

However, Aboriginal cultural heritage has been previously recorded within 2 km of the study area's boundaries and identified via searching the DATSIP Aboriginal Cultural Heritage Register (Figure 3). This recorded Aboriginal cultural heritage relates to a landscape feature or traditional pathway, a contact site, artefact scatter and quarry. Given that previously recorded Aboriginal cultural heritage is situated within proximity to the study area's boundaries; there is potential for additional as yet unrecorded Aboriginal cultural heritage to be situated within the study area. The study area is also traversed by a minor tributary/waterway (Figure 2) and land within close proximity to tributaries and waterways have a higher potential to contain Aboriginal cultural heritage.

As the proposed activity will cause additional surface disturbance and may impact on as yet unidentified Aboriginal cultural heritage, regardless of the Category 4 rating as described above, the entire study area and proposed activity should be considered as comprising a Category 5 activity under Section 5.0 of the Duty of Care Guidelines: *5.0 The nature and extent of past uses in the area affected by the activity – Section 23(2)(g)* until further assessment involving visual inspection of the study area occurs.

Section 5.13 and 5.14 of the Duty of Care Guidelines specifies the following:

5.13 - *A category 5 activity is any activity, or activity in an area, that does not fall within category 1,2,3 or 4.*

5.14 – *Where an activity is proposed under category 5 there is generally a high risk that it could harm Aboriginal cultural heritage. In these circumstances, the activity should not proceed without cultural heritage assessment. Cultural heritage assessment should involve consideration of the matters a Court may consider under section 23(2) of the Act, set out in paragraph 1.12 of the Preamble to these guidelines.*

Given the above assessment the following recommendations are provided to minimise or avoid harm to unknown Aboriginal cultural heritage within the study area:

- Further cultural heritage assessment of the study area, involving a site inspection or archaeological survey, is undertaken in conjunction with the local relevant Aboriginal communities prior to the activity commencing;
- Formal consultation with the local relevant Aboriginal communities (in this instance the Karingbal People and the Bidjara People) is undertaken so that their views on managing the proposed activity and any Aboriginal cultural heritage which may be situated within the study area are recognised and incorporated into any further assessments or agreements;
- A Cultural Heritage Management Agreement (CHMA) may be undertaken to minimise or avoid harm to Aboriginal cultural heritage which may be impacted by the proposed activity. A CHMA is best described as a legal agreement with the local Aboriginal communities. The CHMA allows for the management of Aboriginal cultural heritage material before, during and after the proposed development.

## 6.2 Environment Protection and Biodiversity Conservation Act 1999 (Commonwealth)

The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) provides a national framework for the protection of heritage and the environment and the conservation of biodiversity. The

EPBC Act is administered by the Australian Government Department of the Environment and Energy (DoEE). The EPBC Act established the National Heritage List (NHL), the Commonwealth Heritage List (CHL) and the World Heritage List (WHL) for statutory protection of heritage places of national or international significance. Where Matters of National Environmental Significance (NES), including National Heritage Places, will or may be impacted by a development, then a referral to the Minister will be required to determine whether an approval under the EPBC Act is required.

DoEE also administers the Register of the National Estate (RNE). The RNE is no longer a statutory register and listed sites are no longer protected (unless registered on another statutory register).

#### **Implications for the project**

There are no sites listed on the NHL or CHL within the study area. There are no implications for the project.

### **6.3 Central Highlands Regional Council Planning Scheme (2016)**

The study area is located within the Central Highlands Regional Council and is governed by the Central Highlands Regional Council Planning Scheme (2016). Planning schemes set out policies and provisions for the use, development and protection of land.

The Heritage Overlay of the Central Highlands Regional Council Planning Scheme (2016) was examined. No Aboriginal or historic heritage places listed on the Heritage Overlay are present within the study area.

#### **Implications for the project**

There are no implications for the project under the Central Highlands Regional Council Planning Scheme (2016).

