

5. ENVIRONMENTAL AND PLANNING LEGISLATION

5.1 ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979

5.1.1 SECTION 79C(1)(a)(i) – ENVIRONMENTAL PLANNING INSTRUMENTS

The only applicable Environmental Planning Instrument to the proposed development and site is State Environmental Planning Policy (Kosciuszko National Park – Alpine Resorts) 2007 (SEPP Alpine Resorts). The relevant clauses contained within SEPP Alpine Resorts are addressed below:

Clause 11 - Land Use Table:

The land use table for the Perisher Range Alpine Resort specifies that 'Ski slopes' are permitted with consent. The proposed development is for the re-establishment and widening of the Powder Valley Traverse, a ski traverse run. The proposed tree removal works are therefore associated with 'Ski slopes' and the proposal is therefore permissible with consent.

Clause 14 - Matters for consideration:

Matter for Consideration	Response
Cl.14 (1) In determining a development application that relates to land to which this Policy applies, the consent authority must take into consideration any of the following matters that are of relevance to the proposed development:	
(a) the aim and objectives of this Policy, as set out in clause 2,	<i>The proposed development is considered to be consistent with the aims and objectives of the Policy.</i>
(b) the extent to which the development will achieve an appropriate balance between the conservation of the natural environment and any measures to mitigate environmental hazards (including geotechnical hazards, bush fires and flooding),	<i>The proposed development does not require any measures to mitigate environmental hazards (eg geotechnical, bush fires or flooding) that would impact on the conservation of the natural environment.</i>

<p>c) having regard to the nature and scale of the development proposed, the impacts of the development (including the cumulative impacts of development) on the following:</p> <p>(i) the capacity of existing transport to cater for peak days and the suitability of access to the alpine resorts to accommodate the development,</p> <p>(ii) the capacity of the reticulated effluent management system of the land to which this Policy applies to cater for peak loads generated by the development,</p> <p>(iii) the capacity of existing waste disposal facilities or transfer facilities to cater for peak loads generated by the development,</p> <p>(iv) the capacity of any existing water supply to cater for peak loads generated by the development,</p>	<p><i>The proposed development will not generate any additional demand on the capacity of the existing transport, reticulated effluent management system, existing waste disposal facility or existing water supply system at the resort.</i></p>
<p>(d) any statement of environmental effects required to accompany the development application for the development,</p>	<p><i>This Statement of Environmental Effects satisfies this sub-clause.</i></p>
<p>(e) if the consent authority is of the opinion that the development would significantly alter the character of the alpine resort—an analysis of the existing character of the site and immediate surroundings to assist in understanding how the development will relate to the alpine resort,</p>	<p><i>The proposed development will not significantly alter the character of the alpine resort.</i></p>
<p>(f) the Geotechnical Policy—Kosciuszko Alpine Resorts (2003, Department of Infrastructure, Planning and Natural Resources) and any measures proposed to address any geotechnical issues arising in relation to the development</p>	<p><i>The proposed works are located within the 'G' line.</i></p> <p><i>Tree removal works do not require any Geotechnical assessment as no excavations are required and no structures are proposed to be erected.</i></p>
<p>(g) if earthworks or excavation works are proposed—any sedimentation and erosion control measures proposed to mitigate any adverse impacts associated with those works,</p>	<p><i>No excavations are proposed. Refer to the SEMP provided in Appendix D.</i></p>
<p>(h) if stormwater drainage works are proposed—any measures proposed to mitigate any adverse impacts associated with those works,</p>	<p><i>Not applicable - No stormwater drainage works are proposed or required.</i></p>

