



Friday Flat and Middle Slopes, Thredbo Modification

Modification Application Assessment (MOD 22/13512 (DA 22/458 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
DPE Water	Department of Planning and Environment - Water
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
SEPP	State Environmental Planning Policy

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1 Introduction

The modification application seeks approval to modify development consent (DA 22/458) for the installation of new snowmaking infrastructure within the Friday Flat Ski Area (Friday Flat) and Middle Slopes, 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).

On 31 March 2022, the Team Leader of the Alpine Resorts Team, as delegate of the Minister for Planning, granted consent to a Development Application (DA 22/458) for the installation of new snowmaking infrastructure at:

- Friday Flat – removal of five (5) existing lance snowmaking guns and installation of five (5) new concrete pits with fixed fan guns and three (3) retractable concrete pits with mobile fan guns, as well as one (1) new manual hydrant. Trenching to each for the laying of cabling is required.
- Middle Slopes - installation of four (4) manual hydrants and trenching for the laying of cabling to the manual hydrants.

This proposal to modify DA 22/458 seeks to alter the works to the Middle Slopes site by replacing the approved manual hydrants with four (4) concrete pits with fixed fans guns. The installation of each concrete pit would have a disturbance of 3 metres x 3 metres x 1.6 metres deep, which is a disturbance of 36 sqm in total compared to a total disturbance of 4 sqm for the previously approved four (4) manual hydrants.

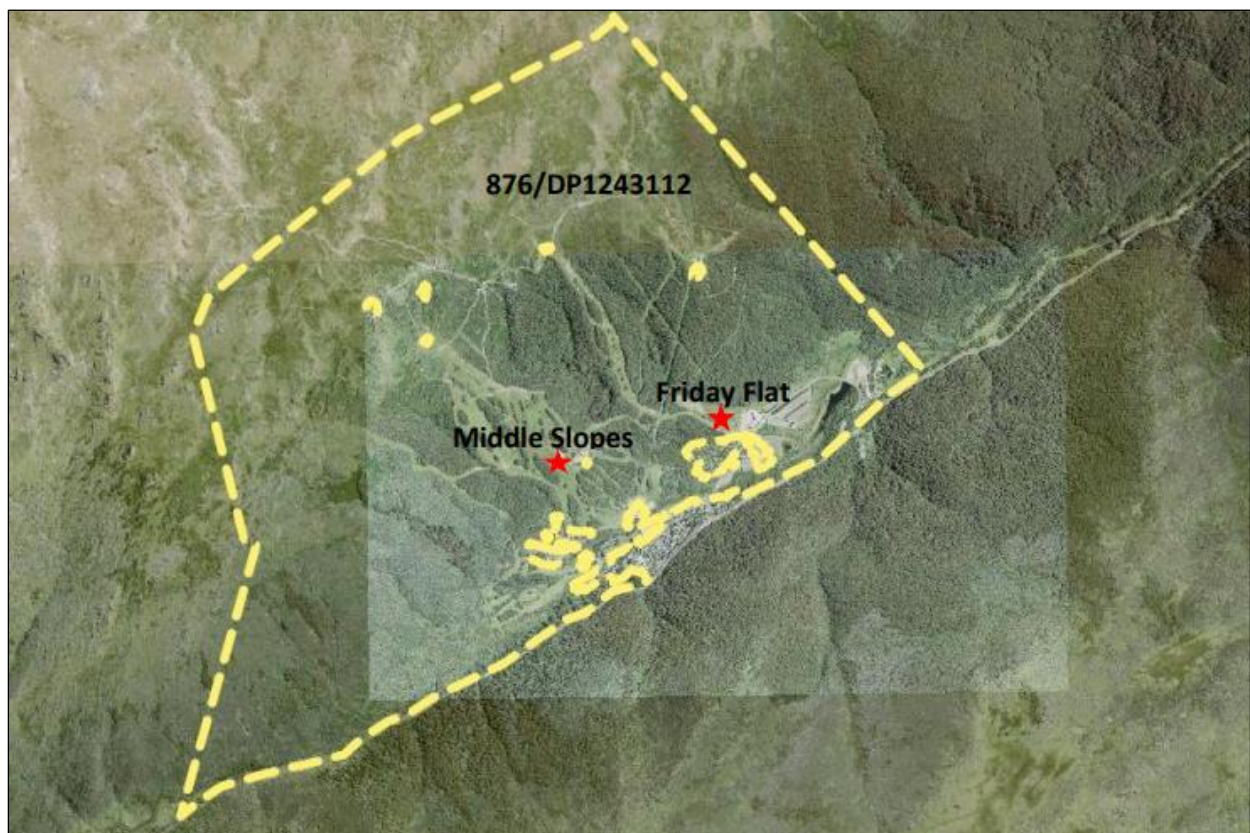


Figure 1 | Sites in context of Thredbo Village and adjoining areas (Source: Applicant's documentation)

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).

