



Cruiser Blue Mountain Bike Trail, Thredbo Modification

Modification Application Assessment (MOD 22/2233 (DA 21/16265 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 21/16265) for the construction of the Cruiser Blue Mountain Bike Trail. The subject site is located within the Merritts ski area of 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 17 March 2022, the Team Leader of the Alpine Resorts Team, as delegate of the Minister for Planning, granted consent to a Development Application (DA 21/16265) for the construction of the Cruiser Blue Mountain Bike Trail.

This proposal to modify DA 21/16265 seeks approval for constructed variations to the approved trail alignment located outside of the construction corridor.

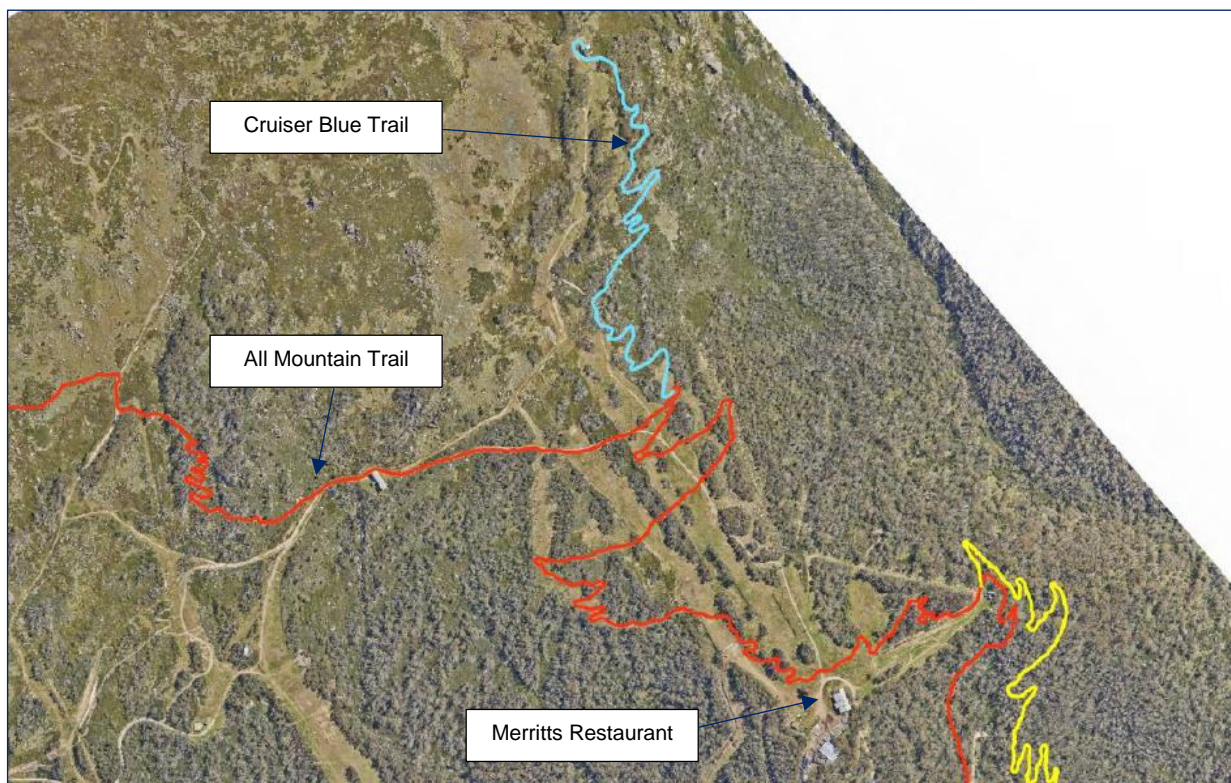


Figure 1 | Site (blue line) in context of Merritts ski area and adjoining All Mountain Trail (red line) (Source: Applicant's original DA documentation)

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 development site commences at the Cruiser Chairlift top-station before traversing across ski slopes and terminating where it joins onto the All-Mountain Trail (**Figure 1**). The trail provides an intermediate rated mountain bike trail for the use of visitors to Thredbo Alpine Resort.

During construction of the trail during late 2022, the Applicant states that due to inaccuracies with the GPS phone utilised to mark the initial approved trail alignment and final construction installation taking into

account the environment (rocks and trees and finding ski lift timing cabling), construction has now occurred outside of the approved 20 metre construction corridor (**Figure 2**). Five areas are identified as being outside of the construction corridor that results in an additional 125.8 square metres of vegetation impact, with 60.62 square metres of this being on disturbed ski slopes.



Figure 2: | Works as executed plan with construction corridor overlay indicating the five (5) areas constructed outside of the approved construction corridor (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 modifications to the trail alignment would enable opening of the trail that benefits the mountain bike community, which supports visitation to Thredbo Alpine Resort.

