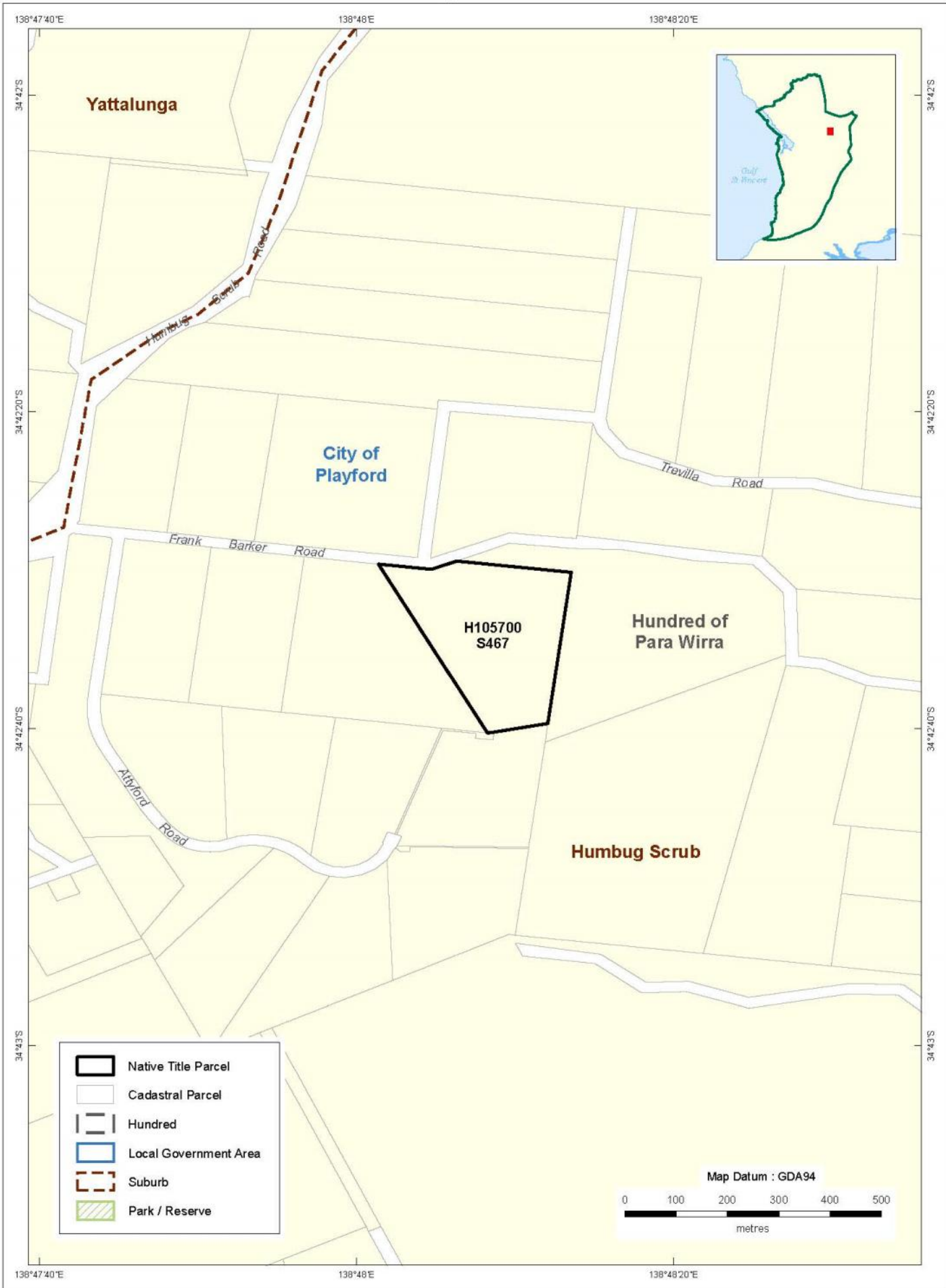
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Native Title Land

