

Daniel James
Team Leader
Department of Planning & Environment
Alpine Resorts Team
Shop 5A, Snowy River Ave
Jindabyne NSW 2627

Delivered by hand.

Dear Sir or Madam,

Re: S.96 (1A) Modification to modify Development Application 6114 for the construction of mountain bike trails – Stage 1A, High Noon and Dream Run Ski Run Deviations, Thredbo Alpine Resort

In regard to the above, please find attached on behalf of Kosciuszko Thredbo Pty Ltd:

- 1 x S.96 Modification Application form inc Political Donations Form (from Stage 1A DA 6114)
- Attachment A: S.96 Modification Report
- Attachment B: Correspondence from Ryan Smithers of Eco-Logical Australia
- Attachment C: Photos
- 5 x copies of the Proposed Alignment in A3
- 1 x cheque for \$645 for the S.96 (1A) Modification Application fee made out to the NSW Department of Planning and Environment

Should you require any further information, please do not hesitate to contact me on the details provided below.

Regards

A handwritten signature in black ink, appearing to read 'I. Pasalich', with a small flourish at the end.

Ivan Pasalich
Principal

21 March 2017

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 1A Mountain Bike Trails, DA 6114. The proposed modification relates to seeking a variation to Section 3 of Trail 13 (All Mountain Trail) to improve the trail alignment and remove sections of the trail, particularly corners from the High Noon and Dream Run ski runs.

This is due to the impact the trails have had on winter operations, particularly snowmobiles, grooming machines and to a lesser extent, skiers and snowboarders.

Due the steeper slopes of the High Noon and Dream Run ski runs, the trail has had to be cut well into the earth, with the corners creating large excavations which cannot be adequately filled prior to winter. As such, Thredbo personnel have raised safety concerns and have had accidents using snowmobiles for winter operations, particularly in marginal conditions. Similarly grooming machines have had operational problems associated with the trails.

With regards to summer operations, access to the mountain bike trail above Dream Run has been compromised with limited motorised vehicle access for first aid response, weed management and general trail works.

Lower down on the trail, where the trail crosses onto the Sundowner ski run, a small deviation is proposed to remove the current conflict between the mountain bike trail and Merritts walking trail, where the trails currently are merged over a short distance.

The proposed revised trail alignments have been identified by KT, designed by Dirt Art and reviewed by Eco-Logical Australia to determine an appropriate alignment that fulfils both an improved mountain bike trail outcome and resort operation outcome, whilst minimising impacts on the environment and avoiding any constrained or high value biodiversity areas.

This has resulted in the trail alignment being revised, with the lower section of trail (skiers left of the Dream Run and High Noon) being relocated away from the area that is populated by a large gully and Tea Trees.

The revised trail overall will result in a marginal increase in loss of native vegetation when compared to the current trail alignment, however the existing trails where located within native vegetation areas will be rehabilitated.

The revised trail alignment is also located exclusively within Sub-alpine Woodland, the most common vegetation community found within the Thredbo Resort area and wider locality.

The proposed S.96 Modification is therefore of a minimal environmental impact and is considered substantially the same development, satisfying the provisions of S.96 (1A) of the Environmental Planning and Assessment Act, 1979 and therefore does not require re-advertising or notification.

As the lower section of the trail alignment associated with the Sundowner ski run is located within 40m of Merritts Creek (although the ski run spans the creek via a culvert) an amended Controlled Activity Approval from the NSW Office of Water will be sought.

2. Background

Development Application 6114 was granted consent by the Department of Planning and Environment on the 1 December 2014.

This DA was modified by MOD 6971 Mod 1 in April 2015 relation to a minor variation to approved Trail 2 [Friday Flat] & Stage 2 of Trail 13 [All Mountain Trail]. This resulted in an improved trail alignment that minimised disturbance on native vegetation, avoided wet areas and provided a better connectivity between the trails.

The DA was then subsequently modified by MOD 7440 Mod 2 in December 2015. This was a minor variation to approved Trail 1 – Village Trail in relation to the use of the existing vehicular bridge, known as the Creek Station Bridge. Rather than construct an extension to the existing bridge for mountain bike riders only, the modification was approved to utilise the existing bridge with a shared use arrangement between vehicles and mountain bike riders.

