



Eagles Nest Communications and Ski Patrol Hut, Thredbo Modification

Modification Application Assessment (MOD 22/6520 (DA 076-11-2010 MOD 1))

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Cover image: Main Range, Kosciuszko National Park (Source: Alpine Resorts Team)

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Glossary

Abbreviation	Definition
BCA	Building Code of Australia
BC Act	<i>Biodiversity Conservation Act 2016</i>
BC Regulation	<i>Biodiversity Conservation Regulation 2017</i>
BVM	Biodiversity Values Map
Consent	Development Consent
Department	Department of Planning and Environment
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	<i>Environmental Planning and Assessment Regulation 2021</i>
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
EPI	Environmental Planning Instrument
ESD	Ecologically Sustainable Development
KNP	Kosciuszko National Park
Minister	Minister for Planning
NPWS	National Parks and Wildlife Service
Planning Secretary	Secretary of the Department of Planning and Environment
RFS	NSW Rural Fire Service
SEPP	State Environmental Planning Policy

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1 Introduction

1.1 Preamble

This report contains the Department of Planning and Environment's (the Department's) assessment of an application to modify the development consent (DA 076-11-2010) for removal of an existing hut, erection of a new building for ski patrol and communications equipment and associated trenching above Eagles Nest, Thredbo, Thredbo Alpine Resort within Kosciuszko National Park (KNP) (**Figure 1**).

The application has been lodged by Kosciuszko Thredbo Pty Ltd (the Applicant) pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The modification application seeks approval for alteration to the building design to enable modular communication pods to be installed within the same footprint of the approved development. This follows an agreement being reached with the NSW Telco Authority and the Applicant for it to occupy a standalone communication facility on the site (subject to separate approval through National Parks and Wildlife Service).

The Minister for Planning is the consent authority for development within a ski resort in KNP and the proposal is permissible with consent under the provisions of *State Environmental Planning Policy (Precincts – Regional) 2021* (the Precincts – Regional SEPP).



Figure 1 | Location of works (with previous hut illustrated, removed in 2015) (Source: SIX Maps 2022)

1.2 Background

The site is located in Thredbo Alpine Resort, which is within the southern part of KNP. The subject site (contained within the Head Lease parcel of Lot 876 DP 1243112) is to the west of the top station of the Kosciuszko Express Chair, which commences at the Valley Terminal before ending at a ridge adjacent to the Eagles Nest restaurant building.

The area of the works is adjacent to the existing walking trail to Mount Kosciuszko, from where a previous hut (**Figure 2**) was removed from the site in 2015. The commencement of the existing All Mountain mountain bike trail is located to the west. The site is exposed to the westerly winds and is covered in snow during winter. Rocky outcrops are located behind the site, to the east, and the immediate vegetation surrounding this site is mainly native grasses and heath vegetation.

The site also has the potential to contain Aboriginal heritage items given the context of the site and significance of the locality. Conditions of consent were incorporated into the development consent requiring test pit monitoring to be undertaken during works.

