



Department of Energy, Environment and Climate Action

71 Hotham Street
Traralgon, Victoria 3844
Telephone: 03 5172 2111
deeca.vic.gov.au

Chairperson
Gunaikurnai Land and Waters Aboriginal Corporation
27 Scriveners Road
Kalimna West Victoria 3909

Date: 13 February 2024
Our Reference: 1500453 & 1502347

Dear Chairperson

**RE: NOTICE CONCERNING WORKS ON NATIVE TITLE LANDS (RIGHT TO COMMENT)
PROPOSED WORKS ON WATERWAY PERMIT – CREEK CROSSING
WILDERNESS CREEK, DRIFFIELD**

The Proposal

West Gippsland Catchment Management Authority proposes to issue a works on waterway permit pursuant to section 130, 219 and 287ZC of the *Water Act 1989* and by-laws No 3 and 2014-1 of the *Waterways Protection 2014*.

The permit would allow the construction of a crossing over Wilderness Creek at 120 Walsh & Gibsons Road, Driffield.

The permit application was submitted by David Jeffrey, being the Crown land licensee and adjoining landowner on both sides of the creek.

The proposed crossing is a pipe culvert design with rock spoils, containing two rows of three pipes, over an area 4.5 metres long, 2.1 metres high, 2.44 metres wide.

The purpose of the works is for moving livestock and farm machinery within the applicant's farm.

The location of the area subject to proposal is outlined in the following attachments:

- Cadastral plan showing Crown allotment descriptions.
- Aerial Photo
- Parish plan
- Works on Waterway permit application

Description of The Native Title Land and Waters Affected

Crown allotment 6B, Section A in the Parish of Narracan (P263229).

Privacy Statement

Any personal information about you or a third party in your correspondence will be protected under the provisions of the *Privacy and Data Protection Act 2014*. It will only be used or disclosed to appropriate Ministerial, Statutory Authority, or departmental staff in regard to the purpose for which it was provided, unless required or authorized by law. Enquiries about access to information about you held by the Department should be directed to foi.unit@delwp.vic.gov.au or FOI Unit, Department of Energy, Environment and Climate Action, PO Box 500, East Melbourne, Victoria 8002.



OFFICIAL

The allotment is unreserved Crown land administered by Department of Energy, Environment and Climate Change.

The allotment is subject to Crown land licences 1500453 and 1502347, held by David Jeffrey, issued under section 130 of the *Land Act 1958*.

Seeking Your Comments

The *Native Title Act 1993* (NTA) requires DEECA to consult and seek comments from the Traditional Owners of Native Title lands and incorporate appropriate conditions into consent to use and develop the land.

We understand that the proponent may also be obliged under Cultural Heritage legislation to contact the Gunaikurnai RAP body concerning this project and we will advise them of those responsibilities as a matter of standard process. However, if you would also like DELWP to raise some specific conditions on cultural heritage protection matters in the exercise of your native title right to protect cultural heritage as part of this formal commentary and approvals process, we will be happy to do so at your direction.

Further, your comments on how this proposal might affect your other native title rights and interests, and how that can be managed or addressed as part of this approvals process are also keenly sought.

These recognised rights and interests include the:

- right to have access to or enter and remain on the land and waters;
- right to use and enjoy the land and waters;
- right to take the resources of the land and waters for the purposes of satisfying personal, domestic or communal needs, but not for any commercial purposes;
- right to protect and maintain places and areas on the land and waters which are of importance according to Gunaikurnai traditional laws and customs;
- right to camp
- right to engage in cultural activities;
- right to engage in rituals and ceremonies;
- right to hold meetings and gatherings;
- right to teaching and learning about the physical, spiritual and cultural attributes of places and areas of importance.

Please note that the 'non-extinguishment' principle applies to these works and your native title rights will continue to exist over the site.

The Department intends to advise the proponent that the project can proceed after 40 days from the date of this notification have elapsed. We would appreciate the opportunity to discuss this proposal however in the meantime please contact Matt Kelly at the following details.