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 7 November 2017

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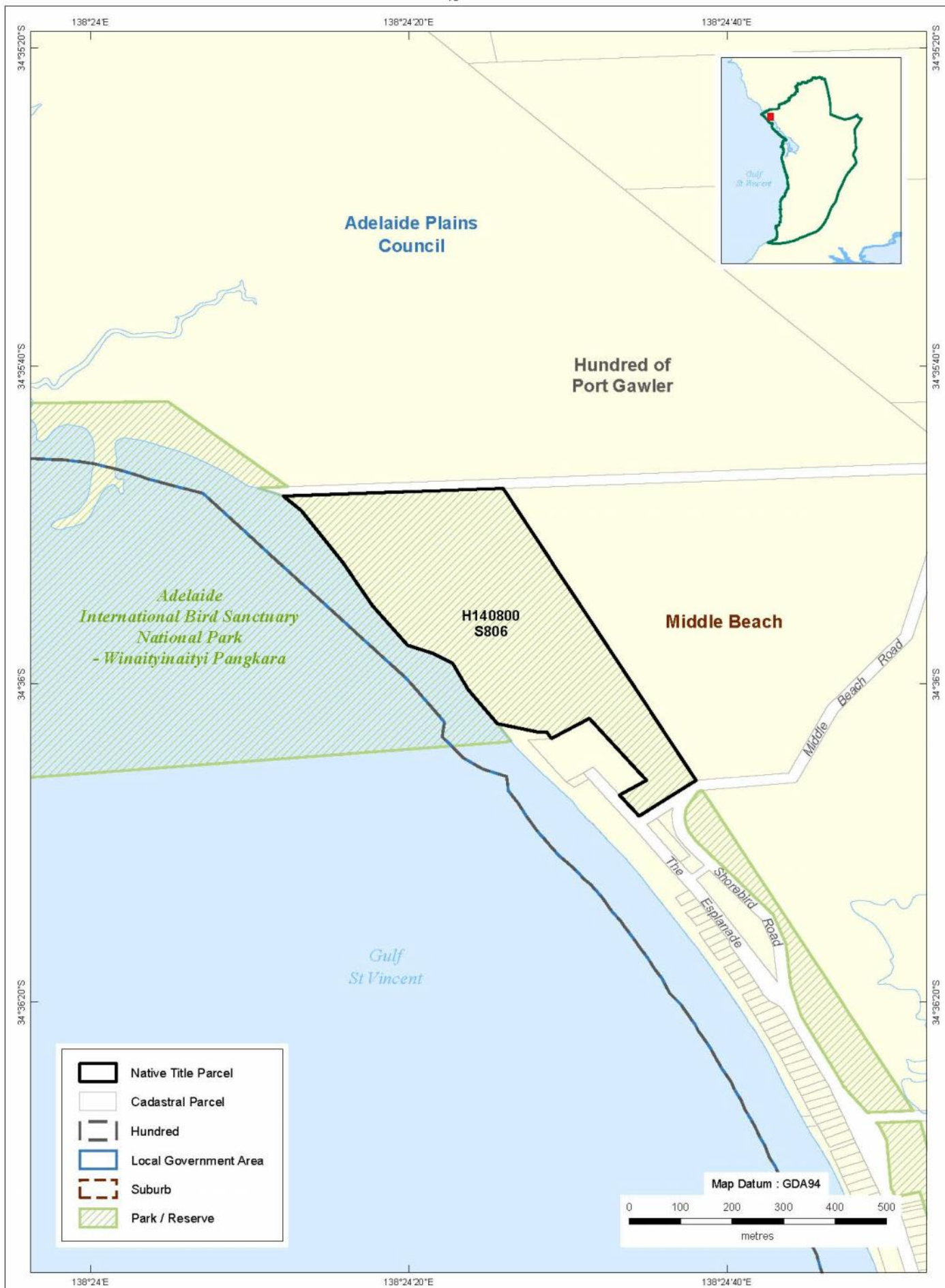
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Kaurna Peoples Determination

Native Title Land

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Kaurna Peoples Determination

Native Title Land

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 Department of Planning,
 Transport and Infrastructure

