Office of Environment & Heritage
NSW National Parks & Wildlife Service

Our reference: DOC17/394946
EF17/4112

Mr Mark Brown
Senior Planner
Alpine Resorts Team
Department of Planning and Environment
PO Box 36
Jindabyne NSW 2627

Dear Mark,

S96 Modification - MOD 8364 (DA 6114 Mod 3) - Variation of trail alignment of section 3, Trail 13, Stage 1A Mountain Bike Trails, Thredbo

I refer to the above application to modify development consent for DA 6968 forwarded to the Office of Environment and Heritage (OEH) for provision of comments in accordance with *State Environmental Planning Policy (Kosciuszko National Park - Alpine Resorts) 2007.*

In addition to our referral comments on 26 May 2017 and 9 June 2017, in response to the letter from Kosciuszko Thredbo, dated 25 July 2017, to the Department of Planning and Environment (DPE), OEH provide the following comments.

Ancillary Works Guidelines
We note KT's acknowledgement and agree that splitting the works between the previously Conditioned (DA 6114) Ancillary Works Guidelines and this DA modification (MOD) request is not in the spirit or intent of the Guidelines. OEH supports the transparency of process by the lodgement of the 399.4 metre trail realignment as a modification.

Modification as a Section 96 (1A)
OEH maintains its view that 680m2 of undisturbed sub-alpine woodland removal is not considered minimal environmental impact.

OEH agrees with the previous DA 6114 Assessment Report prepared by DPE, that the proposed works of that DA would not have a 'significant impact'. OEH also consider that the works proposed in the MOD will not have a 'significant impact', however, this does not mean the proposed works in the MOD are deemed 'minimal environmental impact'. The two terms – 'minimal environmental impact' and 'significant impact' - are two very different terms and should not be confused or used synonymously.

To clarify:

- DA 6114 did not trigger the need for minimal environmental impact consideration because the works proposed in a DA are not required to be 'minimal environmental impact' for determination.
- A section 96 (1A) Modification is for modifications involving minimal environmental impact. For a section 96(1A) to be determined, the proposed works must be both minimal environmental impact and substantially the same development as the original DA.

PO Box 2228 Jindabyne NSW 2627
Kosciuszko Road Jindabyne NSW
Tel: (02) 6450 5555 Fax: (02) 6450 5630
ABN 30 841 387 271
www.environment.nsw.gov.au

- A section 96 (2) is for other modifications that are substantially the same development but are deemed not to be 'minimal environmental impact'. A section 96 (2) Modification does not require the works to be 'minimal environmental impact' to be determined.

Therefore, the OEH position is that this MOD is a section 96 (2) and not a section 96(1A). OEH does not agree that to determine the MOD as a 96 (2) is at odds with the DA 6114 determination. To determine the MOD as a section 96 (2) means that the development is substantially the same however the environmental impacts are not considered to be minimal. Note: the environmental impacts of this MOD are not considered to be significant impacts due to the controls that will be put in place through the SEE and the determination conditions.

In addition to the large area of undisturbed native vegetation being removed, the following environmental impacts will result from the proposed works and thus the works are not considered to be minimal impact:

- Whilst soil erosion is planned to be minimised it will still occur because of the proposed works;
- Changes to water drainage patterns;
- Increase in weeds to this previously undisturbed native area;
- Increase in predation of native animals from the opening up of access routes for predators; and
- Providing additional pathways for exotic species.

It is OEH's understanding that DPE has the provision to add conditions to any MOD determination. As such, the assessment of this MOD needs to consider the above impacts contrary to KTs positions that the conditions for this MOD should stay the same as for DA 6114.

Pre-DA engagement

OEH encourages proponents to engage with them prior to the lodgement of their DA. This can assist in identifying potential issues early and assists in facilitating discussions to address these issues. This early engagement usually assists in a timely assessment of the DA.

Rehabilitation and Offsets

Whilst the agreed offset for DA 6114 may have been previously "*suggested, facilitated and approved by NPWS*", the appropriateness of this offset has been reconsidered by OEH and is now deemed to be not in accordance with OEH offsetting principles.

OEH have published principles for biodiversity offsetting on their website (http://www.environment.nsw.gov.au/biodivoffsets/oehoffsetprincip.htm). Taken from these principles is the need to "result in a net improvement in biodiversity over time", those relevant are listed below for your consideration:

- Enhancement of biodiversity in offset areas should be equal to or greater than the loss in biodiversity from the impact site;
- Setting aside areas for biodiversity conservation without additional management or increased security is generally not sufficient to offset the loss of biodiversity;
- Offsets should be based on quantitative assessment of the loss in biodiversity from the clearing or other development and the gain in biodiversity from the offset;
- Offsets must be enduring – they must offset the impact of the development for the period that the impact occurs; and
- The methodology must be based on the best available science.

As presented, OEH does not considered the proposed offsets to be appropriate for the native vegetation removal. The proposed offsets are not in accordance with OEH offsetting principles, as outlined below:

- The change in management regime includes no works for the improvement of the area;
- There is no scientific evidence provided to suggest that the change in management regime will provide "the best compromise between operational requirements (to allow skiing to continue) and the requirement to allow cover for any fauna traversing the site". In addition, maintaining vegetation at 500mm is a degradation, rather than enhancement, of the existing native vegetation it is proposed to offset;
- No baseline data has been provided to demonstrate suitability of the proposed site as an offset and its ability to enhance or 'gain in biodiversity'. I.e. including the number, type, percentage of cover of native species, weeds etc.

A revised rehabilitation and offsets plan for endorsement by OEH is recommended.

Soil Removal and Management and Machinery, Equipment and Materials and Construction Period

DPE has the provision to add consent conditions to any Modification. OEH considers it appropriate to add conditions to the approval for DA 6114 as many lessons have been learnt about sustainable trail construction since the approval for DA 6114 and it would be best practice to implement any conditions that improve trail construction and assist in minimising the environmental impacts.

Leasing

As previously advised, Kosciuszko Thredbo Pty Ltd are now required to seek separate Lessor's Consent under Clause 4.9 of the Head Lease for this development.

For leasing enquiries please contact the Team Leader Properties Team, Karen Field on 6450 5540.

If you have any other enquiries, please contact the Assessments Coordinator, Rebecca Owen on 6450 5543.

Yours sincerely

Tania Ashworth
Team Leader
Resorts Environmental Services Team
1 August 2017