Will Hoban
LBE Program Officer, Gippsland



Department of Energy, Environment and Climate Action
71 Hotham Street
Traralgon, Victoria, 3844

Email: william.hoban@delwp.vic.gov.au
Phone: 0436 616 650

Legislative Basis for this Notice
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The proposed works are valid under Subdivision H of the *Native Title Act 1993* (NTA) which allows for an 'authority' to be granted which relates to the management of water.

In instances where authority is to be granted in regards to management or regulation of water, it is necessary that formal procedural notice be given to any registered claimant and to any registered Representative Body extending the right to comment.

The non-extinguishment principle applies.



Will Hoban
LBE Program Officer, Gippsland
Department of Energy, Environment and Climate Action

Date of Notice: 13 February 2024

Proposed crossing location - orange

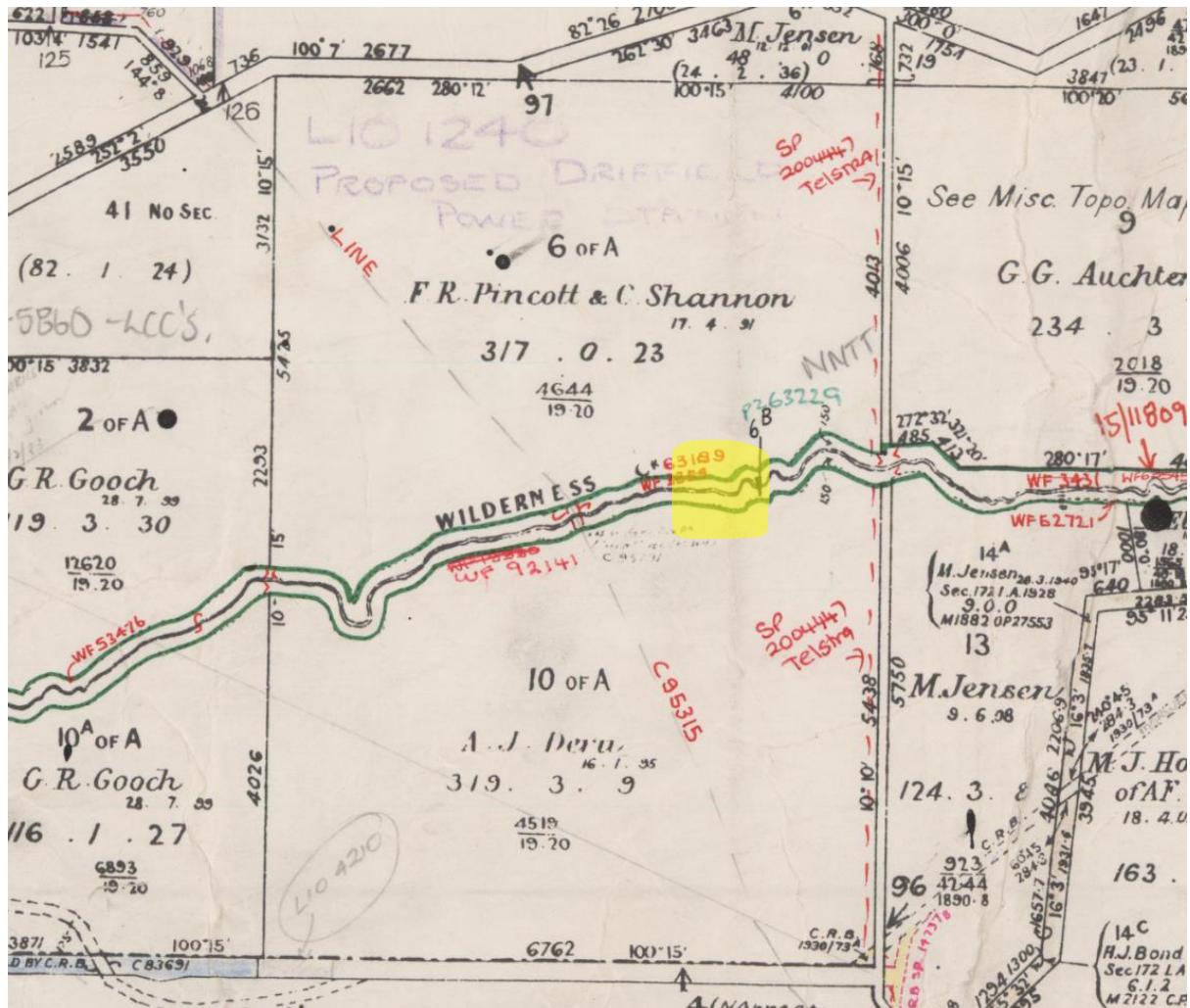


1: 1,664

Map Created on 08-Feb-2024

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Parish Plan of Narracan



Proposed crossing location - orange

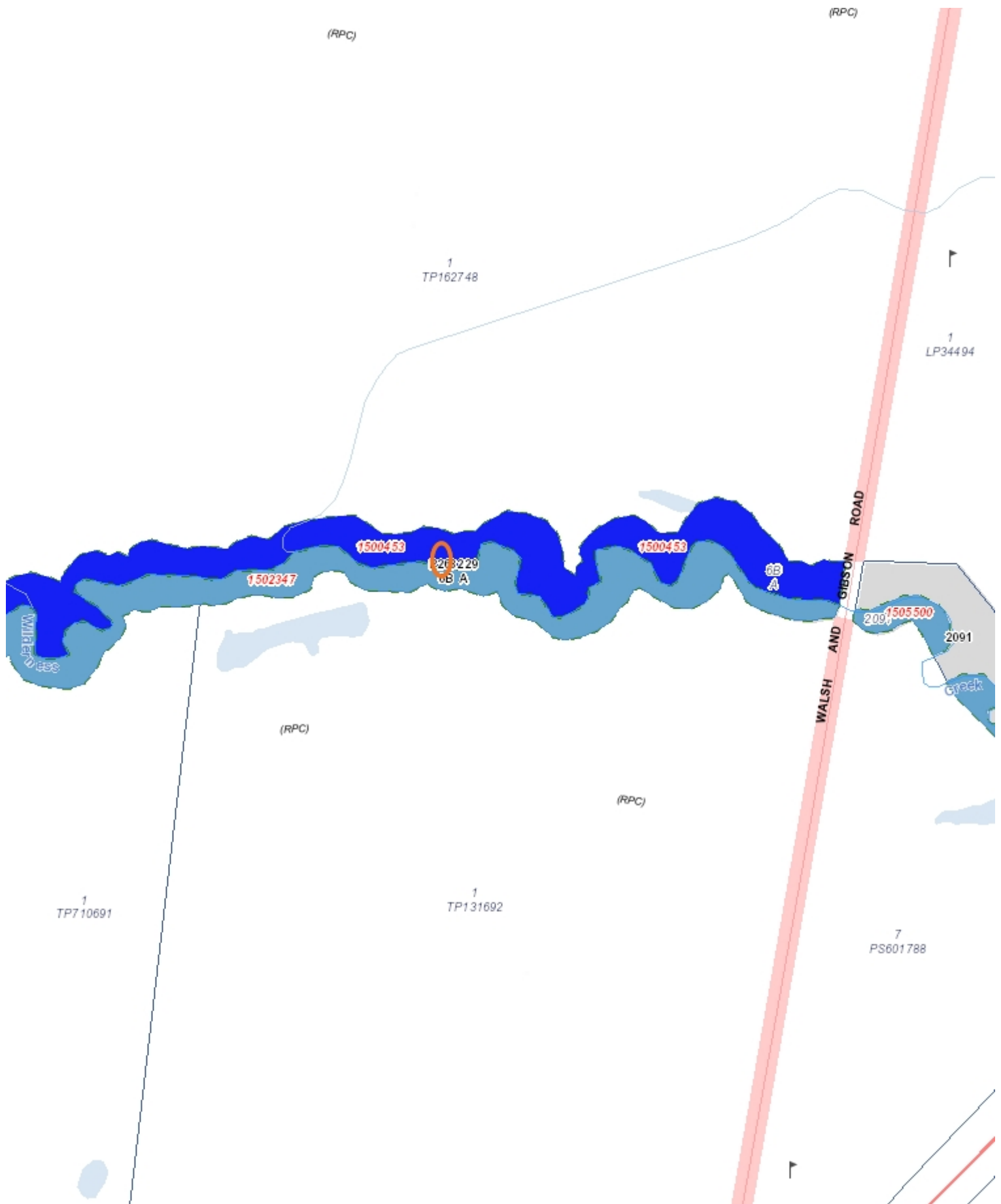


1: 2,599

Map Created on 08-Feb-2024

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Proposed crossing location - orange



