

Final Report

# Heritage Due Diligence Assessment: Proposed Columboola Solar Farm, Kerwicks Road, Columboola, Queensland

Prepared for:

Luminous Energy Pty Ltd

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Ecology and Heritage Partners Pty Ltd

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## ACKNOWLEDGEMENTS

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- Agistees for site access; and
- Department of Aboriginal and Torres Strait Islander Partnerships (DATSIP) for access to the Aboriginal Cultural Heritage Register and Aboriginal Cultural Heritage Database.

**Cover Photo:** Study area facing south

(Photo by Ecology & Heritage Partners Pty Ltd)

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# EXECUTIVE SUMMARY

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## Introduction

Ecology and Heritage Partners was engaged by Luminous Energy Pty Ltd to prepare this Heritage Due Diligence Assessment for a proposed Solar Farm within a property situated at Kerwicks Road, Columboola, Queensland (Western Downs Regional Council), hereafter referred to as the 'study area'.

The purpose of the assessment was to identify Aboriginal cultural heritage values that may be present within the study area. Information gathered throughout the assessment was used to determine potential legislative implications (associated with Aboriginal cultural heritage values) for the proposed development works.

## Aboriginal Cultural Heritage Act 2003 (QLD)

### Implications for the project

With regard to Aboriginal archaeological heritage, the assessment indicates that a Cultural Heritage Management Plan (CHMP) is not required under the *Aboriginal Cultural Heritage Act 2003* ('the Act') as an Environmental Impact Statement will not be conducted.

## Aboriginal Cultural Heritage Act 2003 – Duty of Care Guidelines

The Duty of Care Guidelines state that the Act requires that a proponent must exercise due diligence and reasonable precaution prior to undertaking an activity which may cause harm to Aboriginal cultural heritage. In exercising due diligence or complying with the cultural heritage 'Duty of Care' the following may be considered:

- The nature of the activity, and the likelihood of its causing harm to Aboriginal cultural heritage;
- The nature of the Aboriginal cultural heritage likely to be harmed by the activity;
- The extent to which the person consulted with Aboriginal parties about the carrying out of the activity, and the results of the consultation;
- Whether the proponent carried out a study or survey, of any type, of the area affected by the activity to find out the location and extent of the Aboriginal cultural heritage, and the extent of the study or survey;
- Whether the proponent searched the database and register for information about the area affected by the activity;
- The extent to which the proponent complied with the Duty of Care Guidelines; and
- The nature and extent of past uses in the area affected by the activity.

This Heritage Due Diligence Assessment has ascertained that portions of the study area have been subject to historical native vegetation clearing in order to improve pasture (Figures 2a to 2b). This clearing would have involved the removal of native vegetation by disturbing root systems situated beneath the ground surface

and exposing underlying soils. This type of vegetation removal is considered to be in line with current descriptions of significant ground disturbance as defined under the Duty of Care Guidelines.

The Duty of Care Guidelines defines Significant Ground Disturbance as:

*“disturbance by machinery of the topsoil or surface rock layer of the ground, such as by ploughing, drilling or dredging; the removal of native vegetation by disturbing root systems and exposing underlying soil”.*

Given the above, it is assessed that the portions of the study area subject to historical native vegetation clearing (Figures 2a to 2b) and any proposed activities within these locations would comprise a Category 4 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).*

Section 5.4 of the Duty of Care Guidelines specifies the following:

*Where an activity is proposed in an area which has been previously subject to Significant Ground Disturbance it is generally unlikely that the activity will harm Aboriginal cultural heritage and the activity will comply with these guidelines.*

Section 5.5 also states:

*In these circumstances, subject to the measures set out in paragraphs 5.6 – 5.12, it is reasonable and practicable that the activity proceeds without further cultural heritage assessment.*

However, Aboriginal cultural heritage was also identified within other portions of the study area not previously subject to intensive native vegetation clearing. The locations of the Aboriginal cultural heritage finds are shown on Figures 2a to 2b. Generally, the Aboriginal cultural heritage finds were located in more vegetated areas, within close proximity to drainage lines or natural waterways and associated with gilgai formations in the eastern half of the study area. This Aboriginal cultural heritage comprised stone artefacts and non-lithic features such as hearths and clay balls. This Aboriginal cultural heritage was documented in both disturbed and undisturbed contexts. The gilgai formation in the eastern half of the study area appears to be particularly sensitive for Aboriginal cultural heritage; and it is highly likely that more Aboriginal cultural heritage would be located here. It is also considered that further Aboriginal cultural heritage is likely to be present across the study area, particularly near drainage lines or natural waterways and areas not previously subject to significant ground disturbance (Figures 2a to 2b).

Given the above, it is assessed that these portions of the study area (Figures 2a to 2b) and any proposed activities within these locations would comprise 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).*

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 known and unknown Aboriginal cultural heritage within the study area:

- Formal consultation with the local relevant Aboriginal group (in this instance the Barrunggam People) is undertaken so that their views on managing the proposed activity and the Aboriginal cultural heritage 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 groups (in this instance the Barrunggam People). The CHMA allows for the management of Aboriginal cultural heritage material before, during and after the proposed development;
- No activities may be undertaken within areas assessed as being Category 5 (Figures 2a to 2b) without further formal archaeological assessment being undertaken in conjunction with the Barrunggam People;
- No activities may be undertaken at the GPS location of the Aboriginal cultural heritage identified by this assessment or within a 50 m buffer radius of this point location without further formal archaeological assessment being undertaken in consultation and conjunction with the Barrunggam People; and
- Activities proposed for areas assessed as being Category 4 are unlikely to harm Aboriginal cultural heritage and the activity will comply with the Duty of Care guidelines. If any of the proposed activities for areas assessed as being Category 4 are likely to impact the ground surface beyond that which has already occurred (i.e impact footprint of the solar panel) it is recommended that these portions of the study area (likely to be only 1-2% of the entire study area) are further addressed in agreement with the Barrunggam People.

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

### **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.

## **Western Downs Regional Council Planning Scheme (2017)**

### **Implications for the project**

There are no implications for the project under the Western Downs Regional Council Planning Scheme (2017).



## 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:

- Formal consultation with the local relevant Aboriginal group (in this instance the Barrunggam People) is undertaken so that their views on managing the proposed activity and the Aboriginal cultural heritage 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 groups (in this instance the Barrunggam People). The CHMA allows for the management of Aboriginal cultural heritage material before, during and after the proposed development;
- No activities may be undertaken within areas assessed as being Category 5 (Figures 2a to 2b) without further formal archaeological assessment being undertaken in conjunction with the Barrunggam People;
- No activities may be undertaken at the GPS location of the Aboriginal cultural heritage identified by this assessment or within a 50 m buffer radius of this point location without further formal archaeological assessment being undertaken in consultation and conjunction with the Barrunggam People; and
- Activities proposed for areas assessed as being Category 4 are unlikely to harm Aboriginal cultural heritage and the activity will comply with the Duty of Care guidelines. If any of the proposed activities for areas assessed as being Category 4 are likely to impact the ground surface beyond that which has already occurred (i.e impact footprint of the solar panel) it is recommended that these portions of the study area (likely to be only 1-2% of the entire study area) are further addressed in agreement with the Barrunggam People.

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# 1 INTRODUCTION

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## 1.1 Preamble

Ecology and Heritage Partners was engaged by Luminous Energy Pty Ltd to prepare this Heritage Due Diligence Assessment for a proposed Solar Farm within a property situated at Kerwicks Road, Columboola, Queensland (Western Downs Regional Council), hereafter referred to as the 'study area'.

The purpose of the assessment was to identify Aboriginal cultural heritage values that may be present within the study area. Information gathered throughout the assessment was used to determine potential legislative implications (associated with Aboriginal cultural heritage values) for the proposed development works.