<p>(i) any visual impact of the proposed development, particularly when viewed from the Main Range,</p>	<p><i>The tree removal works are located low down in the valley and are associated with an existing skier traverse.</i></p> <p><i>The proposed removal and pruning of forty-four (44) trees in the context of the landscape setting will not generate any detrimental visual impacts.</i></p>
<p>(j) the extent to which the development may be connected with a significant increase in activities, outside of the ski season, in the alpine resort in which the development is proposed to be carried out,</p>	<p><i>The proposed development will not increase activities outside of the ski season.</i></p>
<p>(k) if the development involves the installation of ski lifting facilities and a development control plan does not apply to the alpine resort:</p> <p>(i) the capacity of existing infrastructure facilities, and</p> <p>(ii) any adverse impact of the development on access to, from or in the alpine resort,</p>	<p><i>The development does not involve the installation of a ski lift.</i></p>
<p>(l) if the development is proposed to be carried out in Perisher Range Alpine Resort:</p> <p>(i) the document entitled Perisher Range Resorts Master Plan, as current at the commencement of this Policy, that is deposited in the head office of the Department, and</p> <p>(ii) the document entitled Perisher Blue Ski Resort Ski Slope Master Plan, as current at the commencement of this Policy, that is deposited in the head office of the Department,</p>	<p><i>The Perisher Ski Slope Master Plan (PSSMP) indicated a new access track to a new Quad Chairlift located in a slightly different alignment to the new Freedom Quad Chairlift currently under construction, that would also access future proposed lifts within the Link Unit. This is illustrated in figure 12 below.</i></p> <p><i>With the revised location of the bottom of the Freedom Quad Chairlift being further up the slope, this access route is no longer necessary and therefore the traverse needs to be higher up the slope to provide sufficient fall-line to the new lift.</i></p> <p><i>The proposal is therefore considered consistent with the objectives of the PSSMP.</i></p>
<p>(m) if the development is proposed to be carried out on land in a riparian corridor:</p> <p>(i) the long term management goals for riparian land, and</p> <p>(ii) whether measures should be adopted in the carrying out of the development to assist in meeting those goals.</p>	<p><i>The proposed tree removal works will be partly located within the riparian corridor of Blue Cow Creek.</i></p>
<p>(2) The long term management goals for riparian land are as follows:</p>	
<p>(a) to maximise the protection of terrestrial and aquatic habitats of native flora and native fauna and ensure the provision of linkages, where possible, between such habitats on that land.</p>	<p><i>The proposed tree removal works will not require any excavations or disturbance of the ground and therefore will have negligible impacts on the riparian corridor associated with Blue</i></p>

<p>(b) to ensure that the integrity of areas of conservation value and terrestrial and aquatic habitats of native flora and native fauna is maintained,</p>	<p><i>Cow Creek.</i></p>
<p>(c) to minimise soil erosion and enhance the stability of the banks of watercourses where the banks have been degraded, the watercourses have been channelised, pipes have been laid and the like has occurred.</p>	
<p>(3) A reference in this clause to land in a riparian corridor is a reference to land identified as being in such a corridor on a map referred to in clause 5.</p>	