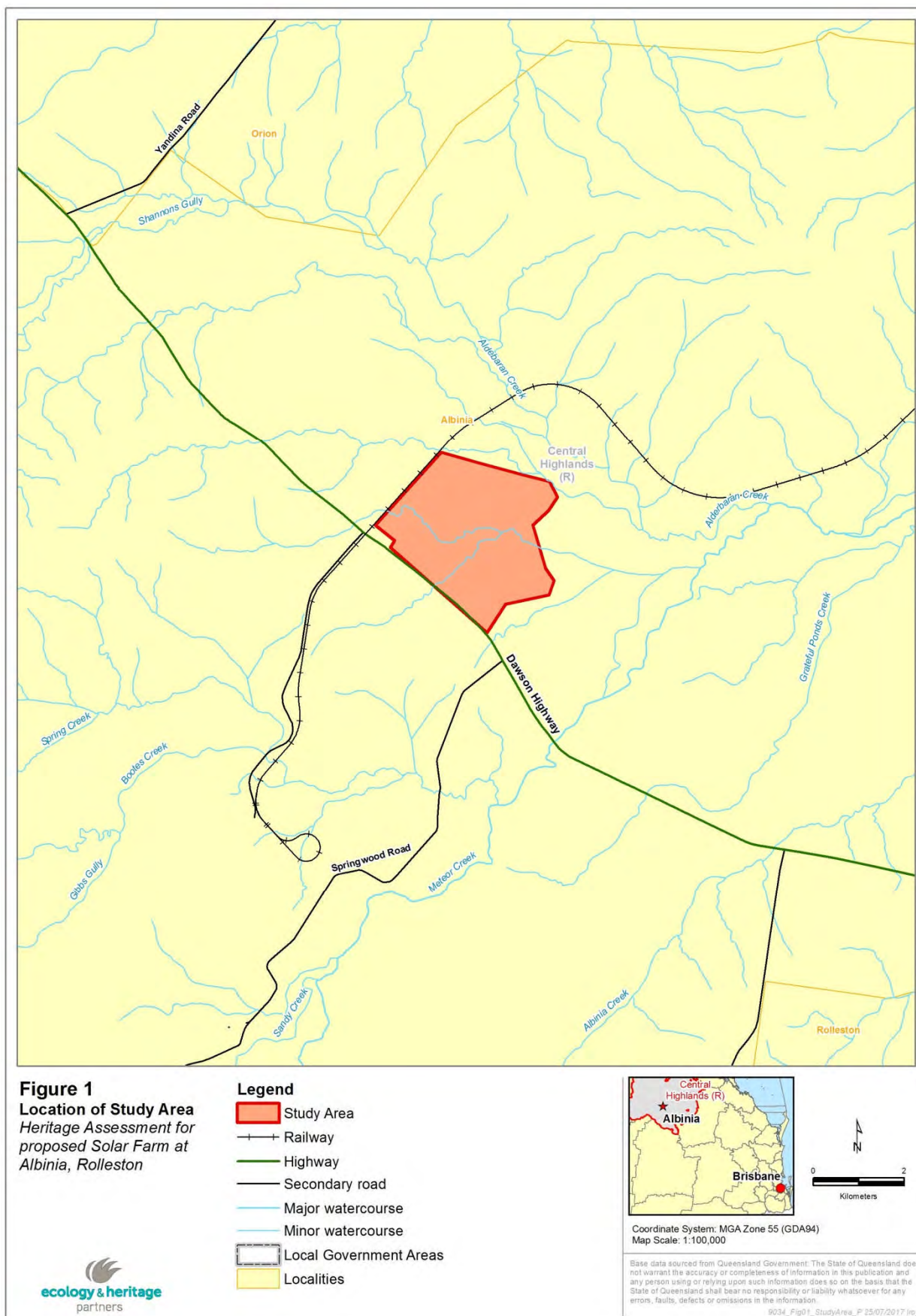
### **6.4 Recommendations**

Given the above assessment the following recommendations are provided to minimise or avoid harm to known and unknown Aboriginal cultural heritage within the study area:

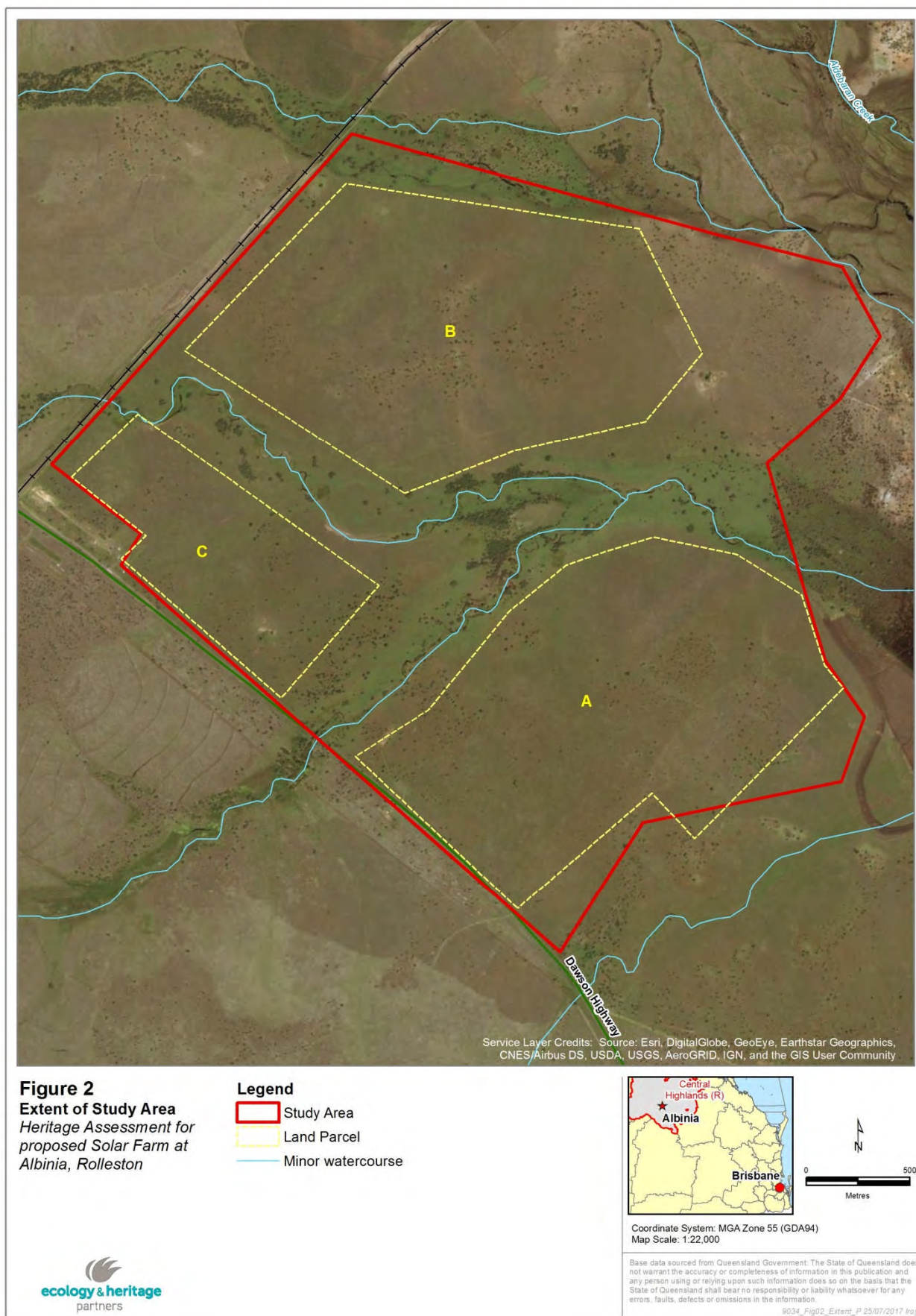
- Further cultural heritage assessment of the study area, involving a site inspection or archaeological survey, is undertaken in conjunction with the local relevant Aboriginal communities prior to the activity commencing;
- Formal consultation with the local relevant Aboriginal communities (in this instance the Karingbal People and the Bidjara People) is undertaken so that their views on managing the proposed activity and any Aboriginal cultural heritage which may be situated within the study area are recognised and incorporated into any further assessments or agreements;
- A Cultural Heritage Management Agreement (CHMA) may be undertaken to minimise or avoid harm to Aboriginal cultural heritage which may be impacted by the proposed activity. A CHMA is best described as a legal agreement with the local Aboriginal communities. The CHMA allows for the management of Aboriginal cultural heritage material before, during and after the proposed development.