## 1.2 The Study Area

The proposed development is located on agricultural land approximately 9 kilometres north-east of Miles (Figure 1). The study area is described as Lots 70 and 71 on BWR159 and is bound by the unformed Gearys Road to the south, remnant vegetation and grazing lands to the north and west and Ryalls Road to the east. The unformed Kerwicks Road bisects the study area from north to south. The Columboola Substation occurs approximately 1.5 kilometres to the south of the study area.

The study area is located within a largely vegetated landscape, and is currently used for the grazing of cattle which is the primary land use across the broader region. Patches of vegetation have been historically cleared in order to improve pasture. Two watercourses are situated within the study area, one occurs in the western portion and flows from south to north and the other also occurs in the western portion and traverses towards the north-east corner of the study area.

The study area is comprised of predominantly flat to gently sloping land and contains an existing house with sheds in the southern portion.

## 1.3 The Activity

The proposed activity will comprise the construction, operation and maintenance of a large scale solar farm with an installed capacity of approximately 300 megawatts (MW). The proposed activity will be developed in up to three stages, with each stage comprising approximately 100MW. The lifetime of the project will be approximately 30 years.

## 1.4 Details of Authors

### 1.4.1 Ecology and Heritage Partners Pty Ltd Cultural Heritage Division

Ecology and Heritage Partners is a professional cultural heritage and ecological consultancy providing high quality technical services in the field of Aboriginal and historical cultural heritage assessment, Cultural Heritage Management Plans (CHMPs), ecological assessment, research and management. The business

provides effective and innovative cultural and natural heritage advice to a range of state and local government authorities/agencies, corporate and private clients.

Ecology and Heritage Partners has an established heritage team led by Oona Nicolson (Director and Principal Heritage Advisor). All of the team are qualified Cultural Heritage Advisors, specialising in Australian archaeology (including Aboriginal, Historical and Maritime).

#### **1.4.2 Authors**

The Heritage Advisor of this Heritage Due Diligence Assessment is Stacey Kennedy. The authors are Stacey Kennedy and Meredith Filihia. The quality assurance review was undertaken by Oona Nicolson (Director/Principal Heritage Advisor). The field inspection was undertaken by Meredith Filihia (Archaeologist/Heritage Advisor). Mapping was provided by Monique Elsley (GIS Coordinator) and Louisa Roy (GIS Officers).

Details of the project team are provided in Appendix 1.

### **1.5 Heritage Legislation**

The assessment conforms to the requirements of the *Queensland Aboriginal Cultural Heritage Act 2003*, *Queensland Heritage Act 1992*, the *Queensland Heritage and Other Legislation Amendment Act 2003*, and the *Sustainable Planning Act 2009*. This legislation is subordinate to the *Coroners Act 2003* in relation to the discovery of human remains.

The assessment has been prepared with reference to the following guidelines:

- The *Aboriginal Cultural Heritage Act Cultural Heritage Management Plan Guidelines* (DATSMA 2005);
- *Aboriginal Cultural Heritage Act 2003 Duty of Care Guidelines* (DATSMA 2004);
- The *Guideline for Archaeological Investigations* (DEHP 2013a);
- *Assessing Cultural Heritage Significance: Using the Cultural Heritage Criteria* (DEHP 2013b); and
- *Carrying Out a Heritage Survey* (DEHP 2013c).

## 2 PROJECT METHODS

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### 2.1 Scope of Works

The following tasks were undertaken as part of the Heritage Due Diligence Assessment:

1. A desktop study providing a review of all relevant cultural heritage databases and literature was undertaken and examined the following:
  - o Western Downs Regional Council Planning Scheme (2017) and overlay maps and policies;
  - o EPBC Act Protected Matters Search Tool (Department of the Environment and Energy (DoEE) 2017), The National Heritage List (NHL) and Commonwealth Heritage List (CHL), as well as the Register of the National Estate (RNE) via the Australian Heritage Database;
  - o National Native Title tribunal (NNTT) database of Native Title Claims and Determinations, and Indigenous Land Use Agreements (ILUA);
  - o Heritage Registers, including the Queensland Heritage Register (QHR; Department of Environment and Heritage Protection (DEHP) 2015), and the Aboriginal Heritage Register;
  - o Any historical mapping available;
  - o Topographic maps and aerial photographs; and
  - o Other relevant earlier studies for the study area and surrounds.
2. Provide a brief review of land use for the study area;
3. Provide information in relation to any implications of Commonwealth and State environmental legislation and Government policy associated with the proposed development;
4. Conduct a site inspection of the study area by a Heritage Advisor to identify any Aboriginal cultural heritage;
5. Discuss any opportunities and constraints associated with the study area; and
6. Presentation of the results in this Heritage Due Diligence Assessment report.

### 2.2 Limitations

The cultural heritage information used to inform this Heritage Due Diligence Assessment is limited to that obtained through desktop assessment and field inspection.

This report is an opportunity to provide a context for understanding the study area and to identify potential areas that may contain Aboriginal or historical sites in order to determine the relevant legislative implications for the proposed activity (refer Section 6). Aboriginal cultural heritage may occur anywhere in the landscape and it is important to note that the assessment of likelihood is based on the balance of probability; it is our opinion based on an assessment of landforms and the extent of previous ground

disturbance, compared to the general archaeological character of the region. It is not a categorical statement that Aboriginal cultural heritage will or will not be present.

## 3 ENVIRONMENTAL CONTEXT

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### 3.1 Bioregion

The study area is situated within the Brigalow Belt South bioregion and the Eastern Darling Downs subregion.

The Brigalow Belt South bioregion is situated within southern Queensland and also incorporates a small portion of northern NSW. Overall it covers an area of approximately 56,796 km<sup>2</sup>. There are various different land types occurring within the region including: undulating hilly areas with low ridges and deep valleys, as well as flat alluvial plains. Vegetation within the region comprises primarily mixed eucalypt woodland with areas of brigalow scrubs and open Mitchell grasslands. Land use within rural areas is primarily cattle grazing (Rangelands 2008).

The climate of the Brigalow Belt South bioregion is hot to warm subhumid climate with summer dominate rainfall. The spatially averaged median rainfall for the area is 489 mm (1890-2005) (Rangelands 2008).

### 3.2 Geology, Geomorphology and Soils

Landscapes within the Brigalow Belt South bioregion are derived from extensive basalt flows and quartz sandstones which have subsequently formed very variable soils and vegetation types dependant on the local rock type or sediment source (OEH 2016).

The western portion of the study area is characterised by Jurassic to Lower Cretaceous Kumburilla bed rock comprised of sandstone, siltstone, shale and conglomerate. The eastern portion is characterised by Quaternary sandy alluvium resulting from the Condamine River (GHD 2016: 2).

The majority of the study area has been described as comprising a vertisol (clayey soil with little organic matter) with significant gilgai formation occurring within the most eastern portion.

#### Gilgai formations

There are significant numbers of gilgai formations throughout the study area and in the region more generally. These features, otherwise known as crabholes, form in soil types containing a high percentage of swelling clay (vertisols). They are characterised as circular to linear shaped depressions, often ringed by stone deposits which undergo dynamic seasonal changes. In dry seasons, when there is little to no moisture remaining in the soil, gilgai surfaces deeply crack creating large voids extending through the B-horizon. In contrast, after rain events the clay soils dramatically swell, closing the cracks and uplifting and expelling subsurface rocks and other materials (Mabbut 1977, Twindale 1972).

Stepped gilgai formations such as those in the study area, may migrate many meters both down and upslope over several years (Dixon 1994, Mabbut 1963). Therefore, the contemporary location of gilgai formation should not be assumed to have been the same over the potentially long time-span of Aboriginal occupation of the region.

