

**Modification Assessment Report
MOD 6561**

Modification (1) of DA 5937

**Amend Condition B.6 to defer when the
installation of the screens around the above
ground fuel tank are to be installed**

Proposed by Charlotte Pass Village Pty Ltd



Secretary's Environmental Assessment Report
Section 96(1A) of the
Environmental Planning and Assessment Act 1979

July 2014

Cover photo: Photo of above ground storage tank (white) as approved under DA 5976
(Source: Department of Planning and Environment)

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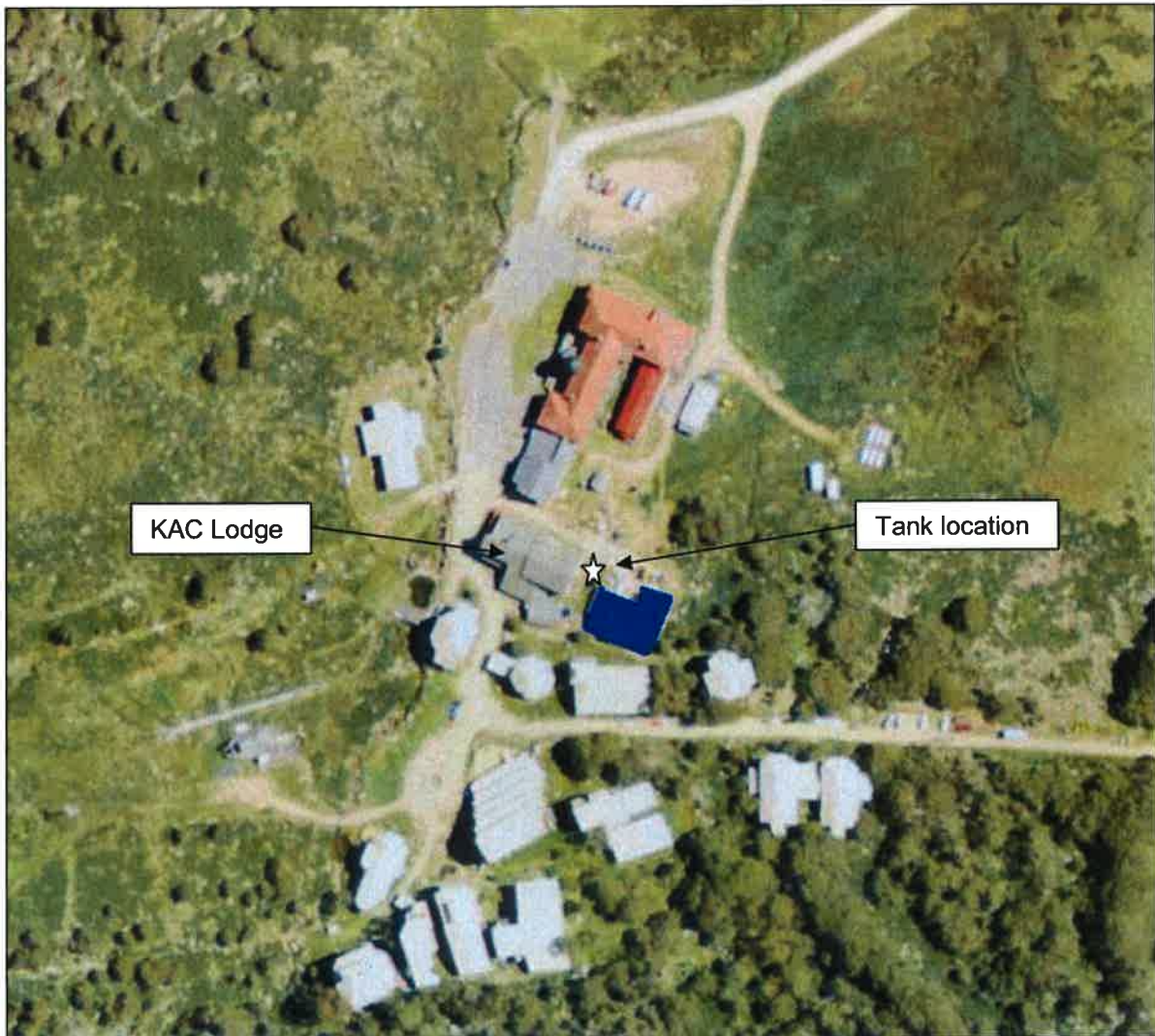
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1 INTRODUCTION

This application seeks approval to modify development consent DA 5937 for the installation of an above ground fuel storage tank on the workshop pavement area at Charlotte Pass Alpine Resort under Section 96(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The application seeks to amend Condition B.6 by postponing the installation of the approved screens around the above ground fuel tank from prior to the 2014 winter season to prior to the 2015 season.

