

**DEVELOPMENT ASSESSMENT REPORT  
DA 040-04-2010 MOD 2**



**Proposed s 96(1A) modification**

**Alterations and refurbishment of Happy  
Valley Hut, Perisher Range alpine resort**

***Proposed by Perisher Blue Pty Ltd***

Part 4 of the  
*Environmental Planning and Assessment Act 1979*

May 2012

© Crown copyright 2012  
April 2012  
NSW Department of Planning and Infrastructure  
[www.planning.nsw.gov.au](http://www.planning.nsw.gov.au)

**Disclaimer:**

While every reasonable effort has been made to ensure that this document is correct at the time of publication, the State of New South Wales, its agents and employees, disclaim any and all liability to any person in respect of anything or the consequences of anything done or omitted to be done in reliance upon the whole or any part of this document.

## 1 EXECUTIVE SUMMARY

---

This report is an assessment of an application to modify development consent DA 040-04-2010 pursuant to s 96(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The application is assessed under Part 4 of the EP&A Act, the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation), and *State Environmental Planning Policy (Kosciuszko National Park – Alpine Resorts) 2007* (the Alpine SEPP).

### **Consent authority**

Under the provisions of the Alpine SEPP, the Minister for Planning and Infrastructure is the consent authority for development within the NSW alpine resorts.

### **Background**

Development consent was granted to Perisher Blue Pty Ltd on 28 May 2010 for alterations to and the refurbishment of the existing Happy Valley hut. This involved temporarily servicing the hut using an on-site water tank, an on-site waste water collection tank, and a portable staff toilet. A condition of this consent required that all temporary services be removed by the 30 April 2011.

Consent was then separately granted to DA 023-03-2010 on 3 June 2010 for the installation of permanent water and sewer infrastructure to the Happy Valley hut. This permanent infrastructure has not yet been installed and consent lapses on the 3 June 2015.

Prior to the 2011 winter season, the applicant sought to extend the period for the temporary services until 30 April 2012, and this modification (1) to DA 040-04-2010 was granted.

### **Proposal**

The applicant, Perisher Blue Pty Ltd, now seeks consent to further extend the use of the temporary services up until 3 June 2015.

### **Permissibility**

Pursuant to cl 11 of the Alpine SEPP and the Perisher Range alpine resort land use table, 'food outlets' are permissible with consent.

### **Key considerations**

The Department is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted, and that the proposed modification is of minimal environmental impact and the application may be determined under section 96(1A) of the EP&A Act.

The key matter arising from an assessment of the proposed modification against the relevant matters for consideration, including those set out in s 79C(1) of the EP&A Act and the Alpine SEPP, is whether it is appropriate in the circumstances to allow the hut to continue to operate with temporary services. It has been demonstrated over the last two winter seasons that these temporary services have been adequate for the load generated by the development. Also, there have been no known adverse incidents related to these temporary services, and the applicant has provided additional information relating to monitoring and disposing of the waste water. Both the Department and the OEH are satisfied of the public health aspects related to the temporary facilities.

### **Consultation**

The proposed modification was referred to the NSW Office of Environment and Heritage (OEH) pursuant to cl 17 f the Alpine SEPP. The OEH have advised that they have no objection to extend the use of the temporary services for this period.

## **Conclusion**

The proposal has been considered against the relevant statutory considerations, including s 96(1A) and s 79C(1) of the EP&A Act, and the provisions of the Alpine SEPP. It is concluded that the proposed modification (2) to development consent DA 040-04-2010 is appropriate and acceptable in the circumstances, particularly given that the temporary facilities have adequately catered for the load generated by the development over the previous winter seasons and there has not been any adverse environmental or public health impacts resulting from the temporary nature of these facilities. The proposed modification is therefore recommended for approval subject to the conditions contained in Schedule 2.

## **2 BACKGROUND**

---

### **2.1 Site description**

The Happy Valley Hut is located to the north-west of the base of the Happy Valley T-bar, within the Perisher Range alpine resort.

### **2.2 The original development consent DA 040-04-2010**

On 28 May 2010, development consent was granted for alterations to and the refurbishment of the existing Happy Valley hut, including temporary servicing, and business signage.

The temporary servicing included a 3,000 litre water tank, a 1,000 litre waste water collection tank mounted on skids for the collection of all waste water from the hut, and a portable toilet facility for staff use. These temporary services are currently still in place and are proposed to be removed once permanent water and sewer services are made available to the hut.