## FIGURES

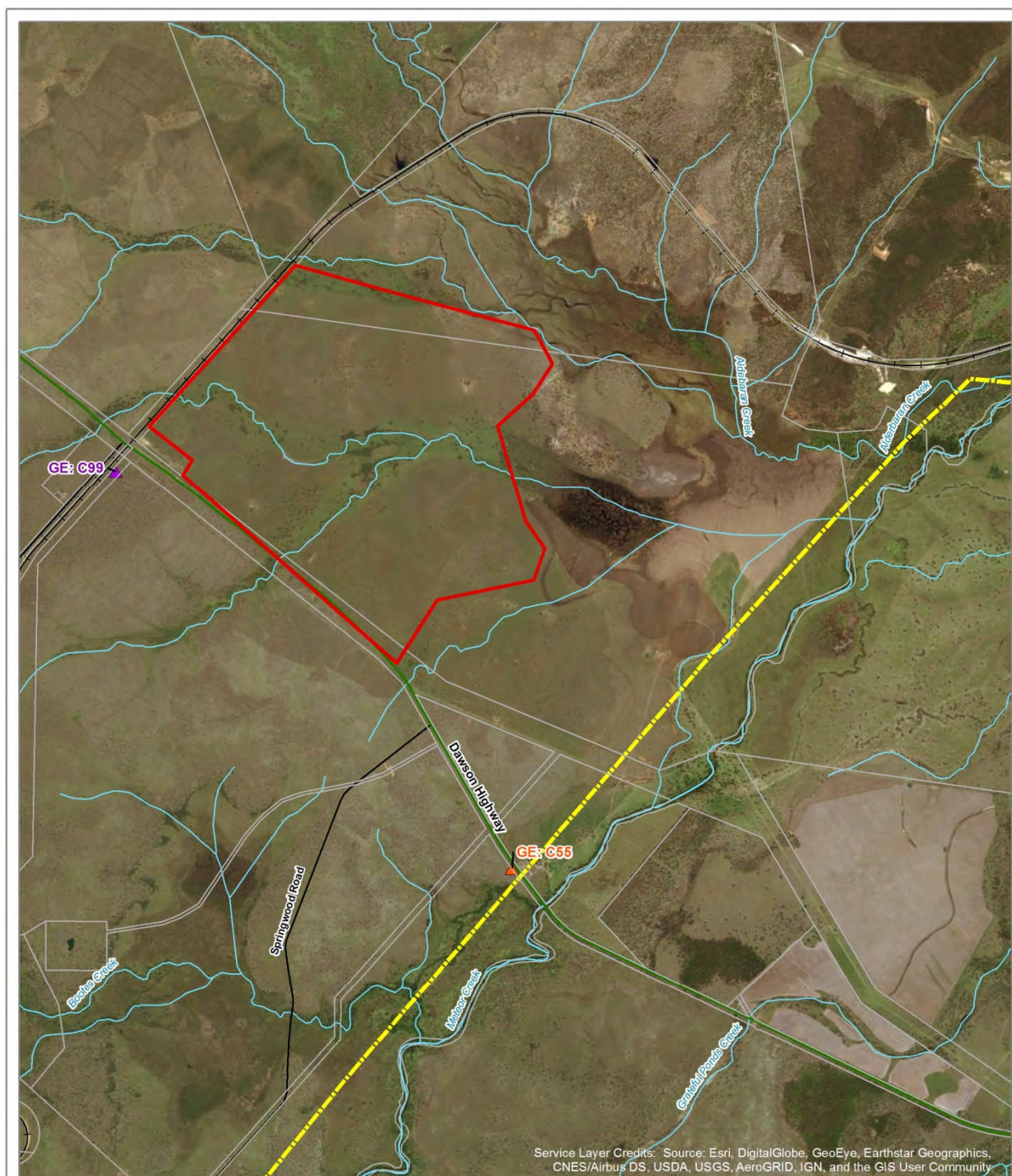
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Service Layer Credits: Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

**Figure 3**  
**Aboriginal Cultural Heritage Sites**  
*Heritage Assessment for proposed Solar Farm at Albinia, Rolleston*

**Legend**

- Study Area
- Aboriginal Sites**
  - ▲ Artefact scatter and Quarry
  - ▲ Contact site
  - Landscape feature / pathway



