



Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth)

Notice of an application for the preservation and protection of a specified area, being the area known as 415 and 417 Barry Way, near Cobbin Creek, Jindabyne, New South Wales

Invitation to make representations

I, Len Roberts, hereby give notice as follows:

The Minister for the Environment (**Minister**), responsible for the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth)* (**Act**), has received an application made under section 10 of the Act. The application is seeking long term preservation and protection of a claimed significant Aboriginal area being the area known as 415 and 417 Barry Way, near Cobbin Creek, Jindabyne, New South Wales. The Minister has appointed me to provide a report to the Minister under paragraph 10(1)(c) of the Act.

The applicant

The application is made by Michelle Francis, a Ngarigo person, representing the Ngarigo Nation Indigenous Corporation (**applicant**).

The purpose of the application

The application seeks the long-term preservation or protection of the area specified in the application as the area is significant as an acknowledged and accepted camping ground and burial site. Burials in alluvial areas nears creeks are part of Ngarigo people's funerary practices dating back 7,000 years (**specified area**). The specified area is depicted in Figure 1 below. Section 10 of the Act confers power on the Minister to make a declaration to preserve and protect an area where the Minister is satisfied that it is a 'significant Aboriginal area' under threat of injury or desecration. A 'significant Aboriginal area' is defined by section 3 of the Act as an area of land or waters that is "of particular significance to Aboriginals in accordance with Aboriginal tradition". 'Aboriginal tradition' is defined as the "body of traditions, observances, customs and beliefs of Aboriginals generally or of a particular community or group of Aboriginals, and includes any such traditions, observances, customs or beliefs relating to particular persons, areas, objects or relationships".

Matters the report is required to deal with

The Minister must consider my report pursuant to section 10 of the Act in relation to the specified area before deciding whether to make a declaration under section 10 of the Act. Under subsection 10(4) of the Act, the report is required to deal with the following matters:

- (a) the particular significance of the area to Aboriginals;
- (b) the nature and extent of the threat of injury to, or desecration of, the area;
- (c) the extent of the area that should be protected;
- (d) the prohibitions and restrictions to be made with respect to the area;
- (e) the effects the making of a declaration may have on the proprietary or pecuniary interests of persons other than the Aboriginal or Aboriginals who made the application, or on whose behalf the application is made;

- (f) the duration of any declaration;
- (g) the extent to which the area is or may be protected by or under a law of the State or Territory, and the effectiveness of any remedies available under any such law; and
- (h) such other matters (if any) as prescribed.

The specified area

Figure 1 below depicts the area for which preservation and protection is sought. This specified area is described as 415 and 417 Barry Way, near Cobbin Creek, Jindabyne, New South Wales.

