

# State Environmental Planning Policy No 73—Kosciuszko Ski Resorts (2002 EPI 683)

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New South Wales

## Status Information

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Authorisation

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# State Environmental Planning Policy No 73—Kosciuszko Ski Resorts (2002 EPI 683)



New South Wales

Her Excellency, the Governor, with the advice of the Executive Council, has made the following State environmental planning policy under the *Environmental Planning and Assessment Act 1979* in accordance with the recommendation made by the Minister for Planning after consultation with the Minister for the Environment.

ANDREW REFSHAUGE, M.P., Minister for Planning

## 1 Name of Policy

This Policy is *State Environmental Planning Policy No 73—Kosciuszko Ski Resorts*.

## 2 Commencement

This Policy commences on 6 September 2002.

## 3 Aims of Policy

The aims of this Policy are:

- (a) to provide a framework for the planning and development of ski resorts in the Kosciuszko National Park, and
- (b) to make development of ski resorts in the Kosciuszko National Park subject to the controls in Part 4 (instead of Part 5) of the Act, and (subject to certain specified exceptions) consequently to require development consent for development within those ski resorts, and
- (c) to protect the natural and cultural heritage values of the Kosciuszko National Park, and
- (d) to ensure that the carrying out of that development will be authorised by or under the *National Parks and Wildlife Act 1974*, and
- (e) to encourage the carrying out of ski resort development in the Kosciuszko National Park, being development of State and regional environmental planning significance, in an ecologically sustainable manner.

**Note—**

This Policy is intended to be an interim measure only. It is proposed to replace it with a more comprehensive regional environmental plan made after the carrying out of an environmental study and appropriate consultation under the *Environmental Planning and Assessment Act 1979*.

#### **4 Definitions**

(1) In this Policy:

**development policy** means a policy providing detailed development guidelines for land to which this Policy applies, as adopted for the time being by the Director-General of the Department of Planning for the purposes of this Policy.

**lease** includes a sub-lease.

**master plan** means a plan establishing development principles and guidelines for the development of land to which this Policy applies, as adopted for the time being by the Director-General of the Department of Planning and the Director-General of National Parks and Wildlife for the purposes of this Policy.

**the Act** means the *Environmental Planning and Assessment Act 1979*.

**the map** means the map marked “*State Environmental Planning Policy No 73—Kosciuszko Ski Resorts*” deposited in the head office of the Department of Planning.

**the Minister** means the Minister for Planning.

(2) To remove any doubt, a reference in this Policy to the carrying out of development for the purpose of water storage dams (including artificial reservoirs, tanks and ponds) or sewage treatment works includes a reference to the installation, use and maintenance of pipelines, pumps and related infrastructure used to supply water to and from those dams or used to convey sewage to and from those works.

(3) Notes in this Policy and the list of its contents do not form part of it.

#### **5 Land to which this Policy applies**

This Policy applies to the land shown edged heavy black on the map marked “*State Environmental Planning Policy No 73—Kosciuszko Ski Resorts*” deposited in the head office of the Department of Planning.

#### **6 Relationship to other environmental planning instruments**

(1) The following environmental planning instruments do not apply to land to which this Policy applies and are amended as set out in Schedule 1:

*State Environmental Planning Policy No 4—Development Without Consent and Miscellaneous Complying Development*

*State Environmental Planning Policy No 60—Exempt and Complying Development*

*State Environmental Planning Policy No 64—Advertising and Signage*

*Kosciuszko Regional Environmental Plan 1998—(Snowy River)*

*Snowy River Local Environmental Plan 1997*

*Tumut Local Environmental Plan 1990*

- (2) In the event of an inconsistency between this Policy and another environmental planning instrument applying to land to which this Policy applies, whether made before or after this Policy, this Policy prevails to the extent of the inconsistency, subject to section 36 (4) of the Act.

## **7 Development that may be carried out**

- (1) Development that is allowed to be carried out in a national park by or under the *National Parks and Wildlife Act 1974* may be carried out on land to which this Policy applies, but only with development consent.
- (2) However, development may be carried out without development consent on land to which this Policy applies if:
- (a) it is exempt development, or
  - (b) it is carried out by or on behalf of a public authority, subject to subclause (3).
- (3) Development consent must be obtained for the carrying out on land to which this Policy applies of development for the purpose of water storage dams (including artificial reservoirs, tanks and ponds), sewage treatment works or waste management facilities by or on behalf of a public authority (but not by Snowy Hydro Limited).
- (4) For the purposes of subclause (2), development authorised to be carried out by the approval under Part 5 of the Act issued by the Minister for Urban Affairs and Planning on 27 May 1999 in relation to the Perisher Range Village Master Plan is taken not to be development carried out by or on behalf of a public authority.
- (5) In this clause, **public authority** includes Snowy Hydro Limited.