Coordinate System: MGA Zone 55 (GDA94)  
Map Scale: 1:50,000

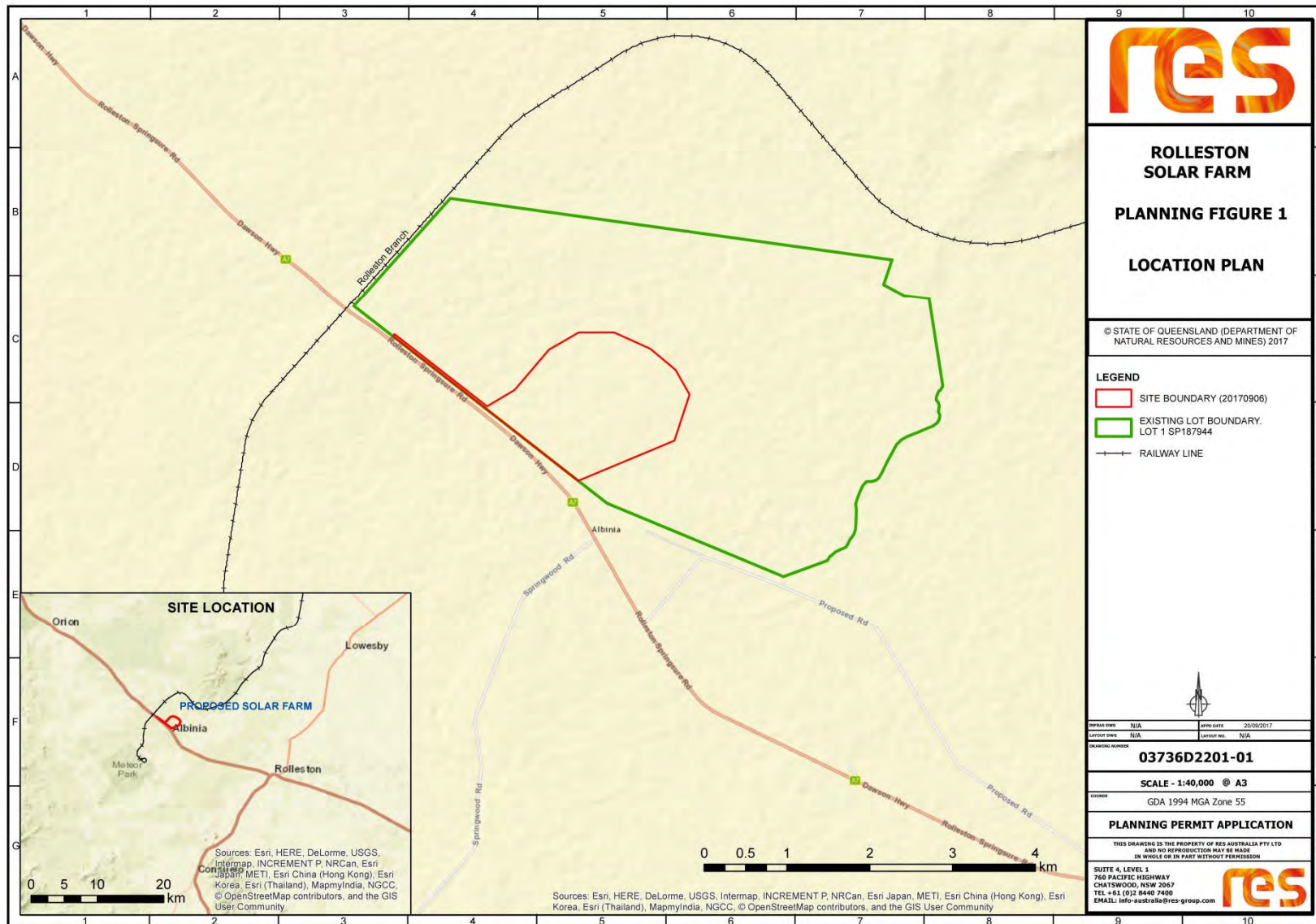
Base data sourced from Queensland Government. The State of Queensland does not warrant the accuracy or completeness of information in this publication and any person using or relying upon such information does so on the basis that the State of Queensland shall bear no responsibility or liability whatsoever for any errors, faults, defects or omissions in the information.