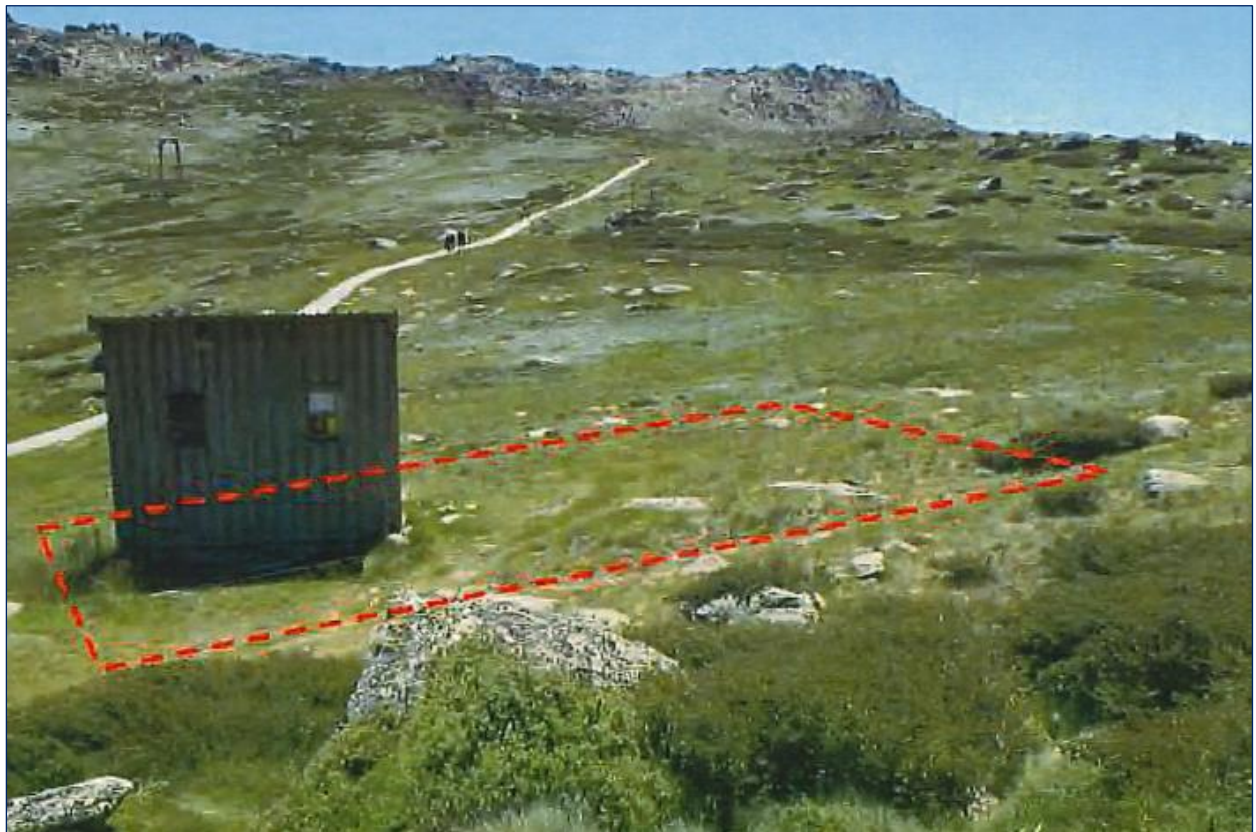


Figure 2 | Former hut, now removed from the site (Source: Applicant's original documentation)

1.3 Approval History

On 29 April 2011, the Acting Team Leader of Metropolitan and Regional Projects South (Alpine Resorts Team), as delegate of the then Minister for Planning and Infrastructure, granted consent to a Development Application (DA 076-11-2010) for removal of an existing hut, erection of a new building for ski patrol and communications equipment and associated trenching (**Figure 3** and **4**).