1: 5,199

Map Created on 08-Feb-2024

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Works on Waterways Application Form

Application for a Permit is required by West and East Gippsland Catchment Management Authority pursuant to Sections 160, 219 and 287ZC of the Water Act, 1989 and by-laws No 3 & 2014-1, Waterways Protection 2014



The applicant must complete all details on this form, attach all required details, and ensure that the indemnity clause is signed. Before completing this application, please ensure you read the **Guidelines for Applying for a Works on Waterways Permit** and the specific notes for the proposed work type that you wish to undertake. These documents are available from our website.

Have you had a pre-application meeting or contact with a CMA staff member? ☒ Yes ☐ No

If Yes, who with? Susan O'Sullivan Your Ref No (if Applicable):

(Please contact us on 1300 094 262 between 8.30am and 4.30pm weekdays if you have any questions relating to this form).

Locality Maps MUST be supplied with this application

1. NAME OF APPLICANT May be a person representing the owner

Name: David Jeffrey

Company Name (if applicable): David Jeffrey Pty Ltd

Postal Address: 120 Walsh and Gibson Road Postcode: 3840

Drifffield Preferred Contact Phone No: 0419513539

Email: caroline.jeffrey58@hotmail.com

2. NAME OF LAND OWNER (if different from applicant) The permit will be issued to this party

Name:

Company Name (if applicable):

Postal Address: Postcode:

Preferred Contact Phone No:

Email:

3. INDEMNITY CLAUSE (If not signed, this form will be returned for completion)

This indemnity must be signed by the owner of the property, or if an organisation, someone authorised to do so. Where works are sited on Crown land, the owner of the works must sign the indemnity.

I acknowledge that the West or East Gippsland Catchment Management Authority may issue a permit for the construction of the works on a waterway but that West or East Gippsland Catchment Management Authority shall not be responsible for any claims, suits or actions, arising from injury, loss, damage or death, to any person or property which may arise from the construction, maintenance, existence or use of the works.

I hereby indemnify the West or East Gippsland Catchment Management Authority and its officers against all claims, suits or actions arising from injury, loss, damage or death, to any person or property which may arise from the construction, maintenance, existence or use of the works described in this application or so varied by any conditions issued with the permit.

Signed:

Date:

Print name in CAPITALS:

4. WATERWAY DETAILS – Please consult Land Data's Mapshare webpage and provide a print out if possible.
<https://mapshare.vic.gov.au/mapsharevic/> A Mapshare User manual can be found here
https://www.land.vic.gov.au/data/assets/pdf_file/0033/499191/Mapshare-Vic-user-manual.pdf

Name of Waterway: Wilderness Creek

Tributary of Macwell River

5. PROPERTY DESCRIPTION WHERE THE WORKS ARE PROPOSED

Are the works on Crown land or Private land? ☒ Crown land ☒ Private land

(If you ticked Crown land, you must advise DELWP of your proposed works)

Address of Works/Site Location: 40 Walsh + Gibson Road Duffield 3846

Lot No: Plan of Subdivision No: (PS/CP/LP/TP)

Or:

CA: 6, 6A (P.T.) Section: A Parish: NARRACAN

Name of Nearest Town: Macwell

Co-ordinates (if available): Easting: Northing:

6. CULTURAL HERITAGE MANAGEMENT PLAN

It is the responsibility of the applicant, as the party legally and financially responsible for the proposed activity, to determine if a Cultural Heritage Management Plan (CHMP) is required under the *Aboriginal Heritage Act 2006*. The Authority is not able to issue a Works on Waterways permit if a CHMP is required but has not been prepared.