9034\_Fig03\_AborPlaces 3/08/2017 mnt/ley

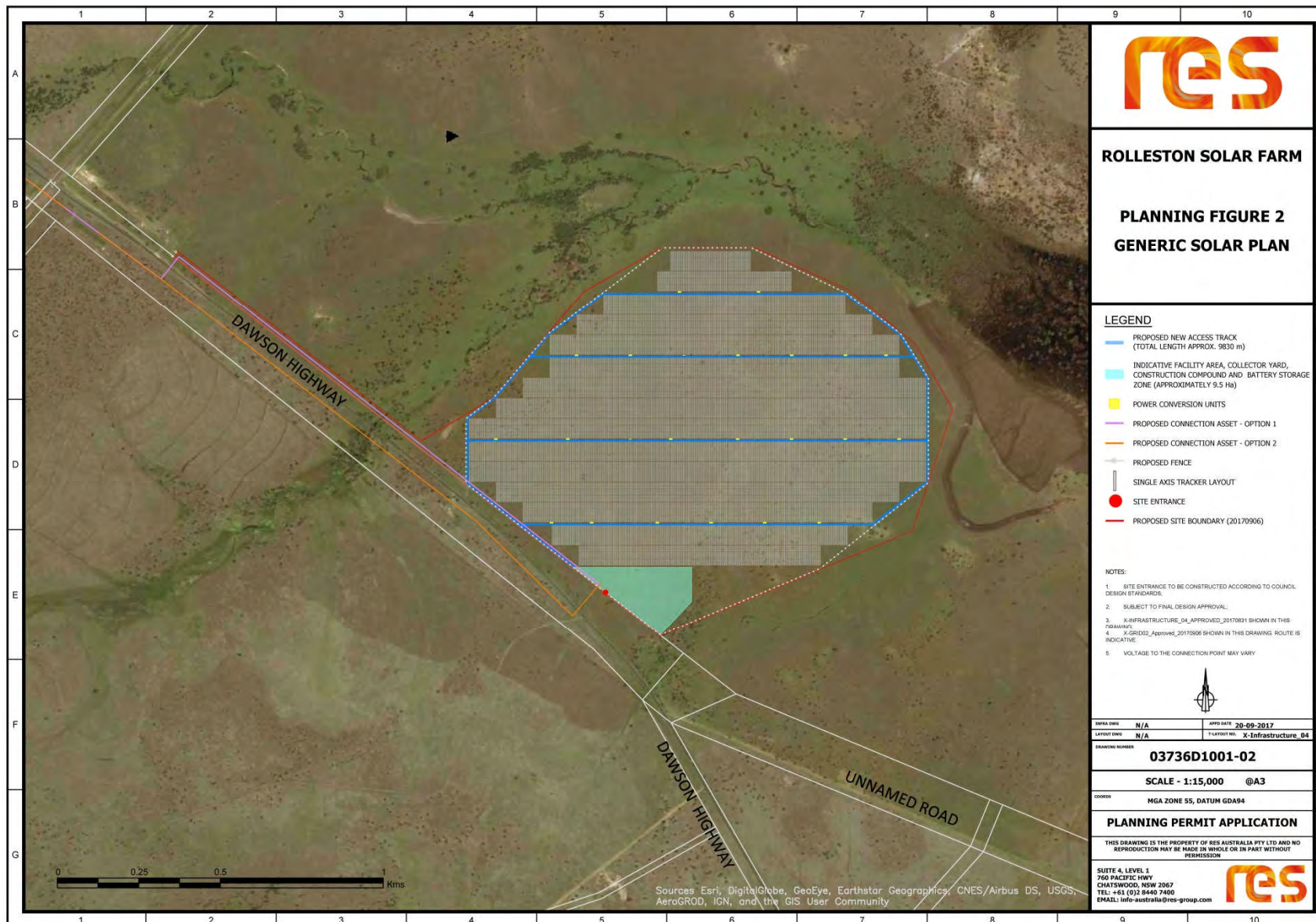
## PLANNING FIGURES

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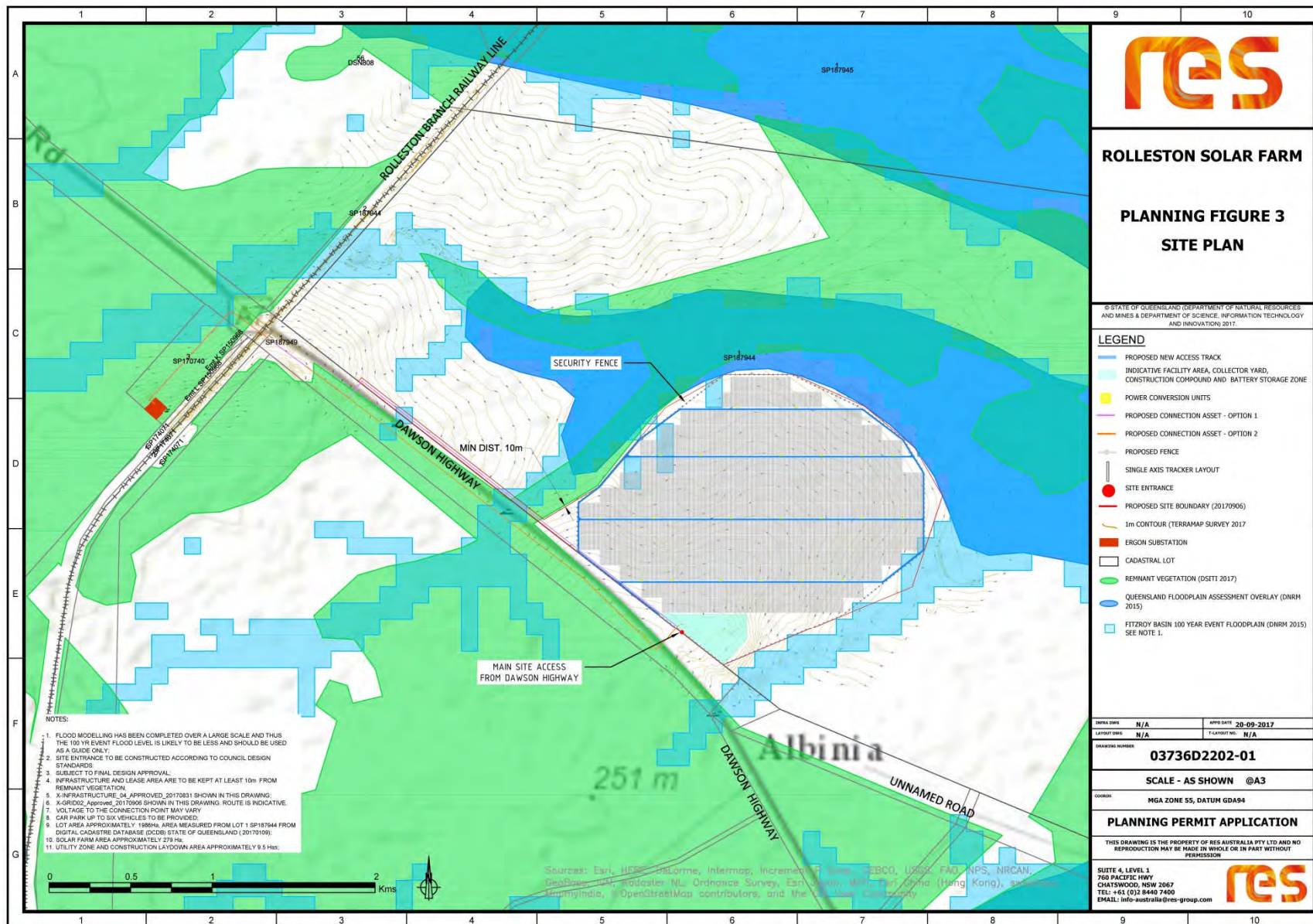