Gilgai were seasonal sources of water for Aboriginal people (Bayly 1999), holding moisture within saturated clays, long after shallow surface sources would have evaporated (Neyland 2016). The presence of gilgai



formations also has great implications for understanding potential post-depositional archaeological site formation processes. Previous research examining the impacts of gilgai on archaeological sites has found that processes may displace artefacts and other archaeological materials both horizontally and vertically. Artefacts may become positioned deep within the soil subsurface where they fall down clay cracks in dry seasons or are buried by deposits created by the expulsion of materials in wetter periods (Neyland 2016, Wood and Johnson 1978). For this reason, there is a high potential for subsurface artefacts in areas with gilgai formations. Likewise there is low potential for stratigraphic integrity of archaeological sites.

### **3.3 Vegetation**

The study area is characterised by a modified landscape with large areas cleared for agricultural purposes, resource extraction and infrastructure development with several large areas of remnant vegetation present. A detailed analysis of the vegetation types present within the study area has been provided within a separate report which provides an Ecological Assessment of the study area (Ecology & Heritage Partners 2017 – In prep).

## 4 ABORIGINAL CONTEXT

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The section reviews the Aboriginal context of the study area and includes an examination of historical and ethnohistorical sources, previously recorded Aboriginal archaeological site types and locations in the region of the study area, and previous archaeological studies undertaken in the area. Together, these sources of information can be used to formulate a predictive statement concerning what types of sites are most likely to occur in the study area, and where these are most likely to occur.

### 4.1 Ethnohistory

The study area is situated within the greater ‘Darling Downs’ region. A large number of ethno historical accounts detailing encounters between early explorers/settlers and Aboriginal people exist for the Darling Downs region. These accounts, along with supporting archaeological evidence, indicate that the Darling Downs region was widely utilised by Aboriginal people over a long period of time.

The Darling Downs area was inhabited by various clans of the *Wakka Wakka* language speakers: the *Keinjan* around Warwick, the *Giabal* around Toowoomba, the *Barunggam* to the west of Dalby and the *Jarowair* around the Bunya mountains. The *Bigambal* and *Kambuwal* of the *Kamilaroi* speakers were situated to the south and west and to the east were the *Jagara* of the *Turubul* speakers. Aboriginal people of the Darling Downs were also known as the *Gormaingguru* ‘men of the Condamine’ or *Gooneburra* ‘fire blacks’ due to their habit of firing the grasslands (Queensland Art Gallery NA).

Alan Cunningham was associated with several exploring expeditions around the Morton Bay region during the 1820’s and it was during this time that he discovered the Darling Downs region and realised its potential for pastoral purposes. He is also believed to be one of the first Europeans to provide first-hand written accounts of Aboriginal people from the area. While situated near Swan Creek (10 km east of Warwick) he recorded the following:

*“Although very recent traces of natives were remarked in different parts of the vale in which we remained encamped about a week, only a solitary aborigine (a man of ordinary stature) was seen, who, in wandering forth from his retreat in quest of food, chanced to pass the tents. Immediately, however, on an attempt made by my people to approach him, he retired in great alarm to the adjacent brushes at the foot of the boundary hills, and instantly disappeared.”* (Coffey Environments 2012: 23-10).

Ludwig Leichardt also noted the activities of the local Aboriginal people during his expeditions:

*“The natives seemed to have burned the grass systematically along every watercourse, and round every waterhole, in order to have them surrounded by young grass as soon as the rain sets in...It is no doubt connected with a systematic management of their runs, to attract game to particular spots, in the same way stockholders burn parts of theirs in proper seasons”* (Johnston 1988: 5).

Leichardt also provided descriptions on the type of resources consumed by Aboriginal people of the Darling Downs area whilst visiting camps near the Comet River area (near Emerald) and at the Lynd in Carpentaria:

*“When we rode up to the camp, and found their dinner ready, consisting of two eggs of brush turkey, roasted opossums, bandicoots, and iguanas. In their “dillis”, (small baskets) were several roots or tubers of an oblong form, about an inch in length, and half an inch broad, of a sweet taste, and of an agreeable flavour, even when uncooked; there were also balls of pipe-clay to ornament their persons for corroborris” (Johnston 1988: 6-7).*

Following on from the initial exploration expeditions into the Darling Downs region, pastoral expansion began in earnest from the 1840’s onwards. This expansion inevitably created conflict between European settlers/squatters and the Aboriginal people of the area as access to important food and ceremonial resources became restricted. As traditional resources become restricted Aboriginal people began to raid the livestock of the squatters and the squatters had very little tolerance toward this behaviour. This led too intermittent conflicts and in some cases across the Burnett, Auburn, Condamine, Dawson and Maranoa river districts, open warfare (Converge 2008: 16-18).

This frontier violence led to the formation of the Native Mounted Police in 1848. This involved Aboriginal troopers, under the command of white leaders, moving around new settlements to punish Aboriginal people who were involved in violence (either to life or property). The force was seen as having a reputation of undue brutality and violence. Many complaints were made about the inefficiency of the force and these inefficiencies were further highlighted through the occurrence of massacres. One such massacre occurred on the Hornet Bank station in the Dawson River district where a party of armed warriors killed eleven Europeans. This event led to many other instances of intermittent violence in the region (Converge 2008: 18; Johnston 1988: 76-77).

### **Previous Aboriginal Archaeological Investigations**

No previous Aboriginal archaeological investigations are readily available in regards to the study area; however, two regional studies have been completed within the wider area which provides information on the general character of Aboriginal sites located within the same bioregion as the study area.

A study of excavations undertaken at Mt Moffat Station (approximately 396 km north west of the study area) indicate that the Darling Downs region has been utilised by Aboriginal people for approximately 22, 000 BP. Physical evidence of this occupation was found in the form of stone artefacts (Coffey Environments 2012: 23-6).

Ceremonial sites are also known to occur within the greater study area bioregion. The *Gummingurru* Aboriginal stone arrangement lies north of Toowoomba close to the township of Meringandan on the Darling Downs (inland southern QLD), approximately 204 km south-east of the study area. The area is home of the *Jarowair* Aboriginal people one of many Aboriginal groups associated with the Bunya Mountains (or *Boobarran Ngummin*). The site is one of a series of ceremonial and other associated places in the cultural landscape that is the social catchment of the Bunya Mountains. Other places include Maidenwell Rock Shelter (Morwood 1986), Gatton Rock Art site (Morwood 1986, 1992), and the Kogan stone arrangement (Bartholomai and Breeden 1961) and various other Dreaming tracks, increase sites, pathways, burials, ochre and stone quarries, art sites and occupation sites (Rowlings-Jensen 2004; Thompson 2004).

Prior to European settlement of the area in 1877, Aboriginal people travelling to the Bunya Mountains from the areas subsequently named Moreton Bay, the Gold Coast, the Brisbane and Lockyer valleys and the

Darling Downs would have come to the *Gummingurru* stone arrangement to participate in initiation ceremonies to ensure that young men were able to take part in the major social activities that were associated with the Bunya feasts (Ross 2008).

## 4.2 Register Searches

### 4.2.1 Lot on Plan Search (DATSIP)

A search of DATSIP was conducted on 24 March 2017 for sites within the study area. Searching this area ensured that a relevant and representative sample of information was obtained. No Aboriginal cultural heritage site points or polygons were identified within the study area. Three stone artefact scatters have been recorded within 1 km of the study area's boundaries and information on these sites is provided in Table 1 below.

**Table 1** - Information on previously recorded sites situated within 1 km of the study area

Site ID	Record date	Attribute
JC00000333	4/11/2010	Artefact scatter
JC00000334	4/11/2010	Artefact scatter
JC00000335	4/11/2010	Artefact scatter

According to the Lot on Plan search provided by DATSIP, the cultural heritage party relevant to the study area are the Barrunggam People. The search also specified that there is no cultural heritage body, recorded for the study area.

There is no Designated Landscape Areas (DLA), or registered Study Cultural Heritage Areas recorded within the study area. A number of Cultural Heritage Management Plans have been recorded and approved for the area, information on these can be found in Table 2 below.