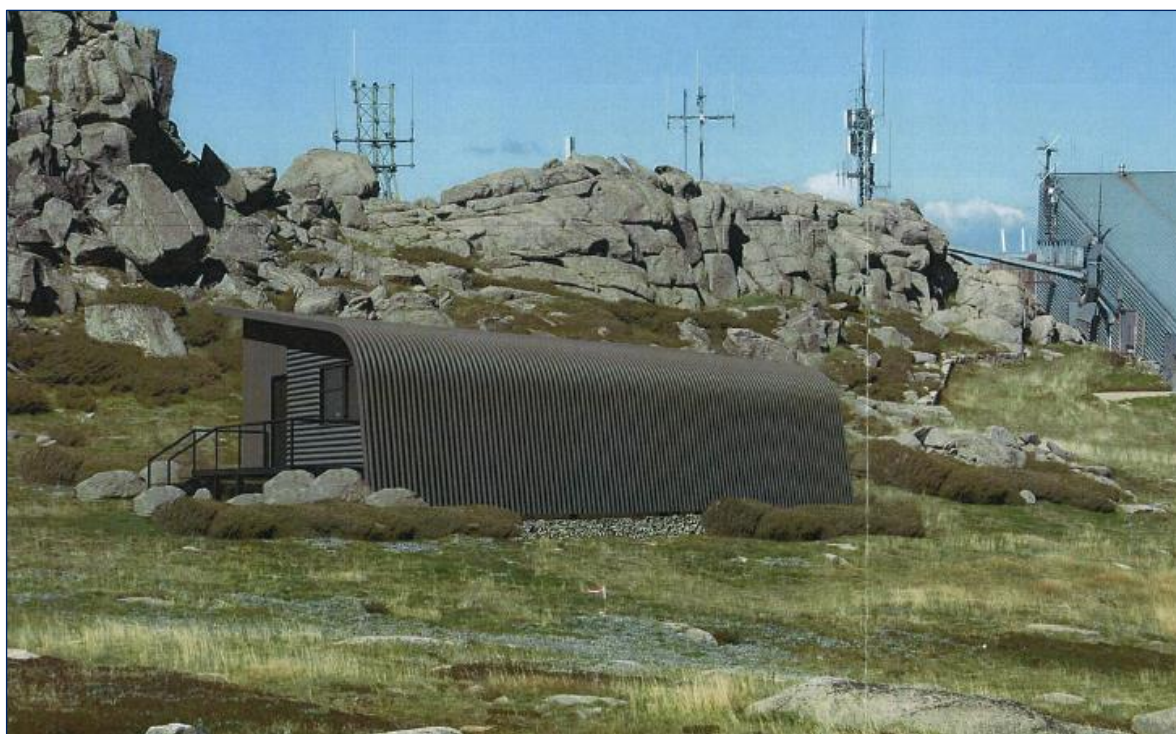


Figure 3 | Approved development viewed from ski slopes (Source: Applicant's original documentation)