The two sites are located within Thredbo Alpine Resort, which is approximately thirty (30) kilometres south-west of Jindabyne in the southern part of KNP. Thredbo is a year-round tourist destination resort catering for both winter and summer activities.

The Friday Flat component of the proposal adjoins the 'Easy Does It' ski run, located to the north of Thredbo Village. The Middle Slopes component, which is where the modified infrastructure the subject of this application is proposed to be installed, is to the north-west of Thredbo Village, located south of the Meadows Nature Track parallel to the Kosciuszko Express chair lift at a distance of approximately sixty (60) metres to the south-west – **Figure 2**.

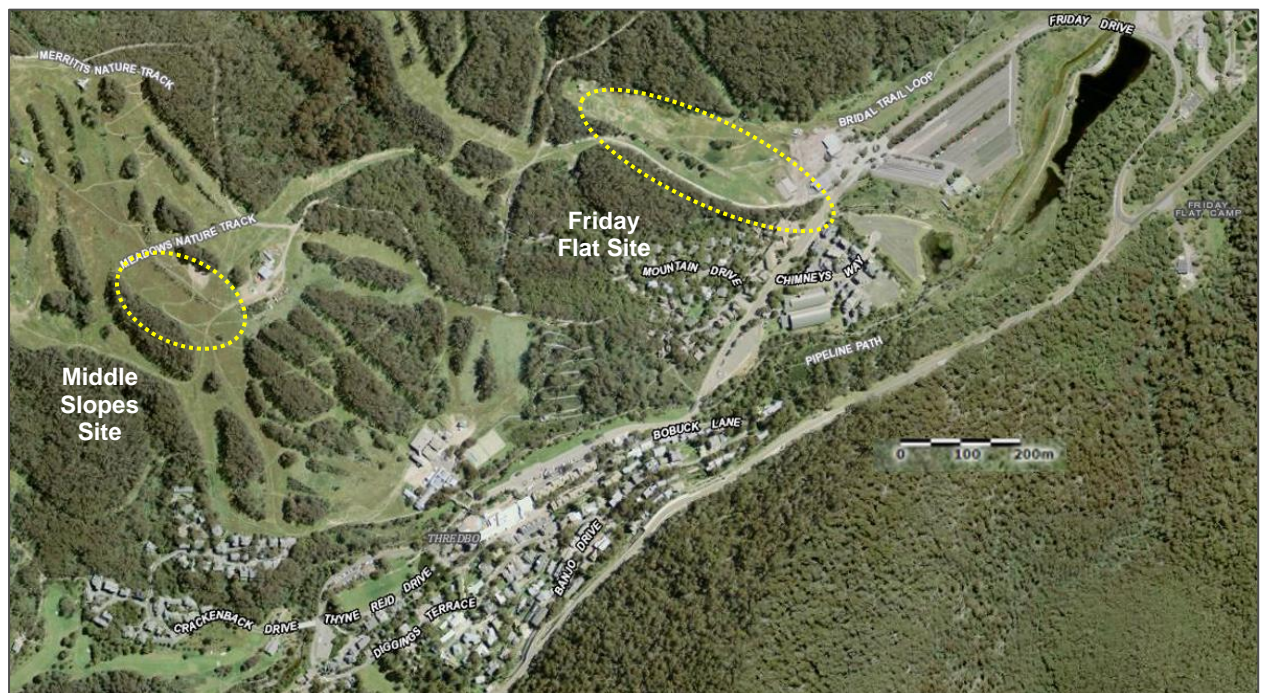


Figure 2 | Middle Slopes and Friday Flat work sites (highlighted) (Source: SIX Maps 2022 with Department of Planning and Environment annotations)

Supporting documents and supporting information to this assessment report can be found on the NSW Planning Portal website at:

<https://www.planningportal.nsw.gov.au/development-assessment/state-significant-applications/projects/state-development-applications>

2 Matters for Consideration

2.1 Strategic Context

South East and Tableland Regional Plan 2036

The Department considers the proposal continues to be consistent with the Regional Plan as the proposal supports the improvement in resort operations through enabling the opening of the Thredbo Alpine Resort earlier and more consistently in marginal conditions, which supports the ongoing visitation to the NSW ski resorts.

Snowy Mountains Special Activation Precinct Master Plan

The Department considers that the proposal supports the vision of the Master Plan, while also ensuring impacts upon the environment have been considered against those previously approved. With the proposed change in the type of snowmaking infrastructure, an additional disturbed area is required, however this raises no additional matters that would impact the Master Plan.

Precincts – Regional SEPP

The Department considers the proposal continues to be consistent with Chapter 4 of the Precincts – Regional SEPP as the proposal continues to contribute to the ongoing range of recreational activities available within KNP, with potential impacts on the environment considered acceptable when noting the contained nature of the location of the modification works being on or adjacent to a ski slope.

2.2 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 22/458. 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 not mapped on the BVM and given the scope of the modification proposal, would not impact on any BC Act considerations. No additional vegetation management is required to facilitate the modification, with the works occurring within the existing disturbed and managed ski run.

