



Department of Energy, Environment and Climate Action

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

Native Title Committee
Gunaikurnai Land and Waters Aboriginal Corporation
27 Scriveners Road
Kalimna West Victoria 3909

Date: 9 October 2024
Our Reference: P262927

Dear Chairperson

**RE: NOTICE CONCERNING WORKS ON CROWN LANDS (RIGHT TO MAKE SUBMISSIONS)
PROPOSED LEASE FOR AN AUTOMATIC WEATHER STATION – PARISH OF YEERIK**

The Proposal

DEECA are proposing to issue a lease to the Bureau of Meteorology for the operation of an existing automatic weather station facility located on part of Crown allotment 1 in the parish of Yeerik.

The lease is being issued under the Crown Land Act 1978.

The lease will authorise occupation of an existing facility that has existed for many years.

There are currently no proposed new works.

This act is a valid future act pursuant to S24KA of the Native Title Act 1993.

The proposal allows for a lease to be issued to Bureau of Meteorology on behalf of the Crown for the purpose of operating an existing automatic weather station facility on the subject area. Section 24KA of the Native Title Act 1993 (NTA) provides that future acts that consist of the construction, operation, use, maintenance or repair of any of the things listed in Subsection (2), by or on behalf of the Crown or local government body, that is to be operated for the general public, is a valid act under Section 24KA of the NTA. This is provided that the act does not prevent native title holders from having reasonable access to land or waters in the vicinity of the facility.

An automatic weather station is among those facilities listed in Section 24KA, Subsection (2) of the Native Title Act 1993 (NTA).

The non-extinguishment principle applies.

<i>Privacy Statement</i>

OFFICIAL

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

- Cadastral plan showing Crown allotment descriptions
- Aerial Photo - Murderers Hill
- Site Plan

Description of The Native Title Land and Waters Affected

Crown allotment 1 in the Parish of Yeerik (P262927)

Seeking Your Submissions

The *Native Title Act 1993* (NTA) requires DEECA to consult and seek submissions from the Traditional Owners of Native Title lands and incorporate appropriate conditions into consent to use and develop the land and if required, facilitate a six month period of 'good faith' negotiations between the parties to reach a mutual agreement. Further detail on the Submissions process is attached to this notice.

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 DEECA to raise some specific conditions on cultural heritage protection matters in the exercise of 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 other native title rights and interests that may exist, and how that can be managed or addressed as part of this approvals process are also keenly sought.

Please note that the 'non-extinguishment' principle applies to these works.

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 Sarah Brown at the following details.

Sarah Brown
Project Officer, Gippsland
Department of Energy, Environment and Climate Action
71 Hotham Street
Traralgon, Victoria, 3844

Email: sarah.x.brown@deeca.vic.gov.au
Phone: 0436 642 301

Legislative Basis for this Notice

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

Subdivision K of the *Native Title Act 1993* (NTA) allows for acts to be carried out that constitute the establishment of a facility for service to the public as listed in Section 24KA(2) of the NTA.

In this case, the lease of an automatic weather station facility, is listed in Section 24KA(2)(a).

The future act is being undertaken by the Department of Energy, environment and Climate Action (DEECA).

The non-extinguishment principle applies.

SBrown

Sarah Brown
Project Officer, Gippsland,
Department of Energy, Environment and Climate
Action Date of Notice: 9 October 2024

Attachment One: Good Faith Criteria

Developed jointly by the State and Native Title Services Victoria (now First Nations Legal and Research Services), criteria for assessing good faith may include, but should not be limited to, the following statements regarding appropriate conduct for all parties in negotiations.

