

## ***MODIFICATION REQUEST:***

***Perisher Village concept plan  
Perisher Range alpine resort, Kosciuszko  
National Park, NSW***

***(262-10-2004 MOD 2)***

***Request to modify the lapsing date***



PERSPECTIVE VIEW WEST ALONG BRIDGE STREET

Source: Daryl Jackson Robin Dyke Pty Ltd 2004

Director General's  
Environmental Assessment Report  
Section 75W of the  
*Environmental Planning and Assessment Act 1979*

September 2013

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## EXECUTIVE SUMMARY

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This report is an assessment of a modification request (262-10-2004 MOD 2) lodged by Perisher Blue Pty Ltd (the proponent), seeking approval to amend Term of Approval A.6 relating to the lapsing date of the concept plan approval, pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The current concept plan approval will lapse on 24 October 2013. This request seeks to extend the approved lapsing date until 1 October 2016 and to specify an action to prevent the lapsing of the approval pursuant to section 75Y of the EP&A Act.

The modification application was placed on the department's website and no submissions were received. The application was also referred to the Office of Environment and Heritage (OEH). No objections were raised by OEH.

The department has assessed the merits of the modification application and considers that it is appropriate to extend the lapsing date of the approval. For technical reasons surrounding the interpretation of the transitional arrangements for Part 3A as prescribed in clause 11(3)(b) of Schedule 6A of the EP&A Act, the department recommends that 2 October 2016 (a day later than the day that is 5 years after the repeal of Part 3A) is an appropriate lapse date for the concept plan.

The department is satisfied that the recommended lapsing date would provide the proponent with the opportunity to realise the Perisher Village development which would make a significant contribution to the sustainability of ski tourism in NSW. The department considers the modification application to be in the public interest and recommends that the application be approved.

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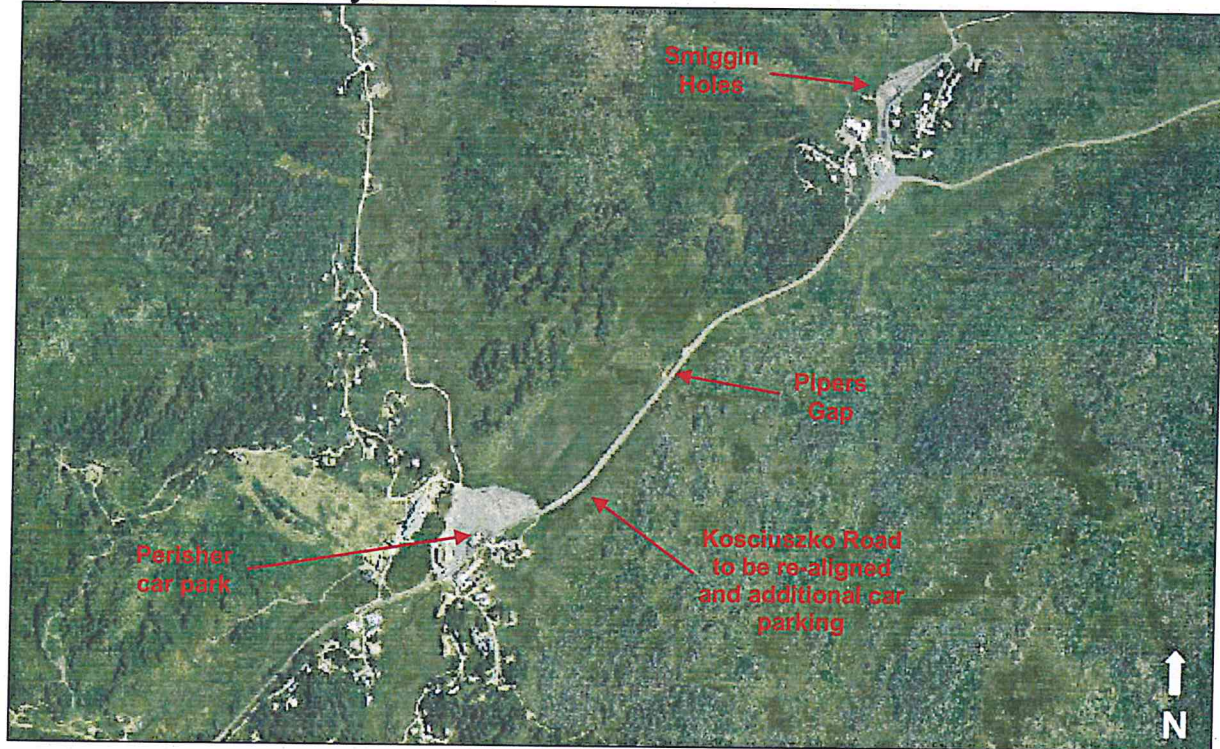
## 1 BACKGROUND

### 1.1 The locality and site

The Perisher Range alpine resort is located within Kosciuszko National Park, in the south-eastern region of NSW, approximately 20 kilometres west of Jindabyne. It comprises of four smaller ski resort areas, namely Perisher, Smiggin Holes, Guthega and Blue Cow.

