

MODIFICATION ASSESSMENT REPORT

Modification to the approved Stage 1A mountain bike trails, Thredbo Alpine Resort, Kosciuszko National Park

MOD 8364 (DA 6114 MOD 3)

1. INTRODUCTION

This report provides an assessment of an application to modify Development Consent 6114 for the construction of mountain bike trails within Stage 1A, Thredbo Alpine Resort within Kosciuszko National Park. The application has been lodged by Kosciuszko Thredbo Pty Ltd (the Applicant) under Section 96(2) of the *Environmental Planning and Assessment Act 1979* (EP&A Act). It seeks approval to amend the alignment of the All Mountain Trail to resolve winter access issues and conflicts between riders and walkers along the Merritts Nature Track (**Figure 1**).

The proposed modification is described in detail in **Section 4** of this report.

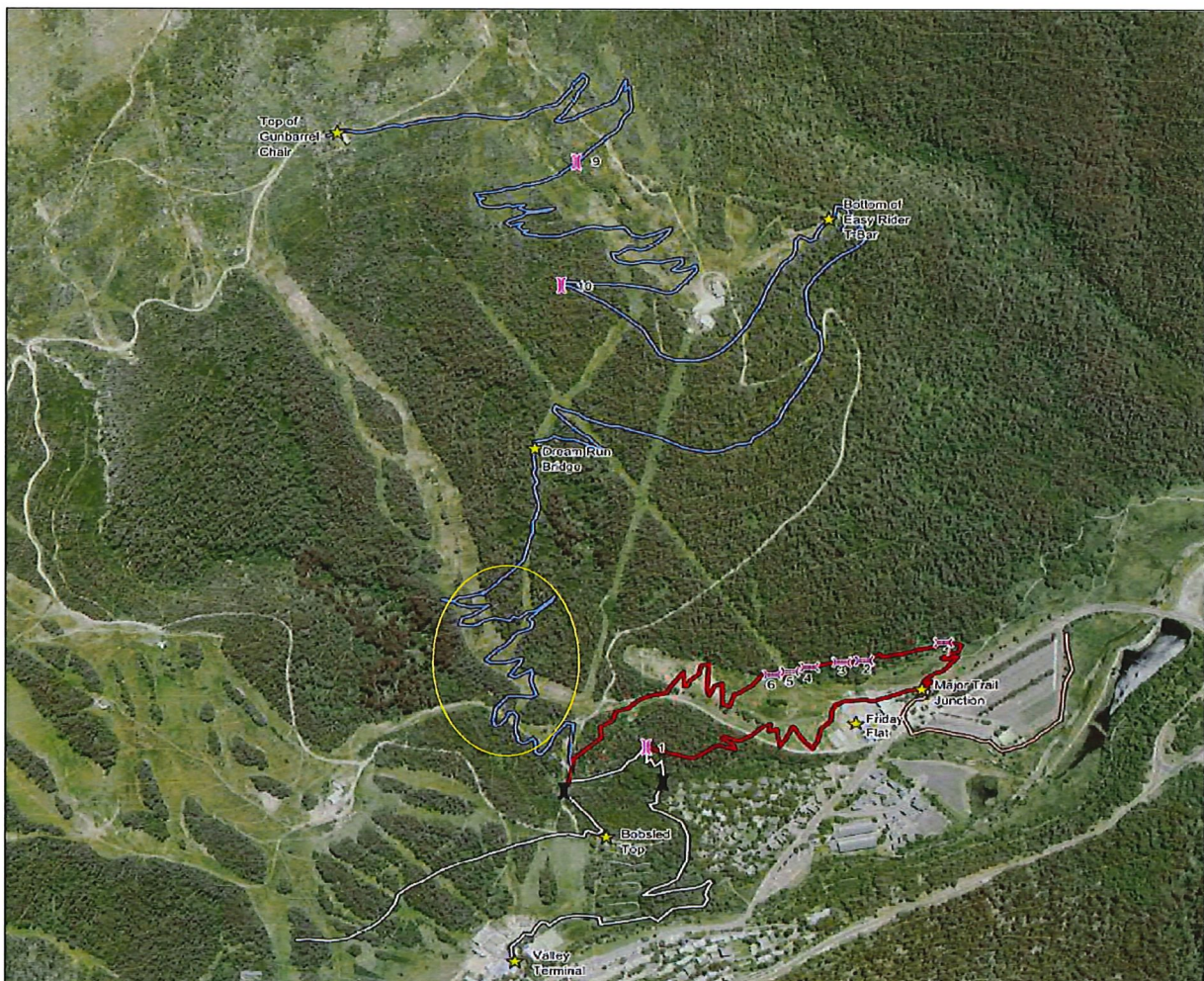


Figure 1: Location of the four mountain bike trails approved under Stage 1A and area of proposed modification circled (Source: Applicant's SEE to original application)

2. SUBJECT SITE

The Thredbo Alpine Resort is located within Kosciuszko National Park and provides both summer and winter activities, including mountain bike access across the mountain.

The modification to the mountain bike trail occurs along the approved Section 3 of Trail 13 (All Mountain Trail), with the area of works located on High Noon and Dream Run ski runs and the intersection of the trail with Merritts Nature Track, adjacent to the Sundowner ski run (**Figure 1**).

3. ORIGINAL DEVELOPMENT CONSENT

On 1 December 2014, the Team Leader of the Alpine Resorts Team, as delegate for the Minister for Planning approved the construction of part of the proposed Mountain Bike Trail Network (Stage 1A) comprising Trail 1, Trail 2, Trail 3 and Sections 2 and 3 of Trail 13 (DA 6114).

In particular, the approval granted consent for:

- four mountain bike trails with a combined length of approximately 12.5 kilometres;
- bridges and platforms;
- a retaining wall;
- a new trail head;
- environmental offsets;
- ancillary structures (future structures); and
- associated works.