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
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 earths 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	Hundred Name	TF Type	Asset Type	Input Voltage	Output Voltage
H105700S467	CR5744/248	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: COMMONWEALTH OF AUSTRALIA
Respondent: CITY OF VICTOR HARBOR
Respondent: CITY OF CHARLES STURT
Respondent: CAMPBELLTOWN CITY COUNCIL
Respondent: BAROSSA COUNCIL
Respondent: ALEXANDRINA COUNCIL
Respondent: ADELAIDE HILLS 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: DISTRICT COUNCIL OF MT BARKER
Respondent: COUNCIL OF THE CITY OF PROSPECT
Respondent: CORPORATION OF THE TOWN OF WALKERVILLE
Respondent: CORPORATION OF THE CITY OF NORWOOD, PAYNEHAM & ST PETERS
Respondent: CLARE & GILBERT VALLEYS COUNCIL
Respondent: CITY OF WEST TORRENS
Respondent: CITY OF TEA TREE GULLY
Respondent: CITY OF SALISBURY
Respondent: PORT PIRIE REGIONAL COUNCIL
Respondent: LIGHT REGIONAL COUNCIL
Respondent: WAKEFIELD REGIONAL COUNCIL
Respondent: CORPORATION OF THE CITY OF UNLEY
Respondent: RAMINDJERI HERITAGE ASSOCIATION
Respondent: AMBRO PTY LTD
Respondent: GINA BATTISTELLA
Respondent: GIANNI BATTISTELLA

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: CHEETHAM SALT 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
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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
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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
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Respondent: EDWARD GEORGE PERKINS
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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: UNIVERSITY OF ADELAIDE - OFFICE OF THE VICE-CHANCELLOR

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: NATIONAL TRUST OF SOUTH AUSTRALIA
Respondent: AIRSERVICES AUSTRALIA
Respondent: TELSTRA CORPORATION LIMITED
Respondent: HAHNS CULLEY & SONS
Respondent: WILDCATCH FISHERIES SA INC
Respondent: ST JOHN AMBULANCE AUSTRALIA SA INC
Respondent: SA POWER NETWORKS (FORMERLY KNOW AS ETSA UTILITIES)
Respondent: SOUTH AUSTRALIAN NATIVE TITLE SERVICES LTD

Appendix 2

Legal Advice

PRIVATE AND CONFIDENTIAL

By Email: aaiken@ahc.sa.gov.au
Ref: NLJM0246756F05159124

2 March 2018

Mr A Aitken
Adelaide Hills Council
PO Box 44
WOODSIDE SA 5244

Dear Andrew

Kaurna Native Title Claim – Provision of Draft Consent determination

1. We refer to our previous correspondence in relation to the above matter, including our letter dated 21 February 2018. We confirm that we attended at the case management conference which was listed before Justice Mortimer of the Federal Court of Australia at 4.15pm on Thursday 22 February 2018. Relevantly, as we reported in our email dated 23 February 2018, Justice Mortimer made public orders including an order requiring the State and the Kaurna to file and serve a draft native title consent determination by Monday 26 February 2018. That document was not filed and served by that time due to ongoing discussions between the State and the Kaurna over certain content which does not affect Local Government. We confirm that we did eventually receive the document on the afternoon of 1 March 2018. It is **enclosed**.
2. While the provision of the document was being stalled during the week due to the discussions between the State and the Kaurna, we nevertheless discussed with the State our views upon appropriate wording for the Local Government-related provisions of the consent determination document. The Local Government-related provisions in the enclosed document are the result of those discussions. Accordingly, we are satisfied that they are appropriately formulated to preserve the Council's general statutory powers and functions insofar as they might theoretically have otherwise been impacted upon by native title (e.g. making of by-laws which may restrict traditional activities). Schedule 3 of the document also reflects the preservation of the Council's specific interests in the relevant parcels of Crown land which are under the Council's care, control and management. (You will note an error in Schedule 3 whereby the State has said that the Council has care, control of management of S467 of the Hd. of Para Wirra. That is not the case. We have advised the State of the error.)
3. Please review the consent determination document. Respondent parties now have an opportunity to make submissions upon the draft consent determination document. Under the Court Orders, the deadline to indicate (by Notice filed and served on the other Parties) whether the Council wants to be heard is 5 March 2018. If the Council does want to be heard, the deadline for the provision of any submissions is also 5 March 2018. That is clearly very soon—it is next Monday. Because the draft consent determination document was provided so late, there is an argument that an extension should be warranted for Respondents' Notices and submissions.

