



Department of Energy, Environment and Climate Action

171-173 Nicholson Street
Orbost, 3888
(03) 51611222
deeca.vic.gov.au

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

Date: 23/04/24
Our Reference:

Dear Chairperson

**RE: NOTICE CONCERNING WORKS ON NATIVE TITLE LANDS (RIGHT TO COMMENT).
PROPOSED INTERSECTION AND ROAD WIDENING WORKS – FREESTONE CREEK ROAD, WINKIE
CREEK ROAD AND INSOLVENT TRACK.**

The Proposal

The Department of Energy, Environment and Climate Action (DEECA) propose to widen the road intersection of Freestone Creek Road and Winkie Creek Road, and sections of Winkie Creek Road and Insolvent Track in Moornapa.

The existing Freestone Creek Road and Winkie Creek Road intersection has insufficient turning space to allow 19-meter-long trucks to turn north up Freestone Creek Road from Winkie Creek Road. Similarly, sections of Winkie Creek Road and Insolvent Track are too narrow to support a 19-meter-long truck. A 19-meter-long truck is required to use these roads in order to access the crossing on Freestone Creek Road which was damaged during a flood event and requires replacement, and for on-going management purposes.

The intersection is proposed to be increased up to approximately 10 meters either side of the existing road, tapering back for a length of approximately 30 meters. The road pavement is required to be increased by one meter in total to allow trucks to safely use the road. This proposed increase in road pavement will result in an overall road increase up to 3 to 5 meters (depending on the slope), to allow for new table drains and appropriate batter slopes to be constructed.

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

- Cadastral plan showing Crown allotment descriptions.
- Aerial Photos.
- Site Plan – for the intersection and western end of Winkie Creek Road only.

Description of The Native Title Land and Waters Affected

Crown allotment 10 in the Parish of Moornapa (P262643).

Privacy Statement

Any personal information about you or a third party in your correspondence will be protected under the provisions of the Information Privacy Act 2000. 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 authorised by law. Enquiries about access to information about you held by the Department should be directed to the Manager Privacy, Department of Environment, Land, Water and Planning, PO Box 500, East Melbourne, 3002.



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Crown allotment 11 in the Parish of Moornapa (P262644).

Crown allotment 16A in the Parish of Marlooh (P262846)

These allotments are Crown lands in part reserved forest by notice published in the *Victoria Government Gazette* in 1968 on page 1275.

The balance of these allotments are unreserved Crown lands.

The above areas are subject to a recommendation from the Land Conservation Council (predecessor to the now Victorian Environmental Assessment Council) that the lands are uncommitted and be utilised for various purposes (including forest produce, grazing and honey) under the Gippsland Lakes Hinterland Area.

Gippsland Lakes Hinterland Area Final Recommendations (1983) – UI – Uncommitted Land

Freestone Creek Road and Insolvent Track are located on road reserves, however small sections of the proposed works are outside of the road reserve boundaries.

Seeking Your Comments

The *Native Title Act 1993* (NTA) requires DELWP 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 Nicole Chapman at the following details.

Nicole Chapman
Senior Planning Officer, Roads and Fixed Assets, Infrastructure and Resources Division
Department of Energy, Environment and Climate Action
171-173 Nicholson Street
Orbost, 3888

Email: nicole.chapman@delwp.vic.gov.au

Phone: 0436604387

Legislative Basis for this Notice

The proposed activity is a valid future act pursuant to Section 24 JA of the *Native Title Act 1993*.

Subdivision J of the *Native Title Act 1993* (NTA) allows for acts to be carried out on reserves provided that the act is in good faith with the purpose of the reservation. Where the act involves the construction of a public work, it is necessary that formal procedural notice be given to any Body Corporate and to any registered Representative Body.

This notice is also prepared and issued cognisant of the agreed terms outlined in Section 7.3 of the Indigenous Land Use Agreement between the State of Victoria and the Gunaikurnai Land and Waters Aboriginal Corporation dated 22 October 2010 and registered with the National Native Title Tribunal on 8 February 2011.

The proposed works are to be carried out over land that was validly reserved prior to 23/12/96. The future act is in accordance with the purpose of the reservation (Reserved Forest).

The proposed works are considered "a road" which constitutes the establishment of public works under Part 15, Division 4, Section 253 of the *Native Title Act 1993*.

The non-extinguishment principle applies.



Nicole Chapman
Senior Planning Officer, Roads and Fixed Assets, Infrastructure and Resources Division.
Department of Energy, Environment and Climate Action

Date of Notice: 23 April 2024



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