**Table 2** - Information on CHMPs completed for the area

CHL #	Sponsor	Party	Approval date
CLH000183	Syntec Resources	Barrunggam People	9/11/2007
CLH000759	Origin Energy	Barunggam People	2/7/2011
CLH000759	Origin Energy	Western Wakka Wakka	24/3/2010
CLH000768	Syntech Resources Pty Ltd	Western Wakka Wakka People	19/10/2010
CLH011004	Powerlink Queensland	Barrunggam People	10/10/2011

#### **4.2.2 National Native Title tribunal (NNTT) database of Native Title Claims and Determinations, and Indigenous Land Use Agreements (ILUA)**

Two Native Title claims (Application QUD178/2010 & QUD6005/1999) for the study area region have been made by the Barrunggam People in 1999 and 2010. Both of these applications were subsequently dismissed. As the activity area comprises privately owned land, any Native Title relating to the activity area has been extinguished (see Appendix 2 for a summary of the Commonwealth *Native Title Act 1993*).

#### **4.2.3 Local Council**

The study area is located within the Western Downs Regional Council and is governed by the Western Downs Regional Council Planning Scheme (2017). Planning schemes set out policies and provisions for the use, development and protection of land.

The Heritage Overlay of the Western Downs Regional Council Planning Scheme (2017) was examined. No Aboriginal heritage places listed on the Heritage Overlay are present within the study area.

#### **4.2.4 Consultation**

Section 1.16 of the Duty of Care Guidelines states: the Act expressly recognises that the views of the relevant Aboriginal party for a study area are key in assessing and managing an activity which is likely to impact on Aboriginal cultural heritage.

This assessment of the study area comprises preliminary due diligence in order to understand what obligations the proponent may have under the Duty of Care Guidelines. As this assessment was preliminary in nature, rather than a formal survey or investigation, consultation with the relevant Aboriginal party (being the Barrunggam People) has not been undertaken at this stage.

If this preliminary assessment identifies Aboriginal cultural heritage or landforms considered to have the potential to contain Aboriginal cultural heritage within the study area further formal investigation including consultation with the Aboriginal Party for the area (Barrunggam People) must be undertaken prior to the proposed activity being undertaken. This will enable the Barrunggam People to be notified of the presence of any Aboriginal cultural heritage and seek their advice and agreement as to how the Aboriginal cultural heritage should be managed (Duty of Care Guidelines: 5.8).

#### **4.2.5 Land Use History of the Study Area**

The study area has been previously used for agricultural purposes. The study area is currently used for the grazing of cattle, which is the primary land use across the broader region. Patches of vegetation have been historically cleared in order to improve pasture. The study area is comprised of predominantly flat to gently sloping land and contains an existing house with sheds in the southern portion. Although patches of the study area have been cleared several large areas of remnant vegetation are present.

## 5 FIELD ASSESSMENT RESULTS

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A field inspection was carried out on 28 March 2017 by Meredith Filihia (Heritage Advisor and Archaeologist).

### 5.1.1 Landforms

Each of the proposed work areas were visually inspected in order to identify the presence of Aboriginal cultural heritage (surface archaeological sites) as were landforms considered to have the potential to contain Aboriginal cultural heritage (sub-surface archaeological sites). The field inspection also sought to identify and assess salient prominent landform features of the study area, and the extent to which these landforms may have been disturbed by previous land use practices. The configuration of native vegetation and local geomorphology, specific to the formation of caves or rock shelters, was noted in order to determine the presence of mature indigenous trees capable of retaining cultural scarring and any cave/cave entrances or rock shelters.

In the eastern portion of the study area, an abandoned homestead with a number of dams was noted (Plate 1). There is a large stand of native vegetation to the south of the homestead in which a scatter of historical artefacts including complete and broken bottles, a cast iron oven and corrugated iron sheets were noted (Plate 2). Vehicle tracks cross the study area, affording excellent ground surface visibility (Plate 3).

There are several dams and minor drainage lines in the eastern portion of the study area. A drainage line crosses the western portion of the study area from north to south; at the time of the inspection this was dry and river cobbles and gravels were noted in the sandy creek bed. The land slopes down towards the creek bed before rising again on the other bank. Also in the western portion of the study area, in the southwest corner, the alignment of a high-pressure gas pipeline was observed (Plates 4-5).

Most of the dams contained water (see Plate 6), but the drainage lines were dry. The impressions left by cattle trampling were visible in the drainage lines and around the dams.

The eastern portion of the study area is comprised of flat to gently undulating plains on deep cracking clays. In particular, the presence of gilgai formations noted in a previous report by Bio-Track Pty Ltd (2016) was confirmed. Ground surface visibility in this area ranged from poor to excellent. The depressions of the gilgai generally had good visibility while visibility on their surrounding mounds varied from excellent on eroding areas to very poor where dense vegetation existed (Plates 12 and 14).

Beyond the gilgai formation, the landform of the study area is generally comprised of undulating plains planted with pasture grasses. The grasses obscured visibility in most portions of the study area where grazing has taken place. There are stands of trees, some of which have been thinned. Both trees which have fallen as a result of natural processes as well as having been cut by saw were observed. The ground surface visibility within these areas varied due to leaf litter and fallen logs preventing the ground from being sighted.

Throughout the study area, there are signs of the pastoral use of the land: two water troughs made of a fallen tree cut in half and hollowed out were noted, and near the dam in the northeast corner of the study area a rectangular structure made of fallen logs was also observed (Plate 13).





**Plate 1:** Homestead in centre of eastern portion of study area, facing north



**Plate 2:** Scatter of historic artefacts in treed area south of homestead, facing south



**Plate 3:** Ground surface visibility in treed areas in eastern half of study area, facing northwest



**Plate 4:** View of sloping landform down to drainage line in western portion of study area, facing east



**Plate 5:** Alignment of high-pressure gas pipeline, near western boundary of study area, facing north



**Plate 6:** Dam in western portion of study area, facing north



**Plate 7:** Ground surface visibility on western boundary of study area, facing south



**Plate 8:** Example of ground surface visibility in treed areas in the north of the study area, western portion.



**Plate 9:** Gully erosion in sandy soil in the alignment of the drainage line, western portion of study area, facing east



**Plate 10:** Farm implements associated with past agricultural use of the study area, facing west



**Plate 11:** Evidence of thinning in treed area, north of study area, facing north



**Plate 12:** Gilgai land formation in eastern portion of activity area, facing north.





**Plate 13:** Rectangular structure in area of gilgai formations, facing southeast



**Plate 14:** View of ground surface visibility in gilgai formation, facing north

### 5.1.2 Previous Ground Disturbance

Disturbance to the topsoils can influence the likelihood of whether *in situ* (undisturbed) Aboriginal cultural heritage is present or not. The study area has been subject to minimal previous disturbance.

Disturbance noted included:

- Vehicle access tracks; and
- Minor farm infrastructure, including a homestead, shed and related outbuildings.

### 5.1.3 Identified Aboriginal Cultural Heritage

Aboriginal cultural heritage was identified across the study area in both disturbed and undisturbed contexts. In many cases the disturbance, for example, vehicle tracks, afforded improved ground surface visibility, thereby exposing the Aboriginal cultural heritage. No mature native trees with cultural scarring were noted during the inspection nor were any caves, cave entrances or rock shelters.

Cultural heritage was identified in a number of forms, including flakes, cores, flaking debris, clay balls and an earth feature in the form of a hearth comprised of clay balls eroding out of a mound around a gilgai; there was also an associated chert artefact. All artefacts were identified on the surface during the site inspection, and were located in open grasslands on and beside vehicle tracks and amongst trees.

