



DA 6114 Stage 1A – Thredbo Mountain Bike Trails– MOD 5

Section 4.55 (1A) Modification Supporting Report

December 2024

Document Control

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A	19/07/2024	Draft	C. Chalk	K.Delpit
0	11/12/2024	Final	C.Chalk	K.Delpit
1	02/01/2024	Inclusion of assessment against EP&A Act, Section 4.55(3) as per email from Zac Derbyshire (DPHI) dated 20/12/2024	J.Best	C.Chalk

Project Number: 24021MO

Kosciuszko Thredbo Pty Ltd

Contents

1	Introduction	4
1.1	Application Details.....	4
1.2	Background.....	4
1.2.1	Approved Development	4
1.2.2	Original Offset Strategy	4
2	Description of Modification	6
2.1	Justification for Modification.....	6
2.2	Proposed Modification	6
3	Statutory Framework	6
3.1	Environmental Planning and Assessment Act 1979	6
3.2	Environmental Planning and Assessment Regulation 2021	8
3.3	Supporting Documents.....	9
4	Conclusion.....	9
5	References	10

1 Introduction

This Modification application (MOD) relates to Development Application (DA) 6114 which was granted development consent on 1 December 2014. This application is being made under section 4.55 of the *Environmental Planning and Assessment Act 1979*.

1.1 Application Details

Table 1: Application Details

Details	
Applicant Name	Kosciuszko Thredbo Pty Ltd (KT)
Applicant Address	1 Friday Drive, Thredbo NSW 2625
ABN	ABN 95 000 139 015
Site address	2 Friday Drive, Thredbo NSW 2625
Land	Thredbo Alpine Resort, Kosciuszko National Park
Lot/Plan	876/DP1243112
Consent Authority	Department of Planning, Housing and Infrastructure

1.2 Background

1.2.1 Approved Development

The approved development under DA 6114 was for the construction of mountain bike trails – Stage 1A. DA 6114 was modified by the following applications:

- 1) MOD 6971 (April 2015) –minor variation to approved Trail 2 (Friday Flat) & Stage 2 of Trail 13 (All Mountain). This resulted in an improved trail alignment that minimised disturbance on native vegetation, avoided wet areas and provided a better connectivity between the trails.
- 2) MOD 7440 (December 2015) – minor variation to approved Trail 1 – Village Trail in relation to the use of the existing vehicular bridge (Creek Station). The modification was approved to utilise the existing bridge with a shared use arrangement between vehicles and mountain bike riders.
- 3) MOD 8364 – variations to Section 3 of Trail 13 (All Mountain), including trail deviations on High Noon, Dream Run and Sundowner ski runs.
- 4) MOD 10216 (November 2020) – variations to Section 2 of Trail 13 (All Mountain), including deviations at the Easy Rider Terrain Park and construction of jumps in this area.

1.2.2 Original Offset Strategy

To offset the impacts of disturbance to various vegetation communities under the original DA, an offset strategy was prepared by Dabyne Planning Pty Ltd (Dabyne). It should be noted the offsets were voluntary and they do not fall under the Biodiversity Offset Scheme (BOS) which was established under the *Biodiversity Conservation Act 2016*.

As part of the offset strategy, a new management regime within the Merritts Double Chairlift corridor (now Merritts Gondola) was proposed (refer pp.84-87 of the SEE (Dabyne 2013 for details). The management regime precludes the routine maintenance activity of slashing the heath vegetation on a bi-annual basis.

The management regime is to allow for native vegetation to grow and recruit within this area to an approximate height of 500 mm. No planting was proposed in the area, unless it was shown during site inspections that there has been a significant decline in native vegetation cover.

DA 6114 Development Consent Condition D.5 required the preparation of a detailed rehabilitation and environmental offsets plan. As per the *Rehabilitation and Environmental Offsets Plan, Stage 1A Mountain Bike Trails, Thredbo DA 6114 (April 2015)* (2015 Offset Plan) an area of 8,700 m² was nominated along the upper section of Merritts Chairlift line (now Merritts Gondola), between Tower 12 and the top station of the lift (refer **Figure 1**).