To determine if a CHMP is required, complete the Aboriginal Heritage Planning Tool at
<https://www.aav.nrms.net.au/aavQuestion1.aspx>

Regardless of the outcome, **please include a copy of the final Process List** with this application and tick the applicable outcome below:

- ☐ CHMP not required (you must include a copy of the plan as evidence)
- ☐ CHMP required and prepared (you must include a copy of the plan as evidence)
- ☐ CHMP required but not prepared
- ☒ Applicant is unable to complete the Aboriginal Heritage Planning Tool and requires assistance

Regardless of the requirement for a CHMP, earthworks within an area of cultural sensitivity or in / near a Registered Aboriginal Cultural Heritage place carry a risk of damaging Aboriginal Cultural Heritage, which is protected under the *Aboriginal Heritage Act 2006*. You may wish to consider undertaking a voluntary Cultural Heritage Management Plan, obtaining a Cultural Heritage Permit or seeking advice from Aboriginal Victoria
<https://www.vic.gov.au/aboriginalvictoria.html>.

7. GENERAL DESCRIPTION OF THE PROPOSED WORKS (Tick box and Circle relevant works)

☒ **Access Crossing:**
 Bridge, Culvert, Ford, Other

☐ **River Health Works:**
 Vegetation Removal, Stabilisation,
 Wetlands, Other River Health Works

☐ **Waterway Deviation**

☐ **Service Crossing:**
 Gas Pipeline, Power Cable

☐ **Pipeline:**
 Sewerage, Water or Gas

☐ **Service Structures:**
 Boat Ramp, Jetties,

☐ **Extraction Activities:**
 Gravel, Sand, Other

☐ Stabilisation (erosion control)

☐ Other (describe in your words)

☐ **Stormwater Outlet**

7A. DESCRIPTION OF WORKS

Proposed Works: To build a pipe culvert on the existing creek alignment for the purpose of moving stock, machinery + equipment between adjoining farm properties

7B. WATERWAY DIMENSIONS

Distance between top of waterway banks.....metres

Please attach a sketch of the waterway cross section

7C. EROSION AND VEGETATION DETAILS

Is there evidence of erosion in the bed and banks of the waterway? ☐ Yes ☒ No

Please Comment:.....

Describe the type and extent of existing vegetation on the bed and banks of the waterway at the proposed site.

Bed:

Banks:

7D. ADDITIONAL DETAIL (Please fill out the relevant section below if applicable.)

Bridge Crossing

Proposed Bridge Dimensions:

Total Length:.....metres

Bridge Width:.....metres

Number of Spans: ☐ Single Span ☐ Two Spans ☐ Three Spans ☐ Four Spans ☐ Other:.....

Proposed Material:

☐ Concrete ☐ Steel ☐ Timber ☐ Other (please specify):.....

Pipe and Box Culvert Crossing

Proposed Culvert Dimensions:

Culvert Type: ☐ Box Culvert ☒ Pipe Culvert

Size of box or pipe diameter: 2:1 mtrs height, 2.44 mtrs l. metres 6 pipes in total
2 rows of 3 pipes

Width of crossing (measured from upstream to downstream): Approx 8 metres

Length of crossing (measured from bank to bank): Approx 4.5 metres

Number of parallel culverts: 2

Height of crossing above waterway bed level: Approx 1/2 to 1 metres

Proposed Material:

☒ Concrete ☐ Steel ☐ Other (please specify): Rock Spalls

Ford Crossing

Total Width of ford crossing (measured from upstream to downstream):metres

Total Length of ford crossing (measured from bank to bank): metres

Height of crossing above waterway bed level:metres

Proposed Material:

☐ Concrete Slab ☐ Rock ☐ Other:

8. ANCILLARY WORKS

Do the proposed works involve stream alignment?

☐ Yes ☒ No

Are there any proposed bed and/or bank protection works?