1.1 Locality

The Charlotte Pass Alpine Resort is located within Kosciuszko National Park, approximately 40 kilometres from Jindabyne. The workshop is located centrally within the resort.



Map 1: Workshop building in blue (Source: <http://maps.six.nsw.gov.au/>)

1.2 Site Description

The development site is the Charlotte Pass workshop located approximately 30 metres east of the Chalet at Charlotte Pass. Other surrounding buildings include Spencers Creek Lodge, Jerrabomberra Lodge, Knockshannock Lodge and Kosciuszko Alpine Club (KAC) Lodge.

The approved and erected above ground fuel storage tank (refer to photo on front cover page) to be screened is located on the concrete pavement area to the northwest of the workshop. The area already contains a 35,000 litre above ground diesel tank. There are also three 13,600 litre underground storage systems (two for diesel and one for ULP) located under that access driveway to the workshop that are in the process of being decommissioned.

1.3 Original Development Consent – DA 5937

On 31 May 2013, the Acting Director of Metropolitan and Regional Projects South, as delegate for the former Minister for Planning and Infrastructure approved the installation of a 4,500 litre above ground fuel storage tank to store unleaded petrol (ULP) on the workshop pavement area at Charlotte Pass Alpine Resort.

The storage tank was approved to improve resort operations and to allow the decommissioning of three existing underground tanks. In order to reduce the visual impact of the storage tank from the neighbouring KAC lodge, Condition B.6 - Screens was imposed requiring screening to be constructed between the tank and the boundary of the KAC lodge and along the road side of the tank prior to the 2014 winter season.

2 THE PROPOSED MODIFICATION

The applicant proposes to modify Condition B.6 – Screens to postpone the installation of the approved screening around the above ground fuel tank from prior the 2014 winter season to prior the 2015 winter season.

No other changes are proposed to the approved location or dimensions of the screens and the applicant is still required to submit plans and specifications to the department for approval prior the installation of the screens.

The applicant has advised that the proposed 12 month extension is necessary as the investigation into appropriate screening materials was not finalised prior the construction constraints of the 2014 winter season. Additionally, the extension will allow further consideration and consultation with the builder to ensure the best option for the screen to be presented to the department for approval prior being installed in 2015.

3 STATUTORY FRAMEWORK

3.1 Modification of Approval

Section 96(1A) of the EP&A Act requires the consent authority to be satisfied that the following matters are addressed in respect of all applications which seek modifications to approvals:

1. *It is satisfied that the proposed modification is of minimal environmental impact.*

The proposed modification is considered to be of minimal environmental impact (see assessment in **Section 5** of this report).

2. *It is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all).*

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. The department's consideration of this is contained in Section 6 of this report.

3. *It has notified the application in accordance with the regulations, if the regulations so require, or any development control plan, if required*

There is no development control plan in place that requires the modification application to be notified. However, Kosciuszko Alpine Club (KAC) Lodge adjoining the site and has the potential to be affected by the development. For this reason they were notified of the development.

4. *It has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

The modification application was notified to the KAC for fourteen (14) days. No submission was received.

3.2 Environmental Planning Instruments

State Environmental Planning Policy (Kosciuszko National Park – Alpine Resorts) 2007

The modification application is consistent with the aim and objectives of the Alpine SEPP. Further consideration of the Alpine SEPP is provided in **Appendix A**. 'Infrastructure facilities' are permissible with consent pursuant to Clause 11 of the Alpine SEPP and the Charlotte Pass Village land use table.

3.3 Delegation

The original application was determined under the delegation of the Minister for Planning and Infrastructure, therefore the Minister remains as the consent authority for any subsequent applications to modify the consent.

In accordance with the Minister's delegation of 14 September 2011, the Team Leader, Alpine Resorts Team may determine the application as:

- the application relates to land to which *State Environmental Planning Policy (Kosciuszko National Park – Alpine Resorts) 2007* applies; and
- there are less than 10 public submissions in the nature of objections.

4 CONSULTATION AND SUBMISSIONS

The application was notified in accordance with the *Environmental Planning and Assessment Regulations 2000*. The modification request was made available on the department's website and referred to the previous submitter, Kosciuszko Alpine Club (KAC) lodge, for a period of fourteen (14) days and to the Office of Environment and Heritage for comment as required by Clause 17 of the Alpine SEPP. Due to the nature of the proposed modification, the modification request was not exhibited by any other means.