4. Because there is land within the boundaries of the Council which will have native title recognised upon it under the consent determination, and because of the precise way in which Justice Mortimer has formulated her Orders, we consider that the most prudent approach is for us to file on behalf of the Council a Notice stating that the Council wants to be heard, and then simply submitting that the Council is content with the terms of the consent determination. It is not necessary to go into any detail about protecting specific interests, because that is all covered in the consent determination document itself. If the Council does instead have some particular comment it wants to publicly submit to the Court and all parties, please advise us as a matter of urgency. Otherwise, in the absence of any specific instruction to the contrary, we will file on behalf of the Council a brief and uncontroversial Notice and submission as discussed.
5. The next Court hearing in this matter is a case management hearing before Justice Mortimer on 6 March 2018. If it appears to the Court in the case management hearing that the matter has indeed reached a settlement, then an order will be made vacating the trial and the formal process of obtaining the consent of all parties will begin. The Council therefore needs to decide whether it will indeed consent to the Kurna determination.
6. It is our advice that the Council should provide this consent. As explained in previous letters, we consider that avoiding a trial is in the legal interests of Local Government for various reasons, including the need to preserve relationships for Aboriginal heritage purposes and to avoid potential compensation indemnity arguments with the State if the State were to lose any trial. We wrote to the State last year (before any consent determination deal was reached with the Kurna) relaying these concerns and a general concern that the State did not appear to be advancing settlement negotiations. Now, by reaching a deal, the State has come around to a position which accommodates those concerns.
7. Further, because the Council has secured the preservation of its particular interests on the Crown land which is in its care, control and management and which will have native title recognised upon it, there is no appreciable adverse impact of the proposed determination upon the Council. We accordingly see no reason to withhold consent.
8. On the other hand, if the Council does not want to provide its consent for whatever reason, we consider that the only practical option would be to withdraw as a Respondent from the proceeding altogether. We advise against this course of action, because withdrawal as a Respondent would deprive the Council of its rights under proposed Order 4 of the Kurna determination regarding applying to the Court to determine the location and boundaries and effect on native title of public works on native title land.
9. Theoretically, there is a third option whereby the Council could remain as a Respondent but withhold its consent. However, we strongly advise against that course of action. Given that the State is of course also consenting to the determination (as will be numerous other Respondents from a range of sectors and industries), to withhold consent in spite of this broad support would require a fairly persuasive explanation to the Court and other parties. Further, if the Council still maintained its opposition despite almost certain criticism from the Court, then this would cause the entire consent determination to collapse, and create a full-scale native title trial over the entire metropolitan Adelaide area. This would be a trial in which realistically the State and the Kurna may join together and argue against the Council, and for which the Council may need to foot the entire multi-million bill.

10. Please advise us of the course of action which the Council would like to take. If the Council adopts our advice and instructs that it consents to the Kaurna determination, we will sign the consent determination as the Council's legal representative (strictly, the determination is a proposed set of Federal Court orders, and so it is appropriate that we sign it). If there are any particular internal procedural issues (e.g. perceived lack of delegated authority or preference to take the matter to the elected members) which means instructions in this regard may be delayed, please advise us of this so that we can reliably keep the Court and other parties abreast of the realistic timeline for consent (or withdrawal) on the part of the Council. Please advise in particular if there is any issue in providing Council's instructions regarding consent in the first two weeks of March.
11. Please do not hesitate to contact with the writer, or Chris Alexandrides (8210 1299 or calexandrides@normans.com.au), if you would like to discuss the matters outlined in this letter. We are also available to visit and address Councils in order to expedite the receipt of instructions, if necessary.