☐ Yes ☒ No

If you ticked **YES** to either of the above questions, please attach sketch with dimensions of the works

9. NATIVE VEGETATION REMOVAL ASSOCIATED WITH THE PROPOSAL

Will any native vegetation be removed? (includes trees, shrubs, grasses)

☐ Yes ☒ No

If **YES**, please specify the type and amount/area of vegetation to be removed. You should also contact your local Council to determine whether a planning permit is required.

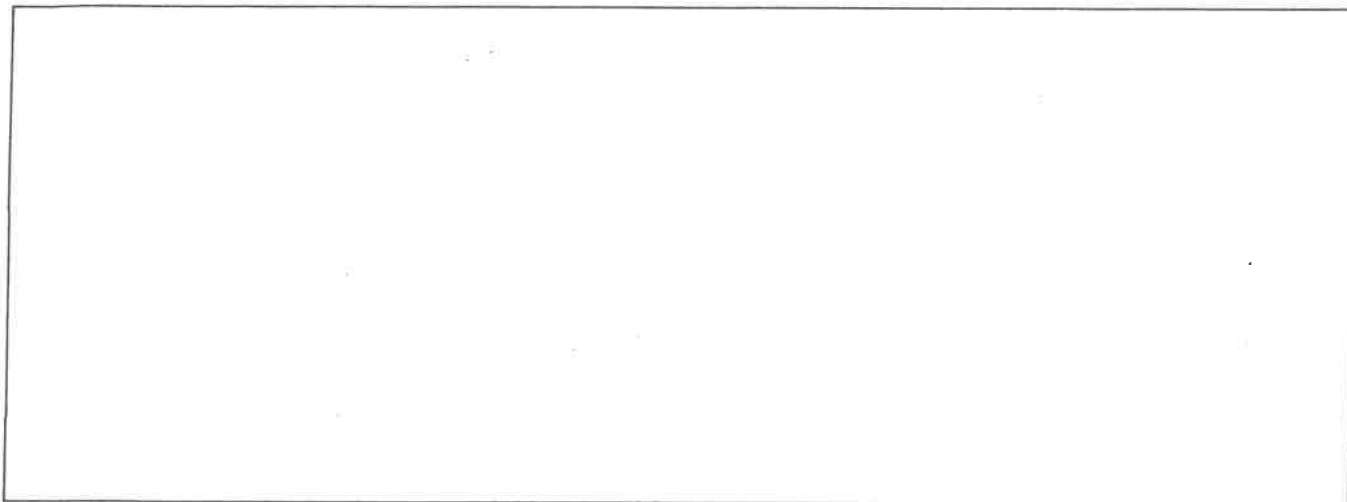
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10. DETAILED PLANS OF PROPOSED WORKS

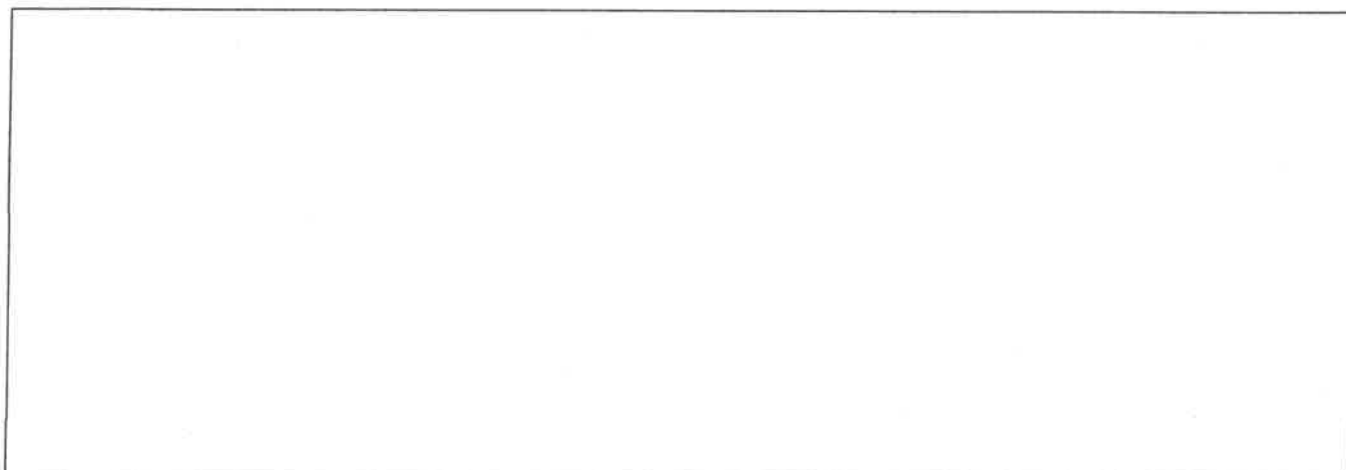
- Provide plans and drawings of the proposed works if available.
- If possible, please provide a photograph of the site
- Please consult Land Data's Mapshare webpage and provide a printout if possible.
<https://mapshare.vic.gov.au/mapsharevic/>