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

3. Proposed Modifications

High Noon and Dream Run Deviations:

Section of 3 of Trail 13 [All Mountain Trail] was approved to utilise part of the lower High Noon ski run, where it is at its most steepest and part of the Dream Run ski run, with the trail traversing the Sub-Alpine Woodland in between, including the tree islands.

As a result of safety and operational concerns, the trail is proposed to be relocated within the Sub-Alpine Woodland between the High Noon ski run and Dream run, and area to the skiers left (north and east) of the runs.

All the corners, including berms which necessitate relatively large excavations when located on a steeper slope, will therefore be relocated off the ski slope into the Sub-Alpine Woodland vegetation on the side, where they can be left during winter without constantly filling and re-opening or causing safety issues and/or impeding resort operations.

This will result in the trail being re-aligned into the Sub-Alpine Woodland vegetation for a length of approximately 385m. Of the existing trail, approximately 70m of the trail that is currently located within Sub-Alpine Woodland will no longer be used and therefore rehabilitated.

Sundowner Deviation:

To avoid conflict (between mountain bikers and walkers), the All Mountain Trail and Merritts walking trail, adjacent to the Sundowner ski run, both trails are proposed to be re-aligned. This will result in a modification to the trail, resulting in approximately 15m of new trail within Sub-Alpine Woodland vegetation, resulting in removal of approximately 25m².

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 a marginal increase in the removal of Sub-Alpine Woodland Vegetation, with a net loss of approximately 560m².

In context of the overall Stage 1A trails and the demonstrated impacts as constructed, this is considered both minor and acceptable, given that the trail alignment was chosen and modified to follow the vegetation community that is most common and of least conservation value, which naturally recruits and regenerates.

Furthermore, the original trail (Section 2 of Trail 13) was modified as part of MOD 6971 Mod 1 with a reduction in vegetation loss of 280m², from the original approved trail.

Therefore, the overall impacts as modified, when compared to that originally approved, will only result in an additional removal of 280m² of Sub-alpine Woodland.

As documented in the Flora and Fauna assessment provided by Eco Logical Australia in Attachment B, the proposal overall represents a minor and acceptable impact.

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 four mountain bike trails, forming Stage 1A. The proposed modification seeks to amend the approval by re-aligning a short section of Trail 13, the All Mountain Trail to improve safety and resort operations.

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 Ilenace 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, therefore 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 -

Ivan Pasalich
Dabyne Planning
PO Box 179
Jindabyne NSW 2627

ECO LOGICAL AUSTRALIA PTY LTD
ABN 87 096 512 088
www.ecoaus.com.au

Ref/Job No: 17HNG_6634

13 March 2017

Dear Ivan,

RE: S.96 modification to Stage 1 All Mountain Trail DA – Thredbo Ski Resort

As requested, I have inspected the proposed minor realignments of the Thredbo All Mountain Trail. Find below a description of the proposed realignments and an assessment of the potential impacts on flora and fauna.

Proposal Description

The proposed realignments are identified in **Figure 1** and **Figure 2** and described below:

High Noon/Dream Run – Described as Thredbo AM Realignment in **Figure 1**, the realignment substantially reduces the extent to which the All Mountain Trail traverses the High Noon and Dream Run ski runs. Instead the proposed realigned trail will traverse the Subalpine Woodland adjoining these runs as identified in **Figure 1** and **Photo 1** and **Photo 2** below. The proposed realignment is 439 m in length, approximately 390 m of which traverses Subalpine Woodland. The proposed realignment will remove the hazard the sections of trail on the ski runs pose to skiers and mountain operations. As the sections to be realigned are on relatively steep ski slopes, the berms are quite high, and are a hazard to skiers and skidoos, particularly in low snow conditions.

Merritts Nature Trail – Described as Proposed New Realignment in **Figure 2**, the realignment removes an approximately 10 m section of trail that is shared by the Thredbo All Mountain Trail and the Merritts Nature Trail, adjacent to the Sundowner ski run. The shared section of trail includes a corner with poor visibility, as shown in **Photo 3**, and poses a real danger of collisions between walkers and mountain bikers. The proposed realigned trail will traverse approximately 15 m of Subalpine Woodland and will separate walkers and mountain bikers.

