



Mr Daniel James  
Team Leader  
Alpine Resorts Team  
Department of Planning and Environment  
Jindabyne NSW 2627

Our reference: DOC18/125322  
EF18/3387

Dear Daniel,

### DA Referral – Telecommunications equipment installation, Charlotte Pass DA 9111

I refer to the above development application (DA) 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* (SEPP). OEH have reviewed the information supplied and provide the following comments.

#### Flora and Fauna

The development area is a previously disturbed site, including exotic vegetation and gravel access roads. The proposed trenching alignment does not appear to have been ground truthed as the route potentially includes a concrete driveway and wet areas. These wet areas are not considered to be Alpine Bog however impacts from the works in these wet areas will still need to be minimised.

To assist in minimising impacts to flora and fauna OEH recommend the following:

- The exact trenching alignment must be determined onsite prior to works with OEH involvement in an alignment inspection.
- All heavy machinery must be kept out of the wet areas (see appendix 1). Trenching works in these areas must either be done by hand, with other hand-held equipment or by placement of the machines outside of the wet area.
- Sod replacement must be used for revegetation in the first instance.
- If sod replacement does not achieve rapid stabilisation and revegetation in some areas, or is not suitable for an area, then follow up rehabilitation of the site is required to achieve an erosion resistant state. Chewings Fescue is acceptable for this site due to the surrounding exotic vegetation and to achieve rapid stabilisation – except for the wet area.
- Rehabilitation in the wet area must include 100% native carex species due to the wet nature of the site prior to works commencing.
- All rehabilitation works must be conducted as per the, "Rehabilitation Guidelines for the Resort Areas of Kosciuszko National Park" (DECC 2007).
- If straw bales are to be used for mulching or sediment and erosion control, then they must be certified as 'weed free'.
- The revegetation of all trench lines must be monitored and maintained until they are stabilised and have achieved a pre-works state. This includes replacement planting for plants that do not survive.

- If trenches are left open overnight then fauna egress provisions must be included.
- Stockpile sites, including materials storage areas, parking and waste management (skip bins) must not impact on native vegetation.

### **Aboriginal Cultural Heritage**

In terms of Aboriginal cultural heritage, we have reviewed the information provided and note that the proponent has not adequately followed the Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales (DECCW 2010).

Whilst the Proponent has conducted a search of the Aboriginal Heritage Information Management System (AHIMS), this is only part of the requirements of the Due Diligence Code (Code), and therefore they have not provided adequate information relating to Aboriginal cultural heritage. While there may be no Aboriginal sites recorded on this property, it should be noted that surveys for Aboriginal objects have not been done in many parts of NSW. Aboriginal objects may exist on a parcel of land even though they have not been recorded in AHIMS. Landscape features also need to be considered to determine whether there is potential for Aboriginal sites to occur, as per Step 2(b) of the Code.

The Due Diligence Code can be found at:

<http://www.environment.nsw.gov.au/resources/cultureheritage/ddcop/10798ddcop.pdf>

To assist Proponents in fulfilling their legislative obligations through use of the due diligence, OEH have developed a guidance sheet, please see attached. In addition, it should be noted that "the *National Parks and Wildlife Act 1974* (NPW Act) provides that a person who exercises due diligence in determining that their actions will not harm Aboriginal objects has a defence against prosecution for the strict liability offence if they later unknowingly harm an object with an Aboriginal Heritage Impact Permit (AHIP)" (DECCW 2010).

Whichever decision is reached this should be documented with specific reference to the Due Diligence Code and submitted to the Department of Planning.

OEH are happy to assist the Proponent in answering any questions they may have on how to conduct their due diligence. Please contact the Assessment Coordinator on 6450 5543.

### **Leasing**

The works proposed are permissible and are located on the 'agreement to lease' area that is valid until 30 April 2018 and is also permissible in the new head lease that commences 1 May 2018. Charlotte Pass Village are to seek OEH's consent to grant a licence to Telstra for this purpose prior to works commencing.