Kosciuszko Thredbo Pty Ltd
Environmental Offset Plan for Stage 1A Thredbo Mountain Bike Trails Project
Merritts Double Chairlift (Schuss Ski Run) Corridor: Native Heath Regeneration Area (Dec 2014)



Prepared for:



Prepared by:



Figure 1: Extract from 2015 Offset Plan

2 Description of Modification

2.1 Justification for Modification

KT are proposing the construction of two mountain bike trails (Schuss Advanced Mountain Bike Trails subject to separate development approval) below Merritts Gondola which traverse parts of the Stage 1A voluntary offset areas.

On 17 July 2024, the Department provided the below advice via email:

The Department is of the view (as previously mentioned) that should any of the new MTB alignments traverses into this offset area, this would need to be offset and subject to consideration under a modification application to the Stage 1A MTB approval. This can occur concurrently with the DA / DA's for the new alignments that you are proposing.

In principle support is provided to the proposed offset plan adjoining the Alpine Coaster (subject to some discussion on species that would be appropriate – potential for inclusion of ground cover / heath planting). This can be discussed during the assessment or prior to in conjunction with NPWS.

2.2 Proposed Modification

The modification is seeking approval for a new offset area around the Alpine Coaster, equating to 1,400 m² to offset impacts from the proposed Schuss Advanced Mountain Bike Trails that traverse the Stage 1A offset area (subject to separate development approval). The offset will include the cessation of slashing (like-for-like offset), and in addition, the planting of 280 Snow Gums across the entire offset area as well as 230 native shrubs in the upper area of the offset. The proposal is therefore considered to have a positive environmental impact as it will increase the native plant cover within the locality.

Details of the offset are provided in the Addendum – Stage 1A Rehabilitation & Environmental Offsets Plan (KT 2024). A copy of the plan is provided separately with this application.

3 Statutory Framework

3.1 Environmental Planning and Assessment Act 1979

A review of the Development against the provisions of the *Environmental Planning and Assessment Act 1979* (EP&A Act) is provided in **Table 2**. This MOD is being made under Section 4.55(2) of the EP&A Act.

Table 2: EP&A Act, Section 4.55 considerations

EP&A Act, Section 4.55	Comments
(2) Other modifications A consent authority may, on 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 regulations, modify the consent if—	
(a) it 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 and before that consent as originally granted was modified (if at all), and	The consent as modified by this application is substantially the same development for which consent was originally granted. No changes to the mountain bike trails constructed under DA 6114 are proposed. The amended offset areas will not substantially change the original development.

EP&A Act, Section 4.55	Comments
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	DPHI is responsible for consultation as required by the Act.
(c) it has notified the application in accordance with— (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and	The original DA was nominated integrated development under the <i>Water Management Act 2000</i> . The DA was placed on public exhibition between 13/09/2013-28/10/2013. The proposed new offset area is not located within waterfront land. There is no applicable development control plan.
(d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be. Subsections (1) and (1A) do not apply to such a modification.	Consideration will be given to submissions made.
(3) 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 grant of the consent that is sought to be modified.	Refer Table 2 .

A review of the Development against the provisions in Section 4.15(1) of the EP&A Act is provided in **Table 3**.

Table 3: EP&A Act, Section 4.15(1) considerations

Environmental Planning and Assessment Act 1979, Section 4.15(1)	Comment
(1) Matters for consideration—general In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application— (a) the provisions of—	
(i) any environmental planning instrument	The Precincts – Regional SEPP is the only environmental planning instrument which applies to the site for this proposal. Refer to assessment in the next section.
(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been	Not applicable. There are no draft Environmental Planning Instruments that are applicable to the Development.