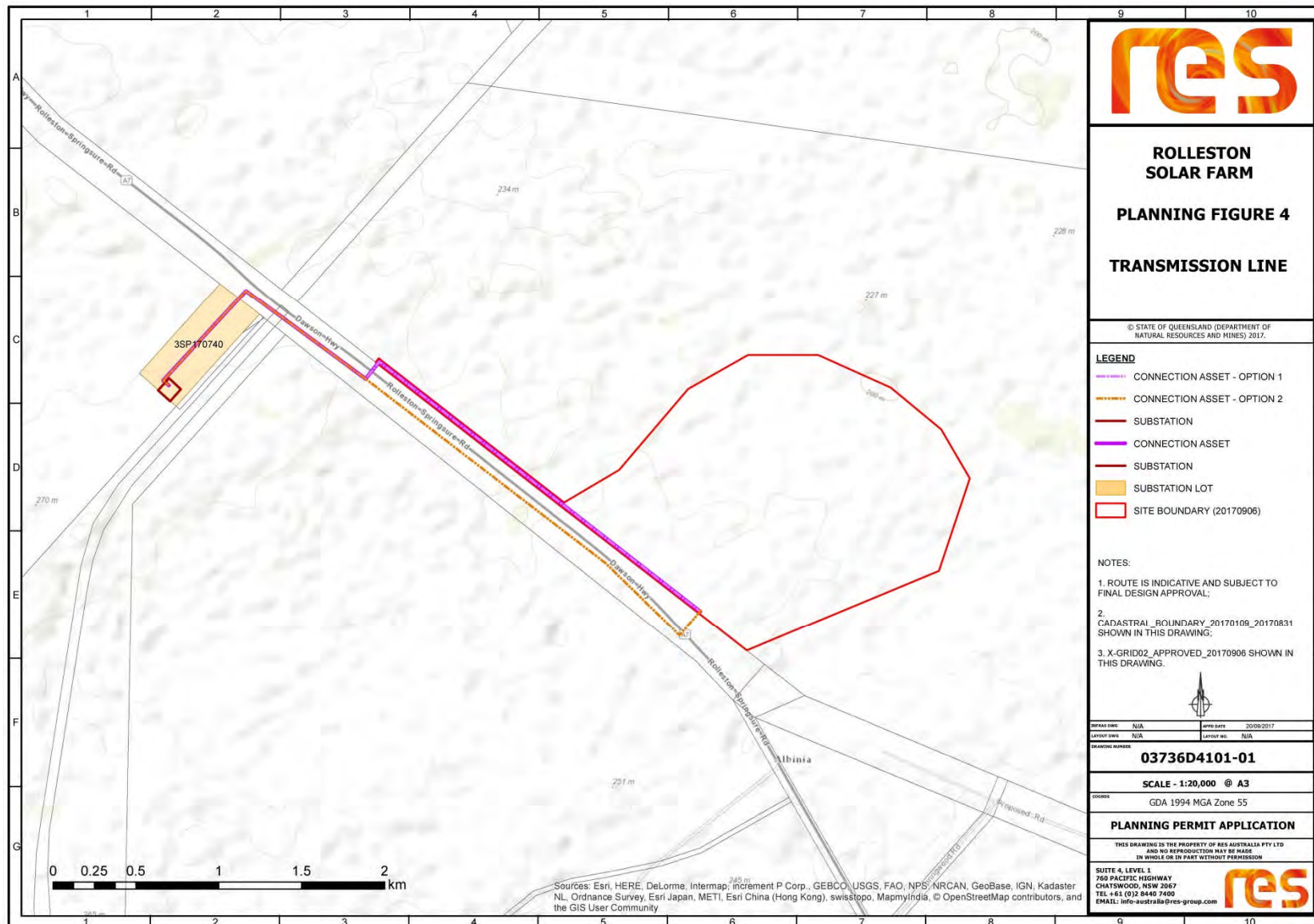




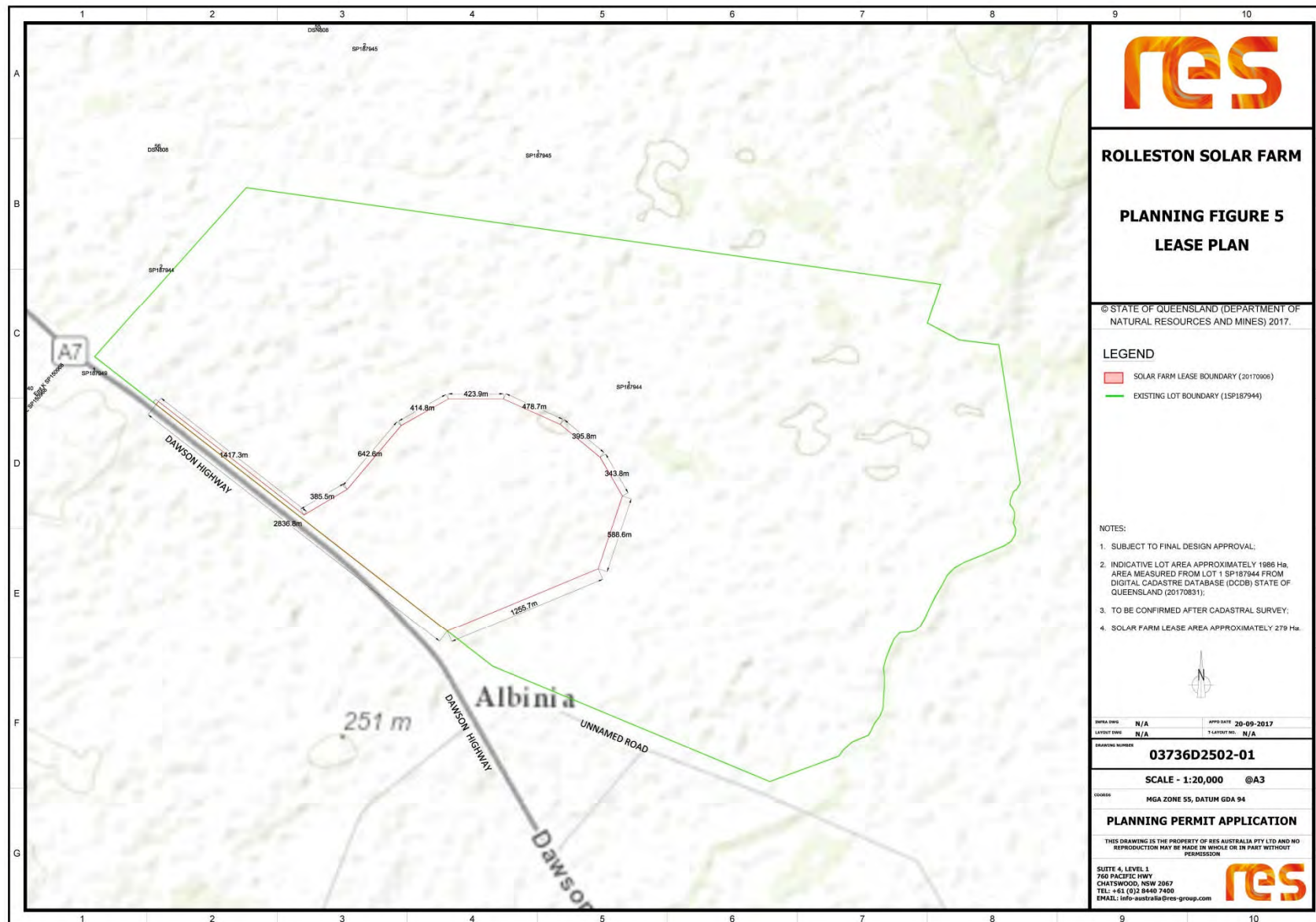












## APPENDICES

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## Appendix 1: Author Details

### Stacey Kennedy

Stacey has more than ten years of consulting experience working in Victoria, New South Wales, ACT, Queensland and Western Australia. Stacey completed her archaeology degree with Honours at La Trobe University in 2008, and has been involved in Aboriginal and historic excavations since 2006. Stacey's thesis focused on Aboriginal archaeology, with particular emphasis on the distribution of silcrete sources and stone artefacts across the greater Melbourne region. Stacey was trained in stone artefact analysis during her undergraduate studies at La Trobe University and further refined these skills during extensive field work undertaken at Lake Mungo National Park.

Stacey is an experienced senior field supervisor and has overseen the investigation and salvage of large and complex archaeological sites. She has managed numerous Aboriginal heritage projects for a variety of Agents and developments within Victoria, New South Wales, ACT, and Queensland. Projects have included heritage assessments and excavations for utility construction projects such as: pipelines, sewerage lines, footpaths and wind/solar farms, and large area urban growth heritage assessments for residential and industrial developments. In regards to Aboriginal Cultural Heritage Management Plans, Stacey has currently authored over 60 plans, which have focussed on large residential / industrial subdivisions across the outer Melbourne metropolitan area. Stacey has also authored many: due diligence assessments, desktop assessments, survey and excavation reports, including comprehensive analysis and subsequent reporting on Aboriginal stone tools. In addition, she has built professional relationships working with Heritage Victoria and Aboriginal Victoria as well as consulting with various clients. Stacey has a positive history of consulting with Registered Aboriginal Parties and Traditional Owner groups in Victoria, New South Wales, ACT and Queensland.

