



Mr Mark Brown  
Senior Planning Officer  
Alpine Resorts Team  
Department of Planning and Environment  
Jindabyne NSW 2627

Our reference: DOC20/277310  
EF20/20385

Dear Mark,

**DA Referral – External alterations to existing building, Chimneys Ridge,  
7b Diggings Terrace, Thredbo  
DA 10181**

I refer to the above development application (DA) forwarded to the National Parks and Wildlife Service (NPWS) for provision of comments in accordance with *State Environmental Planning Policy (Kosciuszko National Park - Alpine Resorts) 2007* (SEPP). In providing these comments consideration has been had to the *National Parks and Wildlife Act 1974*, the *Kosciuszko Plan of Management 2006* (KNP PoM) and the *Biodiversity Conservation Act 2016* (BC Act) and any other applicable legislation. Accordingly, I suggest that the following should be considered by the Department of Planning, Industry and Environment (DPIE) in its assessment.

**1. Leasing and KNP PoM**

- 1.1 NPWS Property and Commercial Team have advised that the proposed works are permissible under the Head Lease held by Kosciuszko Thredbo Pty Ltd (KT).
- 1.2 The works appear consistent with other relevant provisions of the KNP PoM including section 10.2 (Alpine Resorts Management Units), section 10.4 (Thredbo Management Unit), section 11.6 (Environmental Quality) and chapter 8 (Recreation).

**2. BC Act**

- 2.1 DPIE is to consider the BC Act in its assessment. However, it is noted that there are no proposed impacts to native vegetation and the area is not mapped as threatened species habitat. NPWS can provide further advice if required.

**3. Protection of native vegetation, fauna and fauna habitats**

- 3.1 In order to assist in minimising any impacts of the proposed development NPWS recommends the following measures.
  - (i) If native vegetation removal is required for an Asset Protection Zone, then further consultation with NPWS is required (Please note: this is not consent for further vegetation management just a request for further consultation).
  - (ii) All stockpile sites, including materials storage areas, parking and waste management (skip bins) must not impact on native vegetation.
  - (iii) All waste management receptors must be able to be **covered daily** to ensure waste cannot blow away or must be emptied or removed from site each day.

#### 4. Aboriginal Cultural Heritage

4.1 In accordance with the *Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales* (DECCW 2010), it is recommended that the proponent undertakes Aboriginal Cultural Heritage Due Diligence for all works that involve ground disturbance and/or tree removal even if the works are in previously disturbed areas (unless defined as a low impact activity'). Please refer to the attached guidance sheet which sets out obligations under the Code of Practice and the NPW Act.

4.2 The Due Diligence Code can be found at:

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

4.3 NPWS 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, Bec Owen, on 6450 5543 or [rebecca.owen@environment.nsw.gov.au](mailto:rebecca.owen@environment.nsw.gov.au).

#### 5. Other matters

5.1 I note that NPWS has also considered the following matters in its assessment:

- (i) That there is no change to stormwater drainage.
- (ii) That the works have no public health and no plumbing and drainage components.
- (iii) That the property is not listed as a heritage item on the SEPP.

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

Yours sincerely



**Mick Pettitt**  
**Director**  
**Southern Ranges Branch**

9 April 2020

**Attachment:** Guide to using the Due Diligence Code of Practice.

## **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 without 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.