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 Precincts – Regional SEPP (Chapter 4) was undertaken in the determination of the original application (DA 22/458).

The Department has considered the current modification application against the provisions of the Precincts – Regional SEPP and is satisfied the modification proposal continues to be consistent with this EPI.

2.3 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, being disturbance of an existing ski slope with no additional vegetation removal required to facilitate the development.</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 changes the approved development in terms of the type of snowmaking infrastructure to be installed on the Middle Slopes site.</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 (i.e. for the installation of snowmaking infrastructure).</p>

(c) <i>The application has been notified in accordance with the regulations</i>	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 3 of this report).
(d) <i>Consideration of any submissions made concerning the proposed modification within the period prescribed by the regulations</i>	The Department has considered the submissions received during the exhibition period (refer to Section 3 and 64 of this report).

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 appropriate. The Department's assessment in **Section 4** concludes that there will be a small increment in the footprint of the works, however the impacts will be minimal in extent and appropriately managed, and the impacts are considered acceptable. No variation is required to 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.

2.4 Other approvals

Water Management Act 2000

As the original works at the Friday Flat site occurred within forty (40) metres of both an unnamed watercourse that is a tributary of Merritts Creek as well as within forty (40) metres of Merritts Creek, an approval was required from then Natural Resources Access Regulator (NRAR) (now known as the Department of Planning and Environment – Water (DPE Water)). The NRAR issued General Terms of Approval for the development requiring the Applicant to obtain a Controlled Activity Approval under the *Water Management Act 2000* prior to the commencement of works.

Refer to **Section 3** for further discussion on this component in relation to the modification application.

3 Submissions

3.1 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 the public interest in applications) between 27 October 2022 and 11 November 2022 on the NSW Planning Portal website.

The application was forwarded to the DPE Water pursuant to Section 4.46 of the EP&A Act (integrated development) as General Terms of Approval under the *Water Management Act 2000* is required for the development to be carried out and the National Parks and Wildlife Service (NPWS) pursuant to clause 4.15 of the Precincts – Regional SEPP.

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

3.2 Summary of submissions

During the exhibition, the Department received comments from the DPE Water and NPWS. No public submissions were received.

Key issues – Government Agency

The DPE Water advised that for the purposes of the *Water Management Act 2000* (WM Act), previously issued General Terms of Approval are adequate, remain current, and that no further assessment by DPE Water was necessary.

The NPWS raised no concerns with the proposed modification, subject to reiterating comments provided for the original Application that requested the biodiversity mapped land in close proximity to the Middle Slopes site be roped off or flagged to clearly delineate them as 'no-go zones' for vehicles, machinery and personnel. The Department notes that Condition C.5 is included within the consent for the Applicant to identify the biodiversity land as a 'No Go' area.

4 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, and
- matters for consideration under section 4.15(1) of the EP&A Act.

The Department's assessment considers the modification would result in minimal impacts upon the natural environment, with the modification application relating to only the installation of concrete pits and TT10 fan guns within the general location of previously approved snowmaking infrastructure at Middle Slopes (**Figure 3**).

The Applicant indicates that the proposal will result in an increased disturbance footprint of 32 sqm (approved 4 sqm compared to proposed 36 sqm). The works are substantially the same as the development for which the consent was originally granted. With the implementation of appropriate environmental controls that were approved under DA 22/458, the impacts of the proposal are considered acceptable.

The Department notes that the additional impact occurs on previously disturbed ski slopes. NPWS raised no concerns with the proposed modifications, with adoption of required 'No Go' areas being marked in accordance with current conditions of consent.

The proposed modification to the consent is supported.



Figure 3 | Middle Slopes work site (Source: Applicant's documentation)

5 Recommendation

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 DPE Water and NPWS.

The Department's assessment concludes that the proposed modification is appropriate as the modification is of minimal environmental impact and the additional environmental impact is acceptable being additional disturbance of ski slopes; it is substantially the same development as originally approved and 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; and the proposal does not result in any additional matters that required consideration under section 4.15(1) of the EP&A Act.

Overall, the Department is satisfied that the proposal is suitable and in the public interest.

As the original application was determined under the delegation of the Minister for Planning and Public Spaces, the Minister therefore remains as the consent authority for any subsequent applications to modify the consent. In accordance with the Minister's delegation of 9 March 2022, the Team Leader, Alpine Resorts Team may determine the application as

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

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

- **considers** the findings and recommendations of this report
- **determines** that the modification application MOD 22/13512 (DA 22/458 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
- **modifies** the consent DA 22/458
- **signs** the attached approval of the modification (**Appendix A**).

Recommended by:



Mark Brown
Senior Planner
Alpine Resorts Team

Adopted by:



17 January 2023

Daniel James
Team Leader
Alpine Resorts Team

as delegate of the Minister for Planning

Appendices

Appendix A – Notice of Modification