Environmental Planning and Assessment Act 1979, Section 4.15(1)	Comment
deferred indefinitely or has not been approved)	
(iii) any development control plan	Not applicable. There are currently no development control plans applicable to the site.
(iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4	Not applicable. There are no planning agreements applicable to Thredbo under the Precincts – Regional SEPP.
(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph)	The DA and supporting information have been prepared in accordance with the relevant requirements of the EP&A Regulation.
(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality	The Development will result in acceptable environmental impacts, refer Section 2 .
(c) the suitability of the site for the development	The site is considered suitable for the Development as it is a former ski run lacking native vegetation cover in parts. The site is also located adjacent to an existing offset area.
(d) any submissions made in accordance with this Act or the regulations	Consideration will be given to submissions made.
(e) the public interest.	The Development is considered within the public interest as it will increase the native plant cover within the locality.

3.2 Environmental Planning and Assessment Regulation 2021

A cross-reference to the requirements for a modification application (s100 of the *Environmental Planning and Assessment Regulation 2021* (EP&A Regulation)) is provided in **Table 4**.

Table 4: Content of modification application

Content of modification application (Section 100 of EP&A Regulation)	Comment
(1) A modification application must contain the following information—	
(a) the name and address of the applicant,	Kosciuszko Thredbo Pty Ltd 1 Friday Drive, Thredbo NSW 2625
(b) a description of the development that will be carried out under the development consent	Refer to Section 2 .
(c) the address and folio identifier of the land on which the development will be carried out,	Refer Table 1
(d) a description of the modification to the development consent, including the name, number and date of plans that have changed, to enable the consent authority to compare the development with the development originally approved,	Refer to Section 2 .

Content of modification application (Section 100 of EP&A Regulation)	Comment
(e) whether the modification is intended to— (i) merely correct a minor error, misdescription or miscalculation, or (ii) have another effect specified in the modification application,	Refer to Section 2 .
(f) a description of the expected impacts of the modification,	Refer to Section 2 .
(g) an undertaking that the modified development will remain substantially the same as the development originally approved,	See comment against (e).
(h) for a modification application that is accompanied by a biodiversity development assessment report—the biodiversity credits information,	-
(i) if the applicant is not the owner of the land—a statement that the owner consents to the making of the modification application,	Owners Consent has been provided separately as part of this MOD.
(j) whether the modification application is being made to— (i) the Court under the Act, section 4.55, or (ii) the consent authority under the Act, section 4.56.	This MOD is being made to the consent authority under the EP&A Act, section 4.55.
(2) Subsection (1)(i) does not apply if the consent of the owner is not required under section 98.	-
(3) If a modification application under the Act, section 4.55(1A) or (2) relates to BASIX development, or BASIX optional development if the development application was accompanied by a BASIX certificate, the application must be accompanied by—	-

3.3 Supporting Documents

This application is supported by the documents listed in **Table 5**.

Table 5: Supporting Documents

Document	Title/Description	Author/Prepared by	Date	Document Reference
Plan	Offset Area DA 6614 Stage 1A MTB Trail – MOD 5	Kosciuszko Thredbo Pty Ltd, BB	11/12/2024	Rev A
Plan	Site Overview, Proposed Offset Area, DA 6114 Stage 1A MTB Trail – MOD 5	Kosciuszko Thredbo Pty Ltd, BB	23/12/2024	Rev A
Report	Addendum – Stage 1A Rehabilitation & Environmental Offsets Plan	Kosciuszko Thredbo Pty Ltd	11/12/2024	Version 1

4 Conclusion

This MOD has considered the potential impacts of the works in accordance with relevant statutory requirements. The modification will remain substantially the same as the development that was originally approved under DA 6114.

5 References

Dabyne Planning Pty Ltd (Dabyne) 2013, Statement of Environmental Effects – Stage 1a—Thredbo Mountain Bike Trails, Trails 1,2,3 & Sections 2&3 of Trail 13 Thredbo Alpine Resort Kosciuszko National Park. Prepared for Kosciuszko Thredbo Pty Ltd.

Dabyne Planning Pty Ltd (Dabyne) 2015, Rehabilitation and Environmental Offsets Plan, Stage 1A Mountain Bike Trails, Thredbo DA 6114, April 2015.