The development site comprises the existing Perisher car park, Kosciuszko Road, an area known as Pipers Gap and Smiggin Holes as shown below in **Figure 1**.

**Figure 1: Perisher Valley.**



### 1.2 Concept Plan

On 14 November 2006, the former Minister for Planning approved the Perisher Village concept plan (262-10-2004) for a new village resort on the existing Perisher car park. The approval comprises seven building envelopes providing 239 tourist accommodation apartments, 5,055 square metres of retail floor space, 2,746 square metres of commercial/recreational floor space, basement level car parking, and additional car parking at Smiggin Holes, Pipers Gap and adjacent to a re-aligned Kosciuszko Road. The approved concept plan layout is shown in **Figure 2**.

A separate modification request (262-10-2004 MOD 3) has been lodged to amend the approved Perisher Village concept plan to change the design of the buildings and the staging.



**Figure 2: Approved Concept Plan Layout**



## 2 PROPOSED MODIFICATION

The concept plan was originally approved subject to the following lapsing condition:

### **A.6 Lapsing of Approval**

*This concept plan approval lapses two (2) years from the determination date in the Notice of Determination unless an application for development consent for the first stage of the Perisher Village project, under Part 4 of the Act has been lodged with the Department.*

This would have provided for a lapsing date of 14 November 2008 unless an application under Part 4 of the EP&A Act for Stage 1 of the project was lodged with the department.



On 24 October 2008, the then Executive Director of Strategic Sites and Urban Renewal, as delegate of the former Minister for Planning, granted approval (262-10-2004 MOD 1) to modify Term of Approval A.6 to extend the lapsing date. The Term of Approval was modified as follows:

**A.6 Lapsing of Approval**

*This concept plan approval lapses five (5) years from the determination date in the Notice of Determination for the modification of the Concept Plan approval.*

This would have provided for a lapsing date of 24 October 2013. No specified action was referenced to prevent the lapsing of the approval.

The current modification seeks approval to extend the lapsing date from 24 October 2013 by another three years to 1 October 2016, by replacing Term of Approval A.6 with the following:

**A.6 Lapsing of Approval**

*This concept plan approval lapses on 1 October 2016 unless any part of the project is physically commenced (within the meaning of section 95 of the Environmental Planning and Assessment Act 1979) on or before that day, in accordance with an approval or development consent, on the land to which the approval or consent relates.*

The proponent advises that delays in the development of the Perisher Village concept plan are as a result of ongoing discussions with the New South Wales Office of Environment and Heritage in obtaining development rights for the development of the Perisher Village. The proponent contends that the development of the Perisher Village concept plan is necessary to provide additional beds, leisure, recreation, commercial and social facilities in the ski resort in order for it to effectively compete domestically and internationally.

### **3 STATUTORY CONTEXT**

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#### **3.1 Modification of a Minister's Approval**

In accordance with clause 3C of Schedule 6A of the Environmental Planning and Assessment Act 1979 (EP&A Act), section 75W of the EP&A Act as in force immediately before its repeal on 1 October 2011 and as modified by Schedule 6A, continues to apply to approved concept plans.

The modification application has been lodged with the Director-General pursuant to section 75W of the EP&A Act. Section 75W provides for the modification of a Minister's approval including "revoking or varying a condition of the approval or imposing an additional condition of the approval." The Minister's approval for a modification is not required if the project as modified would be consistent with the existing approval. As the proposal seeks to modify a term of the approval, the modification will require the Minister's approval.

#### **3.1 Environmental assessment requirements**

Section 75W(3) of the EP&A Act provides the Director-General with scope to issue Environmental Assessment Requirements (DGRs) that must be substantially



complied with before the matter will be considered by the Minister. No environmental assessment requirements were issued with respect to the proposed modification as it pertains only to the lapsing date.

### 3.1 Delegated Authority

The Minister has delegated his functions to determine Part 3A modification applications to the Planning Assessment Commission (PAC) where an application has been made by persons other than by or on behalf of a public authority.

The modification application is being referred to the PAC for determination as the proponent, Perisher Blue Pty Ltd, lodged a political disclosure statement with the subject modification application, disclosing a number of reportable political donations made during 2010 and 2011.