### **2.3 Development consent DA 023-03-2010**

Consent was subsequently granted on 3 June 2010 for the installation of permanent water and sewer infrastructure to the Happy Valley hut. This permanent infrastructure has not yet been installed and the consent lapses on the 3 June 2015.

### **2.4 Modification (1) to DA 040-04-2010**

Condition A.3 on the original development consent required that all temporary services, namely the water tank, the waste water tank and the portable toilet, be removed by the 30 April 2011.

As a long-term sub-lessee for the hut had not been secured, the applicant sought to extend the period for the temporary services until 30 April 2012. This modification (1) to DA 040-04-2010 was granted.

## **3 THE PROPOSED MODIFICATION**

---

The applicant has advised that they have been unable, over the last two years of operating, to determine the commercial viability of operating the premises as a result of commercial issues with the operators. Perisher therefore now seeks to further extend this period for the temporary services until 3 June 2015 so that it can be ascertained whether it is viable to install permanent water and sewer infrastructure to the hut as per development consent DA 023-03-2010.

## **4 STATUTORY FRAMEWORK**

---

### **4.1 Development assessment**

The application has been made and assessed pursuant to Part 4 of the EP&A Act and the EP&A Regulations.

#### **4.2 Statement of permissibility**

'Food outlets' are permissible with consent pursuant to cl 11 of the Alpine SEPP and the Perisher Range alpine resort land use table.

#### **4.3 Statutory considerations**

The proposal has been considered against the relevant statutory considerations, including:

- the principles of Ecologically Sustainable Development (ESD);
- the objects of the EP&A Act;
- s 79C(1) and s 96(1A) of the EP&A Act; and
- the Alpine SEPP.

The full assessment is provided in Appendix A and a discussion of the key matters arising from this assessment is provided in section 6 of this report.

## **5 CONSULTATION**

---

### **5.1 NSW Office of Environment and Heritage**

The proposed modification was referred to the OEH pursuant to cl 17 of the Alpine SEPP. The OEH have advised that they have no objection to extend the use of the temporary services for this period.

## **6 CONSIDERATION**

---

The proposed modification has been considered against the relevant matters for consideration and a full assessment is provided in Appendix A. The following is a discussion of the key matters arising from this assessment.

### **6.1 S 96(1A) of the EP&A Act**

The Department is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted. Furthermore, the proposed modification is of minimal environmental impact and the application may be determined under section 96(1A) of the EP&A Act.

### **6.2 Temporary services**

The primary matter for consideration is whether it is appropriate in the circumstances to allow the hut to continue to operate with temporary services.

Both the Department and the OEH have reviewed the operation of the hut over the last two winter seasons, and noted that the temporary services have been adequate for the load generated by the development. Also, there have been no known adverse incidents related to these temporary services, and the applicant has provided additional information relating to monitoring and disposing of the waste water. Both the Department and the OEH are satisfied of the public health aspects related to the temporary facilities.

## **7 CONCLUSION**

---

The proposal has been considered against the relevant statutory considerations, including s 96(1A) and s 79C(1) of the EP&A Act, and the provisions of the Alpine SEPP. It is concluded that the proposed modification (2) to development consent DA 040-04-2010 is appropriate and acceptable in the circumstances, particularly given that the temporary facilities have adequately catered for the load generated by the development over the previous winter seasons and there has not been any adverse environmental or public health impacts

resulting from the temporary nature of these facilities. The proposed modification is therefore recommended for approval subject to the conditions contained in Schedule 2.

## 8 DELEGATIONS

---

It is considered that Daniel James, Team Leader, Alpine Resorts Team has the delegation to exercise the function as a consent authority as provided by the Minister for Planning and Infrastructure, pursuant to s 23 of the *Environmental Planning and Assessment Act 1979*. This exercise of delegations is considered to be appropriate and in accordance with the *Instrument of Delegation* dated 14 September 2011.

## 9 RECOMMENDATION

---

It is recommended that Daniel James, Team Leader, Alpine Resorts Team as delegate for the Minister for Planning and Infrastructure, under the *Instrument of Delegation* dated 14 September 2011, pursuant to s 96(1A) of the *Environmental Planning and Assessment Act 1979* and State Environmental Planning Policy (Kosciuszko National Park – Alpine Resorts) 2007:

- (i) grant consent to **DA 040-04-2010 MOD 2** subject to conditions (refer to **Schedule 2**); and
- (ii) sign and date the **Notice of Determination** for DA 040-04-2010 MOD 2 (refer to **Notice of Determination**).

