

# Assessment Officer Report

Permit Application no. PA2302041  
Magic Forest Ski Slope, MOUNT BULLER



Officer Assessment Report  
Development Approvals & Design

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# Executive Summary



Key Information	Details		
<b>Application No:</b>	PA2302041		
<b>Received:</b>	3 February 2023		
<b>Statutory Days:</b>	22		
<b>Applicant:</b>	Buller Ski Lifts Pty Ltd		
<b>Planning Scheme:</b>	Alpine Resorts		
<b>Land Address:</b>	Magic Forest Ski Slope, Mount Buller (Crown Allotment 5A, Section A, Parish of Changue East) PP2370		
<b>Proposal:</b>	Vegetation removal limited to the lopping of trees to ground level and site rehabilitation in the Magic Forest ski slope area.		
<b>Development Value:</b>	\$ 50,000		
<b>Why is the Minister responsible?</b>	The Minister for Planning is listed as the responsible authority for administering and enforcing the planning scheme at sub-clause 1.0 of the Schedule to Clause 72.01.		
<b>Why is a permit required?</b>	<b>Clause</b>	<b>Control</b>	<b>Trigger</b>
<b>Zone:</b>	Clause 37.04-4	Comprehensive Development Zone – Schedule 2 (CDZ2)	<ul style="list-style-type: none"> <li>construct or carry out works</li> </ul>
<b>Overlays:</b>	Clause 42.01-2	Environmental Significance Overlay – Schedule 1 (ESO1)	<ul style="list-style-type: none"> <li>construct or carry out works</li> <li>construct a fence</li> </ul>
	Clause 43.02-2	Design and Development Overlay Schedule 3	<ul style="list-style-type: none"> <li>construct or carry out works</li> </ul>
	Clause 44.01-2	Erosion Management Overlay – Schedule 1 (EMO1)	<ul style="list-style-type: none"> <li>construct or carry out works</li> </ul>
	Clause 44.01-3	Erosion Management Overlay – Schedule 1 (EMO1)	<ul style="list-style-type: none"> <li>remove, destroy or lop any vegetation</li> </ul>
	Clause 44.06-2	Bushfire Management Overlay – Schedule 1 (BMO1)	<ul style="list-style-type: none"> <li>construct or carry out works associated with a leisure and recreation use</li> </ul>
<b>Particular Provisions</b>	Clause 52.17-1	Native vegetation	<ul style="list-style-type: none"> <li>remove, destroy or lop native vegetation, including dead native vegetation</li> </ul>
<b>Cultural Heritage:</b>	CHMP is not required as vegetation is to be lopped using chain saws at ground level and stumps are to remain in situ to ensure no significant ground disturbance is caused.		
<b>Total Site Area:</b>	3632 m <sup>2</sup>		
<b>Referral Authorities:</b>	Department of Energy, Environment and Climate Action (section 55) Alpine Resorts Victoria (section 55) Country Fire Authority (section 55) Mansfield Shire Council (section 52(1)(b) notice)		
<b>Public Notice:</b>	Notice of the application under section 52 of the Act was not required because it was not considered that the application as amended would cause any material detriment.		
<b>Delegates List:</b>	Not required		



## Application Process

1. The application as originally submitted proposed the regrading of the site, the moving of carpet ski lifts and placing timber fence posts in the Magic Forest ski slope. DTP noted that the land is in an area of aboriginal cultural heritage significance and that there was no statutory discretion to grant planning approval for these types of high impact works in the absence of an approved Cultural Heritage Management Plan.
2. The key milestones in the application process were as follows:

Milestone	Date
Application lodgement	3 February 2023
Further information requested	15 February 2023, 19 May 2023, 25 October 2023
Further information received	Not received
Amended application submitted formally under s50 of the Act	18 January 2024
Further information requested in respect of s50 amended application	12 February 2024
Further information received	15 March 2024
Decision Plans	<p>Plans prepared by Mt Buller Ski Lifts Pty Ltd in respect of the Proposed Magic Forest Optimisation as follows:</p> <ul style="list-style-type: none"><li>▪ Site Construction Management Plan - Site overview, dated 17 January 2024 at sheet 1 of 11,</li><li>▪ Construction Management Plan dated 14 March 2024 at sheet 2 of 11</li><li>▪ Vegetation Management, dated 7 March 2024 at sheet 3 of 11</li><li>▪ Scope of works, dated 14 March 2024 at sheet 4 of 11</li><li>▪ Ski Field Lease area, dated 14 March 2024 at sheet 5 of 11</li><li>▪ Mountain Pygmy Possum Type 1 Habitat Overlay, dated 14 March 2024 at sheet 6 of 11</li><li>▪ Site rehabilitation and Revegetation Management Plan – Map 1, dated 14 March 2024 at sheet 7 of 11</li><li>▪ Site rehabilitation and Revegetation Management Plan – Map 2, dated 14 March 2024 at sheet 8 of 11</li><li>▪ Notes regarding soil stabilisation, rehabilitation and revegetation, vegetation management plan and weed management/ weed control at sheets 9 through to 11 of 11 (proposed Works Plans)</li></ul>
Other Assessment Documents	<p>Response to request for information as set out in correspondence from Mt Buller Ski Lifts to DTP dated 14 March 2024.</p> <p>Completed application form confirming the applicant's intent to amend the application to remove the original reference to "works and vegetation removal associated with the regrading of a slope, the moving of carpet ski lifts and placing timber fence posts in the Magic Forest ski slope" dated 15 March 2024</p> <p>Preliminary Geotechnical Risk Assessment prepared by Taylor Consulting Engineers Pty Ltd, Rev 3 dated 5 June 2024 (attaching a certificate of insurance current as to 1 February 2025)</p>



(proposed Preliminary Geotechnical Risk Assessment)

Letter from Biosis dated 14 March 2024 setting out a response to the matters identified in DTP's request for information.

'Flora and fauna assessment for proposed ski area expansion' (Project no. 31381), version 2, prepared by Biosis dated 14 March 2024 (File no. 38270.Magic.Forest.FFA.Update.FIN02.20240314)

(Flora and Fauna Assessment)

Site environmental management plan prepared by Edward Mahon, dated 6 May 2024.

(proposed SEMP)

Bushfire Management Statement, Version 2 prepared by Edward Mahon on behalf of Buller Ski Lifts, dated 11 January 2024.

Certificate of Title Volume 11484 Folio 287 being for Crown Allotment 5A, Section A, Parish of Changue East

Email sent by the applicant notifying the Minister of Energy, Environment and Climate Change of the permit application dated 8 March 2024.

Planning permit no. 201473321 for land at Grimus Chairlift, Mt Buller Ski Field, Mount Buller issued on 20 December 2019.

Planning Permit no. 201521078 for land in Mount Buller Ski Field dated 16 January 2017.

3. The subject of this report is the decision plans and other assessment documents (as described above).

## Proposal Summary

4. The proposal can be summarised as follows:

Key Information	Details	
<b>Proposal:</b>	Vegetation removal limited to the lopping of trees to ground level and site rehabilitation in the Magic Forest ski slope area	
<b>Total Site Area:</b>	3632 m <sup>2</sup>	
<b>Tree Lopping Area:</b>	1,080 m <sup>2</sup>	
<b>Land Uses:</b>	<b>Existing</b>	<b>Proposed</b>
	Ski field – Beginner ski lessons	Ski field – Beginner ski lessons

5. Significant features of the application include:

- vegetation is to be lopped using chain saws at ground level
- tree/ vegetation stumps are to remain in situ to ensure no significant ground disturbance is caused
- no fencing or other ground disturbance (including re-grading) is proposed to occur
- following the tree/ vegetation removal works, site rehabilitation and vegetation management (including weed management) will be undertaken in line with the Mt Buller Ski Field Vegetation Management Plan as most recently endorsed under permit no. 2011011306-2 on 20 December 2023.