Office of Environment and Heritage

The OEH provided advice that they support the 12 month extension and that no further comments, in addition to those provided for the original application, were necessary.

Public Submissions

No submission was received from the KAC lodge.

5 CONSIDERATION

The department's consideration of the modification to the consent is provided below:

Screen installation modification

The applicant seeks to modify Condition B.6 to postpone the installation of the approved screening around the above ground fuel tank from prior the 2014 winter season to prior the 2015 winter season. The extension for time for the installation of the screen will allow the applicant to consider a number of design options and also to consult with KAC on the final option.

Condition B.6 is to be modified as follows:

B.6 Screens

Plans and specifications of an appropriate screen/s shall be submitted to the Department for approval prior to being installed. The following shall be addressed in the submitted documentation:

- *the screen/s shall be constructed of an appropriate material;*
- *the minimum height shall be equivalent to the height of the top of the tank above the ground;*
- *the maximum height shall be 2 metres;*
- *the maximum length shall be 5 metres between the tank and the boundary of KAC;*
- *the minimum length shall be equivalent to the length of the tank; and*
- *a maximum length of 3 metres can also be constructed along the road side of the tank.*

The screen/s shall be installed after the 2013 winter season and prior to the 2014 2015 winter season.

As a consequence of the modification application, the screen was not installed prior to the 2014 winter season. The department notes that the condition was included to mitigate the adverse visual amenity impact of the fuel tank when viewed from public areas in the neighbouring KAC lodge.

The department has considered the visual impact of not providing a screen until prior to the 2015 winter season and is of the opinion that the impact is acceptable as:

- the impact will be short term;
- the tank is less visually intrusive as it is located in a workshop area and is coloured white; and
- the minor view impact is localised to one lodge (KAC lodge).

The department also notes that the KAC lodge was notified of the proposal and raised no concerns regarding the impact to visual amenity.

On this basis, and in the absence of any environmental impacts or long term visual amenity impacts, the department is satisfied that the development is substantially the same and of minimal environmental impact. Accordingly, the department supports the applicant's request to extend the period in which the approved screen is to be installed to prior to the 2015 season.

6 CONCLUSION

After consideration of the proposal against the relevant statutory considerations, Section 79C of the EP&A Act and the provisions of the Alpine SEPP, it is concluded that the proposed modification of Condition B.6 is appropriate. The proposal is permissible and no submissions were received regarding the application.

The visual impact from the postponed screen installation is deemed minor as it is only short term and no changes are proposed to the approved location or dimensions of the screen to be installed prior to the 2015 winter season. Accordingly, it is recommended that Condition B.6 be amended to enable the screen to be installed prior to the 2015 winter season.

7 RECOMMENDATION

It is therefore recommended that the Team Leader, Alpine Resorts Team as delegate for the Minister for Planning:

- (i) **consider** the findings and recommendations of this report;
- (ii) **approve** the modification under delegated authority, subject to conditions; and
- (iii) **sign** the attached Notice of Determination and Schedule 1 for MOD 6561.

Prepared by:



Mark Brown
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Industry, Key Sites and Social Projects

Approved by:



11/8/2014

Daniel James
Team Leader
Alpine Resorts Team

Determined as Delegate of the Minister for Planning

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 Section 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

A2.1 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.

A2.2 Section 5A - Significant effect on threatened species, populations or ecological communities, or their habitats

The proposed modifications are not expected to impact on any threatened species, populations, ecological communities or their habitats.

A2.3 Section 79C(1) - Matters for consideration - general

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

S 79C(1)(a)(i) the provisions of any environmental planning instrument
The applicable environmental planning instrument is State Environmental Planning Policy (Kosciuszko National Park – Alpine Resorts) 2007. See section A3 for an assessment of the proposal against this policy.
S 79C(1)(a)(ii) the provisions of any proposed instrument
None are applicable to the proposal.
S 79C(1)(a)(iii) the provisions of any development control plan
None are applicable to the proposal.
S 79C(1)(a)(iiia) the provisions of any planning agreement
None are applicable to the proposal.
S 79C(1)(a)(iv) the provisions of any regulations
The modification application has been assessed in accordance all relevant provisions of the regulations.
S 79C(1)(a)(v) any coastal zone management plan
The subject site is not within the coastal zone.
S 79C(1)(b) the likely impacts of that development
The matters generally considered within the provisions of Section 79C(1)(b) concerning the 'likely impacts of that development' have been assessed in detail in Section 5 of this report. The unscreened fuel tank will have a minor impact on visual amenity when viewed from the neighbouring KAC lodge. However, the department considers this to be acceptable as it is only short term (as the screening will be constructed by 2015 winter season) and the fuel tank is less visually intrusive as it is located within a workshop area and is painted white to be consistent with existing infrastructure. The environmental impacts on the natural and built environment are considered to be

acceptable and within the scope of impacts assessed as part of the original development consent.