On 2 April 2015, the Department approved a Section 96(1A) modification (MOD 1) to the approved mountain bike trails for Friday Flat (Trail 2) and the Cruiser Area (Trail 13) to minimise disturbance to native vegetation, avoid wet areas and provide better connectivity between trails. The application also noted that a minor variation to Trail 1 is also proposed, being a redirection of the trail around existing trees to assist in improving connectivity between Trails 1 and 2.

On 18 December 2015, the Department approved a Section 96(1A) modification (MOD 2) to the approved mountain bike trails for an amendment to the alignment of Trail 1 (Village Trail) for the use of an existing bridge rather than construct an extension off the bridge as originally approved and include staging of the Village Trail.

4. PROPOSED MODIFICATION

The Applicant seeks approval to modify a section of the constructed All Mountain Trail (Section 3 of Trail 13) by altering the alignment as follows:

- High Noon and Dream Run ski runs – amendment to the trail alignment to improve the alignment and remove sections of the trail because of safety and operational concerns (i.e. berms being located on ski runs) (**Figure 2**); and
- Intersection of All Mountain Trail and Merritts Nature Track – amendment to the trail to avoid conflict between mountain bikers and walkers, adjacent to the Sundowner ski run (**Figure 3**).

The Applicant estimates that the proposed amendments to the trail impact upon an additional 680m² of Subalpine Woodland (excluding the 120m² of the existing track that would be rehabilitated), with offset planting proposed to compensate for the disturbance.

The Applicant has also confirmed that the trails would be constructed in accordance with the existing geotech requirements as originally approved.

Note: the Applicant's submitted documentation indicates that the works include a deviation of Merritts Nature Track, however this has subsequently been verbally acknowledged that the proposal does not include works to Merritts Nature Track, only a new mountain bike trail separated from Merritts Nature Track. A condition is included noting this arrangement.



Figure 2: Proposed realignment of All Mountain Trail adjoining the High Noon / Dream Run ski runs – yellow line is existing (Source: Applicant's documentation)