6. The applicant has provided the following concept image which depicts the extent of the proposed tree/ vegetation removal works:

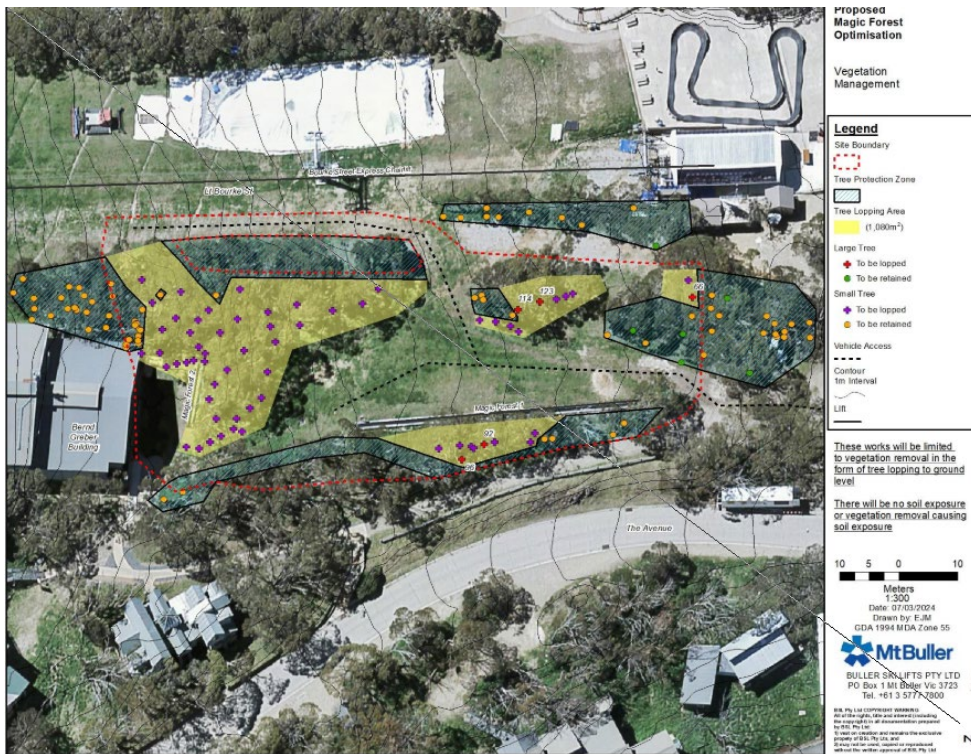


Figure 1: Vegetation Management Plan (Source: proposed Works Plans, sheet 3 of 11)



Tree no. 66



Tree no. 92





Tree no. 96



Tree no. 114



Tree no. 123

Figure 2: Photographs of large trees proposed to be removed  
(Source: Letter from Biosis dated 14 March 2024)

7. The applicant has provided the following concept image in respect of the proposed site rehabilitation and revegetation:

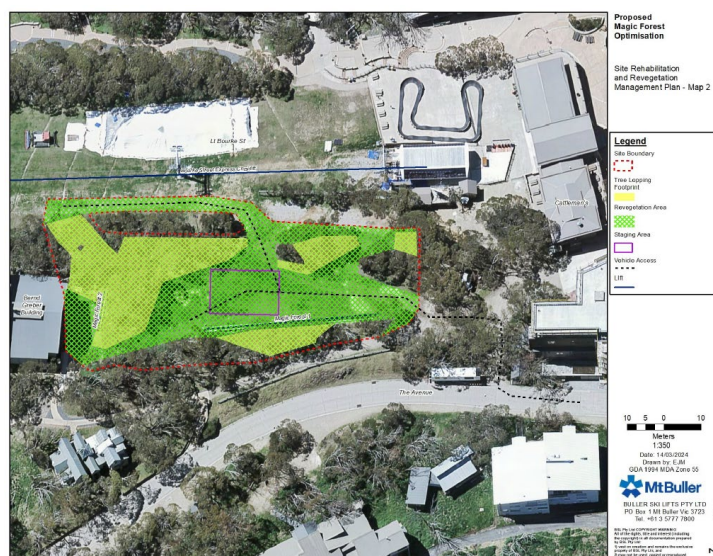


Figure 3: Site Rehabilitation and Revegetation Plan – Map 2  
(Source: proposed Works Plans, sheet 8 of 11)



## Site Description

8. The site is located within a section of the Mount Buller ski fields which is surrounded on all edges by a layer of vegetation and existing development associated with the Mount Buller Alpine Village. The applicant describes the Magic Forest Area in a letter accompanying the permit application in the following terms:

*The Magic Forest Area (originally known as the Black Forest) has been an area set aside as a Ski School teaching area and in particular as a children's teaching area since an area within it was cleared and a rope tow ski lift installed in 1987. An access corridor from the Little Bourke Street ski slope to The Avenue (and the Village Centre) was cleared in 1985...Much of the terrain is unusable due to the natural fall of the land (being too steep in some places) and existing tree coverage.*

9. The existing site is used during the ski season as a beginner ski school teaching area and features two magic carpet ski lifts. The *Mt Buller Master Plan 2010* (as revised in 2014) indicates that over-crowding in and around the subject site has been a longstanding issue:

*Bourke Street, the main beginner and ski school area gets congested and there is an unsatisfactory mixing of pedestrians, skiers and snow players (p.12).*

10. The site has a total site area of 3632 m<sup>2</sup> and forms a small part of a significantly larger land parcel described as Crown Allotment 5A, Section A, Parish of Changué East which is subject to a Crown Lease in favour of the Buller Ski Lifts Holdings Pty Ltd and which will expire on 31 December 2089. The Title search lodged in support of the permit application lists Buller Ski Lifts Holdings Pty Ltd as the registered proprietor.

## Site Surrounds

11. Mount Buller is located on the Great Dividing Range and comprises approximately 2300 hectares of Crown land. Access into the Mount Buller Alpine Village is via Mansfield on the Mount Buller Tourist Road. The subject site is located within a section of the Mount Buller ski fields immediately to the west of the centre of the village. As such it has proven to be a convenient and popular location for ski lessons over many years. Surrounding development consists mainly of ski lodge/ apartment accommodation, retail, food and drink premises and various services (such as information, lockers, lost property and equipment rental) to support the outdoor recreation activities accessed from the village.
12. The Scheme notes at Clause 02.03-1 that



Figure 4: Site Plan showing location of subject site in red  
(Source: proposed Works Plans, sheet 1 of 11)

13. Development surrounding the site can be described as follows:





- To the **north** of the site: the Bourke Street Express Chairlift, Athlete's Walk and alpine accommodation such as Valley View Apartments (8 ABOM Way) and Alto Villas (6 ABOM Way).
  - To the **south** of the site: Magic Forest Walk and The Avenue (at a lower grade) which provides road access to the Black Forest Lodge (16 The Avenue), Dandenong Ski Club (24 The Avenue) and Snowmass Apartments (20 The Avenue).
  - To the **east** of the site: Mount Buller Village Square including the Clock Tower Information Centre, Alpine Central and the Village Toboggan and Snow Play Park
  - To the **west** of the site: the Mount Buller Ski and Snowboard School (within the Franz Greber Building), the Chamois run (intermediate) and further afield, the Abom Express Chairlift forming part of the wider reaching Mount Buller ski fields.
14. A site inspection of the subject site and surrounds was undertaken on 28 April 2023. Photographs taken by DTP officers while on site are set out below.



