



Toppa's Dream Judging Structure, Blue Cow Modification

Modification Application Assessment (MOD 22/15219 (DA 9954 MOD 1))

February 2023

Published by the NSW Department of Planning and Environment

dpie.nsw.gov.au

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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 9954) for the removal of an existing ski hut, installation of a permanent judging structure (two shipping containers) and associated rehabilitation works at Toppa's Dream, Blue Cow, Perisher Range Alpine Resort within Kosciuszko National Park (KNP) (**Figure 1**). The application has been lodged by Perisher Blue Pty Ltd (the Applicant) pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

On 41 November 2019, the Team Leader of the Alpine Resorts Team, as delegate of the then Minister for Planning and Public Spaces, granted consent to a Development Application (DA 9954) for the installation of a new judging structure and associated works to facilitate the development.

This proposal to modify DA 9954 seeks to alter the approved development and incorporate an additional door into the bottom container, modify approved handrails and deck area, inclusion of an additional window and provide detail on the plans to address Building Code of Australia compliance.

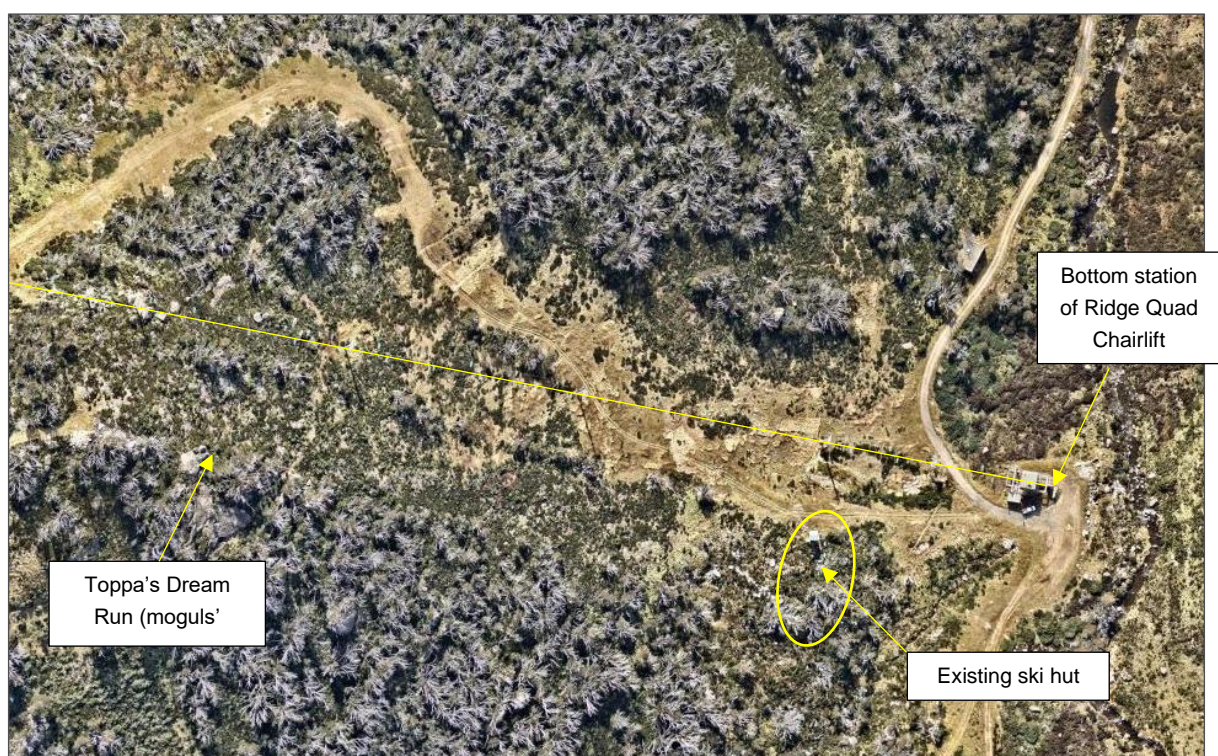


Figure 1 | Site in context of existing facilities and adjoining areas (Source: Nearmap 2023)

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 site is located in the Blue Cow Precinct of Perisher Range Alpine Resort, which is within the southern part of KNP. Perisher is a winter-based tourist destination incorporating a number of ski areas, including the Blue Cow ski area that provides a range of skiing options and competition areas such as the Toppa's Dream run moguls course.