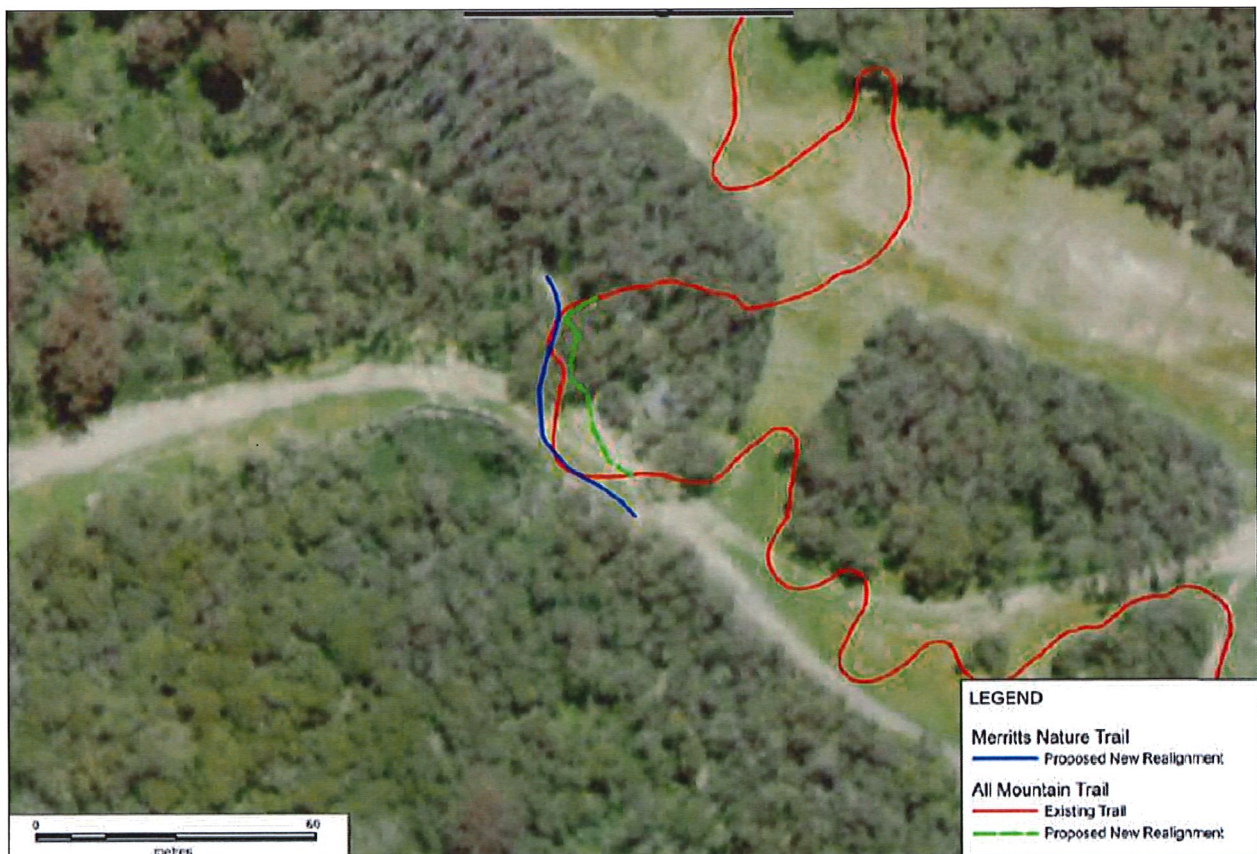


Figure 3: Proposed realignment of All Mountain Trail and Merritts Nature Track (Source: Applicant's documentation)

5. STATUTORY FRAMEWORK

5.1 Modification of Approval

The modification application was originally lodged with the Department under Section 96(1A) of the EP&A Act. Following a review of the application and receipt of comments from the Office of Environment and Heritage, the Department advised the Applicant that the proposal could not be supported as a Section 96(1A).

This was on the basis that the extent of the vegetation disturbance was not considered to be of a minimal environmental impact as required under Section 96(1A). Therefore, a Section 96(2) modification is most appropriate.

Subsequently, the Applicant amended the modification application to Section 96(2) of the EP&A Act that provides that 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 *Environmental Planning and Assessment Regulations 2000* (EP&A Regulations), modify a consent.