Prepared by:



**Erin Fuller**  
Senior Planner  
Alpine Resorts Team

8/5/2012

Approved by:



**Daniel James**  
Team Leader  
Alpine Resorts Team

21/5/2012

**Determined as Delegate of the Minister for  
Planning and Infrastructure**

# Appendix A – Statutory Assessment & Consideration

## A1 ECOLOGICALLY SUSTAINABLE DEVELOPMENT

The Department has considered the proposed development against the five principles of ESD set out in s 3 of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). The proposed modification does not alter the conclusions reached in the original assessment relating to ESD.

## A2 ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

### Objects

The proposal as modified is considered consistent with the objects of the EP&A Act in that there will not be an adverse environmental impact, the proposal is consistent with the principles of ESD and will contribute to the orderly development of the resort.

### Section 79C(1) - Matters for consideration - general

In determining a development application, including a modification of a development application, a consent authority must take into consideration the matters referred to in s 79C(1) of the EP&A Act as are of relevance to the development:

<b>S 79C(1)(a)(i) the provisions of any environmental planning instrument</b>
The proposed modification has been considered against the provisions of the Alpine SEPP. The Department has concluded that the modification is appropriate in this respect in that: <ul style="list-style-type: none"><li>➤ the development will continue to be consistent with the aim and objectives;</li><li>➤ the 'food outlet' is permissible with consent;</li><li>➤ the temporary services have been adequate over the past two winter seasons to cater for the loads generated by the development; and</li><li>➤ the OEHL have advised they are satisfied with the proposal from a public health perspective.</li></ul>
<b>S 79C(1)(a)(ii) the provisions of any proposed instrument</b>
None are applicable to the proposal.
<b>S 79C(1)(a)(iii) the provisions of any development control plan</b>
There are no development control plans applicable to the development and subject site.
<b>S 79C(1)(a)(iiia) the provisions of any planning agreement</b>
None are applicable to the proposal.
<b>S 79C(1)(a)(iv) the provisions of any regulations</b>
<u>Cl 92 of the EP&amp;A Regulation 2000</u> – The modification does not involve any demolition nor is the site within the coastal zone.
<b>S 79C(1)(a)(v) any coastal zone management plan</b>
The subject site is not within the coastal zone.
<b>S 79C(1)(b) the likely impacts of that development</b>
The primary matter for consideration in this regard is whether it is appropriate in the circumstances to allow the hut to continue to operate with temporary services.  Both the Department and the OEHL have reviewed the operation of the premise over the last two winter seasons, and noted that the temporary services have been adequate for the load generated by the development. There have been no known adverse incidents related to these temporary services, and the applicant has provided additional information relating to

monitoring and disposing of the waste water. Both the Department and the OEH are satisfied of the public health aspects related to the temporary facilities.
<b>S 79C(1)(c) the suitability of the site for the development</b>
The proposed modification does not involve any additional structures to be erected or alter the use of the building.
<b>S 79C(1)(d) any submissions made in accordance with the Act or the regulations</b>
The proposed modification was not notified to any other lodges or buildings as none are within close proximity to the Happy Valley hut.
<b>S 79C(1)(e) the public interest</b>
The proposed development is considered to be consistent with the aims and objectives of the Alpine SEPP and the public interest is not compromised by the proposal.

**Section 96(1A) – Modifications involving minimal environmental impact**

Pursuant to s 96(1A) of the EP&A Act, the consent authority may, on application being made by the applicant or any other person entitled to act on the development consent, modify the consent if it is satisfied of the following matters:

<b>The proposed modification is of minimal environmental impact</b>
The proposed modification is considered to be of minimal environmental impact as the hut has been operating using these temporary services for the last two years with no adverse environmental impact.
<b>The development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted</b>
Having regard to the physical and qualitative nature of the proposed modification, the Department is satisfied that the consent as modified is substantially the same development as the development for which consent was originally granted.
<b>The application is notified in accordance with the regulations or any DCP</b>
There is no requirement for the modification to be notified.
<b>Having regard to any submissions made</b>
No submissions were received.