Vegetation to be affected

The proposed realignments traverse Subalpine Woodland, which is extensive in the middle and lower elevations of the Thredbo Resort Area. The Subalpine Woodland vegetation community is described in detail in the flora and fauna assessment for the Stage 1A Mountain Bike Trails (ELA 2013). The canopy is dominated by regrowth *Eucalyptus niphophila* (Snow Gum) to a height of approximately 14-18 m and projective foliage cover (PFC) of up to 60%. There is a very sparse sub-canopy of *Acacia obliquinervia* (Mountain Hickory). The dense understorey is dominated by *Bossiaea foliosa* (Leafy Bossiaea) to a height of up to 2.5 m with PFC of 70-90%. Other understorey shrubs which occur occasionally include *Olearia phlogopappa*, *Tasmannia xerophila*, *Ozothamnus secundiflorus*, *Rubus parvifolius* (Native Raspberry), *Podocarpus lawrencei* (Mountain Plum Pine).

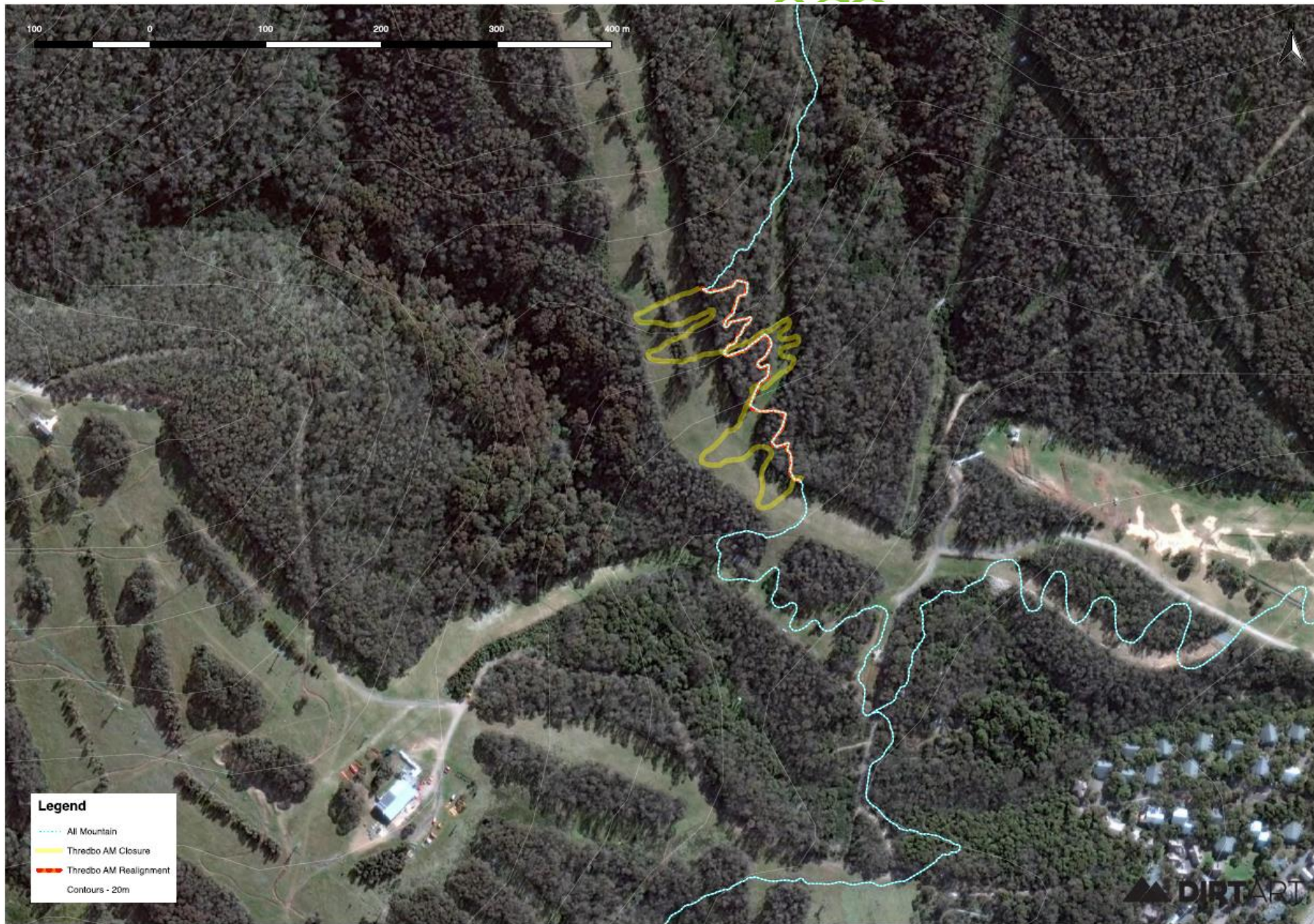


Figure 1: Proposed realignment to Thredbo All Mountain Trail - High Noon/Dream Run