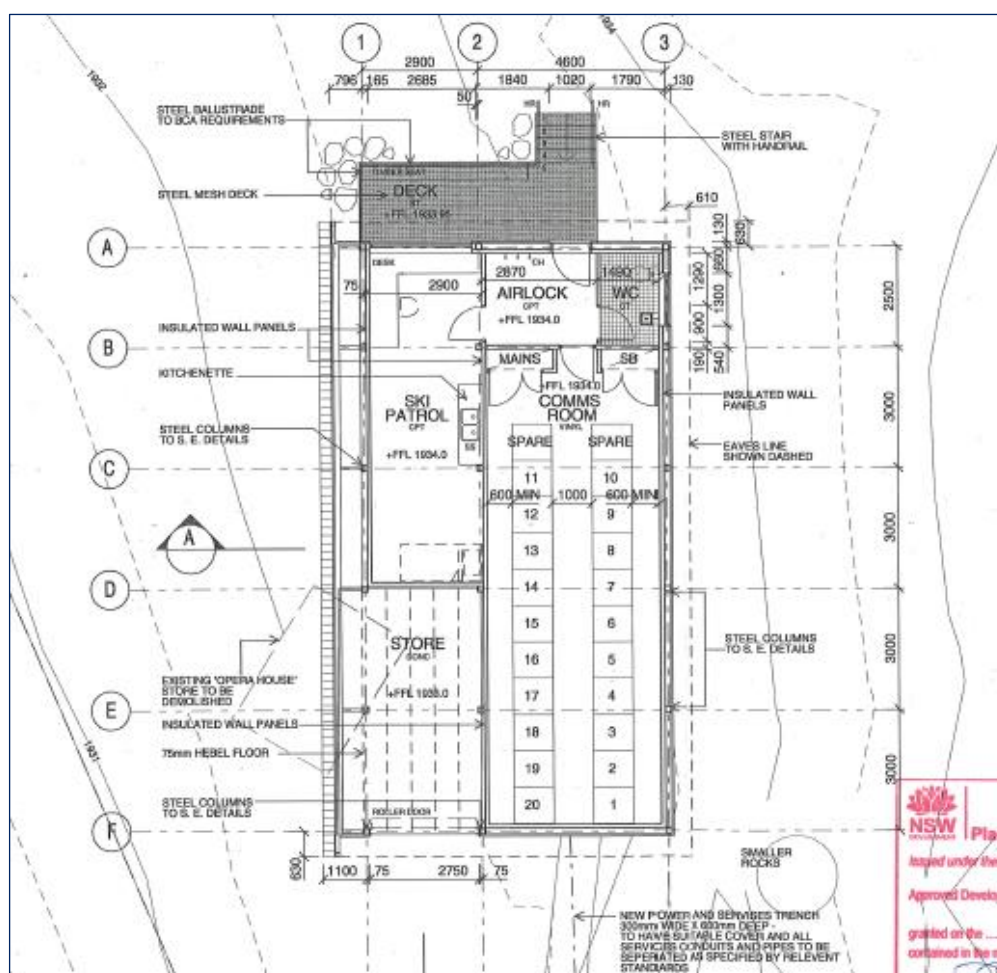


Figure 4 | Approved floor layout of development (Source: Applicant's original documentation)

2 Proposed Modification

On 19 May 2022, the Applicant lodged a modification application (MOD 22/6520 (DA 076-11-2010 MOD 1)) seeking approval under section 4.55(1A) of the EP&A Act to modify the development consent, incorporating the following amendments to the development proposal:

- alteration to the building design to enable modular communication pods to be installed within the same footprint as the previously approved development (**Figure 5**), and
- alteration to the area identified for future use as a ski patrol office area within the building.

This application follows an agreement being reached with the NSW Telco Authority and the Applicant for it to occupy a standalone communication facility on the site (subject to separate approval through National Parks and Wildlife Service).

The Applicant advises that the proposed modification to the building will continue to be contained within the same site / building footprint. The building will be of the same dimensions (15 metres long by 9 metres wide), with the same roof profile and relate to the retention of a separate ski patrol area. The modified proposal differs from that originally proposed in that it provides for modular internal “pods” for individual communication installations and a change to the identified ski patrol area internal layout. Construction of the proposed works, as modified, will be the same as the previously approved building, including pad footings to structural engineering details.