If you have any further enquires please contact the Assessment Coordinator, Bec Owen on 02 6450 5543.

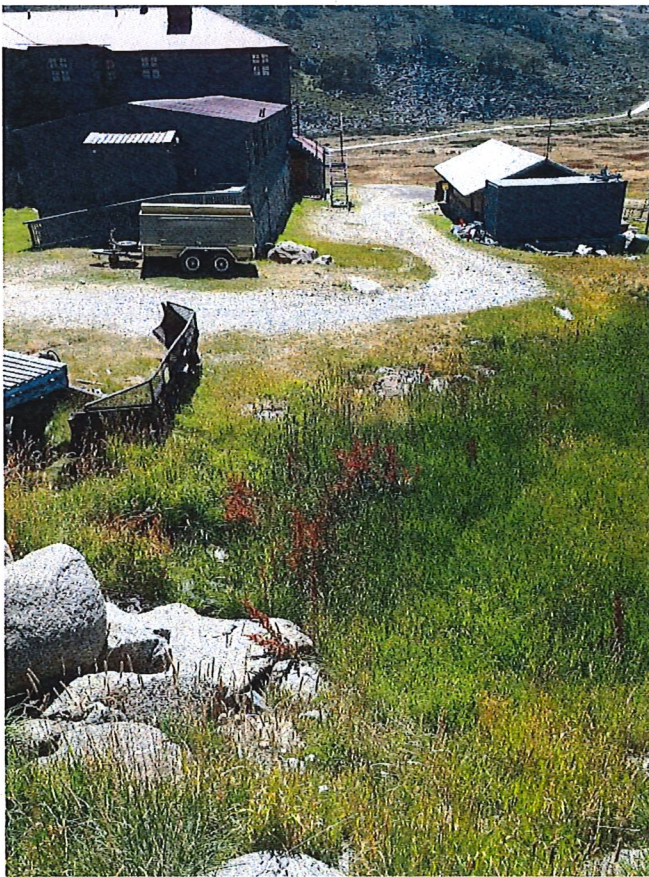
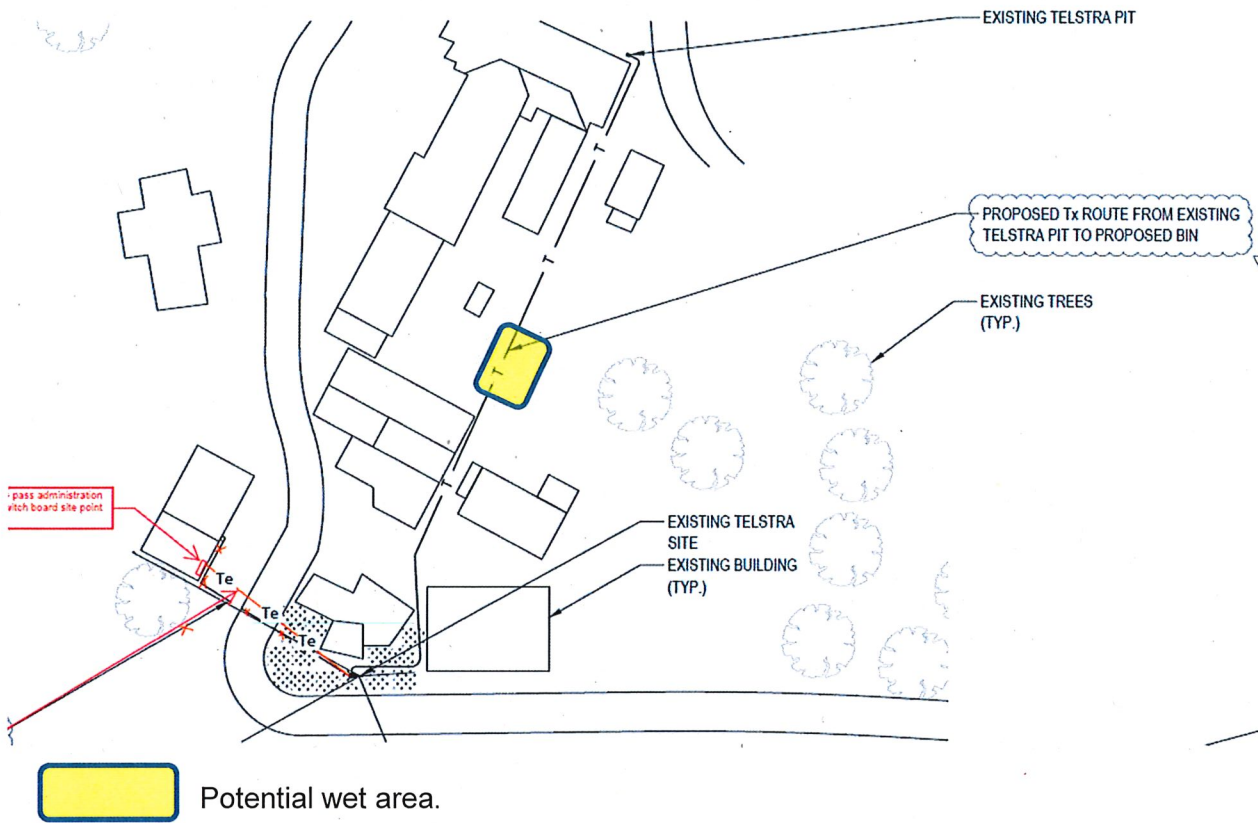
Yours sincerely