Chert was the most common raw material used for the manufacture of artefacts; other raw materials recorded include quartz, chalcedony, silcrete and quartzite. Flaked glass was also recorded in the vicinity of the historic artefact scatter. Clay balls were only found within the gilgai formation in the eastern portion of the study area. Gilgai provided small, ephemeral sources of water (Bayly 1999) while the surrounding mounds provided dry places on which camps could be made; moreover, the clay base of the gilaigais could be a ready source of clay from which to fashion heat retainers.

The plates below show the cultural heritage identified.



**Plate 15:** Flaked glass bottle base located in historic artefact scatter to south of homestead



**Plate 16:** Quartzite cobble showing pitting at one end and flake removal scars on the other, located in stand of remnant brigelow (*Acacia* sp.)



**Plate 17:** Silcrete proximal flake, found in association with quartzite cobble in brigelow stand.



**Plate 18:** Quartz flake, located in remnant vegetation on southern boundary of study area, western portion



**Plate 19:** Silcrete flake located near vehicle track on southern boundary of study area, western portion



**Plate 20:** Chert flake in stand of remnant vegetation, central portion of study area.





**Plate 21:** Chert hafted tool, located in eroding area on track near drainage line, western portion of study area



**Plate 22:** Large chert flake on track leading to dam in forested area, central portion of study area.



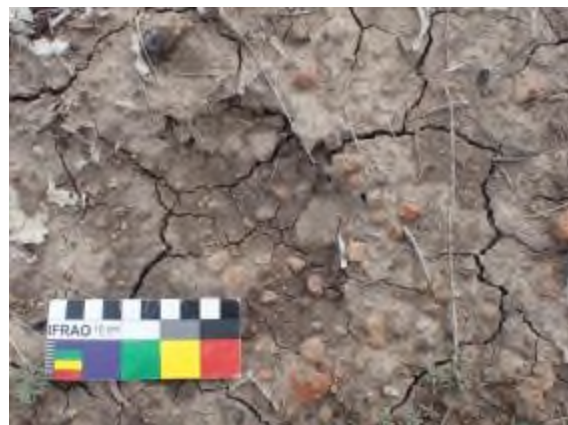
**Plate 23:** Chalcedony core, treed area, central portion of study area



**Plate 24:** Chert core, gilgai formation, eastern portion of study area



**Plate 25:** Scorched clay ball, gilgai formation



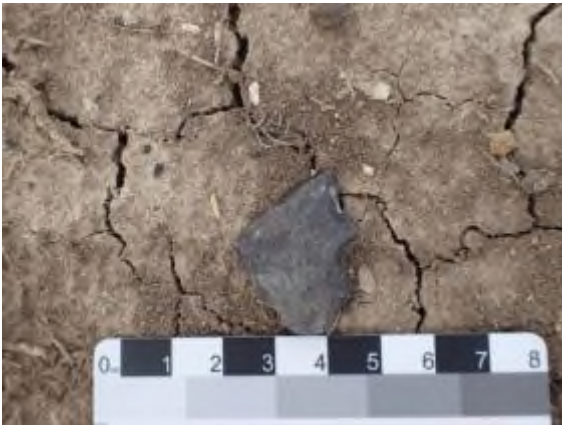
**Plate 26:** Detail of earth feature: clay balls eroding from mound around gilgai



**Plate 27:** Location of earth feature in gilgai mound, facing northwest. A dam is in the background.



**Plate 28:** Silcrete flake, located on open ground near gilgai formation. The area is shown in Plate 14



**Plate 29:** Chert flake, located on open ground, gilgai formation.



**Plate 30:** Quartz flake, located in gilgai formation in southeast corner of study area



**Plate 31:** Clay balls in gilgai formation in southeast corner of study area



**Plate 32:** Silcrete flake found in association with clay balls in gilgai feature.

The table on the following pages sets out the details of the typology, lithology and location of the sites identified.



**Table 3** – Location and description of Aboriginal cultural heritage identified within the study area

Artefact ID	W ID	Typology	Lithology	Easting	Northing
1	65	Grinding stone	Sandstone	221692.6	7048171
2	66	Core	Glass	232642.4	7050537
3	67	Hammerstone/Core	Quartzite	232969.4	7050955
4	67	Proximal Flake	Silcrete	232288.6	7051154
5	68	Core	Quartz	232288.6	7051154
6	69	Flake	Quartz	230027	7050861
7	70	Flake	Chert	230057.1	7050803
8	71	Flake	Chert	230055.1	7050802
9	72	Flake	Chert	230048.2	7050799
10	72	Flake	Chert	230048.2	7050799
11	73	Flake	Chert	228730	7051917
12	74	Core	Chert	228591.7	7052281
13	75	Proximal Flake	Chert	229101.2	7051658
14	76	Flake	Quartz	228986.3	7051626
15	77	Flake	Chert	229040.1	7051672
16	78	Proximal Flake	Chert	229396.7	7051588
17	79	Flake	Chert	229417.9	7051668
18	80	Core	Chalcedony	230032.1	7051793
19	81	Core	Chert	234347.1	7051306
20	82	Clay ball	-	234338.8	7051319
21	83	Clay ball	-	234338.9	7051318
22	84	Clay ball	-	234338.9	7051316
23	85	Clay ball	-	234338.9	7051316
24	86	Flake	Chert	234198.1	7051316
25	87	Hearth	-	234176.6	7051502
25	87	Flake	Chert	234176.6	7051502
26	88	Core	Chert	234179.6	7051500
27	89	Flake	Chert	234180.9	7051533
28	90	Flake	Silcrete	233866	7050774
29	90	Distal Flake	Chert	233866	7050774
30	90	Proximal Flake	Chert	233866	7050774

Artefact ID	W ID	Typology	Lithology	Easting	Northing
31	91	Flake	Quartz	233926.2	7050799
32	92	Distal Flake	Silcrete	234030.1	7050170
33	93	Clay ball	-	234030.1	7050170
34	93	Clay ball	-	234030.1	7050170

#### 5.1.4 Discussion and Conclusions

It is clear that Aboriginal cultural heritage is present throughout the study area. In total, 34 artefacts were documented at 29 different locations; at some locations, artefacts were found in association with non-lithic features such as the hearth of eroding clay balls found in association with a chert flake in the gilgai formation. Aboriginal cultural heritage has been documented in both disturbed and undisturbed contexts and in a range of ecological environments across the study area. Artefacts were found in both open grasslands and in forested environments, near waterways and at some distance away from them.

The gilgai formation in the eastern half of the study area appears to be particularly sensitive for Aboriginal cultural heritage; it is highly likely that more Aboriginal cultural heritage would be located here. There is also potential for other areas to contain Aboriginal cultural heritage, particularly near drainage lines or natural waterways.

There is, therefore, a need for further engagement with local Aboriginal communities.

## 6 LEGISLATIVE AND POLICY IMPLICATIONS

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### 6.1 Aboriginal Cultural Heritage Act 2003 (QLD)

A Cultural Heritage Management Plan is required to be developed and approved under Part 7 of the *Aboriginal Cultural Heritage Act 2003* where an Environmental Impact Statement is required for a project under other legislation. The CHMP process involves a statutory one-month notification of an intention to develop a plan, followed by a maximum three month negotiation/consultation with the Aboriginal party on the terms of the plan.

The sponsor may voluntarily develop and gain approval of a plan under Part 7. The ability to voluntarily develop a plan allows any activities undertaken in accordance with an approved plan meet the cultural heritage duty of care established by the legislation.

A cultural heritage management plan is a State-approved agreement between the sponsor of the plan and an Aboriginal party about how a project is to be managed to avoid harm to Aboriginal cultural heritage and to the extent that harm cannot reasonably be avoided, to minimise harm to Aboriginal cultural heritage. Importantly, an agreement can only receive State approval as a cultural heritage management plan if it has complied with the statutory process contained in Part 7 of the legislation. The legislation requires each party to negotiate and make every reasonable effort to reach agreement about the provisions of the plan.

The plan can have any form or structure agreed between the parties. A plan is intended to address the assessment and management of Aboriginal cultural heritage in relation to land use activities of the sponsor (SCT Logistics).