**Figure 5: Photo taken of Magic Forest 1 magic carpet lift facing south-east  
(Source: Site photos taken by DTP officers during site inspection on 28 April 2023)**



**Figure 6: Photo taken from the Bernd Greber Building overlooking the Magic Forest 2 magic carpet lift (Source: Site photos taken by DTP officers during site inspection on 28 April 2023)**



**Figure 7: Photo of vegetation to the north-east section of the subject site looking towards the Alpine Village (Source: Site photos taken by DTP officers during site inspection on 28 April 2023)**



## Municipal Planning Strategy

15. The following objectives and strategies of the Municipal Strategic Statement of the scheme are relevant to the proposal:

Clause	Description
02.01	Context
02.02	Vision
02.03-1	Settlement and housing
02.03-2	Environmental and landscape values
02.03-3	Environmental risks and amenity
02.03-5	Built environment and heritage - Heritage
02.03-6	Economic development
02.04	Strategic framework plans

## Planning Policy Framework

16. The following objectives and strategies of the Planning Policy Framework of the scheme are relevant to the proposal:

<b>Clause 11</b>	<b>Settlement</b>
11.01-1L	Settlement – Alpine Villages
11.01-1L	Settlement – Alpine Villages – Mt Buller Village
11.03-5S	Distinctive areas and landscapes
<b>Clause 12</b>	<b>Environmental and Landscape Values</b>
12.01-1L	Protection of biodiversity in alpine resorts
12.01-2S	Native vegetation management
12.04-1S	Sustainable development in alpine areas
12.04-1L	Sustainable development – Alpine resorts
12.04-1L	Sustainable development – Alpine resorts – Mt Buller
12.05-2S	Landscapes
<b>Clause 13</b>	<b>Environmental Risks and Amenity</b>
13.01-1S	Natural hazards and climate change
13.04-2S	Erosion and landslip
13.04-2L	Erosion and landslip in alpine resorts
<b>Clause 15</b>	<b>Built Environment and Heritage</b>
15.03-2S	Aboriginal cultural heritage
<b>Clause 17</b>	<b>Economic Development</b>
17.04-1S	Facilitating tourism
17.04-1L	Alpine tourism
17.04-1L	Alpine tourism – Mt Buller tourism



