

## **ATTACHMENT A – S.96 MODIFICATION PLANNING REPORT**

### **1. Introduction**

Dabyne Planning Pty Ltd has been engaged by Kosciuszko Thredbo Pty Ltd (KT), the head lessee of the Thredbo Alpine Resort to prepare a S.96 Modification report to the NSW Department of Planning and Environment (DPE).

The S.96 Modification is in relation to the Stage 1B Mountain Bike Trails, DA 6751. The proposed modification relates to seeking a minor variation to approved Trail 13 (All Mountain Trail) between the Antons Access Road and the top of the Gunbarrel Chairlift.

The proposed modifications are as a result of the trail alignment inspection undertaken in accordance with condition C.9 by the Qualified Ecologist, Ryan Smithers of Eco Logical Australia (appointed under condition C.2), as documented in his correspondence dated 22 January 2016 to the Department, included in Attachment B.

The proposed modifications are therefore a result of complying with the conditions of consent with regard to condition C.9 as well as condition D.26 Anemone buttercup (*Ranunculus anemoneus*).

In accordance with the Ecologist inspection report, the *'proposed alignment is consistent with the development consent as it affects the same vegetation communities and fauna habitats, however it substantially reduced the impacts associated with this part of Trail 13'*. Therefore S.96 Modification should not even be required as the alignment change is a result of complying with a condition (C.9) and therefore this should supersede complying with the plans under condition A.1 as referenced under condition A.3. As a result, the revised alignment is not inconsistent with the original consent granted.

Notwithstanding this, a S.96 Modification has been submitted as requested.

### **2. Background**

Development Application 6571 was granted consent by the Department of Planning and Environment on the 8 December 2015.

As a result of condition C.9, an inspection on the first section of Trail 13 (Eagles Nest to Antons Access Road) was undertaken by the Qualified Ecologist, Ryan Smithers of Eco Logical Australia (appointed under condition C.2), as documented in his correspondence dated 22 December 2015, with a subsequent inspection undertaken by the DPE and the Office of Environment & Heritage (OEH) on the 8 January 2016.

A further inspection of the next section of Trail 13, from Antons Road to the top of the Gunbarrel Chairlift as well as Trail 12, was undertaken on the 14 January 2016.

As a result of this inspection, a report under condition C.9 was prepared and submitted to the Department on the 22 January 2016 (provided in Attachment B).

This report outlines where the proposed alignment changes are beyond the 10m buffer to the DA alignment. These changes will assist construction, minimise potential impacts on the environment, and improve rider experience.

The proposed modifications are discussed below and are shown in the modified plans submitted.

### **3. Proposed Modifications**

#### **Trail 13 – All Mountain Trail:**

The proposed alignment of Trail 13, between the Antons Access Road and the Gunbarrel Chairlift will substantially reduce impacts associated with this part of the trail as it:

- *'Reduces the trail length by approximately 400 m and thus the trail footprint and associated disturbance by an estimated 680m<sup>2</sup>.*
- *Substantially reduces the amount of Ranunculus anemoneus plants affected.*
- *Enables a more gradual loss of elevation along the trail alignment thus reducing the occurrence of short steep sections of trail and thus the potential for erosion and subsequent impacts.*
- *Reduces the amount of rocks and trees that will be removed and / or otherwise disturbed and thus reduces impacts on fauna habitats'.*

As advised by the Qualified Ecologist.

A map of the proposed alignment, in relation to the approved alignment is provided as part of Attachment B.

### **4. Assessment under S.96 (1A) of the EP&A Act, 1979**

Section 96(1A) of the Environmental Planning & Assessment Act 1979 relates to modifications involving minimal environmental impact as addressed below.

*A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority 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, and*

As discussed above, the proposed variation to Trail 13 will result in environmental impacts being reduced by removing approximately 400m of approved trail through native vegetation, with an approximate disturbance footprint of 680m<sup>2</sup> and substantially reducing impacts on the amount of *Ranunculus anemoneus* plants affected.

*In accordance with the Ecologist advice, the 'potential impacts associated with the proposed alignment are improvements to the proposal which reduce the potential impacts associated with the trail. The proposed alignment will not result in any adverse impacts that have not been assessed as part of the development assessment or post approval inspection process'.*

The proposed modifications therefore are of minimal environmental impact.

*(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 and before that consent as originally granted was modified (if at all), and*

The approved development is for the construction of two mountain bike trails, forming Stage 1B. The proposed modification seeks to amend the approval for one section of one trail, by reducing impacts on native vegetation and to assist construction and improve rider experience.

The proposed modifications therefore are not considered to constitute a 'radical transformation' (see The majority of the Court of Appeal in *Sydney City Council v Ilence Pty Limited* (1984) 3 NSWLR 414, or *North Sydney Council v Michael Standley & Associates Pty Limited* (1998) 97 LGERA 433) of the approved development and will ensure that the development remains substantially the same.

