

## **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 as modified under MOD 7493 (Mod 1).

The proposed modification relates to seeking an alternate alignment for Trail 12 (Downhill Link), located between Trail 13 and the start of the Downhill and Flow Trails, adjacent to the Snowgums Double Chairlift top station.

The proposed modifications are as a result of a review of the trail alignment between Dirt Art, the trail builders and KT to reduce the pitch of the approved Trail 12 and thereby reduce the extent of excavations required, as discussed with both OEH and DPE staff as part of the trail alignment inspection process.

The proposed alternate alignment for Trail 12 seeks to commence the trail further along Trail 13, after the crossing of Merritts Creek and then use two bridges over Merritts Creek back towards the summer access road and start of the Downhill and Flow Trails. This reduces the slope of the trail with an average lower grade.

The proposed trail alignment has been flagged by Dirt Art and reviewed by the Qualified Ecologist, Ryan Smithers of Eco Logical Australia (appointed under condition C.2), as documented in his correspondence dated 14 March 2016, included in Attachment B.

In accordance with the Ecologist report attached, the assessment concluded that *'the proposed alignment is preferable to the approved alignment, primarily as it has a lower average grade, and thus there is less potential for erosion and sedimentation issues. Given the lower grade it is also likely to result in a lower average width of disturbance. As such, the batters and cuttings will be smaller, with less overall disturbance to vegetation and fauna habitats'*.

### **2. Background**

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

The DA was modified on the 3 March 2016, under MOD 7493 to make minor variations to Trail 13 including reducing the trail length by 400m.

As part of the trail inspection process undertaken with OEH and DPE staff, the alignment of Trail 12 and its slope was raised with regard whether it could be re-aligned. Following a review of the approved trail by Dirt Art and KT, a proposed new alignment was identified and consultation with OEH & DPE following. The proposed S.96 Modification is a result of these consultations.

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

### **3. Proposed Modifications**

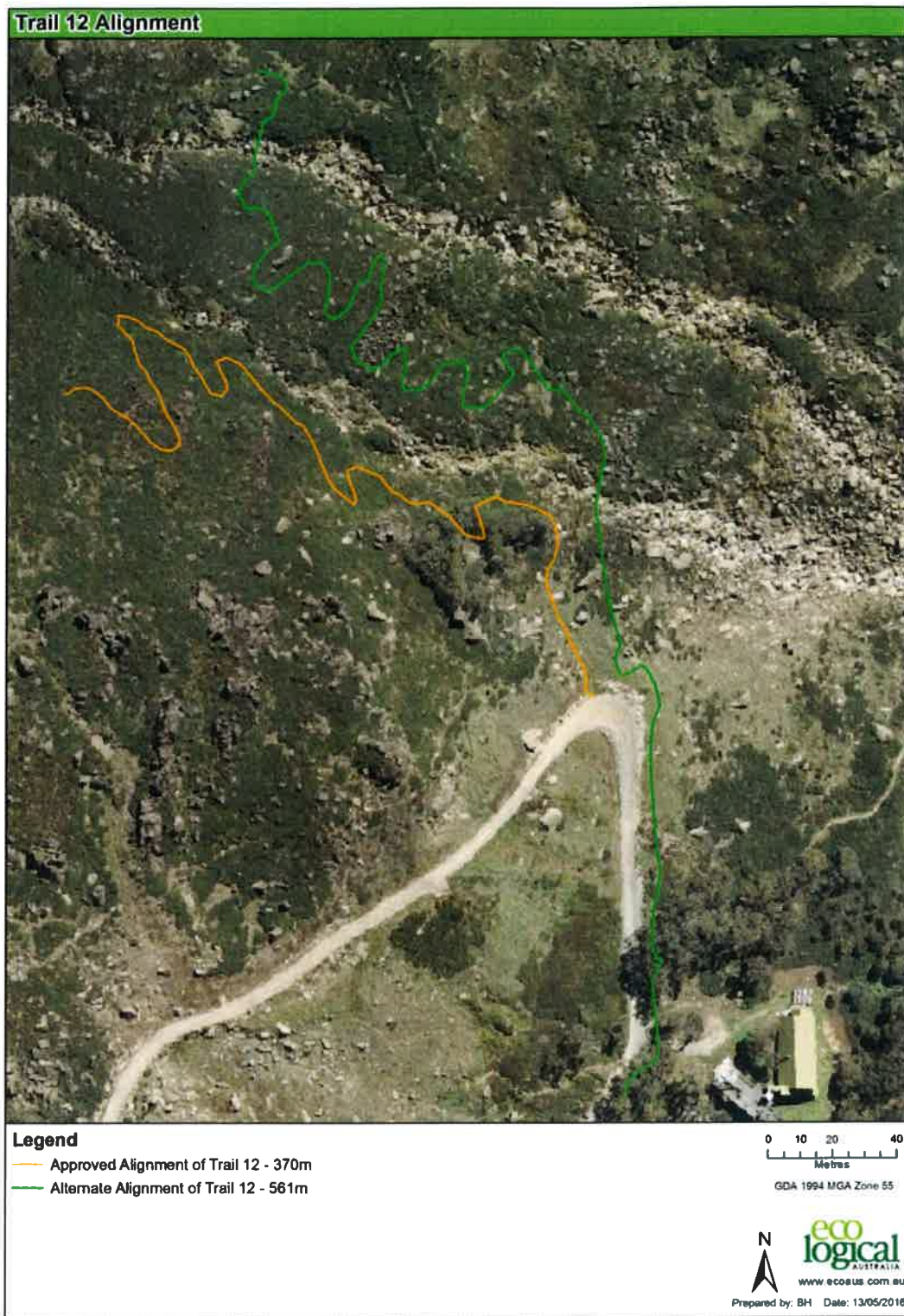
#### **Trail 12 – Downhill Link:**

To reduce the slope of the trail and overall average grade, which was raised as a concern, the trail is proposed to be re-aligned so that it commences further along Trail 13 and therefore traverses more across contour at a longer length, requiring the installation of two bridges across Merritts Creek.

The bridges will be the same as approved for the Trail 13 bridge, constructed using the same method.

A fauna and flora assessment of the re-aligned trail identified that the vegetation communities were very similar to the approved trail. To minimise impacts on fauna and flora values, alterations to the proposed alignment have been recommended, which KT can accept and this can form a condition of the modified approval.

Whilst the length of the modified trail will be longer than the approved trail, the approved trail was designed to also use the side of the Summer Road down to the start of the Downhill and Flow trails, so its actual length would have been more likely 510m rather than 370m as shown below. Therefore the difference in the two trails would be more likely around 50m.



A map of the proposed alignment including the Ecologist assessment 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*

Although the re-aligned trail will be approximately 50m longer than the approved trail, the overall trail lengths as modified, will be well less than the original approved trail lengths as Trail 13 was amended and reduced by approximately 400m under MOD 7493.

In regards to OEH comments on the proposed trail alignment, the number and location of switchbacks proposed are required as advised by Dirt Art to reduce the grade of the trail whilst also providing an enjoyable rider experience as this trail for specifically for Flow trail users with intermediate skills.

The boulder field habitat has been avoided through the recommendations included in the Ecologist report. With no evidence of Mountain Pygmy Possums in the locality and wider resort, and given the trail tread is less than a 1m wide, small culvert crossings are not considered necessary to span such a short amount of disturbance.

Furthermore the lower creek crossing cannot be moved up the slope as it would interfere with winter operations.

As discussed above, the proposed variation to Trail 12 will result in lessor environmental impacts in accordance with the recommendations provided by the Ecologist.

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 Trail 12, 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.