Stacey has shown commitment to the profession through her involvement in the La Trobe University Colloquium where she has presented the results of her excavations at 44 First Avenue, Chelsea Heights in 2012. Stacey has also co-authored a paper for the Excavation, Surveys and Heritage Management in Victoria journal (La Trobe University) regarding the results of the Chelsea Heights excavations which detailed evidence for Pleistocene Aboriginal occupation below the Carrum Swamp (Wheeler, J., Alan N. Williams, Stacey Kennedy, Phillip S. Toms and Peter Mitchel 2014 'A Pleistocene date at Chelsea Heights, Victoria: evidence for Aboriginal occupation beneath the Carrum Swamp' in Excavations, Surveys and Heritage Management in Victoria (Vol 3). La Trobe University: Bundoora.

### Joseph Page

Joseph Page is an Archaeologist at Ecology and Heritage Partners Pty Ltd with over two years of experience in British and Australian Archaeology. He studied Archaeology at the University of Bradford and graduated in 2015. His honours thesis focused on Neolithic and Early Bronze Age occupation of the Upper Wharfedale valley in North Yorkshire.

During his degree Joseph worked as an intern in local government archaeology predominantly in heritage database enhancement, artefact photography and heritage management. Once he graduated he worked on a variety of commercial field projects across the UK including large utility and infrastructure projects, cemetery exhumation and full open area excavation.



Upon arriving in Australia in late 2016 Joseph has worked on a range of Aboriginal and Historical projects in Victoria including directing the archaeological excavations at 599 Swanston Street in Carlton. He has been involved in multiple tasks including field surveys, test pitting, finds processing, report writing, demolition monitoring and uncovering historical sites.

#### **Dr Monique Elsley – GIS Coordinator**

*BAppSc (Cartography), PhD (Cartography) – RMIT, 2013*

Monique completed a Bachelor of Applied Science majoring in Multimedia Cartography at RMIT University in 2007, followed by an Honours Degree in Geospatial Science in 2008. In January 2013, Monique passed her Doctorate in Geospatial Sciences, also at RMIT. Her research focussed on developing a methodology for making better use of a spatial data archive, and assessing if emergent concepts of social media, including crowdsourcing, could be beneficial. A case study focused on data requirements for ecological fire management in national parks. Throughout her PhD, Monique has presented stages of her research to various international and domestic conferences and seminars, and has participated in workshops to improve her knowledge on the various aspects inherent in her research topic.