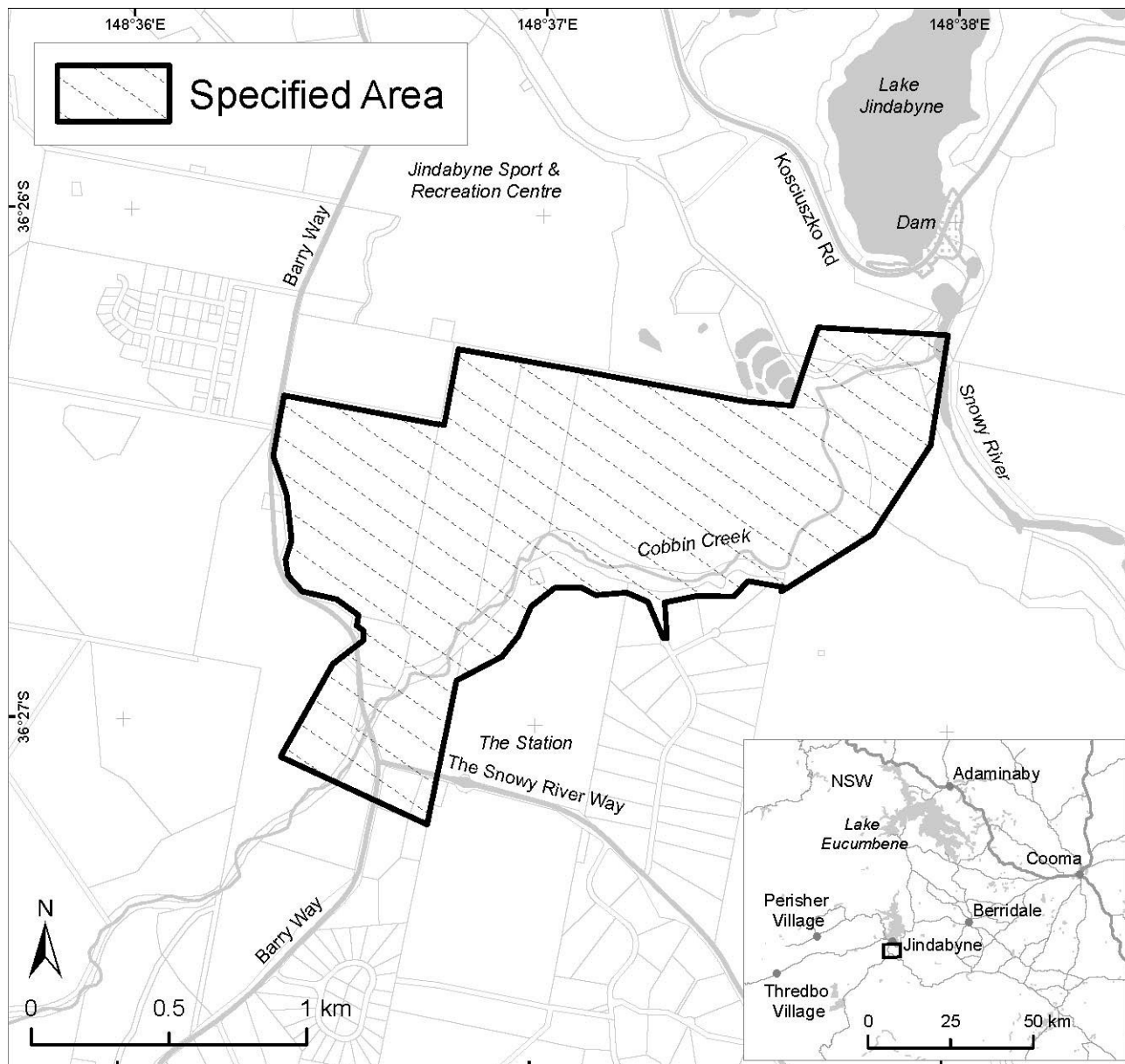


Figure 1 Map showing the specified area being the area known as 415 and 417 Barry Way, near Cobbin Creek, Jindabyne, New South Wales.

The specified area totals 78.7 hectares, and fronts onto Cobbin Creek. It includes the following lots of Property Number 104035:

- LOT 50, DP756686 Ph Clyde
- LOT 95, DP756686 Ph Clyde
- LOT 111, DP756686 Ph Clyde
- LOT 140 DP756686 Ph Clyde

- LOT 142, DP756686 Ph Clyde

Claims in relation to 'significant Aboriginal area'

The applicant claims the specified area is of particular significance in accordance with Aboriginal tradition for the following reasons:

- The area is significant as an acknowledged and accepted camping ground and burial site.
- Burials in alluvial areas near creeks are part of Ngarigo people's funerary practices dating back 7,000 years.
- In the general area there are two Potential Archaeological Deposits and one known and documented Aboriginal burial site. A second burial site is near the Aboriginal burial site but the exact location is not publicly available. These sites are registered in the NSW Aboriginal Heritage Information Management System database.
- It is verbally agreed amongst the Ngarigo Aboriginal Community Members that there is an Aboriginal cemetery within the general vicinity.
- There are stone formations that may indicate more burial sites.

Claimed threat of injury or desecration

The application states that the potential injury or desecration arises from a residential development by Dabyne Planning Pty Ltd approved by the Snowy Monaro Regional Council (SMRC). This threat of infrastructure construction and building works includes excavations, use of heavy machinery and mass land disturbance.