The development site is located at the bottom of the Toppa's Dream run moguls' course (**Figure 1**), which provides an international standard moguls course utilised by local and international ski teams.

The site consists of a previously disturbed area and includes a small hut (**Figure 2**) containing timing equipment for the existing moguls' course. The hut would be removed, and the foundations kept in place as part of this application.



Figure 2: | View of existing hut at the bottom of the moguls' course (Source: Department inspection)

Located above the site, is a mix of native vegetation and disturbed areas, which once snow covered is configured into a moguls' course during winter (**Figure 3**).



Figure 3: | View of the moguls' course during winter (Source: Applicant's documentation)

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 continues its provision of an International Ski and Snowboard Federation (FIS) recognised judging structure, enabling the Toppa's Dream moguls' course to be utilised for international events, which leads to additional 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.

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 minimise potential impacts on the environment by utilising an existing disturbed area, retention of the existing hut footings to minimise native vegetation impacts, and rehabilitating areas of disturbance at the completion of works.

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 9954. 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 accompanying the original application, the Applicant submitted a Biodiversity Development Assessment Report (BDAR) to meet the requirements of the Biodiversity Assessment Method 2016 as the site was mapped on the Biodiversity Values Map. The BDAR also determined that the proposal is unlikely to have a significant impact on matters of National Environmental Significance (MNES) or Commonwealth land, and a referral to the Commonwealth Environment Minister is therefore not required.

Since this assessment, the site of the existing ski hut to be removed and replaced with the judging structure is now not mapped on the BVM (**Figure 4**), however areas of the overall works would still be within. Given the scope of the modification proposal, it is not considered that it would impact on any previous BC Act considerations. Additional vegetation disturbance is required to facilitate the modification, with the works occurring within the existing disturbed areas.