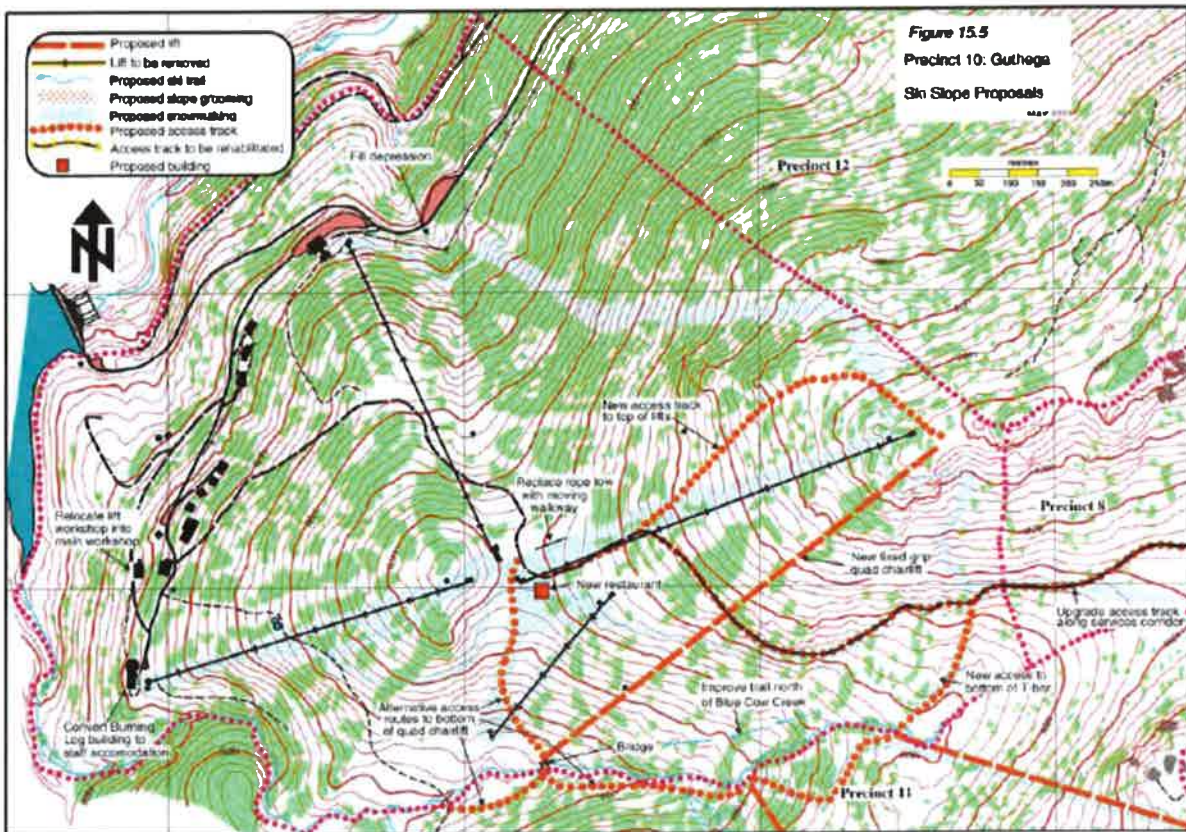


Figure 12: PSSMP Ski Slope Proposal Map for the Guthega Precinct (source: PSSMP)

5.1.2 SECTION 79C(1)(a)(ii) – DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS

There are no draft Environmental Planning Instruments that are applicable to the site or proposed development.

5.1.3 SECTION 79C(1)(a)(iii) – DEVELOPMENT CONTROL PLANS

There are no Development Control Plans applicable to the Kosciuszko Alpine Resorts under State Environmental Planning Policy (Kosciuszko National Park – Alpine Resorts) 2007.

5.1.4 SECTION 79C(1)(a)(iii)a) – PLANNING AGREEMENTS

There are no Planning Agreements applicable to the Kosciuszko Alpine Resorts under State Environmental Planning Policy (Kosciuszko National Park – Alpine Resorts) 2007.

5.1.5 SECTION 79C(1)(a)(iv) – REGULATIONS

The development application has been made in accordance with the requirements contained in Clause 50(1A) of the Environmental Planning and Assessment Regulation 2000.

5.1.6 SECTION 79C(1)(b) – LIKELY IMPACTS

Natural and Built Environment:

Impacts on the natural environment have been considered as part of a comprehensive fauna and flora assessment undertaken and provided in Appendix C.

This assessment determined that given the extent and location of the proposed works, the proposal is not expected to have any effects on the native vegetation communities and associated habitats which occur beyond the subject works area.

Along with the environmental offsets proposed and the mitigation measures outlined in the SEMP, the likely impacts on the natural environment have been mitigated.

The impacts on the built environment are expected to be negligible.

Social and Economic impacts in the locality:

The social and economic impacts from the proposed development will be beneficial by providing a safer, a more easier and efficient skier traverse to the new Freedom Quad Chairlift.

5.1.7 SECTION 79C(1)(c) – SUITABILITY OF THE SITE

The subject site was previously used as a skier traverse and forms part of the Guthega ski area and is therefore considered suitable.

5.1.8 SECTION 79C(1)(d) – SUBMISSIONS

Not applicable.

5.1.9 SECTION 79C(1)(e) – THE PUBLIC INTEREST

The above assessment has demonstrated that the proposal satisfies the objectives and relevant clauses prescribed under State Environmental Planning Policy (Kosciuszko National Park – Alpine Resorts) 2007 and is therefore considered to be within the public interest.

5.2 NATIONAL PARKS AND WILDLIFE ACT, 1974

The National Parks and Wildlife Act, 1974 (NPW Act, 1974) governs the establishment, preservation and management of national parks, historic sites and certain other areas. The NPW Act also provides the basis for the legal protection and management of threatened native flora and fauna and Aboriginal sites within NSW.

As detailed in Section 4 of the report, the proposed development will generate minimal impacts on native fauna and flora and Aboriginal sites and artifacts, which will ensure the development is consistent with the provisions of the NPW Act, 1974.

5.3 THREATENED SPECIES CONSERVATION ACT, 1995

The Threatened Species Conservation Act, 1995 (TSC Act, 1995) requires the consideration of potential impacts on threatened species, populations and or ecological communities. The Act requires that a Species Impact Statement be prepared for a development proposal that is likely to significantly affect threatened species, populations or ecological communities or their habitats.