Context and setting – The fuel tank is located within a workshop area and is painted white to be consistent with the existing infrastructure at the workshop. The location and colour of the unscreened tank will lessen the visual impact when viewed from the neighbouring KAC lodge during the 2014 winter season. The screen is then to be constructed prior to the 2015 winter season. The proposed modification and resulting visual impact is considered minor and will not adversely impact on the context and setting of the locality.

S 79C(1)(c) the suitability of the site for the development

The original development assessment deemed that the site was suitable for the fuel tank without any adverse impact on the surrounding built environment, subject to the erection of screening between the tank and the adjoining KAC lodge. The fuel tank and screen is still considered appropriate for the site as the screen installation is not postponed long term and no changes are proposed to the dimensions or location of the screen.

S 79C(1)(d) any submissions made in accordance with the Act or the regulations

The Section 96(1A) application was notified to the previous submitter, the Kosciusko Alpine Club lodge. No submission was received.

S 79C(1)(e) the public interest

The proposal is considered in the public interest as it will ensure that the minor visual amenity impacts are not long term.

A2.4 Section 96(1A) – Modifications involving minimal environmental impact

Pursuant to Section 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 and subject to and in accordance with the regulations, modify the consent if:

(a) it is satisfied that the proposed modification is of minimal environmental impact

The proposed modification is considered to be of minimal environmental impact. The department's consideration of the proposal is in Section 5 of this report.

(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted

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. The department's consideration of this is contained in Section 5 of this report.

(c) it has notified the application in accordance with the regulations or any DCP if required

There is no DCP in place that requires the modification application to be notified. However, Kosciusko Alpine Club (KAC) Lodge adjoining the site and has the potential to be affected by the development. For this reason they were notified of the development.

(d) it has considered any submissions made within the notification period

The modification application was notified to the Kosciusko Alpine Club lodge for fourteen (14) days. No submission was received.

A3 ENVIRONMENTAL PLANNING INSTRUMENTS

State Environmental Planning Policy (Kosciuszko National Park – Alpine Resorts) 2007

CI 2 – Aim and objectives:
The proposal, as modified, will still be in accordance with the aim and objectives of the Alpine SEPP.
CI 11 – Land use table
Pursuant to cl.11 of the Alpine SEPP and the Charlotte Pass Alpine Resort land use table, 'infrastructure facilities' are permissible with consent.
CI 14(1) – Matters to be considered by consent authority
(a) the aim and objectives of this policy, as set out in clause 2,
See discussion above under Clause 2.
(b) the conservation of the natural environment and any measures to mitigate environmental hazards (including geotechnical hazards, bush fires and flooding),
There are no natural hazards that would limit the construction of the approved screening around the fuel tank.
(c) the cumulative impacts of development on existing transport, effluent management systems, waste disposal facilities or transfer facilities and existing water supply:
There will be no adverse impact to other village facilities and services
(d) any statement of environmental effects,
The documentation supplied by the applicant is considered adequate to enable an assessment of the proposed modification.
(e) the character of the alpine resort,
The proposal will not significantly alter the character of the Resort. The proposal is considered minor and will not adversely impact on the context and setting of the locality
(f) the Geotechnical Policy – Kosciuszko Alpine Resorts,
The proposal has been prepared in accordance with this policy. There are no geotechnical issues that arise in relation to the proposed development.
(g) any sedimentation and erosion control measures,
No earthworks or excavation are proposed.
(h) if stormwater drainage works are proposed,
No stormwater drainage works are proposed.
(i) any visual impact of the proposed development, particularly when viewed from the Main Range,
The above ground fuel tank is not visible from Main Range. The minor visual impact from the unscreened fuel tank is deemed appropriate as it is localised to one lodge, is only short term and the location and colour of the tank lessens the visual impact.
(j) any significant increase in activities, outside of the ski season,
The proposal will not result in a significant increase in activities outside the ski season
(k) if the development involves the installation of ski lifting facilities,
The proposed modification does not include any new ski lifting facilities.
(m) if the development is proposed to be carried out on land in a riparian corridor:
The site relating to the proposed modification is not located within a riparian corridor.

CI 17 – Development applications referred to the Office of Environment and Heritage	
See Section 4 of this report.	
CI 26 – Heritage conservation	
European Heritage	The proposal will not impact on any European heritage items.
Aboriginal Heritage	The proposal will not impact on any Aboriginal heritage items.