### **Note—**

Clause 32C of Schedule 6 to the Act makes the Minister the consent authority for all development applications relating to land within a ski resort area.

## **8 Prohibited development**

Development is prohibited on land to which this Policy applies if it is not allowed by clause 7 to be carried out without, or only with, development consent.

## 9 Objectives for development

Consent must not be granted for development of land to which this Policy applies unless the consent authority is satisfied that carrying out the development will be consistent with achieving each of the following objectives:

- (a) to preserve and protect the outstanding scenery and natural and cultural features of the land to which this Policy applies,
- (b) to encourage the ski resorts on that land to develop as attractive, all year round mountain resorts where form and design complement the natural landscape and environment,
- (c) to encourage ski resort development in the Kosciuszko National Park to be carried out in an ecologically sustainable manner, and to be of a high standard and appropriate for a park of Kosciuszko's environmental quality and international stature,
- (d) to minimise any adverse impact on conservation values that may occur in achieving a sustainable balance between the use of land to which this Policy applies and the protection of those values.

## 10 Development must be authorised by or under [National Parks and Wildlife Act 1974](#)

Consent must not be granted for development of land to which this Policy applies unless the consent authority is satisfied that the development will be authorised by or under the [National Parks and Wildlife Act 1974](#) when it is carried out.

### Note—

It may be necessary to obtain a lease, licence, consent or other authority under the [National Parks and Wildlife Act 1974](#).

## 11 Comments of Director-General of National Parks and Wildlife must be considered

- (1) Subject to subclauses (3) and (4), the consent authority is to refer any development application relating to land to which this Policy applies to the Director-General of National Parks and Wildlife for comment within 7 days of its being lodged.
- (2) Before determining any such application, the consent authority must consider any comments of the Director-General of National Parks and Wildlife received within 21 days after the referral of the application to that Director-General of National Parks and Wildlife.
- (3) The Director-General of the Department of Planning and the Director-General of National Parks and Wildlife may from time to time make agreements or arrangements as to the types of development applications which need not be referred under this clause or the circumstances in which development applications need not be referred.
- (4) Where such an agreement or arrangement exists, a referral of a development

application under this clause need not be made if the agreement or arrangement so provides.

## **12 Additional matters to be considered by consent authority**

In determining whether consent should be granted to the carrying out of development in relation to land to which this Policy applies, the consent authority is to take such of the following matters into consideration as are relevant:

- (a) any master plan for ski slopes,
- (b) any other master plan,
- (c) any threat abatement plan,
- (d) any recovery plan,
- (e) any development policy,
- (f) the statement of environmental effects required to accompany the development application,
- (g) the visual impact of the proposed development particularly when viewed from the Main Range (as defined in the *Kosciuszko National Park Plan of Management* published by the National Parks and Wildlife Service and as in force from time to time),
- (h) the measures proposed to address any geotechnical issues,
- (i) the sedimentation and erosion control measures proposed to mitigate adverse environmental impacts associated with any proposed earthworks and excavation works,
- (j) the measures proposed to mitigate potential adverse impacts associated with any proposed stormwater drainage works.

### **Note—**

Clause 13 of Schedule 6 to the *Environmental Planning and Assessment Regulation 2000* sets out requirements relating to the preparation of the statement of environmental effects required to accompany a development application relating to a ski resort area if the proposed development is advertised development.

## **13 What development is advertised development?**

- (1) Development allowed by this Policy to be carried out only with development consent is advertised development if it involves:
  - (a) the erection of a building with a footprint of more than 1,000 square metres, or
  - (b) the erection of a new ski-lift line, or the extension of an existing ski-lift line, or
  - (c) disturbance of any wetland (such as the filling or draining of, or the removal of

native vegetation from, any wetland) or disturbance of any of the following native vegetation communities that, in the opinion of the consent authority, may have a significant adverse environmental effect:

- (i) upland bogs,
  - (ii) valley bog complexes (including fen),
  - (iii) block-stream heath,
  - (iv) rocky snowpatch herbfield,
  - (v) short alpine herbfield,
- (d) the clearing or disturbance of any other native vegetation community over an area in excess of one hectare.

- (2) Development that is identified by this clause as advertised development must be advertised for at least 30 days, even though the regulations under the Act may only require the development to be advertised for at least 14 days.