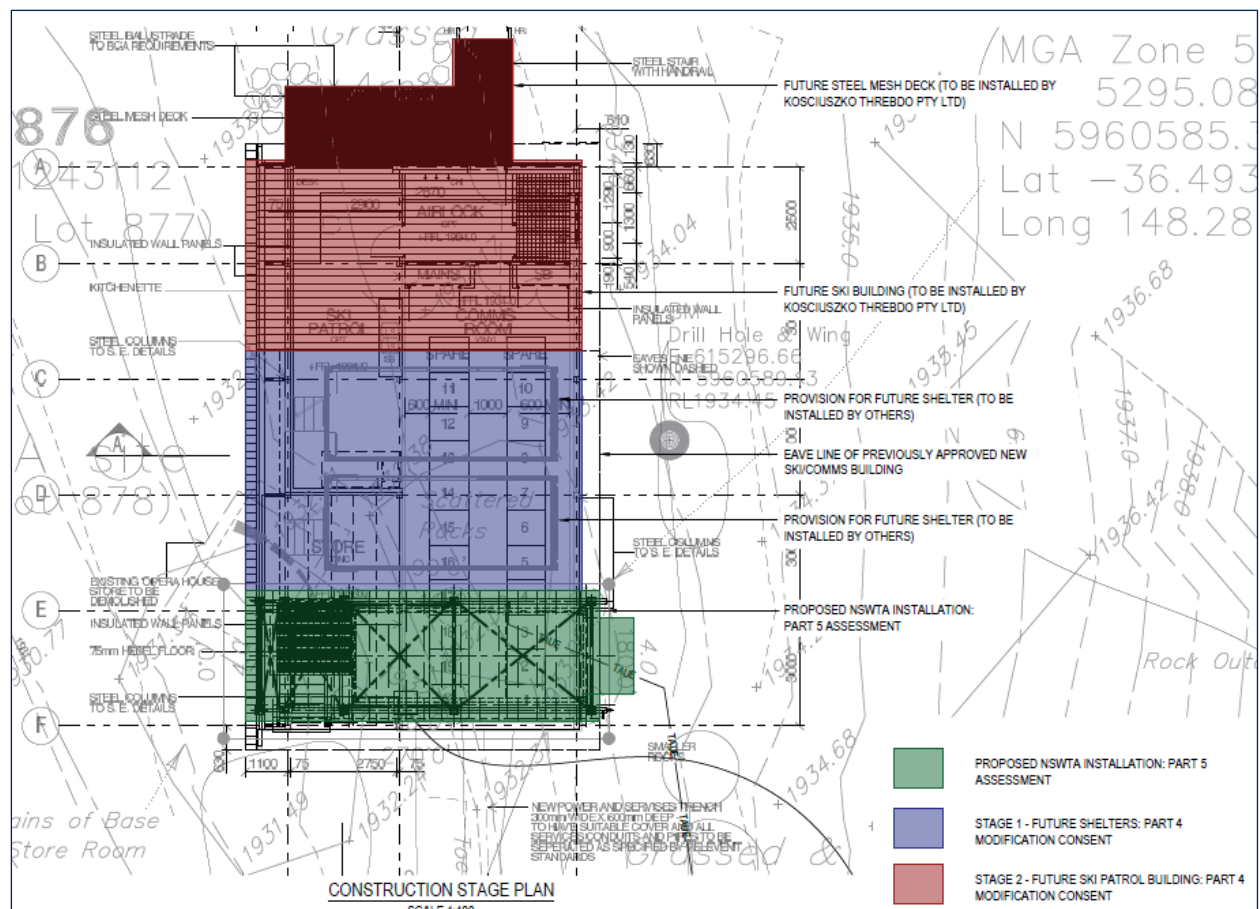


Figure 5 | Proposed layout of proposal (Source: Applicant’s documentation)

3 Strategic Context

The Snowy Mountains region offers a diverse and unique mix of visitor destinations including the KNP, the alpine resorts, the iconic Snowy River and the highest mountains on the Australian continent. A strong tourism economy is driven mainly by skiing and related winter sport experiences during the peak winter season. The region, including the alpine resorts, also provides opportunities for a range of other recreational activities during the warmer months such as hiking, fishing, kayaking and mountain-biking. The resorts are important to NSW due to their economic and social contribution as well as their location within a unique alpine environment. The three main documents that support the strategic context of the alpine resorts are the *South East and Tableland Regional Plan 2036*, the *Snowy Mountains Special Activation Precinct Master Plan* and the *Precincts - Regional SEPP*.

South East and Tableland Regional Plan 2036

The South East and Tableland Regional Plan 2036 describes the vision, goals and actions that will deliver greater prosperity for those who live, work and visit the region. The plan provides an overarching framework to guide more detailed land use plans, development proposals and infrastructure funding decisions.

In relation to the alpine resorts, the Regional Plan seeks to promote more diverse tourism opportunities in the Snowy Mountains that will strengthen long-term resilience while acknowledging the environmental and cultural significance of the locality.

The Department considers the proposal continues to be consistent with the Regional Plan as the proposal maintains the use of the site for communications and a ski patrol hut, with the modifications not impacting the functionality of the approved building, which supports the safe operation of the NSW ski resorts.

Snowy Mountains Special Activation Precinct Master Plan

The Snowy Mountains Special Activation Precinct Master Plan outlines the 40-year vision for the Snowy Mountains as a year-round tourist destination with new business opportunities, services and community infrastructure for the people that live, work and visit the region. Section 9.1.1 of the Master Plan relates to Thredbo.

The Department considers that the proposal supports the vision of the Master Plan, while also ensuring impacts upon the environment are consistent with the previously approved development.

Precincts – Regional SEPP

The Precincts – Regional SEPP governs development on land within the ski resort areas of KNP. Chapter 4 of the SEPP aims to protect the natural and cultural heritage of land within the resorts and to encourage environmentally sustainable development. Under the provisions of section 4.15 of the Precincts – Regional SEPP, the National Parks and Wildlife Service (NPWS) have a commenting role as the land manager, which includes administering the Plan of Management framework for KNP that incorporates objectives, principles and policies to guide the long-term management of the broad range of values found in the park.