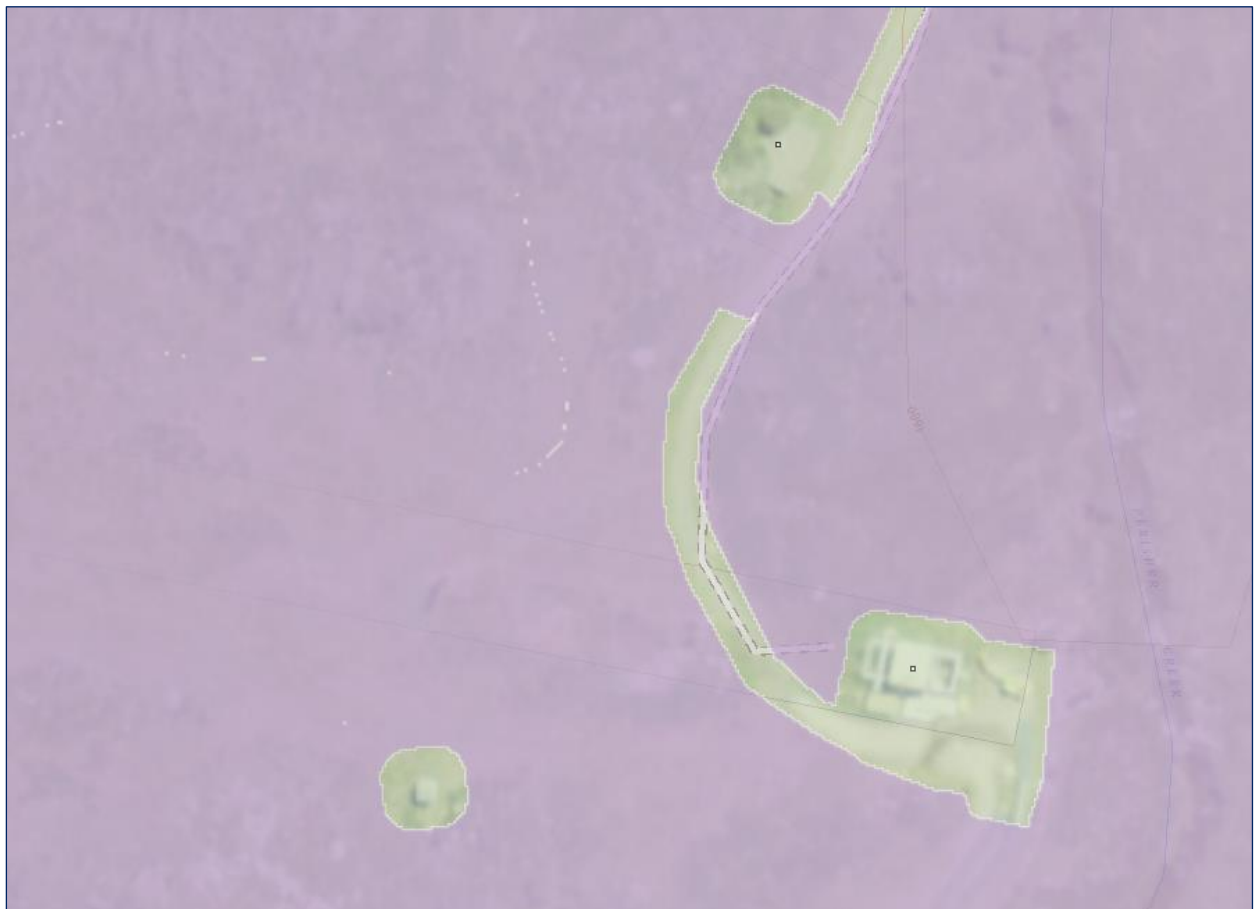


Figure 4: | Biodiversity Values Map and site location (Source: Biodiversity Offset Map)

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 9954).

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 minimal 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 access arrangements from the adjoining ski slope to the judging structure to be installed on the site, improves amenity for occupants within the structure and reconfigures the external stairs and landings.</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 a judging structure).</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 3 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 3 and 64 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 appropriate. The Department's assessment in **Section 4** concludes that there will be a small increment in the disturbance footprint, 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.

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 2 December 2022 and 15 December 2022 on the NSW Planning Portal website.

The application was forwarded to 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 NPWS. No public submissions were received.

Key issues – Government Agency

The NPWS raised no concerns with the proposed modification, advising that as there is no increase in footprint this modification results in minimal environmental impact beyond what was initially proposed and no further assessment by NPWS is required.

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 ensuring compliance with access provisions into the approved facility from the adjoining ski slope and also reconfiguration of stairs and landings (**Figure 5**).