#### Implications for the project

With regard to Aboriginal archaeological heritage, the assessment indicates that a Cultural Heritage Management Plan (CHMP) is not required under the *Aboriginal Cultural Heritage Act 2003* as an Environmental Impact Statement will not be conducted.

However, cultural heritage values are identified and protected under Section 28 of the Act as outlined below.

#### Section 28 Cultural heritage duty of care guidelines

(1) The Minister may by gazette notice notify guidelines (cultural heritage duty of care guidelines) identifying reasonable and practicable measures for ensuring activities are managed to avoid or minimise harm to Aboriginal cultural heritage.

(2) In formulating cultural heritage duty of care guidelines, the Minister may consult with the following—

- (a) Aboriginal groups;
- (b) industry groups;
- (c) local governments;
- (d) other persons the Minister considers appropriate.

The Duty of Care Guidelines state that the Act requires that a proponent must exercise due diligence and reasonable precaution prior to undertaking an activity which may cause harm to Aboriginal cultural heritage. In exercising due diligence or complying with the cultural heritage 'Duty of Care' the following may be considered:

- The nature of the activity, and the likelihood of its causing harm to Aboriginal cultural heritage;
- The nature of the Aboriginal cultural heritage likely to be harmed by the activity;
- The extent to which the person consulted with Aboriginal parties about the carrying out of the activity, and the results of the consultation;
- Whether the proponent carried out a study or survey, of any type, of the area affected by the activity to find out the location and extent of the Aboriginal cultural heritage, and the extent of the study or survey;
- Whether the proponent searched the database and register for information about the area affected by the activity;
- The extent to which the proponent complied with the Duty of Care Guidelines; and
- The nature and extent of past uses in the area affected by the activity.

This Heritage Due Diligence Assessment has ascertained that portions of the study area have been subject to historical native vegetation clearing in order to improve pasture (Figures 2a to 2b). This clearing would have involved the removal of native vegetation by disturbing root systems situated beneath the ground surface and exposing underlying soils. This type of vegetation removal is considered to be in line with current descriptions of significant ground disturbance as defined under the Duty of Care Guidelines.

The Duty of Care Guidelines defines Significant Ground Disturbance as:

*"disturbance by machinery of the topsoil or surface rock layer of the ground, such as by ploughing, drilling or dredging; the removal of native vegetation by disturbing root systems and exposing underlying soil".*

Given the above, it is assessed that the portions of the study area subject to historical native vegetation clearing (Figures 2a to 2b) and any proposed activities within these locations would comprise a Category 4 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).*

Section 5.4 of the Duty of Care Guidelines specifies the following:

*Where an activity is proposed in an area which has been previously subject to Significant Ground Disturbance it is generally unlikely that the activity will harm Aboriginal cultural heritage and the activity will comply with these guidelines.*

Section 5.5 also states:

*In these circumstances, subject to the measures set out in paragraphs 5.6 – 5.12, it is reasonable and practicable that the activity proceeds without further cultural heritage assessment.*

However, Aboriginal cultural heritage was also identified within other portions of the study area not previously subject to intensive native vegetation clearing. The locations of the Aboriginal cultural heritage finds are shown on Figures 2a to 2b. Generally, the Aboriginal cultural heritage finds were located in more vegetated areas, within close proximity to drainage lines or natural waterways and associated with gilgai formations in the eastern half of the study area. This Aboriginal cultural heritage comprised stone artefacts and non-lithic features such as hearths and clay balls. This Aboriginal cultural heritage was documented in both disturbed and undisturbed contexts. The gilgai formation in the eastern half of the study area appears to be particularly sensitive for Aboriginal cultural heritage; and it is highly likely that more Aboriginal cultural heritage would be located here. It is also considered that further Aboriginal cultural heritage is likely to be present across the study area, particularly near drainage lines or natural waterways and areas not previously subject to significant ground disturbance (Figures 2a to 2b).

Given the above, it is assessed that these portions of the study area (Figures 2a to 2b) and any proposed activities within these locations would comprise 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)*.

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 known and unknown Aboriginal cultural heritage within the study area:

- Formal consultation with the local relevant Aboriginal group (in this instance the Barrunggam People) is undertaken so that their views on managing the proposed activity and the Aboriginal cultural heritage 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 groups (in this instance the Barrunggam People). The CHMA allows for the management of Aboriginal cultural heritage material before, during and after the proposed development;
- No activities may be undertaken within areas assessed as being Category 5 (Figures 2a to 2b) without further formal archaeological assessment being undertaken in conjunction with the Barrunggam People;
- No activities may be undertaken at the GPS location of the Aboriginal cultural heritage identified by this assessment or within a 50 m buffer radius of this point location without further formal archaeological assessment being undertaken in consultation and conjunction with the Barrunggam People; and



- Activities proposed for areas assessed as being Category 4 are unlikely to harm Aboriginal cultural heritage and the activity will comply with the Duty of Care guidelines. If any of the proposed activities for areas assessed as being Category 4 are likely to impact the ground surface beyond that which has already occurred (i.e impact footprint of the solar panel) it is recommended that these portions of the study area (likely to be only 1-2% of the entire study area) are further addressed in agreement with the Barrunggam People.

### Cultural Heritage Management Agreement

A Cultural Heritage Management Agreement (CHMA) may be undertaken to minimise or avoid harm to Aboriginal cultural heritage and is best described as a legal agreement with the local Aboriginal groups (Barrunggam People). 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 (DoE). 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.

DoE 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 Western Downs Regional Council Planning Scheme (2017)

The study area is located within the Western Downs Regional Council and is governed by the Western Downs Regional Council Planning Scheme (2017). Planning schemes set out policies and provisions for the use, development and protection of land.

The Heritage Overlay of the Western Downs Regional Council Planning Scheme (2017) 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 Western Downs Regional Council Planning Scheme (2017).