Monique has extensive experience with ArcGIS desktop software for the production of mapping products and data analysis. Her first stint in the spatial industry was as a Cartographer at Lonely Planet Publications, in 2006 - 2007. Responsibilities included creating maps for and assisting with the finalisation of regional and city maps for guidebooks, and updating the database with information obtained from aerial imagery and provided by authors. Following this, Monique gained employment as a Geomatics Research Scientist at the Department of Primary Industries from 2007 – 2009, and again in 2010 - both in a full-time and part-time capacity. Her work involved producing GIS data layers and maps for various projects, analysing results, undertaking a literature review, and contributing to technical reports and journals. Projects she was involved in focussed on climate change adaptation, Victorian land use and developing agricultural ecological zones. Whilst completing her PhD, Monique undertook casual lecturing and tutoring roles at RMIT. This included developing materials for a new practical exercise with the aim of teaching students how to produce quality maps using ESRI's ArcGIS software.

Monique has been employed at Ecology and Heritage Partners since August 2012 and her primary role involves mapping, GIS analysis and data maintenance.

#### **Oona Nicolson**

Oona Nicolson is a Director and the Principal Heritage Advisor at Ecology and Heritage Partners Pty Ltd. She is a heritage specialist with over 18 years of experience in the archaeological consulting sector, working in Victoria, South Australia, New South Wales and Tasmania. Oona regularly appears before VCAT and independent panels as an Expert Witness in the areas of Aboriginal and historical heritage. Oona has extensive experience in over 800 projects with a wide variety of Agents.

Oona's skills include project management, peer reviews, background research and due diligence assessments, archaeological survey, subsurface testing and salvage excavation, Aboriginal and non-Aboriginal site identification, recording and photography, site significance assessment, development of recommendations to mitigate the impact of development upon Aboriginal and non-Aboriginal historical heritage, flaked stone artefact and historical artefact recording and interpretation, communication and

consultation with regulatory bodies (OAAV and HV), Agents, landowners, RAPs and community representatives, preparation of conservation management plans, expert witness statements, Permits and Consents to Disturb for Heritage Victoria, Historical Heritage Assessments and, desktop, standard and complex Aboriginal CHMPs. Her formal qualifications and memberships include:

- Bachelor of Arts (Honours in Archaeology; First Class), Flinders University (1996);
- Bachelor of Arts (Australian Archaeology and Australian Studies), Flinders University (1995);
- Current Archaeology (Alternate) Member of the Victorian Heritage Council;
- Maritime Archaeology Certificate: Part 1 (Part 2 pending), AIMA and NAS (U.K.);
- Australian Association of Consulting Archaeologists Inc. AACAI (Full Member and current Treasurer of Victorian Chapter; Current National Secretary and Current Membership Committee);
- Member, Australian Archaeological Association (AAA);
- Victorian Planning and Environmental Law Association;
- Accredited UDIA EnviroDevelopment Professional (Accredited August 2012)
- UDIA Sustainability Committee; and
- Heritage member of the South Australian Chamber of Mines and Energy (SACOME) Sustainability and Development Committee.

## Appendix 2: Heritage Legislation

### Commonwealth *Native Title Act 1993*

Native Title describes the rights and interests of Aboriginal and Torres Strait Islander people in land and waters, according to their traditional laws and customs. In Australia, Aboriginal and Torres Strait Islander people's rights and interests in land were recognised in 1992 when the High Court delivered its historic judgment in the case of *Mabo v the State of Queensland*. This decision overturned the legal fiction that Australia upon colonisation was *terra nullius* (land belonging to no-one). It recognised for the first time that Indigenous Australians may continue to hold native title.

Native Title rights may include the possession, use and occupation of traditional country. In some areas, native title may be a right of access to the area. It can also be the right for native title holders to participate in decisions about how others use their traditional land and waters. Although the content of native title is to be determined according to the traditional laws and customs of the title holders, there are some common characteristics. It may be possessed by a community, group, or individual depending on the content of the traditional laws and customs. It is inalienable (that is, it cannot be sold or transferred) other than by surrender to the Crown or pursuant to traditional laws and customs. Native Title is a legal right that can be protected, where appropriate, by legal action.

Native Title may exist in areas where it has not been extinguished (removed) by an act of government. It will apply to Crown land but not to freehold land. It may exist in areas such as:

- Vacant (or unallocated) Crown land;
- Forests and beaches;
- National parks and public reserves;
- Some types of pastoral leases;
- Land held by government agencies;
- Land held for Aboriginal communities;
- Any other public or Crown lands; and/or
- Oceans, seas, reefs, lakes, rivers, creeks, swamps and other waters that are not privately owned.

Native Title cannot take away anyone else's valid rights, including owning a home, holding a pastoral lease or having a mining lease. Where native title rights and the rights of another person conflict the rights of the other person always prevail. When the public has the right to access places such as parks, recreation reserves and beaches, this right cannot be taken away by Native Title. Native Title does not give Indigenous Australians the right to veto any project. It does mean, however, that everyone's rights and interests in land and waters have to be taken into account.

Indigenous people can apply to have their native title rights recognised by Australian law by filing a native title application (native title claim) with the Federal Court. Applications are required to pass a test to gain certain rights over the area covered in the application. The Native Title Tribunal (NNTT) was established to administer application processes. Once applications are registered, the NNTT will notify other people about the application and will invite them to become involved so all parties can try to reach an agreement that



respects everyone's rights and interests. If the parties cannot agree, the NNTT refers the application to the Federal Court and the parties argue their cases before the Court.

As a common law right, native title may exist over areas of Crown land or waters, irrespective of whether there are any native title claims or determinations in the area. Native Title will therefore be a necessary consideration when Government is proposing or permitting any activity on or relating to Crown land that may affect native title<sup>1</sup>.

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<sup>1</sup> The information in this section was taken from the Department of Sustainability and Environment, Fact Sheet on Native Title, 2008

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