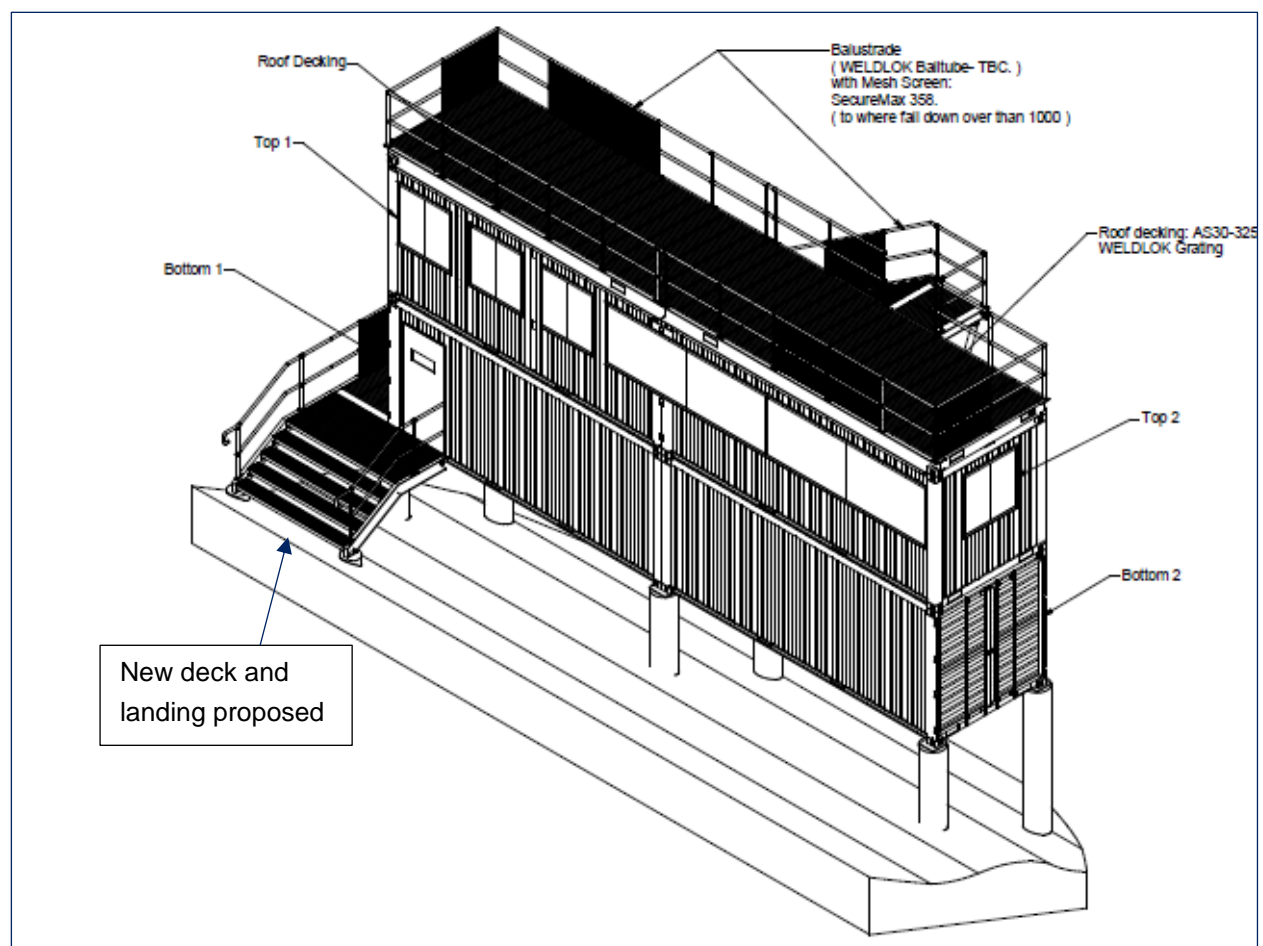


Figure 5: | View of the proposed judging structure (Source: Applicant's documentation)

The Applicant indicates that the proposed modifications are required to ensure compliance with BCA requirements, namely compliant egress from the lower container store area. Following review of the initial planning documents by our review engineers, it was deemed necessary to modify the design for safety and compliance reasons.

The changes involved:

- adding a door to the western elevation and creating a landing and stairs to access this. The stairs, accessing the first floor and roof deck, were then swapped from discharging at the southern end of the site to the northern end with a landing linking then to the proposed new stair on the western elevation.
- more detail has been added to the drawings to ensure that fabrication is completed in accordance with the BCA by eliminating potential hazards such as climbable hand rails.
- the additional window has been added to allow officials and staff to view the base of ridge chair for safety, weather monitoring and crowd control.

The modification to the design and access to the judging structure results in an increased disturbance footprint of 54sqm when compared to the approved development. The works are however substantially the same as the development for which the consent was originally granted and with the implementation of appropriate environmental controls that were approved under DA 9954, 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.

The proposed modification to the consent is supported, with appropriate consideration of BCA compliance for access and movement throughout the judging structure.

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 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 22/15219 (DA 9954 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 9954
- **signs** the attached approval of the modification (**Appendix A**).

Recommended by:



Mark Brown
Senior Planner
Alpine Resorts Team

Adopted by:



14/2/2023

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

Appendices

Appendix A – Notice of Modification