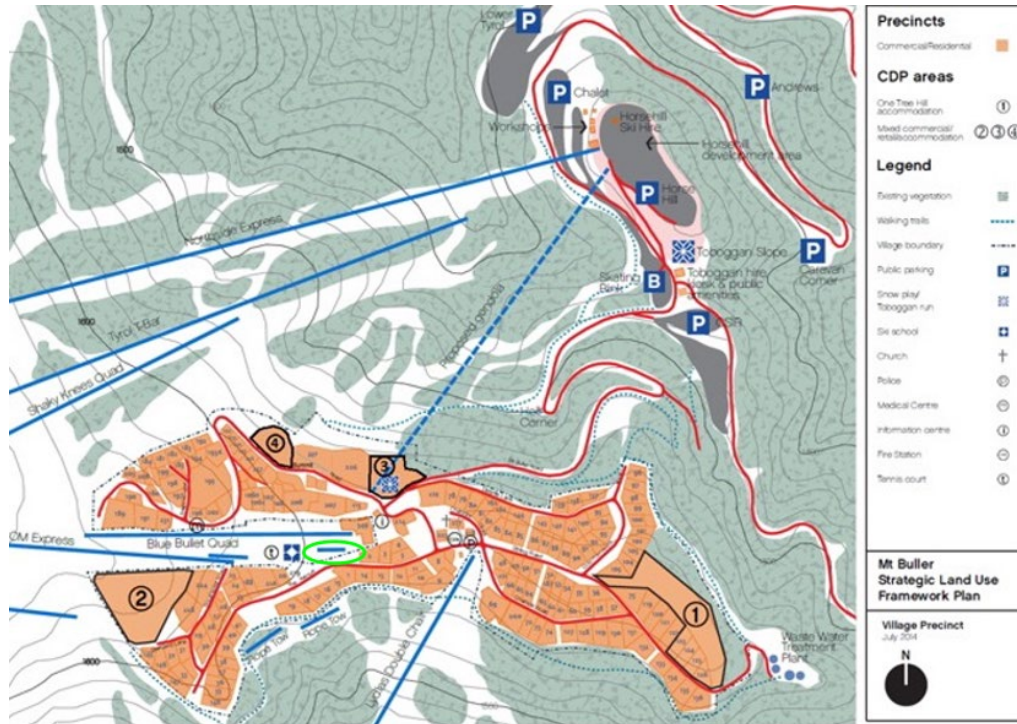


Figure 8: Mt Buller Strategic Land Use Framework Plan – Village Precinct – green oval marks the location of the subject site (Source: Planning Scheme, Clause 02.04 – Strategic framework plans)

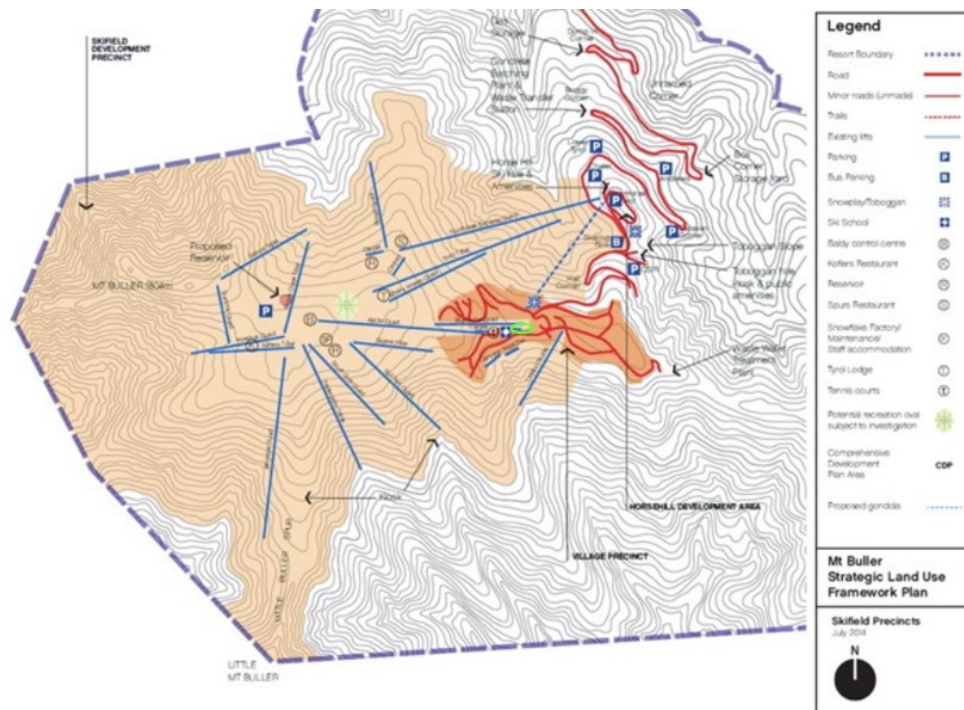


Figure 9: Mt Buller Strategic Land Use Framework Plan – Skifield Precincts - green oval marks the location of the subject site (Source: Planning Scheme, Clause 02.04 – Strategic framework plans)

17. The assessment section of this report provides a detailed assessment of the relevant planning policies as appropriate.