**Tania Ashworth**  
**Team Leader**  
**Resorts Environmental Services Team**  
13 March 2018



**Appendix 1 – wet area**





# Guide to using the *Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW?*

## Potential to harm Aboriginal objects

Development in Alpine areas including construction and alteration of buildings, skiing infrastructure, access roads, car parks, installation of services, landscaping and other ground disturbance activities all have potential to harm any Aboriginal objects that may be present. Vegetation management, including bushfire protection under the 10/50 Code, may also potentially impact Aboriginal heritage objects including ground disturbance through tree removal or impacts to culturally modified trees.

## Legislative protection for Aboriginal objects

Aboriginal objects are protected under the *National Parks and Wildlife Act 1974* (NPW Act). The strict liability provisions of the Act mean that it is an offence to both knowingly and unknowingly harm Aboriginal objects. This means that the proponent must take all reasonable steps to determine whether Aboriginal objects are present or are likely to be present in the development area.

## Requirements under the SEPP

Clause 17 of the *State Environmental Planning Policy (Kosciuszko National Park – Alpine Resorts) 2007* requires the Minister for Planning, as the consent authority, to refer any Development Applications (DA) relating to the alpine resorts to the National Parks and Wildlife Service (NPWS). One matter NPWS must assess is the potential impacts to Aboriginal Cultural Heritage. For NPWS to accurately assess the potential impacts, NPWS requires demonstration that the Proponent has adequately assessed these potential impacts. Whilst NPWS does not approve or certify due diligence assessments we do advise the consent authority when a proposed development could have potential for Aboriginal objects.

## Due Diligence procedure

Exercising due diligence is the first stage in conducting an Aboriginal cultural heritage assessment in NSW. OEH has developed a due diligence procedure to help people consider their obligations under the NPW Act in relation to Aboriginal cultural heritage. This is set out in the *Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW* (DECCW 2010). Proponents need to make all reasonable efforts to determine whether their proposed activities will harm Aboriginal objects, or harm landscape features that are likely to contain Aboriginal objects. Many proponents find the generic code particularly useful in meeting their legislative obligations. Exercising due diligence is the responsibility of the Proponent as per all other Development Application assessments.

## Defence against prosecution

In addition, “the *National Parks and Wildlife Act 1974* provides that a person who exercises due diligence in determining that their actions will not harm Aboriginal objects has a defence against prosecution for the strict liability offence if they later unknowingly harm an object with an Aboriginal Heritage Impact Permit (AHIP)” (DECCW 2010). Note: Due Diligence involves all reasonable steps being taken.