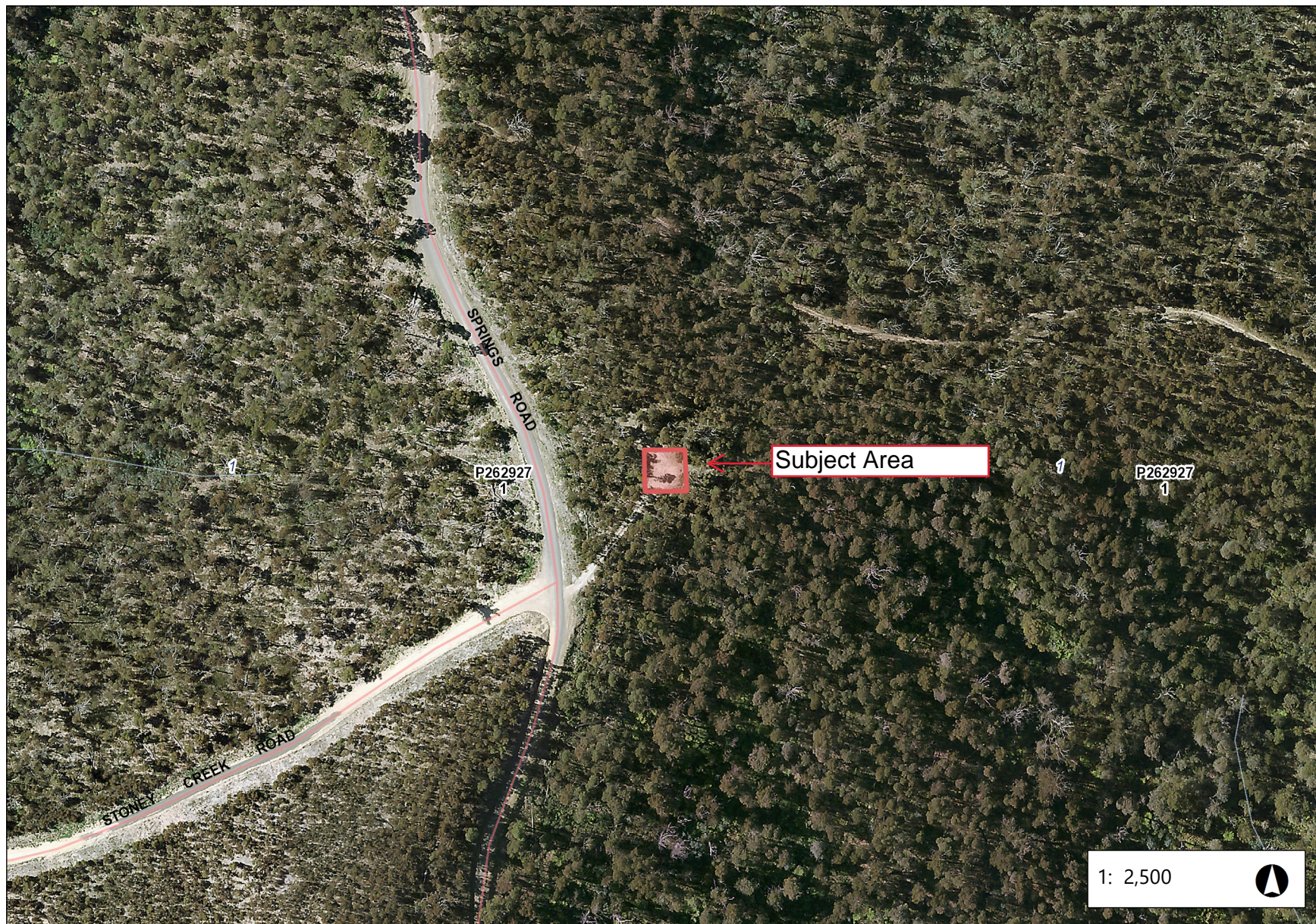
- Negotiating in good faith may depend on the conduct of the party when considered as a whole. It generally involves approaching negotiations with an open mind and a genuine desire to reach an agreement, as opposed to simply adopting a rigid pre-determined position and not demonstrating any preparedness to shift.
- Some preparedness to shift position or compromise in order to achieve agreement is an important part of good faith negotiations, although it is recognised that parties may have little they are able to offer in resolution of some disputes.
- Negotiation in good faith does not mean that one party has an obligation to capitulate or to accept the other side's position, or mean that a negotiated agreement *must* be reached between the parties.
- If one party acts unreasonably there may be a lesser standard on the other party, depending on the circumstances of the particular case.
- Negotiation in good faith will require more than just facilitating discussions. It will require active participation in discussions and it may require the making of proposals.
- There is a need for frankness and openness in negotiations. Parties should not fail to disclose facts or legal argument that they intend to rely on when the Government is assessing good faith.
- The proponent should actively participate in the negotiation process, and provide information in relation to the proposed act. The proponent should *not*:
 - unreasonably delay initiating communications in the first instance;
 - fail, without explanation, to communicate with the other parties within a reasonable time;
 - fail to contact one or more of the other parties;
 - fail to follow up a lack of response from the other parties;
 - fail to respond to reasonable requests for relevant information within a reasonable time;
 - stall negotiations by unexplained delays in responding to correspondence or telephone calls;
 - unnecessarily postpone meetings;
 - send negotiators without authority to do more than argue or listen;
 - fail to make counter proposals;
 - act in a way which harms the negotiating process, eg: issuing inappropriate press releases;
 - refuse to sign a written agreement in respect of the negotiation process or otherwise.

Attachment Two: The Submissions Process

Summary of the *submissions process*:

- The *submissions process* is based on procedural rights for freehold title holders as set under Part Two of the *Land Acquisition and Compensation Act 1986*. This makes it a relevant process in situations where, under the enabling legislation, title would be acquired if the land was freehold.
- This process is also applied in situations where the relevant legislation does not anticipate freehold rights existing or the Crown acting in relation to freehold land, and therefore a common law procedural fairness approach is required to satisfy *Native Title Act 1993* provisions.
- The *submissions process* provides an opportunity for native title parties to negotiate directly with proponents, and to reach an agreement regarding the terms and conditions of the proposed activity.
- The *submissions process* provides a flexible and realistic timeframe for negotiations: allowing a period of up to 6 months when the activity concerns the development of major infrastructure. The time allowed for resolution of issues, or negotiation of a project specific agreement will be influenced by the nature and scale of the proposal.
- The Submission process is satisfied if the proponent can demonstrate good faith attempts to resolve issues raised in negotiations – even if the issues have not been able to be resolved to the complete satisfaction of all parties.
- Identification of “good faith” criteria means that negotiation protocols are clear from the start and each party is aware of their role in this process. Giving structure to this process ensures that negotiation timeframes and project deadlines can be met. A clearly defined process can assist parties to reach agreement.
- The National Native Title Tribunal (NNTT) can assist if negotiations stall.