*(c) it has notified the application in accordance with:*

*(i) the regulations, if the regulations so require, or*

*(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*

*(d) 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 regulations do not require re-advertising or notification for a S.96 (1A) Modification and there is no development control plan in place in relation to notification or advertising. Furthermore, the original DA did not receive any submissions, there re-advertising or notifying the proposed modifications is not necessary.

*Subsections (1), (2) and (5) do not apply to such a modification.*

Noted.

**ATTACHMENT B**

Daniel James  
Department of Planning and Environment  
PO Box 36  
Jindabyne NSW 2627

**Ref/Job No: 15NAR\_3373**

22 January 2016

Dear Daniel,

**RE: Trail Alignment Inspection – DA 6751 Stage 1B MTB - Thredbo Alpine Resort**

As required by condition C.9 of the approval for DA 6571 I undertook an inspection of the proposed alignment of Trail 12 and Trail 13 between the Anton's access road and the Gunbarrel Chairlift on 14 January 2016. I was accompanied on the inspection by Simon French (DirtArt) and Bryce Williams (Kosciuszko Thredbo).

**Trail 13 - Anton's access road to the Gunbarrel Chairlift**

I confirm that the proposed alignment is generally consistent with the development consent. However, the proposed alignment of the lower part of Trail 13 deviates from the alignment proposed in the development application (the DA Alignment), as identified in in **Figure 1**. These alignment changes have been proposed by DirtArt to assist construction, minimise potential impacts on the environment, and improve rider experience. Most of the changes to the alignment are within 10 m of the alignment as marked by World Trail (see **Figure 1**). Where the proposed alignment is beyond the 10 m buffer to the DA alignment, the proposed alignment is consistent with the development consent as it affects the same vegetation communities and fauna habitats, however it substantially reduces the impacts associated with this part of Trail 13 as it:

- Reduces the trail length by approximately 400 m and thus the trail footprint and associated disturbance by an estimated 680 m<sup>2</sup>.
- Substantially reduces the amount of *Ranunculus anemoneus* plants affected.
- Enables a more gradual loss of elevation along the trail alignment thus reducing the occurrence of short steep sections of trail and thus the potential for erosion and subsequent impacts.
- Reduces the amount of rocks and trees that will be removed and / or otherwise disturbed and thus reduces impacts on fauna habitats.

I confirm that the potential impacts associated with the proposed alignment are improvements to the proposal which reduce the potential impacts associated with the trail. The proposed alignment will not result in any adverse impacts that have not been assessed as part of the development assessment or post approval inspection process.



Photo 1: A small platform is proposed where the trail traverses this small watercourse.



Photo 2: The proposed alignment will avoid direct impacts on a Wombat burrow by going over rather than in front of the rock that the burrow entrance is beneath.

The location of proposed bridge and platform are shown in **Figure 1**. The proposed bridge spans the only area of Upland Bog traversed by the proposed trail alignment, as shown in **Figure 1**. One small platform is proposed to traverse a minor watercourse as shown in Photo 1.

Photo 2 shows the location where an active wombat burrow occurs along the trail alignment. The proposed alignment will avoid direct impacts on the burrow by going over rather than in front of the rock that the burrow entrance is beneath.

### ***Ranunculus anemoneus***

The proposed alignment traverses areas where *Ranunculus anemoneus* is present in 17 locations. In the majority of these locations it is not possible to avoid *Ranunculus anemoneus* given its abundance in surrounding areas. Given the presence of healthy numbers of *Ranunculus anemoneus* nearby, it is recommended that it is not necessary to transplant any affected plants in 15 of the 17 locations. In two locations, just above the access road to the Gunbarrel Chairlift, it was agreed that the trail alignment should be modified slightly to avoid affecting the *Ranunculus anemoneus* plants there.

The locations where *Ranunculus anemoneus* was present within the proposed trail alignment and the proposed treatment, as described above, will be included in a report by the project environment officer.

### **Trail 12**

I confirm that the proposed alignment of Trail 12 is generally consistent with the development consent. However, as identified in **Figure 2**, the proposed alignment includes minor deviations from the alignment proposed in the development application (the DA Alignment). With one exception, all of the changes to the alignment are within 10 m of the alignment as marked by World Trail (see **Figure 2**). Where the proposed alignment is beyond the 10 m buffer to the DA alignment, it is only approximately 5 m beyond the 10 m buffer for approximately 10 m.

These alignment changes have been proposed by DirtArt to assist construction, minimise potential impacts on the environment, and improve rider experience.

The proposed alignment is consistent with the development consent as it reduces the impacts associated with Trail 12 as it:

- Reduces the trail length by approximately 140 m and thus the trail footprint and associated disturbance by an estimated 238 m<sup>2</sup>.
- Increases the distance between the trail and Merritts Creek.
- Enables a more gradual loss of elevation along the trail alignment thus reducing the occurrence of short steep sections of trail and thus the potential for erosion and subsequent impacts.
- Reduces the amount of rocks and trees that will be removed and or otherwise disturbed and thus reduces impacts on fauna habitats.

In particular the proposed alignment reduces impacts on the patch of mature Snow Gums in the lower part of the trail, as shown in Photo 3.