**Note—**

Division 7 of Part 6 of the *Environmental Planning and Assessment Regulation 2000* requires advertised development of this type to be publicly notified and enables submissions to be made to the consent authority. Section 79C of the *Environmental Planning and Assessment Act 1979* requires the consent authority to take into consideration relevant submissions made in accordance with that Act and the regulations.

#### **14 What development is exempt development?**

Development specified in Schedule 2 is exempt development for the purposes of this Policy if it:

- (a) is of minimal environmental impact, and
- (b) meets any standards for the development contained in that Schedule, and
- (c) complies with the other relevant requirements of that Schedule.

**Note—**

Exempt development may be carried out without development consent and without assessment under Part 5 of the *Environmental Planning and Assessment Act 1979*.

#### **15 Adoption of master plans and development policies**

- (1) Before a master plan or development policy is adopted, a draft of the plan or policy must:
- (a) be advertised in a newspaper, be publicly accessible on the Internet and be exhibited for not less than 28 days for public comment, and



(b) be made available for comment to the Director-General of the Department of Planning, and

(c) be made available for comment to the Director-General of the Department of Planning, and

in accordance with guidelines approved by the Director-General of the Department of Planning.

(2) After considering any submissions about a draft master plan that have been made in accordance with those guidelines, the Director-General of the Department of Planning and the Director-General of National Parks and Wildlife:

(a) may adopt the plan in the form in which it was publicly exhibited, or

(b) may adopt the plan with such alterations as the Directors-General think fit, or

(c) may defer, or decide not to proceed with, any further consideration of the plan.

(3) After considering any submissions about a draft development policy that have been made in accordance with those guidelines, the Director-General of the Department of Planning:

(a) may adopt the policy in the form in which it was publicly exhibited, or

(b) may adopt the policy with such alterations as the Director-General of the Department of Planning thinks fit, or

(c) may defer, or decide not to proceed with, any further consideration of the policy.

(4) A plan may be adopted by the Director-General of the Department of Planning and the Director-General of National Parks and Wildlife as a master plan for the purposes of this Policy, or a policy may be adopted by the Director-General of the Department of Planning as a development policy for the purposes of this Policy, without compliance with any or all of the requirements of subclauses (1)–(3) if:

(a) the plan or policy was prepared before the commencement of this Policy or was in the course of preparation at the commencement of this Policy, and

(b) the Director-General of the Department of Planning is satisfied that public consultation has already been undertaken on the plan or policy and that no further public consultation is required.

## **Schedule 1 Amendments**

(Clause 6 (1))

### **1.1 State Environmental Planning Policy No 4—Development Without**

## Consent and Miscellaneous Complying Development

### Clause 4 Application of Policy

Insert “or *State Environmental Planning Policy No 73—Kosciuszko Ski Resorts*” after “*Rainforests*” in clause 4 (1).

## 1.2 State Environmental Planning Policy No 60—Exempt and Complying Development

### Clause 4 Where does this Policy apply?

Insert at the end of the clause:

(2) This Policy does not apply to the following land:

Land to which *State Environmental Planning Policy No 73—Kosciuszko Ski Resorts* applies

## 1.3 State Environmental Planning Policy No 64—Advertising and Signage

### Clause 5 Area of application of this Policy

Insert after clause 5 (2):

(3) Despite subclause (1), this Policy does not apply to the following land:

Land to which *State Environmental Planning Policy No 73—Kosciuszko Ski Resorts* applies

## 1.4 Kosciuszko Regional Environmental Plan 1998—(Snowy River)

### Clause 2 Where does this plan apply?

Insert after clause 2 (2):

(3) To avoid any doubt, this plan does not apply to the following land:

Land to which *State Environmental Planning Policy No 73—Kosciuszko Ski Resorts* applies

## 1.5 Snowy River Local Environmental Plan 1997

### Clause 3 Where does this plan apply?

Insert at the end of clause 3:

(2) However, this plan does not apply to the following land:

Land to which *State Environmental Planning Policy No 73—Kosciuszko Ski Resorts* applies

## 1.6 Tumut Local Environmental Plan 1990

### Clause 3 Land to which plan applies

Insert at the end of clause 3:

(2) However, this plan does not apply to the following land:

Land to which *State Environmental Planning Policy No 73—Kosciuszko Ski Resorts* applies

## Schedule 2 Exempt development

(Clause 14)

### 1 Requirements relating to exempt development

To be exempt development:

(a) the development must:

- (i) meet the relevant deemed-to-satisfy provisions of the *Building Code of Australia*, and
- (ii) be carried out more than 1 metre from any easement or sewer main, and
- (iii) if it relates to an existing building that is classified under the *Building Code of Australia* as class 1b or class 2-9, the building must have a current fire safety certificate or fire safety statement or the building must be a building for which no fire safety measures are currently implemented, required or proposed, and