## 4 CONSULTATION AND SUBMISSIONS

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As required by section 75X(2)(f) of the EP&A Act and in accordance with clause 8G of the EP&A Regulation, the documentation relating to the proponent's request to modify the Perisher Village concept plan was placed on the department's website. No submissions were received.

The proposed modification was also referred to the NSW Office of Environment and Heritage (OEH) who did not raise any concerns with the proposed modification.

## 5 ASSESSMENT

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Term of Approval A.6 of the approved Perisher Village concept plan (as modified) provides as follows:

### **A.6 Lapsing of Approval**

*This concept plan approval lapses five (5) years from the determination date in the Notice of Determination for the modification of the Concept Plan approval.*

As the current Term of Approval reads, the concept plan would lapse on 24 October 2013. However, in order to provide a valid lapse date, the Term of Approval should have referenced a specified action that would trigger the commencement of the approval, in accordance with section 75Y of the Act (see words in bold below).

### **75Y Lapsing of approvals**

- (1) *An approval under this Part may be subject to a condition that it lapses on a specified date unless **specified action** with respect to the approval has been taken (such as the commencement of work on the project or the submission of an application for approval to carry out a project for which concept approval has been given)*

This means that due to the omission of a specified action, there is in effect no lapse date. However, the transitional arrangements for Part 3A projects, in particular clause 11 subclause (3) of Schedule 6A of the Act (below), provides that in this situation, the approval of a concept plan will lapse on the day that is five years after the repeal of Part 3A, which is 1 October 2016.



## **11 Lapsing of Part 3A approvals**

- (3) *The approval of a concept plan for a transitional Part 3A project lapses on the day that is 5 years after the repeal of Part 3A unless:*
- (a) *any part of the project is physically commenced (within the meaning of section 95) on or before that day, in accordance with an approval or development consent, on the land to which the approval or consent relates, or*
  - (b) *the approval of the concept plan is subject to a condition in force under section 75Y that provides for the approval to lapse on an earlier or later day.*

The proponent has requested that the lapse date be extended to 1 October 2016. However, the department's Legal Branch advises that due to the wording of Clause 11(3)(b) above, if there is to be a condition that specifies a lapse date, it should specify a date earlier or later than 1 October 2016, and not 1 October 2016 as the actual date.

An extension of another three years to the approval is considered appropriate as it would provide the proponent with an opportunity to realise the approved Perisher Village development which would make a significant contribution to the sustainability of ski tourism in NSW and promote economic growth and tourism in regional NSW. The potential environmental impacts resulting from the project would remain unaltered despite the extension of the lapse date. Should the proposal proceed within the extended timeframe, the concept plan approval would continue to adequately prevent and/or mitigate impacts associated with the development to ensure there is no significant impact on the natural environment.

The project remains generally consistent with the Kosciuszko National Park Plan of Management 2006 and the strategic planning vision for the Perisher Alpine Resort outlined in the Perisher Range Resorts Master Plan 2001, the Perisher Range Resorts Detailed Village Design Plan 2003, and the Perisher Blue Ski Resort Ski Slope Master Plan.

It is therefore recommended that Term of Approval A.6 now read:

*This concept plan approval lapses on 2 October 2016 unless any part of the Perisher Village project is physically commenced (within the meaning of section 95 of the Environmental Planning and Assessment Act 1979) on or before that day, in accordance with a development consent, on the land to which the consent relates.*

## **6 CONCLUSION**

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The department has reviewed the proponent's modification request and supporting documentation and has considered the key issues associated with the proposal.

The department is satisfied that the modification request complies with the aims and objectives of the approved concept plan (as modified) and does not result in any significant changes to the approved development. The modification to Term of

Approval A.6 is consistent with the transitional arrangements for Part 3A and would allow for the realisation of the Perisher Village concept plan.

## 7 RECOMMENDATION

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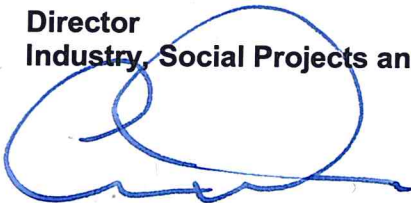
It is recommended that the Planning and Assessment Commission, as delegate for the Minister for Planning and Infrastructure:

- (a) **Consider** the findings and recommendations of this report;
- (b) **Approve** the modification under delegated authority, pursuant to section 75W of the *Environmental Planning and Assessment Act 1979*; and
- (c) **Sign** the attached Instrument of Modification (**Appendix C**).



11/9/13

Director  
Industry, Social Projects and Key Sites



11.9.13

Executive Director  
Development Assessment Systems and Approvals