5/20 CANTY STREET NAROOMA NSW 2546 | PO Box 434 NAROOMA NSW 2546 T | 02 4476 1151 F | 02 4476 1161

Thredbo All Mountain Trail and Merritts Nature

Trail Realignment

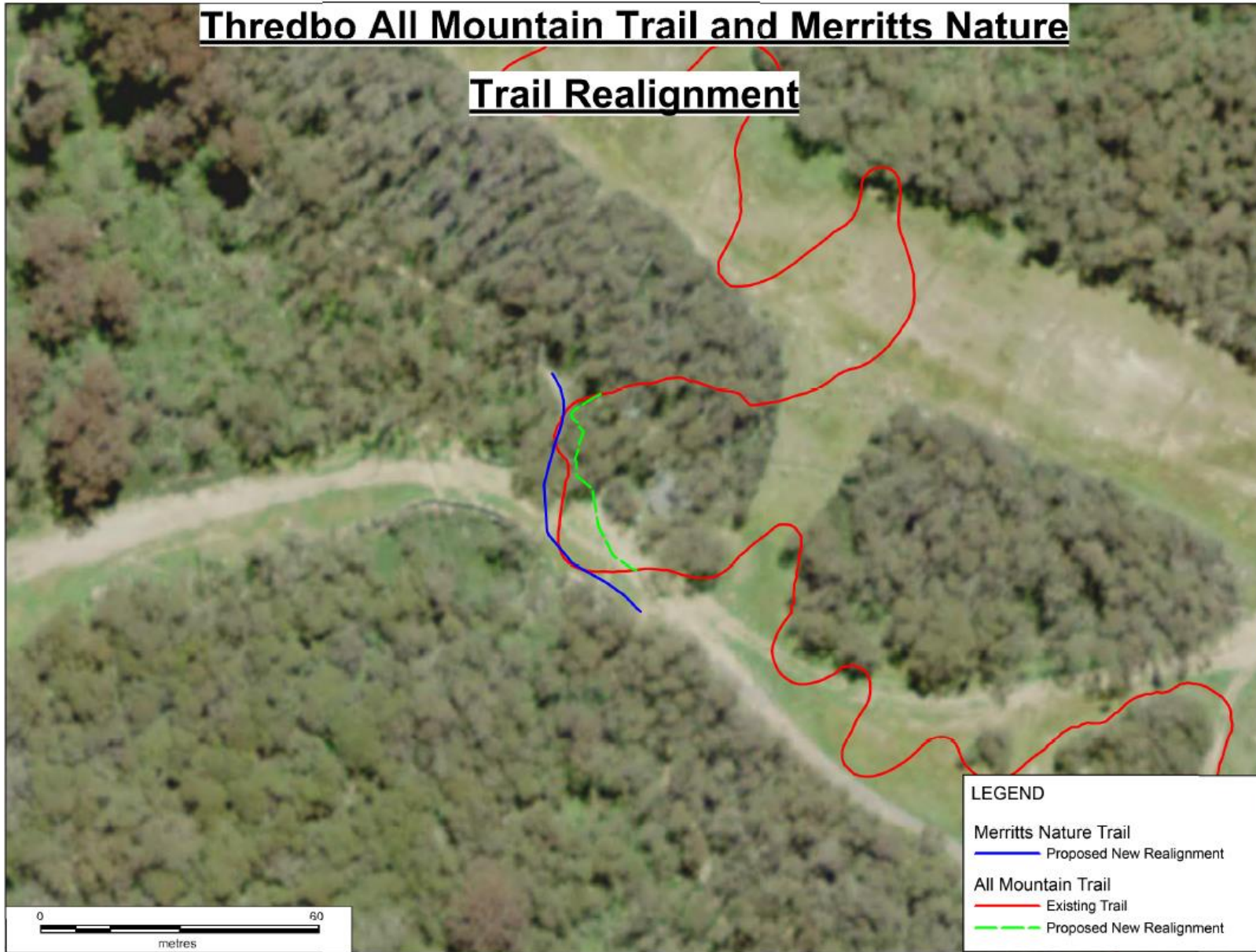


Figure 2: Proposed realignment to Thredbo All Mountain Trail - Merritts Nature Trail

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ARMIDALE | BRISBANE | CANBERRA | COFFS HARBOUR | DARWIN | GOSFORD | MUDGEES | NAROOMA | NEWCASTLE
PERTH | HUSKISSON | SUTHERLAND | SYDNEY | WOLLONGONG



Photo 1: The realignment, instead of traversing the High Noon and Dream Run ski runs, will traverse the subalpine woodland between the two runs.



Photo 2: The Subalpine Woodland typically has a very dense understorey and is dominated by regrowth trees.



Photo 3: The realignment at Merritts Nature Walk also traverses a small section of Subalpine Woodland.

The groundcover is typically sparse given the density of the understorey and includes patches of species such as *Poa ensiformis* (Purple-sheathed Tussock-grass), *Poa fawcettiae*, *Asperula gunnii*, *Senecio gunnii*, *Stellaria pungens*, *Dianella tasmanica*, *Geranium potentilloides* var. *potentilloides*, *Acaena novae-zelandiae*, *Oxalis exilis*, *Hydrocotyle algida* and *Polystichum proliferum*.

Potential Impacts

Vegetation Communities

The proposed realignment will involve the clearing of shrubs and groundcovers in up to a 2.2 m wide corridor (average width of 1.7 m) where the trail traverses native vegetation. The disturbance corridor is necessary to contain the upper and lower batters and the trail surface when the trail is traversing across moderate to steep slopes. On gentler slopes the disturbance corridor will be closer to 1 m. The clearing will be undertaken with a mix of hand tools i.e. chainsaws and brush-cutters, and machinery i.e. mini-excavator. There is unlikely to be any need to remove any larger trees however a few smaller trees or saplings may need to be removed where it is not possible to align the track to retain all trees. In general, it is possible to align the track to avoid tree removal. It is estimated that the proposal will result in impacts up to a maximum of approximately 680 m² of Subalpine Woodland.