Section 96(2) of the EP&A Act requires the following matters to be assessed in respect of all applications which seek modifications to approvals:

Table 1: Consideration under Section 96(2) of the EP&A Act

Section 96(2) matters for consideration	Comment
<p>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)</p>	<p>The proposed modification seeks to realign the existing All Mountain Trail to reduce conflicts between walkers and mountain bikers on part of the trail and remove berms that impact on summer and winter operations.</p> <p>The Department considers that with the realignment of the trails as proposed, the proposal would remain substantially the same development. The changes to the alignment, while not minor in terms of environmental impact, maintain mountain bike trails within the vicinity of the approved alignment.</p> <p>On this basis, the proposal would result in a development that is substantially the same as the originally approved development.</p>
<p>Consultation with the relevant Minister, public authority or approval body in respect of a condition imposed as a requirement of a concurrence / general terms of approval has been carried out, and no objection has been made</p>	<p>The modification application was forwarded to the Department of Primary Industries – Water for comment. No concerns were raised.</p>
<p>The application has been notified in accordance with the regulations or DCP</p>	<p>The modification application has been notified in accordance with the EP&A Regulations. Details of the notification are provided in Section 6 of this report.</p>

<p>Any submissions made concerning the proposed modification has been considered</p>	<p>The Department received no public submissions in respect of the modification application. One agency submission was received.</p> <p>The issues raised are considered in Section 7.</p>
<p>Consideration of relevant matters referred to in Section 79C(1) of the EP&A Act</p>	<p>The Department has considered all relevant matters under Section 79C(1) of the EP&A Act in its assessment of the proposal. See Section 7 below.</p>

5.2 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. The proposal does not negatively impact the assessment carried out by the Department for the original application. 'Recreational infrastructure' is permissible with consent pursuant to Clause 11 of the Alpine SEPP and the Thredbo Alpine Resort land use table.

5.3 Delegation

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

In accordance with the Minister's delegation of 11 October 2017, 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 25 public submissions in the nature of objections.

6. CONSULTATION

6.1 Initial Application (Section 96(1A))

After accepting the application, the Department made the application publicly available on its website. The Department did not exhibit or notify the application when the application was originally received. No public submissions were received during this component of the assessment.

The proposal was referred to:

- the Office of Environment and Heritage (OEH); and
- the NSW Department of Primary Industries – Water as the original application required a Controlled Activity Approval under the *Water Management Act 2000*.

Department of Primary Industries – Water

No concerns were raised by DPI – Water to the proposal.

Office of environment and Heritage (OEH)

The OEH raised the following concerns:

- the proposal should be considered as a Section 96(2) modification as the works are not considered to be of minimal impact and greater than stated in the application; and
- a rehabilitation and offsets plan should be developed.

In addition, comments / recommended conditions were received in relation to the soil removal and management, machinery and equipment, construction period, materials and stabilising agents, ongoing trail management and aboriginal cultural heritage.

The Department has considered the comments received from the OEH in **Section 7** or through recommended conditions in the modified instrument of consent at **Appendix B**.

6.2 Amended Application (Section 96(2))

As discussed in **Section 5.1**, the Department formed the view that the proposal could not be supported under Section 96(1A) of the EP&A Act, rather an application was requested to be lodged under Section 96(2) of the EP&A Act.

On 16 August 2017, the Applicant subsequently amended the proposal to a Section 96(2) application.

In accordance with the EP&A Regulations, the modification application was:

- made publicly available from 24 August 2017 until 6 September 2017:
 - on the Department's website;
 - at the Department's Jindabyne Office (Shop 5A, 19 Snowy River Avenue, Jindabyne); and
 - at NSW Service Centre's.
- notified relevant stakeholders (Thredbo Village sub-lessees) and State government authorities; and
- advertised the exhibition in the Monaro Post on 23 August 2017.

The proposal was referred to:

- the Office of Environment and Heritage (OEH); and
- the NSW Department of Primary Industries – Water as the original application required a Controlled Activity Approval under the *Water Management Act 2000*.

Department of Primary Industries – Water

No concerns were raised by DPI – Water to the proposal.

Office of environment and Heritage (OEH)

No additional comments were received from the OEH.

7. CONSIDERATION

The approval of the Stage 1A mountain bike trails increased the number of trails available at Thredbo and provided a new area of the mountain for mountain biking, rather than additional trails near the Downhill or Flow Trails.

The modification seeks to improve the All Mountain Trail alignment and remove sections of the trail, particularly berms, from the High Noon and Dream Run ski runs and avoid a conflict area between mountain bikers and walkers where the trail crosses the Merritts Nature Track.