The Department considers the proposal continues to be consistent with Chapter 4 of the Precincts – Regional SEPP as the proposal incorporates works into an approved building (yet to be constructed) while satisfying the principles of ecologically sustainable development and having no adverse impacts on the environment.

4 Statutory context

4.1 Scope of modifications

Section 4.55(1A) of the EP&A Act provides that a consent authority may, on an 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 2021* (EP&A Regulations), modify a consent if the following requirements in Table 1 are met:

Table 1: Consideration under Section 4.55(1A) of the EP&A Act

Section 4.55(1A) - Evaluation	Comment
(a) <i>That the proposed modification is of minimal environmental impact</i>	<p>Section 6 of this report provides an assessment of the impacts associated with the proposal.</p> <p>The Department is satisfied that the proposed modifications will have minimal environmental impact.</p>
(b) <i>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)</i>	<p>The proposal does not affect the built form of the building, only the configuration of the communications component and how the building will be constructed.</p> <p>The Department is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted.</p>
(c) <i>The application has been notified in accordance with the regulations</i>	<p>In accordance with the Department's Community Participation Plan (CPP), November 2019, the Department publicly exhibited the modification application for a minimum of 14 days and it was made publicly available on the NSW Planning Portal website (refer to Section 5 of this report).</p>
(d) <i>Consideration of any submissions made concerning the proposed modification within the period prescribed by the regulations</i>	<p>The Department has considered the submissions received during the exhibition period (refer to Section 5 and 6 of this report).</p>

Section 4.55(3) of the EP&A Act provides that in determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the granting of the consent that is sought to be modified.

The relevant consideration under section 4.15(1) of the EP&A Act in relation to the proposed modifications is whether the impacts of the amendments upon the existing environment are acceptable. The Departments

assessment in **Section 6** concludes that the impacts are acceptable and do not negatively impact the Department's previous assessment.

Therefore, the Department is satisfied the proposed modification is within the scope of section 4.55(1A) of the EP&A Act and does not constitute a new development application. Accordingly, the Department considers that the application should be assessed and determined under section 4.55(1A) of the EP&A Act rather than requiring a new development application to be lodged.

4.2 Consent authority

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

Under section 4.6 of the Precincts – Regional SEPP, the Minister for Planning is the consent authority for the application as the development takes place within a ski resort area as referred to in section 32C (2)(a) of Schedule 1 to the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017*.

In accordance with the Minister's delegation dated 9 March 2022, the Director, Regional Assessments may determine the application as:

- no reportable political donation has been disclosed
- there are less than 15 public submissions in the nature of objections
- the application is in relation to land which Chapter 4 of the Precincts – Regional SEPP applies

4.3 Mandatory matters for consideration

The Department conducted a comprehensive assessment of the project against the mandatory matters for consideration as part of the original assessment of DA 076-11-2010. The Department considers this modification application does not result in significant changes that would alter the mandatory matters for consideration under section 4.15 of the EP&A Act and conclusions made as part of the original assessment.

Objects of the EP&A Act

The Minister or delegate must consider the objects of the EP&A Act when making decisions under the Act. The Department is satisfied the proposed modification is consistent with the objects of the EP&A Act.

Biodiversity Conservation Act 2016

Section 1.7 of the EP&A Act requires the application of the *Biodiversity Conservation Act 2016* (BC Act) in connection with the terrestrial environment. The BC Act introduced a Biodiversity Offsets Scheme (BOS) that applies when:

- the amount of native vegetation being cleared exceeds a certain threshold area; or
- the impacts occur within an area mapped on the Biodiversity Values Map (BVM) published by the Minister for Environment; or
- the 'test of significance', in section 7.3 of the BC Act, identifies that the development or activity is likely to significantly effect threatened species or ecological communities, or their habitats; or

- the works are carried out in a declared area of outstanding biodiversity value.

The Department notes that the site is now mapped on the BVM (**Figure 6**) and given the scope of the proposal, would ordinarily require consideration under the BC Act given the proposed footings and that clearing of adjoining vegetation is required to meet RFS requirements.