LAND LOCALITY PLAN Where is the land? Show in relation to roads and nearest intersections.

WORKS LOCALITY PLAN Where on the land will the works be? Show the waterway and location of the works in relation to boundaries, roads, buildings etc. Give distances.



CROSS SECTION OF THE WATERWAY AND THE PROPOSED WORKS, INCLUDING DIMENSIONS.



Please indicate your preferred method of correspondence:

Email ☐ Mail ☐

11. CMA MAILING DETAILS:	
All correspondence for both CMA's is administered by West Gippsland CMA	
Postal Address: West Gippsland Catchment Management Authority PO Box 1374 Traralgon VIC 3844	Telephone No: 1300 094 262 Email: planning@wgcm.vic.gov.au

WORKS ON WATERWAYS PERMIT TERMS AND CONDITIONS

Please keep this page

The West Gippsland Catchment Management Authority (the Authority) regulates works and activities in, on or over designated waterways within the Authority's waterway management district.

1. A Works on Waterways Permit is a written statement from the Authority that certain works or activities may proceed at a certain location, subject to conditions.
2. Maps of the waterways the Authority has declared to be designated are available for inspection at its office at 16 Hotham Street, Traralgon, free of charge during normal business hours.
3. A person who intends to construct or carry out any works in, on or over a designated waterway must first apply to the Authority for authorisation in accordance with the *Water Act 1989*. Works must not commence until the Works on Waterways permit is issued.
4. The applicant must lodge with the Authority a completed application form and a complete description of the works.
5. In determining whether or not to grant a Permit, the Authority will consider the effect or likely effect granting of the Permit may have on any designated waterway within the Authority's district.
6. Assessment of the structural adequacy of the works is not the responsibility of the Authority.
7. The Authority may ask the applicant for more information, and may give notice of the application to persons the Authority considers may be affected by the application. The Authority may require the applicant to give this notice.
8. In making its decision, the Authority will take into account the views of persons who may be affected by the application.
9. The Authority is entitled to refuse the application, giving its reasons for doing so.
10. The Authority is entitled to impose conditions when granting a Permit in accordance with the Authority's powers and functions under the *Water Act 1989*.
11. The issue of a Works on Waterways Permit does not remove the applicant's responsibility to apply for any authorisation or permission necessary under any other Act with respect to anything authorised by the Permit. The Guidance Note below provides more details about the types of approvals which may be required.
12. A Permit shall be subject to time limits and will expire under certain circumstances. Any renewed Permit, if granted, may be subject to renewed conditions.

Contact the Authority between 8.30am and 4.30pm weekdays on telephone 1300 094 262 if you have any questions relating to the above.

GUIDANCE NOTE

There are a number of other approvals which may be necessary for the works. Below is a table outlining of some of the types of approvals which may be required. This table provides examples only and should not be relied upon in any way by permit holders as a current or comprehensive statement of approvals which may be required for the works authorised by their works or activities permit. The approvals that are required will depend upon the nature of the works or activities proposed and the area within which they are proposed to be carried out. Permit holders should obtain independent advice on the approvals which are required for the works or activities they propose to carry out.