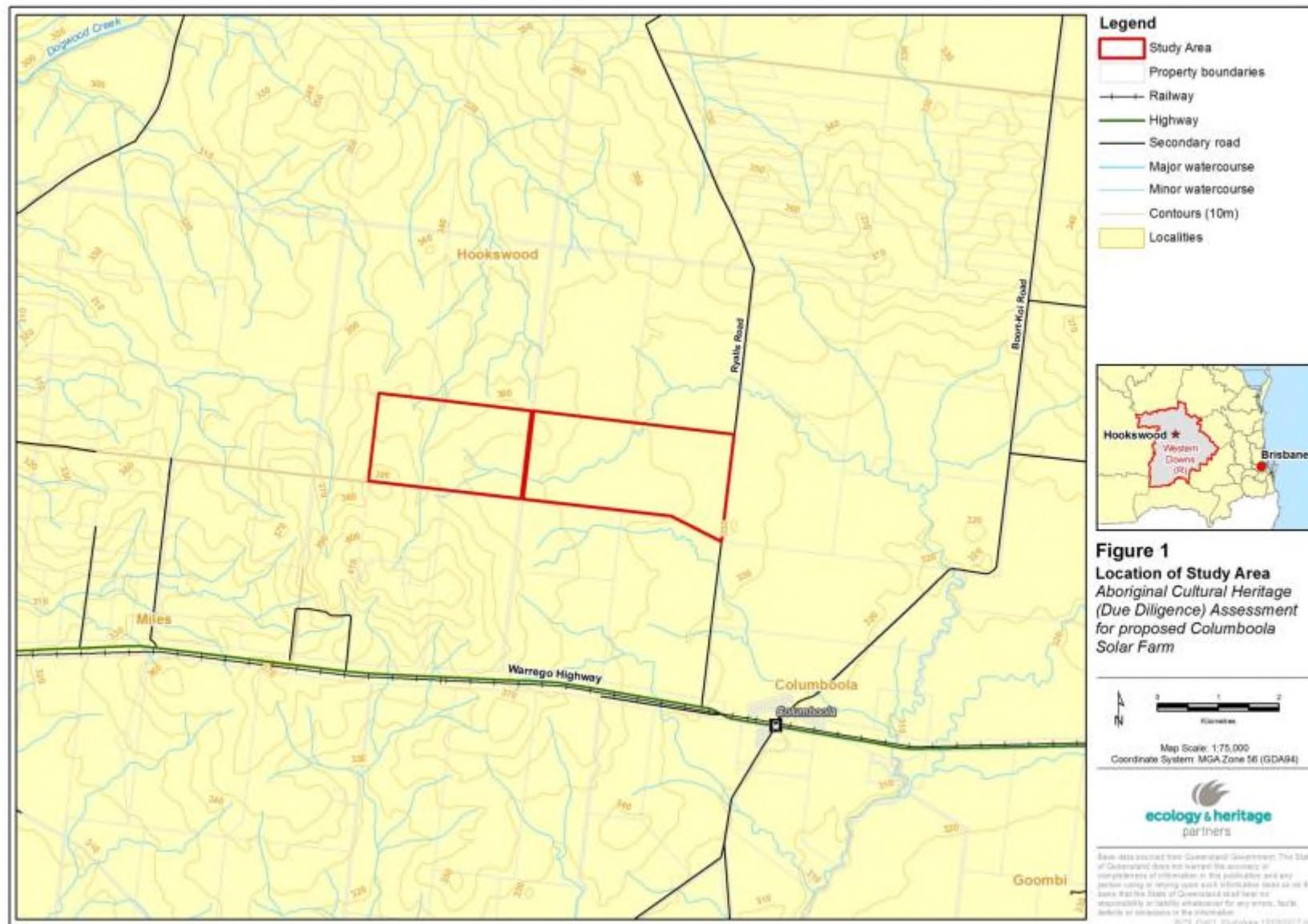
## 6.4 Recommendations

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:

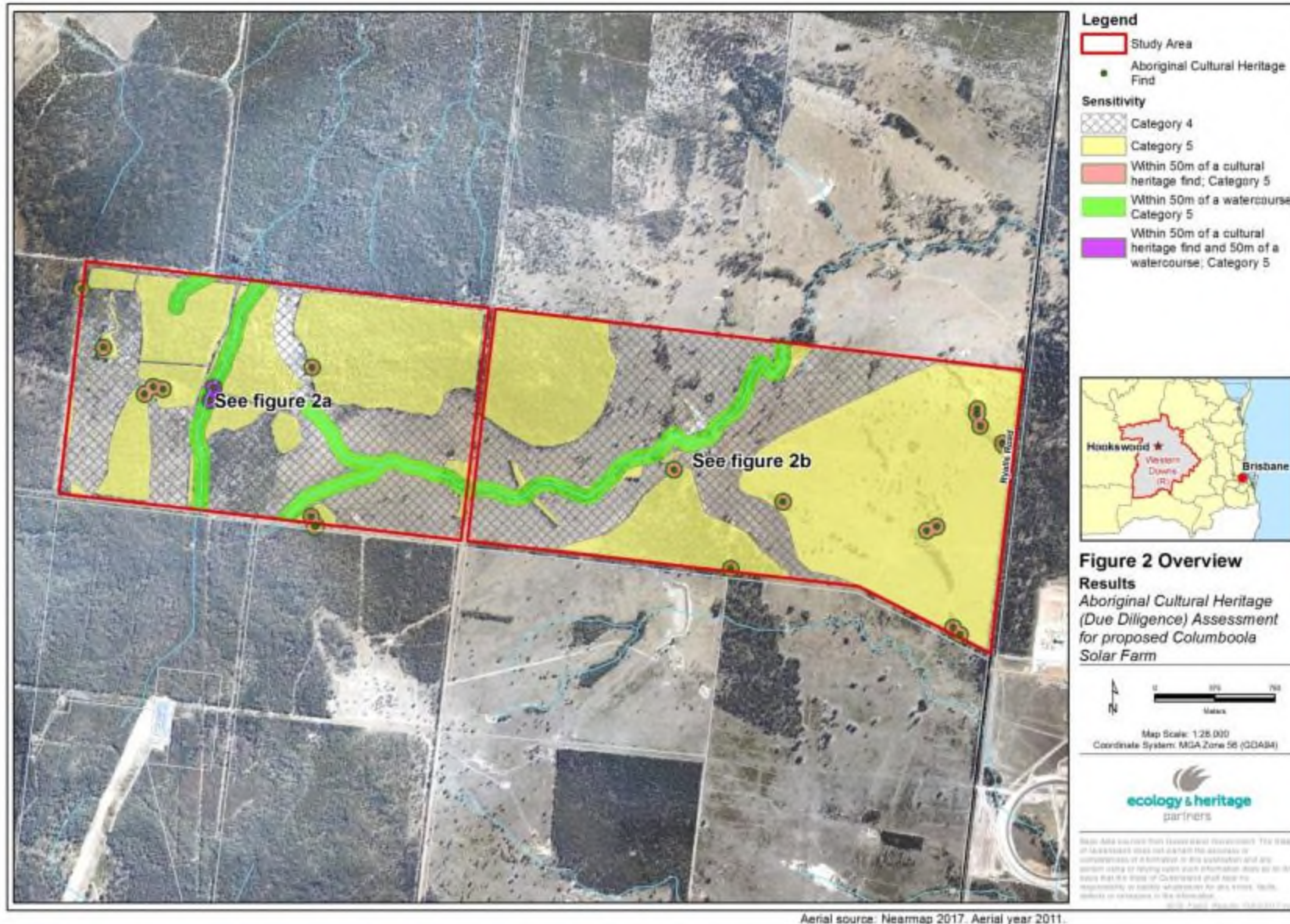
- Formal consultation with the local relevant Aboriginal group (in this instance the Barrunggam People) is undertaken so that their views on managing the proposed activity and the Aboriginal cultural heritage situated within the study area are recognised and incorporated into any further assessments 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 groups (in this instance the Barrunggam People). The CHMA allows for the management of Aboriginal cultural heritage material before, during and after the proposed development;
- No activities may be undertaken within areas assessed as being Category 5 (Figures 2a to 2b) without further formal archaeological assessment being undertaken in conjunction with the Barrunggam People;
- No activities may be undertaken at the GPS location of the Aboriginal cultural heritage identified by this assessment or within a 50 m buffer radius of this point location without further formal archaeological assessment being undertaken in consultation and conjunction with the Barrunggam People; and
- Activities proposed for areas assessed as being Category 4 are unlikely to harm Aboriginal cultural heritage and the activity will comply with the Duty of Care guidelines. If any of the proposed activities for areas assessed as being Category 4 are likely to impact the ground surface beyond that which has already occurred (i.e impact footprint of the solar panel) it is recommended that these portions of the study area (likely to be only 1-2% of the entire study area) are further addressed in agreement with the Barrunggam People.

