

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

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New South Wales

Status Information

Currency of version

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Provisions in force

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

Notes—

- **Repeal**

The Policy was repealed by cl 9 of the [State Environmental Planning Policy \(Kosciuszko National Park—Alpine Resorts\) 2007 \(643\)](#) (GG No 185 of 21.12.2007, p 10216) with effect from 21.12.2007.

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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



New South Wales

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)

Note—

See clause 14 for restrictions relating to exempt development.

1 Requirements relating to exempt development

(1) To be exempt development, development:

(a) 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

(b) 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 or 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) 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 that is nominated by the National Parks and Wildlife Service and approved by the Director-General of the Department of Planning and a copy of which is kept

and available for public access at the head office of the Department.

- (2) Development that relates to an existing building that is classified under the *Building Code of Australia* as class 1b or class 2–9 is not exempt development unless:
- (a) the building is the subject of a current fire safety certificate or fire safety statement, or
 - (b) no fire safety measures are currently implemented, required or proposed for the building.

2 Types of exempt development

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

Table

1 Advertisements

The display of an advertisement (other than an illuminated advertisement), including the erection of any advertising structure on which the advertisement is displayed, but only if:

- (a) the advertisement:
 - (i) relates to the premises on which it is displayed or to goods or services that are available at those premises, and
 - (ii) together with any advertising structure on which it is displayed, has an area of no more than 0.75 square metres, and
 - (iii) together with any advertising structure on which it is displayed, is at least 2.6 metres above any public road above which it is displayed, or
- (b) the advertisement is displayed behind a window, or
- (c) the advertisement:
 - (i) advertises a social, cultural, political or recreational event, and
 - (ii) is displayed for no more than 28 days before the event, no more than 14 days after the event and no more than a total of 22 weeks, and
 - (iii) has an area of no more than 7 square metres, or
- (d) the advertisement:
 - (i) is a real estate sign advertising that the premises on which it is displayed are for sale or are for lease under Part 12 of the *National Parks and Wildlife Act 1974*, and

- (ii) together with any advertising structure on which it is displayed, has an area of no more than 2.4 square metres.

2 Public notices of public authorities

The erection of a sign, by a public authority, in the nature of a public notice that provides only information or directions (or both) in relation to a service provided by the public authority.

3 Signs relating to safety

The erection of a sign whose purpose is to ensure the safety of workers on the site at which it is located or of the general public.

4 Business or building identification signs

The erection and use of a business or building identification sign, displayed on the premises to which it relates, but only if:

- (a) the sign is displayed behind a window on the premises, or
- (b) the sign has an area of no more than 0.75 square metres and, if the sign is erected above a public road, it is erected at least 2.6 metres above the road.

5 Internal building alterations

Internal building alterations that do not involve the following:

- (a) any increase in the gross floor area of the building,
- (b) any alteration to a load-bearing member of a building or any alteration that results in the load-bearing capacity of the building being exceeded,
- (c) any modification of any passive fire safety measure,
- (d) any modification of any of the following:
 - (i) any kitchen used for commercial purposes,
 - (ii) any area, within premises, that is used for skin penetration procedures within the meaning of the *Public Health Act 1991*,
 - (iii) any hairdressing premises,
 - (iv) any swimming or spa pool within the building,
- (e) any alteration to a building comprising tourist accommodation that results in an increase in the size of a bedroom or an increase in the number of bedrooms in the tourist accommodation.

6 Change of use of a building

New use of a building as an office, resulting from a change of use of the building as a shop, or new use of a building as a shop, resulting from a change of use of the building as an office, but only if:

- (a) the use of the building, before the change, as a shop or as an office (as the case may be) was lawful, and
- (b) the new use would otherwise be permitted with consent under this plan, and
- (c) the new use occurs over no more than 200 square metres of floor space, and
- (d) in the case of the new use of a building as a shop—the use of the shop does not involve the handling, preparation or storage of food for sale or consumption.

7 Installation and use of street furniture

The installation and use of street furniture (including a bench, a bollard and a garbage enclosure) on a public footpath or in a plaza, but only if:

- (a) the street furniture does not prevent or extensively restrict use of the footpath or plaza for access, and
- (b) the street furniture is firmly anchored, and
- (c) in the case of a garbage enclosure—the enclosure is animal-proof.

8 Maintenance

The carrying out of any development comprised in the repair of deteriorated or damaged material (whether or not in a building) or the replacement of any such material, but only if:

- (a) no wall of a building is wholly replaced,
- (b) in the case of repairs to, or the partial replacement of, the wall of a building, involving the use of material that differs in nature from the material being repaired or replaced—the repairs extend over no more than 5% of the surface, or the replacement is of no more than 5%, of the wall, over any 3 year period,
- (c) the maintenance does not affect the load-bearing capacity of any load-bearing member of a building.

9 Development carried out on ski slopes

The carrying out on ski slopes of any of the following:

- (a) the maintenance of ski slopes on an annual basis or of a routine nature, including slashing and trimming of regrowth,

- (b) the erection of any of the following structures for the purposes of recreational activities, including skiing:
 - (i) signs not exceeding 2.5 square metres in area,
 - (ii) fences not exceeding 1.8 metres in height,
 - (iii) other structures not exceeding more than 2.4 metres in height,but only if the structures stand for no more than 22 weeks in any one year.

10 Antennae, satellite dishes and aerials

The installation of an antenna, satellite dish or aerial, for use within tourist accommodation, but only if:

- (a) following the installation, there is no more than one antenna, one satellite dish and one aerial per building, and
- (b) the height of the antenna, satellite dish or aerial to be installed is no more than 1 metre above the ridgeline of the building that the device services, and
- (c) in the case of the installation of a satellite dish—the dish is no more than 500mm in diameter, and
- (d) there are no structural alterations involved and the antenna, satellite dish or antenna is firmly anchored.

11 Erection of minor structures

- (1) The erection of a structure ancillary to a permissible use, but only if:
 - (a) the structure is erected at least 1 metre from each boundary of the sublease or lease applying to the site, and
 - (b) the structure does not cover an area of more than 10 square metres, and
 - (c) the structure does not stand higher than 1 metre above the natural ground level of the site, and
 - (d) the erection of the structure does not require any excavation deeper than 500 millimetres below natural ground level and does not compromise any support for adjoining land, and
 - (e) the erection or use of the structure does not involve handling, using or storing of hazardous chemicals or materials, and the materials used in the structure do not release any hazardous chemicals or materials into the environment, and
 - (f) the structure must be made of non-combustible materials if erected on land that is bush fire prone land.

(2) In this clause:

natural ground level, in relation to a site, means the natural level of the site at any point on the site.

12 Laying of paving

(1) The laying of paving, but only if:

- (a) the paving does not cover an area of more than 10 square metres, and
- (b) the laying of the paving does not require any excavation deeper than 500 millimetres below the natural ground level of the site and does not compromise any support for adjoining land.

(2) In this clause:

natural ground level has the same meaning as it has in clause 11.

13 Demolition

Demolition of any structure, the erection of which is exempt development under this plan, but only if:

- (a) the structure stands on an area of not more than twenty-five square metres, and
- (b) is carried out in accordance with AS 2601—2001, *Demolition of structures*.