Each of these are considered below:

Modification between High Noon and Dream Run ski runs

Due to the original construction and the location of the trail on steep ski runs, the berms / corners of the trail required greater excavation or cut and battering (**Figure 4**). This resulted in these sections on the ski runs impacted on access during the summer period (i.e. for personnel

attending an injury on the trails, weed management operations and trail works) and for snow mobile / groomer access during the initial and later parts of winter.



Figure 4: Existing trail along Dream Run illustrating large berms that impeded summer and winter access (Source: Applicant's documentation)

With the modification to the alignment, being now predominantly within the existing vegetation rather than the ski slopes for this section, an additional impact on the existing vegetation is now proposed than what was previously considered acceptable. The Applicant states that the proposed alignment has an additional impact of 535m² upon native vegetation (Sub-Alpine Woodland), while the OEH advises that the impact should be considered on the 655m².

Due to the impact of the trail construction, the Department did not consider this to be of minimal environmental impact as required under Section 96(1A) and therefore requested that Applicant amend the application to a Section 96(2) modification. The proposal therefore is required to meet the "*substantially the same development*" provisions of Section 96(2) of the EP&A Act.

The Department's assessment has considered the proposed alignment having regard to the approved 20-metre corridor for the construction of the mountain bike trail (it is noted that the modification alignment has areas outside of this 20-metre corridor) and the expected disturbance to native vegetation and adjoining ski slopes. While part of the existing trail is to be rehabilitated (approximately 120m²), the realigned trail is to be predominantly provided within undisturbed native vegetation areas.

While noting the additional environmental impact, the Department has formed the view that the proposed realignment is acceptable on the basis that the proposal maintains the provision of a mountain bike trail constructed within the immediate vicinity of the original approval and the impact

on Subalpine Woodland vegetation is acceptable noting the estimates of the vegetation community within the locality.

Overall, this portion of the modification application is supported on the basis that it is substantially the same development.

Modification of All Mountain Trail and Merritts Nature Track

Due to the original construction of the mountain bike trail, the alignment has created issues between the mountain bike trail and the Merritts Nature Track. This has resulted in conflicts between mountain bike riders and walkers on a blind corner.

With the modification to the alignment, an additional impact on existing vegetation is now proposed with approximately 25m² of native vegetation (Sub-Alpine Woodland) to be removed (**Figure 5**). The Applicant also indicates that the alignment endeavours to avoid removing tree removal where possible.



Figure 5: Photograph illustrating existing trail and proposed diversion (pink tag) to avoid Merritts Nature Track (Source: Department's site inspection)

The Department has formed the view that the proposed realignment is acceptable in terms of its environmental impact on native vegetation and maintains the provision of a mountain bike trail constructed within the immediate vicinity of the original approval.

Overall, this portion of the modification application is supported on the basis that it is substantially the same development and avoids future conflicts between mountain bike riders and walkers.

8. CONCLUSION

After consideration of the proposal against the relevant statutory considerations, Section 79C and 96(2) of the EP&A Act and the provisions of the Alpine SEPP, it is concluded that the proposed modifications to the approval are appropriate. The proposal is permissible and no public submissions were received regarding the application.

The Department assessment concludes that the modification request is acceptable as:

- the proposed amended alignment reduces impacts upon adjoining ski slopes while having regard to the impacts associated with the construction of the trails;
- the proposal remains substantially the same as originally approved; and
- the proposal does not result in any additional matters under Section 79C(1) of the EP&A Act.

On this basis, the Department supports the proposed amendments.

9. RECOMMENDATION

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

- a) **consider** the findings and recommendations of this report;
- b) **determine** that the application falls within the scope of Section 96(2) of the EP&A Act;
- c) **approve** the modification application (MOD 8364), subject to conditions; and
- d) **sign** the notice of modification (**Appendix B**).

Prepared by:



Mark Brown
Senior Planner, Alpine Resorts Team

DECISION

Approved by:



Daniel James
Team Leader, Alpine Resorts Team
as delegate of the Minister for Planning

APPENDIX A. RELEVANT SUPPORTING INFORMATION / SUBMISSIONS

The following supporting documents and information to this assessment report can be found on the Department's website at:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8364

APPENDIX B. RECOMMENDED MODIFICATION CONSENT