The applicant claims that the approved the subdivision without a full Aboriginal Heritage Impact Permit investigation and the area has not been properly archaeologically surveyed. As such the applicant claims the approval has not met the criteria by which the Ngarigo people can be assured no damage will be done to the area described as an Aboriginal cemetery. The applicant was of the belief that more advice would be given to the Ngarigo people regarding the treatment of the Aboriginal cemetery before any action within the specified area was approved.

The applicant claims the threat to the sites are from excavation, using heavy machinery and land disturbance and wish to prevent any disturbance of the sites which would be desecration of the graves of their ancestors.

Invitation to make representations

Interested parties are invited to furnish representations in connection with my report to:

Len Roberts
Principal Archaeologist, Myall Coast Archaeological Services
"Tall Pines" 6783 Pacific Highway
TEA GARDENS NSW 2324
Mobile: 0403 07 1922
Email: len@myallcoast.net.au

Interested parties are urged to **contact me** as soon as possible to be provided with further information about the submission process, including the provision of the application, making representations in response to the application, and making final comments in response to representations received.

Representations must be made in writing by **5pm AEST on Wednesday 30 March 2022** or within such further period as may be allowed. **Do not send your representations directly to the Minister.**

Representations received by the due date will be provided to the applicant and to interested parties who submit a representation, and thereafter the applicant and such interested parties will be provided an additional two weeks to make final comments in writing.

Claiming confidentiality

If you wish to claim confidentiality over any part of your representation, please identify why you are claiming confidentiality and how you wish confidentiality to apply. Representations will be provided to the Minister for the Environment and the Department of Agriculture, Water and the Environment, along with the section 10 report. Representations, even those subject to confidentiality, may be disclosed where it is authorised or required by law, to meet procedural fairness requirements, and in response to a request by a House or Committee of the Parliament of the Commonwealth.

Privacy notice

Personal information means information or an opinion about an identified individual, or an individual who is reasonably identifiable.

Sensitive information is a subset of personal information and includes any information or opinion about an individual's racial or ethnic origin, political opinion or association, religious beliefs or affiliations, philosophical beliefs, sexual preferences or practices, trade or professional associations and memberships, union membership, criminal record, health or genetic information and biometric information or templates.

By submitting a representation in response to the 'Notice of an application for the preservation and protection of a specified area, being the area known as 415 and 417 Barry Way, near Cobbin Creek, Jindabyne, New South Wales' you consent to the collection of all personal information, including sensitive information, contained in your representation.

I, Len Roberts, collect your personal information (as defined by the *Privacy Act 1988* (Cth)) contained in your representation for the purposes of consideration in drafting a report under section 10 of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) (**Act**) in relation the specified area and related purposes. If you do not provide some or all of any relevant personal information in your representation(s), I may be unable to fully and comprehensively consider your representation in the drafting of the report to be submitted for consideration by the Minister responsible for the Department of Agriculture, Water and the Environment (**Minister**).

The Department of Agriculture, Water and the Environment (**department**) collects your personal information (as defined by the *Privacy Act 1988* (Cth)) contained in your representation for the purposes of the Minister's consideration in deciding whether to make a declaration under section 10 of the Act in relation to the specified area and related purposes. If you do not provide some or all of any relevant personal information in your representation(s), the Minister may be unable to fully and comprehensively consider your representation in deciding whether to make a declaration under section 10 of the Act in relation to the specified area.

The department may disclose your personal information to the Minister, parties that may be affected by a decision of the Minister under section 10 of the Act (to meet procedural fairness requirements), and other Australian government agencies, persons or organisations where necessary for the above purposes,

provided the disclosure is consistent with relevant laws, in particular the *Privacy Act 1988* (Cth). Your personal information will be used and stored in accordance with the Australian Privacy Principles.

By submitting a representation, you consent to the disclosure of all personal information contained in your representation to the Minister and parties that may be affected by the decision of the Minister under section 10 of the Act.

See the department's [Privacy Policy](#) to learn more about accessing or correcting personal information or making a complaint. Alternatively, telephone the department on (02) 6272 3933.