Figure 6 | Biodiversity Value area is shown in purple (Source: <https://www.lmbc.nsw.gov.au>)

NPWS noted that:

If the original development was assessed and approved under the former planning provisions, then the original development as proposed to be modified is to be used to determine whether the BOS applies. This is because the original application was lodged prior to the commencement of the BC Act.

Clause 30A of the Biodiversity Conservation (Savings and Transitional) Regulation 2017 which applies to modifications of planning approvals granted or applied for before commencement of new Act, states that:

(b) a biodiversity development assessment report is required to be submitted and taken into consideration if Division 4 of Part 7 of the new Act would have applied to the original development (as

proposed to be modified) if planning approval had been granted after the commencement of the new Act, and

(c) however a biodiversity development assessment report is not required to be submitted if the authority or person determining the application for modification (or determining the environmental assessment requirements for the application) is satisfied that the modification will not increase the impact on biodiversity values,

If so, if the consent authority considers that the proposed modification will not increase impacts on biodiversity values, then a BDAR is not required.

The Department notes the advice from the NPWS and is of the view that the proposed modification would not increase impacts on biodiversity values. The Department is therefore satisfied that a BDAR is not required for this proposal.

The Department also notes that there is currently no declared area of outstanding biodiversity value within Kosciuszko National Park.

Environmental Planning Instruments

The Precincts – Regional SEPP is the principal EPI that applies to this application.

An assessment of compliance with the then State Environmental Planning Policy (Kosciuszko National Park – Alpine Resorts) 2007 (Alpine SEPP) was undertaken in the determination of the original application (DA 076-11-2010). The Precincts – Regional SEPP (Chapter 4) has since replaced the Alpine SEPP.

The Department has considered the current modification application against the provisions of the Precincts – Regional SEPP (since adopted on 1 March 2022) and is satisfied the modification proposal continues to be consistent with this EPI.

5 Engagement

5.1 Department's engagement

The Department's Community Participation Plan (CPP), November 2019, prepared in accordance with Schedule 1 of the EP&A Act requires applications for modifications of development consent that are not required to be exhibited by the EP&A Regulations to otherwise be exhibited for a timeframe dependent on the urgency, scale and nature of the proposal.

In this regard, the Department also notes that the CPP advises that applications for development consent under Chapter 4 of the Precincts – Regional SEPP are not required to be public exhibited if the proposal relates to works which are wholly internal to a building or where the site is located more than 50 metres away from a tourist accommodation building. The Department formed the view to make the application publicly available (due to its location and public interest of the proposal) between 25 May 2022 and 6 June 2022 on the NSW Planning Portal website.

The application was forwarded to the NSW Rural Fire Service (RFS) as the original application received comments from the RFS under the former Section 79BA of the EP&A Act (consultation and development consent—certain bush fire prone land) as development consent could not be granted to the development without consultation with the RFS and the National Parks and Wildlife Service (NPWS) pursuant to clause 4.15 of the Precincts – Regional SEPP.

The Department received submissions from the RFS and the NPWS. No public submissions were received.

Following the exhibition of the application, the Department placed copies of all submissions received on its website and forwarded these to the Applicant.

5.2 Key issues – Government Agencies

The RFS did not object to the original proposal and provided comments pursuant to the (former) Section 79BA of the EP&A Act, which included the requirement to provide an Asset Protection Zone around the building to the extent of five (5) metres. The RFS reviewed the modification application and raised no objection to the proposal, subject to compliance with the previous requirements. However, the RFS did recommend that a ten (10) metre APZ would be more appropriate for the telecommunications facility. This would need to be considered during the Part 5 assessment undertaken by NPWS.

The NPWS did not object to the proposal and advised that the comments provided by NPWS on the original DA (DA076-11-2010) are still relevant. NPWS note that the test pit monitoring required under condition D.1 has not been conducted by the proponent prior to the demolition works commencing. NPWS has no further comments at this time.