Murderers Hill



Legend

- Township
- Parish
- Delegated Lease
- Delegated License
- Plan Noting
- Linear Tenure**
 - Other Pipelines
 - Industrial Commercial licences
 - Recreation Amusement licences
 - Occupancy licences
 - Radio TV Telecom site licences
 - Emergency Services Use licences
 - Water Supply licences
 - Miscellaneous General licences
 - Easements
 - Pipe Consents
- All Tenure Outline
- Lease
- General Licence
- Grazing Licence
- Riparian Management Licence
- Water Frontage Licence
- Unused Road Licence
- Government Road**
 - Government Road
 - Dual Status Government Road
- Delegated Management Reserve
- Direct Management Reserve

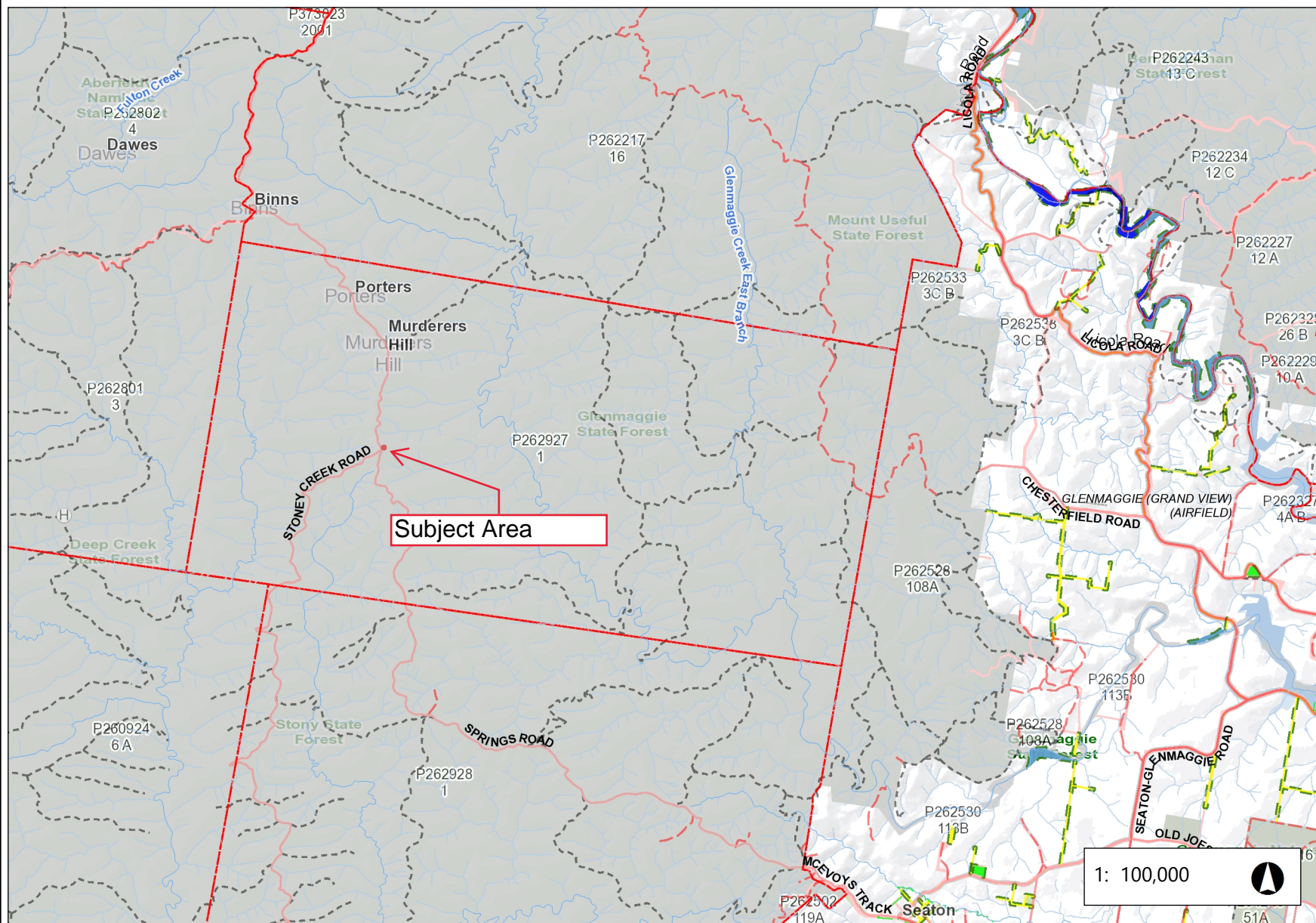
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Map Created on 25-Sep-2024

Murderers Hill



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 - Government Road
 - Dual Status Government Road
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- Direct Management Reserve
- Crown Parcel 100-200K

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Map Created on 25-Sep-2024