The experience with the existing trail confirms that the impacts can be contained within the anticipated impacts corridor. As shown in **Photo 4**, the cuts, batters and side of the trail have predominately been colonised by native groundcovers with weed cover generally being low and limited to cosmopolitan weeds such as *Acetosella vulgaris* (Sheep Sorrel), *Hypochaeris radicata* (Flatweed) and *Taraxacum officinale* (Dandelion).



Photo 4: The existing trail cut, batters and verges are being recolonised primarily by native species.

Ecology Australia (2002) estimate that there is approximately 443 ha of Subalpine Woodland within the Thredbo Resort area, and a further 184 ha within the Perisher Resort area, 183 ha at Mount Selwyn, and 5.7 ha at Charlotte Pass. Under these circumstances, the impacts on the Subalpine Woodland vegetation are relatively minor and acceptable.

The proposed 1A realignment comes within approximately 10 m of the limit of a band of Subalpine Riparian Scrub associated with a minor tributary of Merritts Creek, as shown in **Photo 5**. The community is characterised by a closed sub-canopy of *Leptospermum grandifolium* (Mountain Tea-tree) to a height of approximately 8-10 m and PFC of up to 90%, beneath a canopy dominated by *Eucalyptus niphophila* and a patchy and typically sparse understorey of species more typically associated with the surrounding Subalpine Woodland. The groundcover includes patches of species such as *Poa ensiformis*, *Blechnum penna-marina* subsp. *alpina* (Alpine Water Fern), *Polystichum proliferum*, *Dianella tasmanica*, *Gonocarpus montanus*, *Acaena novae-zelandiae*, and *Hydrocotyle algida*. The proposed realignment was modified so as to ensure that it will not affect the Subalpine Riparian Scrub.