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 disturbed areas where possible or locating trails away from sensitive vegetation types) and ongoing winter operations (by avoiding the need to modify the trails prior to winter), 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 21/16265. 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 Applicant's ecologist has confirmed:

- all impacts beyond the approved corridor were inadvertent, and undertaken with the intent of avoiding, minimising and mitigating biodiversity impacts
- additional impacts associated with the modification are very minor in nature and extent, and consistent with the BAM (Biodiversity Assessment Method) and the BC Act, are appropriately offset by the retirement of the number and type of biodiversity credits required by the development consent for the approved trail

The Department notes that the amendments to the trail have been appropriately considered by the Applicant's ecologist, with no concerns raised by the NPWS. 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 21/16265).

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 4 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 a total disturbance of 125.5 square metres (comprising a disturbance of 60 square metres on existing ski slope and 65.5 square metres of additional native vegetation removal) required to facilitate the use of the trail.</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</i>	<p>The proposal changes the approved development in terms of the alignment of the trail prior to use.</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 construction of a mountain bike trail).</p>

<i>consent as originally granted was modified (if at all)</i>	
<i>(c) 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 formed the view to make the application publicly available on the NSW Planning Portal website (refer to Section 3 of this report).
<i>(d) 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 4 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 disturbance footprint, however the impacts will be minimal in extent and appropriately managed with the impacts 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 23 February 2023 and 8 March 2023 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 period on the NSW Planning Portal website, the Department received comments from the NPWS. No public submissions were received.

Key issues – Government Agency

Initial comments received from the NPWS noted that two sections of the constructed trail outside of the construction corridor occur within areas identified on the Biodiversity Values Map. NPWS sought additional consideration of the BC Act as the original application triggered the Biodiversity Offset Scheme, in particular to identify if any new biodiversity impacts as a result of the modification application.

The Applicant's ecologist provided additional information that included commentary that:

These minor additional impacts do not result in any change to the outcome of the Biodiversity Assessment Method (BAM) assessment undertaken for the approved development, as the minimum area that can be defined in the BAM Calculator is 100 m². As such, the biodiversity credit obligation of the constructed trail is the same as the biodiversity credit obligation of the approved trail. I note that the credit obligation has already been acquitted by payment into the Biodiversity Conservation Fund (BCF).

NPWS reviewed the additional information and commented that they are satisfied that the proponent has satisfactorily addressed the *Biodiversity Conservation Act 2016* (BC Act) for the modification application.

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 formalising constructed sections of trail that have occurred outside of the approved construction corridor alignment.

The Applicant acknowledges that works have occurred outside of the approval 20 metre construction corridor and submits that:

- The trail has been constructed on the intended alignment in Areas 1 (**Figure 3**) and 2 to reduce ongoing erosion impacts and improve rider safety.

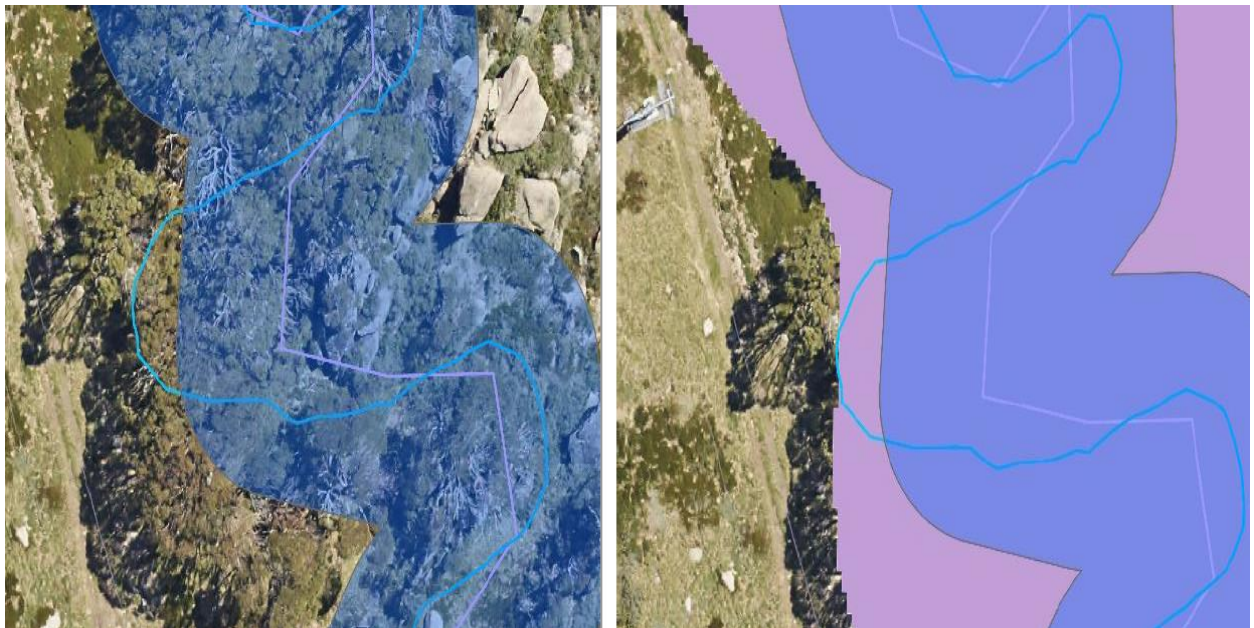


Figure 3: | Area 1 illustrating approved alignment / construction corridor, constructed trail and BVM locations (Source: Applicant's documentation)

- The trail has avoided impacts to *Ranunculus anemoneus* in Area 3.
- In Area 4 the Trail has been re-aligned onto the heavily disturbed ski slope to avoid impacts to mountain operations (**Figure 4**). This also results in a better environmental outcome.
- In Area 5 the trail has been constructed on the intended alignment.