Yours faithfully
Norman Waterhouse



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By Email: aaiken@ahc.sa.gov.au
Ref: CZA\KAURNA REPORT BACK LETTER
08.03.18.DOCX

8 March 2018

Mr A Aitken
Chief Executive Officer
Adelaide Hills Council
PO Box 44
WOODSIDE SA 5244

Dear Andrew

Kaurna Native Title Claim – Final instruction from Council

1. We refer to our previous correspondence in relation to the above matter, including our letter dated 2 March 2018. We confirm that, consistent with that letter and pursuant to orders made by Justice Mortimer, we filed the **enclosed** Notice and Outline of Submissions on behalf of the Council. The purpose of this Notice and Outline of Submissions is to confirm that the Council is satisfied that terms of the consent determination properly preserve the Council's interests. As discussed with your property staff over recent weeks, we are satisfied that the Council's interests in the eight relevant parcels are indeed properly protected by the terms of the settlement.
2. There is therefore now one last step in the entire Kaurna Native Title Claim proceeding for the Council to perform—namely, to instruct us to sign the consent determination on your Council's behalf.
3. We **enclose** orders made by the Court yesterday evening, setting out a timetable for the final stages in this proceeding. Pursuant to those orders, we must sign, file and serve the consent determination on your Council's behalf by no later than 4pm on Wednesday 14 March 2018. We therefore need the instruction from your Council sufficiently before that time.
4. Strictly, the instruction to sign the document could come directly from you or another Council officer. We are your retained legal representatives in this Court proceeding (we are recorded on the Court file as such), and the signing of the consent determination is strictly just like the signing of any other Court document. The terms of the consent determination have already been settled, and the signing of the final document is merely a procedural necessity under Section 87(1)(b) of the *Native Title Act 1993* (Cth).
5. However, following our discussions with Council staff (by email and telephone correspondence), we understand that you will be putting this matter to the elected membership of the Council on 13 March 2018, so that the instruction to execute the consent determination has the force of a formal Council resolution. Given that your Council is one which will be custodian of land upon which native title will be recognised, we consider that this is appropriate. We thank you and your staff for making arrangements at very short notice and outside of your usual Council schedule in order to accommodate the deadline which the

Court imposed yesterday evening.

6. The terms of the resolution can simply be to the effect "That the Council consent to the Kurna determination of native title". In light of the 14 March 2018 deadline for us to execute the document on the Council's behalf, could you please email us confirmation of the resolution passed by the Council either on 13 March 2018 when it is made, or first thing in the morning on 14 March 2018.
7. Upon reviewing the enclosed orders, you will see that the orders contemplate that the Court may make an order extending time for consent. However, the seeking of such an extension would require the filing of an urgent application and suitably persuasive affidavit material (all involving further legal cost). In any event, we consider that the Court is very unlikely to extend the deadline given the protection of the Council's interests in the consent determination document.
8. If the Council instead resolves *not* to consent to the Determination, the outcome would, frankly, be relatively dire. We strongly advise against that course of action. Since the State is consenting to the determination, any other respondent (such as a Council respondent) who withholds consent would likely bear the cost of any trial which results from the failure of the settlement. The total bill for a trial of the necessary scale (over the entire Adelaide metropolitan area) would be in the millions of dollars. It is exceptionally unlikely that any council or other respondent will be withholding consent.
9. If the Council does not make any resolution at all on this matter on 13 March 2018, and if no instruction is forthcoming from staff either, then we will have to advise the Court that we do not have instructions from your Council. The Court may then remove the Council from the proceeding, if the Court considers it is able to do so without hearing from the Council. However, because the Council will be the custodian of parcels of native title land under the terms of the consent determination, the Court may indeed not be willing to remove the Council as a party. Either way, this path would likely have adverse costs consequences for the Council (possibly quite significant cost consequences if the currently-scheduled formal consent determination hearing of 21 March 2018 needs to be vacated), and so we strongly advise against this.
10. You will note from the orders that the formal consent determination hearing is listed for 9.30am on 21 March 2018 in the Federal Court building in Adelaide. At that hearing, Justice Mortimer will deliver some remarks, and the Kurna determination of native title will formally be made. This will be open to the public. We will liaise with the Court to ascertain what number of local government representatives can be specifically accommodated in the space available (many Kurna persons will also be in attendance), and so please advise us if the Council could like to send any representative/s along.
11. We will provide a concluding letter to the Council after the consent determination hearing. We look forward to the Council's instructions. Please do not hesitate to contact the writer, or Chris Alexandrides (8210 1299 or calexandrides@normans.com.au), if you would like to discuss the matters outlined in this letter.

Yours faithfully
Norman Waterhouse



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