Endangered Ecological Communities

The realignments will not affect any endangered ecological communities.

Flora species of conservation significance

The area to be affected by the proposed realignments does not support any threatened flora species nor any habitat for the threatened flora species which are known from the locality. There are a few individuals of *Podocarpus lawrencei* within the realignment. *Podocarpus lawrencei* is considered to be of conservation significance, where it occurs as a shrubland (DEC 2006) or closed heath, and where it is associated with, and a major foraging resource for, *Burramys parvus* (Mountain Pygmy-possum) populations. However, *Podocarpus lawrencei* is very common in the subalpine and montane woodlands and forests in the Thredbo Valley, and the loss of a few individuals scattered within the understorey of the Subalpine Woodland is a minor and acceptable impact.



Photo 5: Looking from the proposed trail realignment to the margins of the Subalpine Riparian Scrub. The trail will be at least 10 m from the Subalpine Riparian Scrub.

Fauna habitats

The small amount of Subalpine Woodland to be affected by the proposed realignments does not support any fauna habitats that aren't widely available in the extensive areas of adjoining Subalpine Woodland. They do not support any hollow-bearing trees, water habitats, or any substantial rock habitats. No wombat burrows or evidence of threatened fauna such as the *Mastacomys fuscus* (Broad-toothed Rat) were observed within the proposed realignments. The only threatened fauna species that are likely to occur within the proposed realignments are *Pachycephala olivacea* (Olive Whistler) and *Callocephalon fimbriatum* (Gang-gang Cockatoo) which may forage there from time to time. However, they would not be dependent upon the areas affected by the realignment nor adversely affected by the proposal, which will not affect any important habitat resources for these species and will affect only a very small area of habitat in the context of the extent of similar habitat available to these species in contiguous subalpine and montane woodlands and forests.

Conclusion

The existing All Mountain Trail has demonstrated the impacts on flora and fauna associated with the construction and use of the trail are minor and acceptable. In this context, as long as the same construction methods and safeguards are used, it is highly unlikely that the proposed realignments will result in a significant impact on any threatened species, population or endangered ecological community, nor result in any substantial adverse impact on the environment generally. By improving safety to walkers, mountain bikers, skiers and Thredbo staff, the proposal will have a net benefit to the community. Notwithstanding this conclusion, and consistent with the various approvals for the All Mountain Trail, the proposal should include appropriate offset plantings to compensate for the 680 m² of Subalpine Woodland to be affected by the proposed realignments. It is noted that an estimated 120 m² of Subalpine Woodland will be rehabilitated where the existing All Mountain Trail will be closed. As such, the net impact on Subalpine Woodland will be approximately 560 m².

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

Yours sincerely,



Ryan Smithers
Senior Ecologist

References

Eco Logical Australia 2013. *Flora and Fauna Assessment. Proposed Mountain Bike Trails – Stage 1A, Thredbo Alpine Resort*. A report for Kosciuszko Thredbo Pty Ltd.

ATTACHMENT C - PHOTOS



Figure 1 - Existing All Mountain Trail on the Dream Run - with large cuts impeding summer and winter access



Figure 2 - Existing All Mountain Trail on the Dream Run - with large cuts impeding summer and winter access



Figure 3 - Existing All Mountain Trail on High Noon - with large cuts impeding summer and winter access



Figure 4 - Existing All Mountain Trail (right) where it intersect and joins the Merritts Nature Walk Trail (left)



Figure 5 Existing All Mountain Trail currently shares the same trail with the Merritts Nature Walk Trail for a short section. Existing trail to be used exclusively for walking, while a new mountain bike trail section is built to the left.



Figure 6 Existing All Mountain Trail to be used in part as the Merritts Nature Walk Trail, while a new mountain bike trail section is built to the left.