The factors to be taken into account in deciding whether there is a significant effect are set out in Section 5A of the EP&A Act, 1979 and are based on a 7 part test of significance.

An assessment of the impacts of the proposed development on threatened species, populations and or ecological communities and their habitats has been undertaken and provided in Appendix C.

5.4 ENVIRONMENT PROTECTION AND BIODIVERSITY ACT, 1999 (COMMONWEALTH)

The Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act, 1999) provides for the protection of the environment, especially matters of national environmental significance (NES). Under the EPBC Act, a person must not take an action that has, will have, or is likely to have a significant impact on any of the matters of NES without approval from the Australian Government Environment Minister or the Minister's delegate.

A referral must be made for actions that are likely to have a significant impact on the following matters protected by Part 3 of the EPBC Act:

- World Heritage properties (sections 12 and 15A)
- National Heritage places (sections 15B and 15C)
- Wetlands of international importance (sections 16 and 17B)
- Listed threatened species and communities (sections 18 and 18A)
- Listed migratory species (sections 20 and 20A)
- Protection of the environment from nuclear actions (sections 21 and 22A)
- Commonwealth marine environment (sections 23 and 24A)
- Great Barrier Reef Marine Park (sections 24B and 24C)
- The environment, if the action involves Commonwealth land (sections 26 and 27A), including:

- actions that are likely to have a significant impact on the environment of Commonwealth land (even if taken outside Commonwealth land);
- actions taken on Commonwealth land that may have a significant impact on the environment generally;
- The environment, if the action is taken by the Commonwealth (section 28)
- Commonwealth Heritage places outside the Australian jurisdiction (sections 27B and 27C)

A search of the matters of national environmental significance database for Perisher Valley was undertaken and identified that two of the above matters are relevant to the proposed development as addressed below.

5.4.1 National Heritage Listing

Under the EPBC Act, 1999, the 'Australian Alps National Parks and Reserves - Kosciuszko National Park' was included on the National Heritage List on the 7 November 2008. The Alps were listed for their outstanding natural and cultural heritage significance to the nation.

Under the EPBC Act, a referral must be made for actions that are likely to have a significant impact on a National Heritage Place, such as the Australian Alps.

To determine whether an action is likely to have a significant impact, the significant impact criteria provided in the Commonwealth Department of Environment and Heritage 'EPBC Act Policy Statement 1.1: Significant Impact Guidelines for Matters of National Environmental Significance, May 2006' applies.

The Guidelines state that an action is likely to have a significant impact on the National Heritage values of a National Heritage place if there is a real chance or possibility that it will cause:

- one or more of the National Heritage values to be lost;
- one or more of the National Heritage values to be degraded or damaged; or
- one or more of the National Heritage values to be notably altered, modified, obscured or diminished.

An assessment of impact against the National Heritage List Criteria and the National Heritage values of the Australian Alps has been undertaken and provided in the following table below:

National Heritage Assessment Table

Criterion	Impact on Values
(a) the place has outstanding heritage value to the nation because of the place's importance in the course, or pattern, of Australia's natural or cultural history	<p><i>The Australian Alps National Parks is listed under this criterion for its glacial and periglacial features; fossils; karst areas; biological heritage; moth feasting; transhumant grazing; scientific research; water harvesting; and recreation.</i></p> <p><i>The proposed development within the Perisher Ski Resort would not conflict with any of the above values of the AANP.</i></p>