**Photo 3: The proposed alignment increases the buffer to Merritts Creek and reduces impacts on the patch of mature Snow Gums in the lower part of the trail.**

I confirm that the potential impacts associated with the proposed alignment are improvements to the proposal which reduce the potential impacts associated with the trail.

The proposed alignment will not result in any adverse impacts that have not been assessed as part of the development assessment or post approval inspection process.

Should you require any further information please contact me on 4476 1151 or 0422 802 447.

Yours sincerely,

**Ryan Smithers**  
**Senior Ecologist**



Figure 1: Proposed Alignment Trail 13



**Legend**

- Proposed Alignment of Trail 13
- DA Alignment
- 10m DA Alignment Buffer
- ⊗ Bridge
- ⊗ Platform

**Vegetation Communities**

- Upland Bog
- Short Alpine Herbfield
- Snowpatch

0 15 30 60  
Metres  
Datum/Projection:  
GDA 1994 MGA Zone 55

N  
  
**eco**  
**logical**  
AUSTRALIA  
www.ecoaus.com.au  
Prepared by: BH Date: 18/01/2016

Figure 1: Trail 13

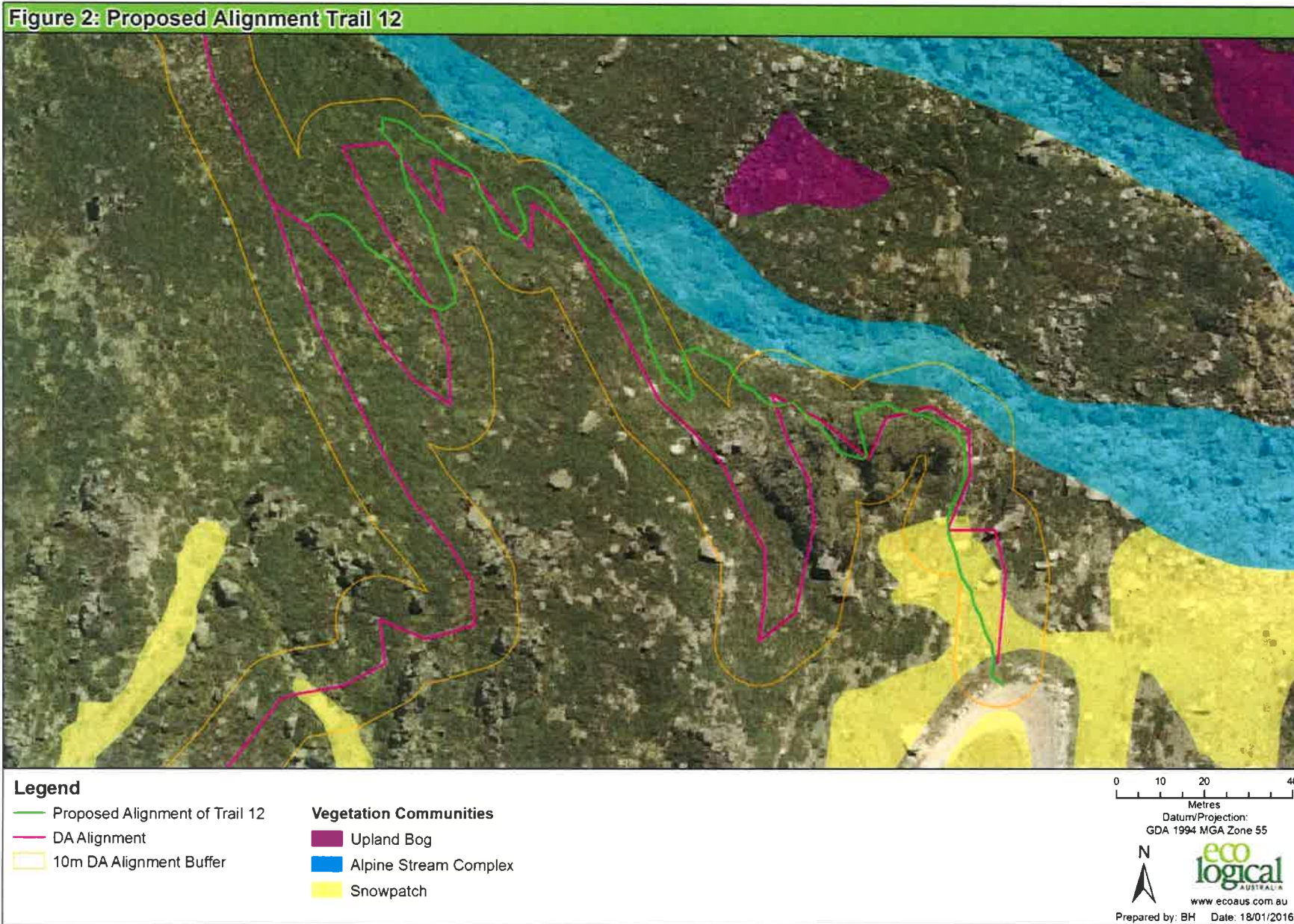


Figure 2: Trail 12