Approval	Legislation	Comments	Relevant contact
Planning Permit	<i>Planning and Environment Act 1987 (Vic)</i>	A Planning Permit may be required for works on waterways depending upon the nature and purpose of the works and the provisions of the relevant planning scheme (including zoning and overlay provisions). Contact the relevant local council for further information.	Relevant local council
Consent for works on Crown Land	<i>Land Act 1958 (Vic); Crown Land Reserves Act 1978 (Vic); Forests Act 1958 (Vic); National Parks Act 1975 (Vic); Coastal Management Act 1995 (Vic)</i>	Consent may be required for the carrying out of works or activities on Crown land, with the type of consent depending upon the status of the relevant Crown land, for example: <ul style="list-style-type: none"> - <i>Unreserved Crown Land</i>: a licence or lease under the Land Act (if appropriate) or a formal agreement with the land manager if the works are to be carried out on behalf of the land manager. - <i>Reserved Crown Land</i>: a licence or lease under the <i>Crown Land (Reserves) Act</i> (if appropriate) or a formal agreement with the land manager if the works are to be carried out on behalf of the land manager. - <i>State forest, national parks, state parks, nature reserves</i>: <i>Forests Act</i> (lease/licence/Section 52 permit/agreement providing works are on behalf of land manager)/ <i>National Parks Act</i> (licence/lease/Section 23 approval/ Section 21 permit). 	Relevant land manager (eg DELWP, Parks Victoria, Committee of Management)
Prohibition on certain works and activities	<i>Heritage Rivers Act 1992 (Vic)</i>	Prohibition on certain activities near heritage rivers. Contact the Department of Environment, Land, Water and Planning (DELWP) for further information on details of activities that cannot be undertaken in the vicinity of heritage rivers and the obligations on land managers to manage heritage rivers to achieve particular outcomes.	DELWP https://www.delwp.vic.gov.au/ 136 186
Permits for harming wildlife, fish or flora and fauna	<i>Wildlife Act 1975 (Vic); Flora and Fauna Guarantee Act 1988 (Vic); Fisheries Act 1995 (Vic)</i>	A permit may be required for activities which could harm wildlife, fish or flora. Contact the Department of Environment, Land, Water and Planning (DELWP) for further information or to apply for a permit.	DELWP https://www.delwp.vic.gov.au/ 136 186
Approval for carrying out a controlled action	<i>Environment Protection Biodiversity and Conservation Act 1999 (Cwth)</i>	Actions that may have significant impact on matters of National Environmental Significant must be referred to the Commonwealth Government for a determination as to whether the matter is a "controlled action" and any necessary approvals must be obtained. Contact the Australian Government for further information including guidelines as to likely impacts on matters of national environmental significance and details of the approvals process.	Australian Government Department of the Environment and Energy http://www.australia.gov.au/directories/australia/environment 1800 803 772
Works Approval	<i>Environment Protection Act 1970 (Vic)</i>	A works approval may be required for some works on waterways (for example works which result in the discharge of wastewater into the waterway). Contact the Environment Protection Authority (EPA) for further information and approvals processes.	EPA Victoria http://www.epa.vic.gov.au/ 1300 372 842
Aboriginal Heritage	<i>Aboriginal Heritage Act 2006 (Vic)</i>	For activities which are not already governed by a Cultural Heritage Management Plan (CHMP), a permit is required for activities which may harm aboriginal cultural heritage. If a CHMP is required for an activity, the Plan must be approved prior to the issue of other permits and licences. Contact the Office of Aboriginal Affairs for further information or to apply for a permit.	Aboriginal Victoria https://www.vic.gov.au/aboriginalvictoria.html 1800 762 003
Native Title	<i>Native Title Act 1993 (Cwth); Land Titles Validation Act 1994 (Vic); Traditional Owner Settlement Act 2010 (Vic)</i>	Native Title rights will need to be considered and an agreement may need to be entered into with any person holding Native Title over the land upon which the works are proposed to be carried out. Contact the Department of Justice and Regulation for further information on Native Title matters.	Department of Justice and Regulation http://www.justice.vic.gov.au/home/your+rights/native+title/ 1300 365 111

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Wilderness Creek

KCROSSING

Google



Dropped pin



Directions



Start



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