(b) the development must not:

- (i) if it relates to an existing building, cause the building to contravene the *Building Code of Australia*, or
- (ii) create interference with the neighbourhood because it is noisy, causes vibrations, creates smells, fumes, smoke, vapour, steam, soot, ash, dust, waste water, grit or oil, or
- (iii) be of such a nature that, were it to require consent, it would be designated development, and

- (c) the development must not be carried out on the site of an item of the environmental heritage that:
- (i) is listed on the State Heritage Register under the *Heritage Act 1977*, or
  - (ii) is subject to an interim heritage order under the *Heritage Act 1977*, or
  - (iii) is identified in any ski resorts heritage or conservation study nominated by the National Parks and Wildlife Service and approved by the Director-General of the Department of Planning.

## **2 Types of exempt development**

Subject to clause 14, the development referred to in the following Table is exempt development.

### **Table**

#### **1 Advertising structures and displays**

The erection of an advertising structure and the display of an advertisement on it, or the display of an advertisement that is not displayed on an advertising structure (but not an illuminated sign), if it satisfies the requirements of any of the following paragraphs:

- (a) The advertisement is behind a glass line of a shop window.
- (b) The advertisement is a temporary advertisement that:
  - (i) is displayed on safety fencing associated with skiing areas for the purpose of promoting, identifying or directing a special event, and
  - (ii) is erected no more than 2 days before the event, and
  - (iii) is not more than 3.5 metres in height and not more than 1.2 square metres in surface area, and
  - (iv) enhances the safety of participants in, and persons attending, the event.
- (c) The advertisement is a public notice displayed by a public authority and provides only information or a direction about a service provided.
- (d) The advertisement is a real estate sign advertising that the premises on which it is displayed are for sale or lease, and the advertisement and any advertising structure on which it is displayed are not more than 2.44 metres in width and not more than 1.83 metres in height.
- (e) The advertisement and any advertising structure are within a site and are not visible from outside the site.

- (f) The advertisement is a construction or safety sign that is required to ensure the safety of workers or the general public.

## **2 Building alterations**

Internal shop fit outs that do not involve any of the following:

- (a) the contravention of any requirement made by a lease, licence or development consent,

**Note—**

The reference to a development consent extends to an approval under Part 5 of the Act that is taken to be a development consent because of the regulations.

- (b) any alteration to a load bearing member of a building,
- (c) any increase in the gross floor area of the shop,
- (d) the modification of any fire safety measure or food preparation area.

## **3 Different use of a building**

A new use of a lawfully erected existing building that results from a change of use from a lawful shop use to an office use or from a lawful office use to a shop use, where:

- (a) if the new use is a shop use, it does not involve the handling, preparing or storing of food for sale or consumption, and
- (b) the new use complies with all requirements made for the former use by any continuing lease, licence or development consent, and

**Note—**

The reference to a development consent extends to an approval under Part 5 of the Act that is taken to be a development consent because of the regulations.

- (c) not more than 200 square metres of floor space is changed in use, and
- (d) the new use is not prohibited by a provision of any environmental planning instrument applying to the land.

## **4 Street furniture**

The provision and use of outdoor seating or tables or any items of street furniture (including benches and bollards) on a footpath or in a plaza within an area leased under the *National Parks and Wildlife Act 1974*, if:

- (a) they do not prevent or extensively restrict use of the footpath or plaza for access, and
- (b) they are firmly anchored.

## **5 Maintenance works**

The carrying out of maintenance work, being work that repairs or replaces deteriorated or damaged material (whether or not in a building or structure) by new material, but excluding:

- (a) the use of any material that has a different nature, characteristic or property from the material being repaired or replaced, and
- (b) without limiting paragraph (a), the use of any material that has a different colour, texture or appearance from the material being repaired or replaced, and
- (c) any building work comprising alterations or additions to any existing structure or material, and
- (d) any building work comprising internal fit outs, whether or not any load bearing member is affected, and
- (e) any building work that would constitute a breach of any development consent, including any condition of any development consent, and

**Note—**

The reference to a development consent extends to an approval under Part 5 of the Act that is taken to be a development consent because of the regulations.

- (f) any building work involving any removal of, or harm to, native vegetation.

## **6 Slopes**

- (1) Maintenance of ski slopes of an annual or routine nature, including slashing or trimming of regrowth.
- (2) Erection of temporary signs, fences and other structures so as not to disturb the ground surface, being signs, fences and structures associated with the operation of ski areas during the ski season.
- (3) Removal of temporary signs, fences and other structures associated with the operation of ski areas during the ski season.