<p>(b) the place has outstanding heritage value to the nation because of the place's possession of uncommon, rare or endangered aspects of Australia's natural or cultural history</p>	<p><i>The Australian Alps is listed under this criterion for its landscape and topography; glacial and periglacial features; fossils; alpine and sub-alpine systems; and eucalypt flora communities.</i></p> <p><i>The proposed development would generate minimal impacts on the overall landscape of the Australian Alps and would not conflict with any of the above heritage values.</i></p>
<p>(c) the place has outstanding heritage value to the nation because of the place's potential to yield information that will contribute to an understanding of Australia's natural or cultural history</p>	<p><i>Not Applicable.</i></p>
<p>(d) the place has outstanding heritage value to the nation because of the place's importance in demonstrating the principal characteristics of: (i) a class of Australia's natural or cultural places, or (ii) a class of Australia's natural or cultural environments</p>	<p><i>The Australian Alps are listed for the North-East Kosciuszko Landscape values.</i></p> <p><i>The subject site is located within the Perisher Range Resorts and are not located within the North-Eastern area of Kosciuszko National Park.</i></p>
<p>(e) the place has outstanding heritage value to the nation because of the place's importance in exhibiting particular aesthetic characteristics valued by a community or cultural group</p>	<p><i>The Australian Alps are listed under this criterion for their powerful, spectacular and distinctive landscape that is highly valued by the community.</i></p> <p><i>These aesthetic characteristics include the KNP main range for its mountain vistas, panoramas, snow covered crests, slopes and valleys, alpine streams and rivers and lakes.</i></p> <p><i>The proposed development would not impact on any of these heritage values.</i></p>
<p>(f) the place has outstanding heritage value to the nation because of the place's importance in demonstrating a high degree of creative or technical achievement at a particular period</p>	<p><i>Not Applicable.</i></p>
<p>(g) the place has outstanding heritage value to the nation because of the place's strong or special association with a particular community or cultural group for social, cultural or spiritual reasons</p>	<p><i>The Australian Alps have a special association with the Australian community because of their unique landscapes, the possibility of experiencing remoteness and as the only opportunity for broad-scale snow recreation in Australia. The AANP is widely recognised by Australians as the 'high country' and many community groups have a special association with the AANP for social and cultural reasons.</i></p> <p><i>The proposed development would not impact on the above values.</i></p>

<p>(h) the place has outstanding heritage value to the nation because of the place's special association with the life or works of a person, or group of persons, of importance in Australia's natural or cultural history</p>	<p><i>The place is listed under this criterion for its association with the life or works of prominent people such as Baron Ferdinand Von Mueller, Eugen Von Guerard, writers 'Banjo' Patterson, Elyne Mitchell and David Campbell.</i></p> <p><i>The proposed development would not have any impact on the life or works of people with importance to the AANP.</i></p>
<p>(i) the place has outstanding heritage value to the nation because of the place's importance as part of Indigenous tradition.</p>	<p><i>Not Applicable.</i></p>

The above assessment has concluded that the proposed development will not have a significant impact on the values of the Australian Alps National Park and therefore referral and approval under the EPBC, Act 1999 is not required.

5.4.2 Listed threatened species and communities

An assessment of the impact of the proposed development on the relevant Commonwealth Listed threatened species and communities has been undertaken and provided in the Fauna and Flora assessment in Appendix C.

The assessment has concluded that the proposed development is unlikely to have a significant impact on matters of National Environmental Significance or Commonwealth land, following consideration of the administrative guidelines for determining significance under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 and, hence a referral to the Commonwealth Minister is not necessary.

6. CONCLUSION

The proposed tree removal works are proposed to re-establish and widen the Powder Valley Traverse as the primary ski run that connects skiers and boarders from Blue Cow, the Pleasant View Trail Ski Run and Double Trouble Ski Run (from the back of the Pleasant Valley Chair) to Guthega.

The removal and pruning of trees will allow for the run to be wider which will improve grooming operations and safety and accommodate the expected increase in skier traffic in association with the opening and operation of the new Freedom Quad Chairlift.

The re-establishment and widening of the run also allows for Perisher to close the Low Traverse and reduce reliance on the Creek Traverse which also improves skier safety and connectivity.

The proposed tree removal works will result in the removal and/or pruning of forty-four (44) trees comprising of the removal of thirty-six (36) trees and pruning of eight (8) trees. To offset the impacts of these works, the proposal includes planting eighty-eight (88) trees at an offset ratio of 2:1 on the western side of the snow fence adjacent to the Bloody Mary Ski Run at the Guthega Saddle.

Any associated impacts with the proposed works will be further minimised through the application of the measures identified in the Site Environmental Management Plan.

To ensure that all the environmental and associated legislation is complied with and fulfilled, the proposed development has been considered in regard to Section 79C of the Environmental Planning and Assessment Act, 1979, Threatened Species Conservation Act, 1995, Fisheries Management Act, 1994, National Parks and Wildlife Act, 1974, Environment Protection and Biodiversity Conservation Act, 1999 and State Environmental Planning Policy (Kosciuszko National Park – Alpine Resorts) 2007.

The proposal has been found to be consistent with the above legislation and relevant Environmental Planning Instrument, as detailed in this SEE.

On balance, the proposed development will generate positive social and economic impacts by providing a safer and more efficient skier traverse whilst minimising impacts on the natural and built environment.