## MAPS

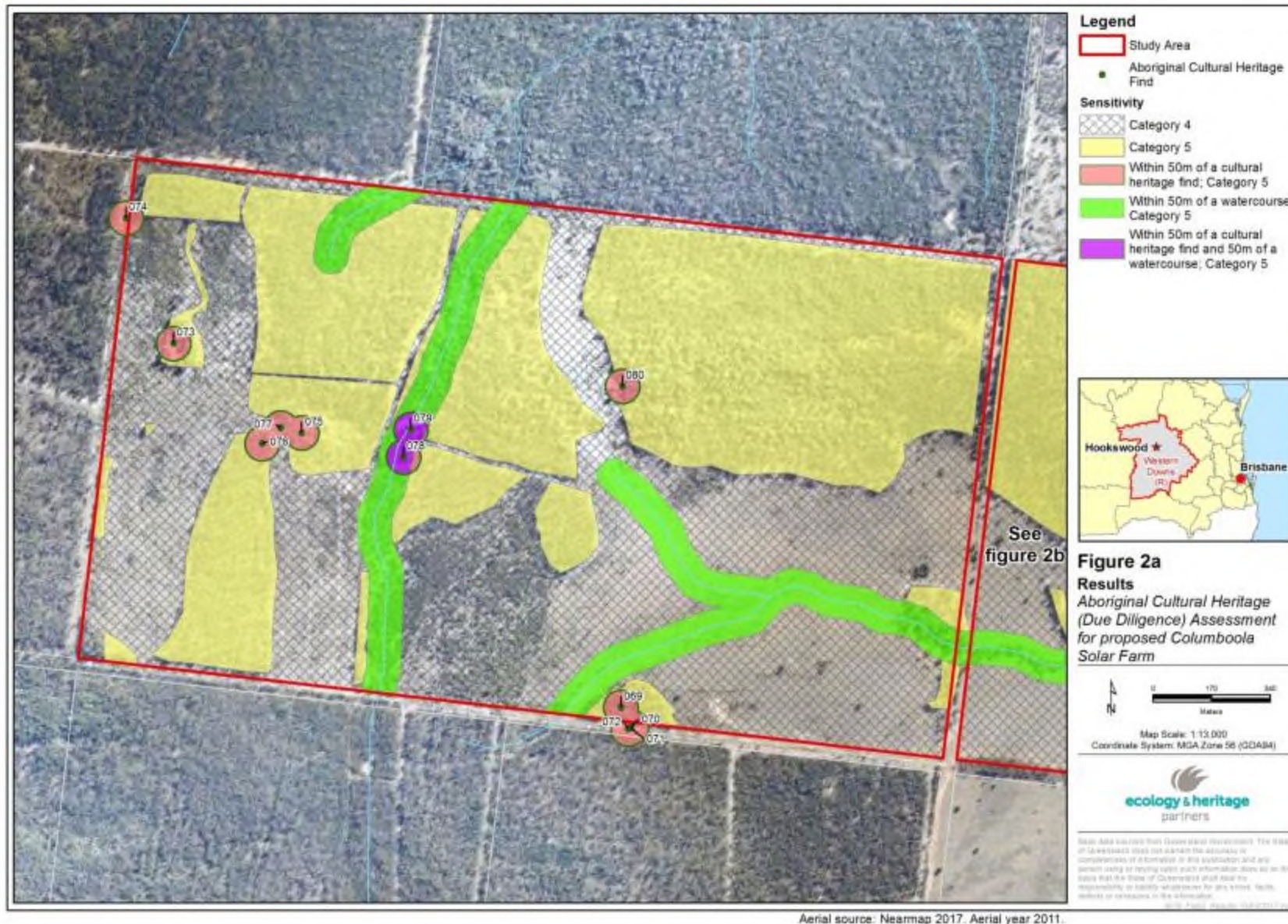
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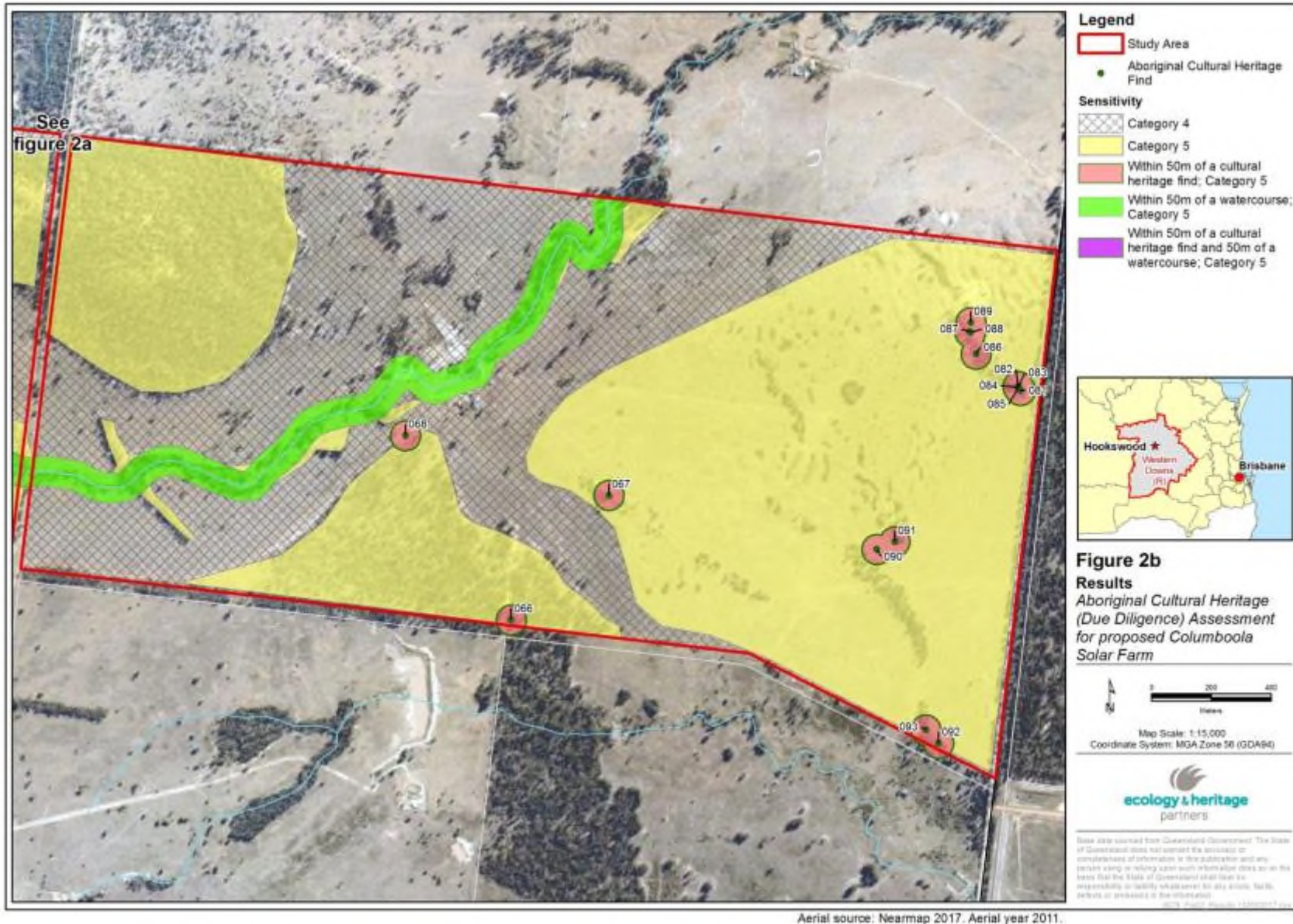












## APPENDICES

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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 40 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.

### Meredith Filihia

Meredith is a historian, archaeologist and cultural heritage advisor with four years' experience in consulting archaeology in Victoria. As a student Meredith participated in excavations on historical and Aboriginal archaeological sites in Victoria and at Lake Mungo. Since qualifying to work in the cultural heritage industry, Meredith has undertaken fieldwork throughout Victoria from Mildura to Lake Tyers, and has also participated in a number of historical excavations in the Melbourne CBD. Meredith is currently working towards attaining a Master of Arts in Archaeology. Her thesis is a study of the ways in which Aboriginal people incorporated introduced materials such as glass into their traditional tool kits with an emphasis on assemblages from Victoria. Meredith has skills in historical research and Aboriginal artefact analysis and she

is particularly interested in refitting flaked artefacts. She regularly presents papers at conferences and colloquia.

Her formal qualifications include:

- Bachelor of Arts (Hons) History, La Trobe University;
- Master of Arts (History), La Trobe University;
- Doctor of Philosophy (History), La Trobe University; and
- Graduate Diploma (Archaeology).

### **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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