Section 7.5 of the Due Diligence Code outlines ‘low impact activities for which there is a defence in the NPW Regulation’. These activities do not need to follow the due diligence process. For transparency to show that Aboriginal Cultural Heritage has been considered, if your activity is a ‘low impact activity’ this should be documented in your application.

## Potential Scenarios

- *The due diligence code shows that I don’t have to conduct due diligence* as there are no ground disturbance activities planned and no culturally modified trees are proposed to be removed. If this is the case please demonstrate why. NPWS strongly recommend a paragraph explaining why the due diligence code and addressing of Aboriginal Cultural Heritage is not required for your proposed works including if the activity is a ‘low impact activity’.

- *No due diligence assessment has been conducted and AHIMS records or landscape features occur:* NPWS requires enough information in the DA to consider whether the proposed development would have a significant impact on Aboriginal cultural heritage values. Therefore additional information in the form of due diligence or a heritage assessment is required.
- *Only an AHIMS search has been undertaken:* Due diligence involves all reasonable steps being taken and in this scenario NPWS are likely to require additional information. While there may be no Aboriginal sites recorded on this property, it should be noted that surveys for Aboriginal objects have not been done in many parts of NSW. Aboriginal objects may exist on a parcel of land even though they have not been recorded in AHIMS.
- *When an insufficient due diligence assessment is included:* In the scenario of inadequate information NPWS may request additional information and/or recommend a visual inspection of the proposed works site by a person experienced in identifying Aboriginal objects to determine whether Aboriginal objects are present or may be present.
- *The due diligence code had determined at point two that works can proceed with caution:* Yes, this is early in the code but it is possible as long as all reasonable steps are taken, all due diligence steps are followed correctly and this is able to be demonstrated.
- *The due diligence says I need to conduct further assessment:* See section and references below.

#### Due Diligence notes

- AHIMS searches should include the surrounding areas not just the project site. This will advise a proponent if objects have been found in the surrounding area and thus the potential to find more. It is ok to include two AHIMS searches – one for your site, one for the area.
- Don't forget to address the landscape features in section 2(b) of the generic code.
- Point 2 of the generic code is where the Proponent can demonstrate if the land is previously disturbed. Eg landscape features present but works are contained to previously disturbed areas.
- Due diligence is only the minimum requirement and your proposed works may require further investigation and/or an Aboriginal Heritage Impact Permit (AHIP).

#### Further Investigation

Further investigation in accordance with the *Guide to investigating, assessing and reporting on Aboriginal cultural heritage in NSW* and *Code of practice for archaeological investigation of Aboriginal objects in New South Wales* is required where there is a likelihood that Aboriginal objects may be present in the construction area. Further assessment involves formal consultation with the Aboriginal community in accordance with the *Aboriginal cultural heritage consultation requirements for proponents 2010*. The further assessment may also require an archaeological survey.

#### OEH Guidelines

- *Due diligence code of practice for the protection of Aboriginal objects in New South Wales*, DECCW 2010.  
<http://www.environment.nsw.gov.au/resources/cultureheritage/ddcop/10798ddcop.pdf>
- *Guide to investigating, assessing and reporting on Aboriginal cultural heritage in NSW*. OEH 2011. <http://www.environment.nsw.gov.au/resources/cultureheritage/20110263ACHguide.pdf>
- *Code of practice for archaeological investigation of Aboriginal objects in New South Wales*, DECCW 2010.  
<http://www.environment.nsw.gov.au/resources/cultureheritage/10783FinalArchCoP.pdf>
- *Aboriginal cultural heritage consultation requirements for proponents 2010*. DECCW 2010.  
<http://www.environment.nsw.gov.au/resources/cultureheritage/commconsultation/09781ACHconsultreq.pdf>
- *Applying for an Aboriginal Heritage Impact Permit guide for applicants, OEH (2011)*.  
<http://www.environment.nsw.gov.au/resources/cultureheritage/20110280AHIPguideforapplicants.pdf>

For further information or assistance please call the NPWS Assessment Coordinator on (02) 6450 5543.