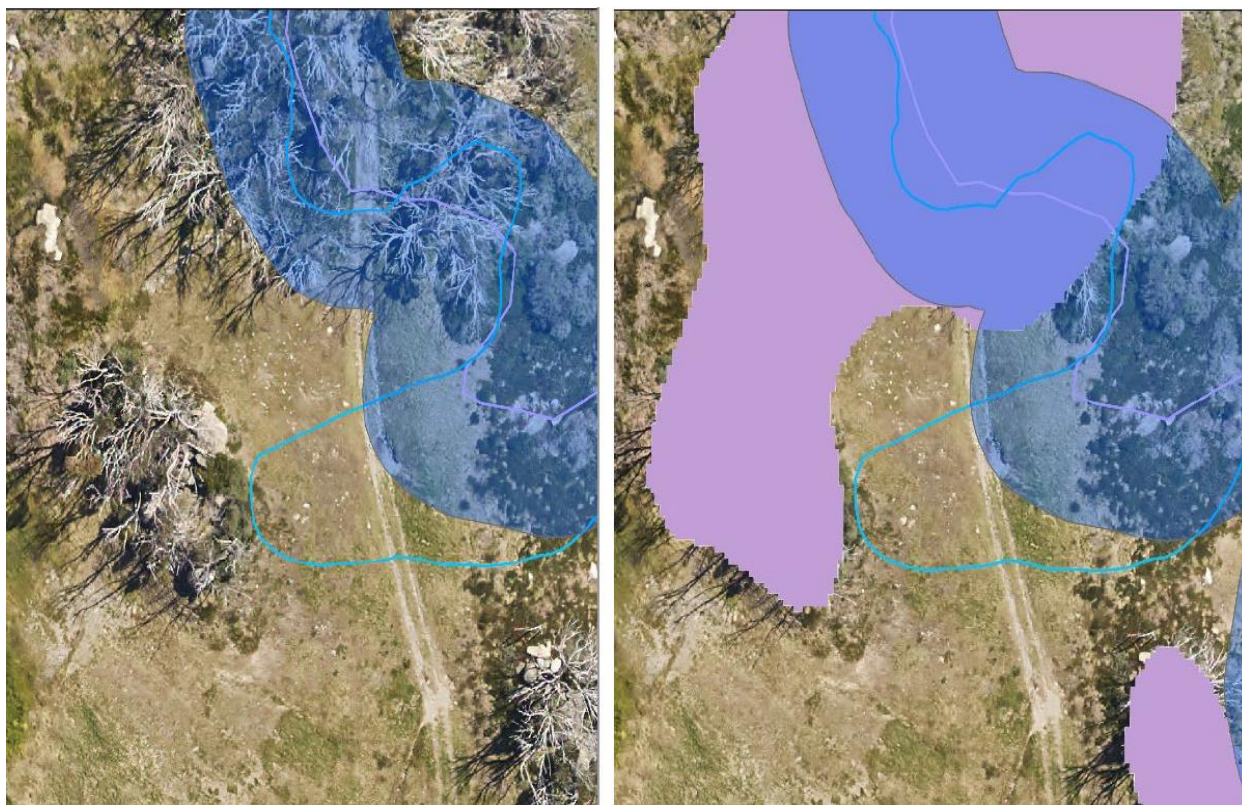


Figure 4: | Area 4 illustrating approved alignment / construction corridor, constructed trail and BVM locations (Source: Applicant's documentation)

The modification to the trails have however resulted in an increased disturbance footprint of 125.5 square metres when compared to the approved development. The works are however substantially the same as the development for which the consent was originally granted, with the impacts of the proposal considered to be acceptable.

The Department notes that the additional impact occur in part on previously disturbed ski slopes. NPWS raised no concerns with the proposed modifications following receipt of additional commentary from the Applicant's ecologist.

The proposed modification to the consent is therefore supported.

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 confined to predominantly existing disturbance on 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, 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 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, and
- the application is in relation to land which Chapter 4 of the Precincts – Regional SEPP applies.

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

- **considers** the findings and recommendations of this report
- **determines** that the modification application MOD 23/2233 (DA 21/16265 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 21/16265
- **signs** the attached approval of the modification (**Appendix A**).

Recommended by:



Mark Brown
Senior Planner
Alpine Resorts Team

Adopted by:



Keiran Thomas
Director
Regional Assessments

as delegate of the Minister for Planning

Appendices

Appendix A – Notice of Modification