The Department notes the NPWS comment and it appears that the Applicant did not comply with the test pit requirements with the demolition of the previous hut. The Applicant will be required to comply with this requirement when undergoing construction of the ski patrol hut and roof relevant to their works. NPWS will need to consider compliance arrangements during consideration of the NSW Telco Authority request to instal the communication pod at the site.

The Department has considered the comments received from the RFS and the NPWS in **Section 6**.

6 Assessment

In assessing the merits of the proposed modification, the Department has considered the:

- previous Environmental Assessment Reports for the proposal
- the modification application and existing conditions of consent
- submissions from government agencies
- matters for consideration under Section 4.15(1) of the EP&A Act

The Departments assessment considers the modification would result in minimal impacts upon the approved built and natural environment, with the modification application relating to enabling the NSW Telco Authority and other future telecommunications companies to install communication pods within the approved communications and ski patrol hut (yet to be constructed).

The Applicant indicates that they do not have a defined timeline of when the building works would be completed, with the NSW Telco Authority communications pod likely to be the first to proceed on the site.

The works do not impact adjoining properties, with the adjoining area containing ski slopes and walking trails. The approved curved roof of the development is to be maintained once all of the works are completed, with individual communications companies responsible for the roof of each of their structures.

NPWS raised no concerns with the proposed modifications, while noting the test pit monitoring for Aboriginal heritage items as required by Condition D.1 has not occurred despite the removal of the previous hut on site. The Department notes that the condition requires the monitoring prior to commencement of any works, while also stating that the monitoring is to be undertaken in the areas where excavation is proposed. The Applicant will need to ensure compliance when they undertake their own works, with the NSW Telco Authority and other relevant telecommunications companies also to meet this requirement.

The Departments considers that the proposed works are unlikely to result in additional impacts and are capable of being built to comply with the Building Code of Australia (BCA) and relevant Australian Standards.

The proposed modification to the consent is supported.

7 Evaluation

The Department has assessed the modification application and supporting information in accordance with the relevant requirements of the EP&A Act and considered the submissions provided by the public and RFS and the NPWS.

The Department's assessment concludes that the proposed modification is appropriate as:

- the modification is of minimal environmental impact and does not have any additional environmental impacts beyond the approved development
- it is substantially the same development as originally approved
- the proposed modifications to conditions are acceptable
- the proposal continues to comply with the Precincts – Regional SEPP provisions
- all submissions received during the assessment of the application have been considered
- the proposal does not result in any additional matters that required consideration under Section 4.15(1) of the EP&A Act

The Department concludes the impacts of the development are acceptable and the proposal is in the public interest. The Department recommends that the application for modification be approved, subject to changes to the existing conditions of consent (**Appendix C**).

8 Recommendation

It is recommended that the Director, Regional Assessments, as delegate of the Minister:

- **considers** the findings and recommendations of this report
- **determines** that the modification application MOD 22/6520 (DA 076-11-2010 MOD 1) falls within the scope of section 4.55(1A) of the EP&A Act
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to approve the modification
- **modify** the consent DA 076-11-2010
- **signs** the attached approval of the modification (**Appendix C**).

Recommended by:



30/08/2022

Mark Brown
Senior Planner
Alpine Resorts Team

9 Determination

The recommendation is **Adopted** / ~~Not adopted~~ by:

A handwritten signature in blue ink, consisting of the letters 'K' and 'T' followed by a long horizontal stroke.

30/08/2022

Keiran Thomas

Director

Regional Assessments

as delegate of the Minister for Planning

Appendices

Appendix A – Modification Report

The following supporting documents and supporting information to this assessment report can be found on the NSW Planning Portal website as follows:

<https://www.planningportal.nsw.gov.au/daexhibitions>

Appendix B – Submissions

The Department made the application publicly available on the NSW Planning Portal between 24 May 2022 and 6 June 2022.

The application was referred to the RFS (as the original applications was referred under the provisions of section 79BA of the then *Environmental Planning and Assessment Act 1979*) and NPWS pursuant to section 4.15 within Chapter 4 of the Precincts-Regional SEPP, with comments received. No submissions from the public were received.

Appendix C – Notice of Modification