## Zoning and Overlays

### Applicable Zone

18. A planning permit is required to construct or carry out works (including to construct a fence) in accordance with Clause 37.04-4. The purpose of Schedule 2 to the Comprehensive Development Zone (CDZ2) is:

- *To identify areas associated with the development and use of an alpine resort on which passive and active recreation occur.*
- *To enable the development and the use of the land which is in accordance with sound environmental management and land capability practices, and which takes into account the significance of the environmental resources.*
- *To minimise impacts on significant landscapes.*
- *To minimise impacts on areas of significant vegetation.*
- *To minimise impacts on habitat and habitat corridors for indigenous fauna.*

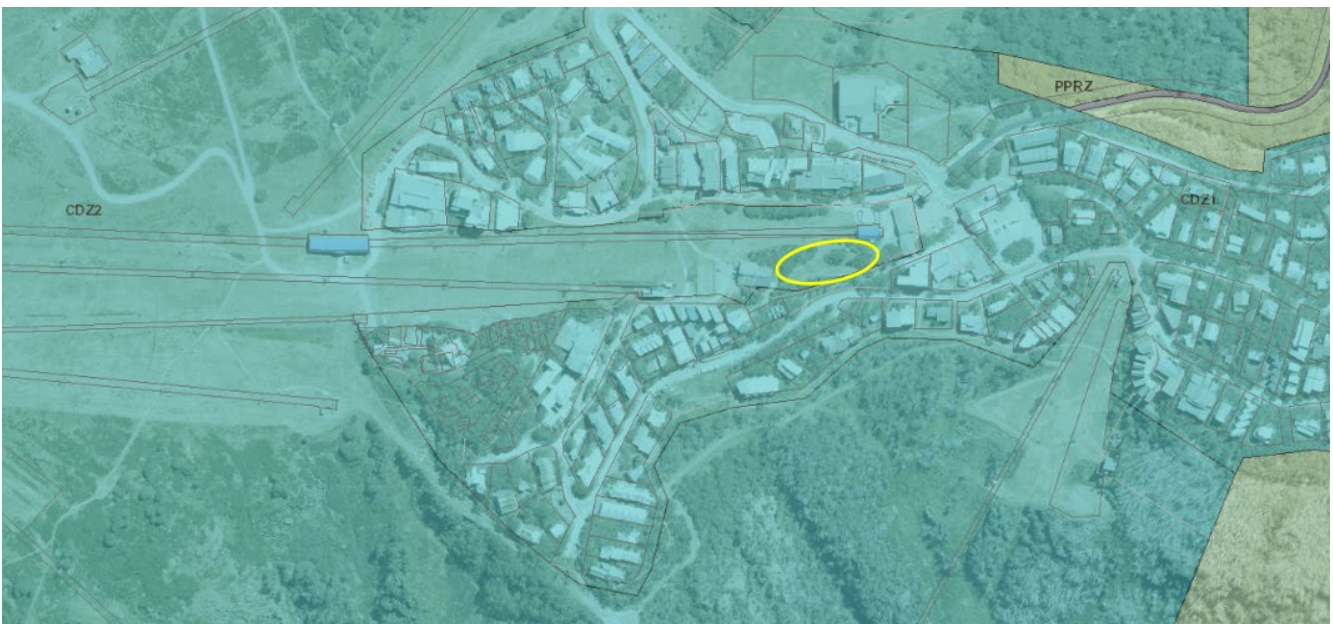


Figure 10: Aerial plan showing zone map layer - yellow oval marks the approximate location of the subject site  
(Source: VicPlan maps, 2024)

19. Exemptions in respect to certain buildings and works are set out at sub-clause 4.1-1 of the CDZ2. The permit application is not exempt.

20. Application requirements are set out at clause 4.3 of the CDZ2. It is considered that the permit application provides sufficient detail based on those requirements.

21. Before determining the application the responsible authority must consider, among other things:

- *The Municipal Planning Strategy, the Planning Policy Framework and local planning policies.*
- *Alpine Resorts Strategic Plan 2020-2025 (State Government of Victoria, Alpine Resorts Coordinating Council, 2019).*
- *Any Alpine Resort Strategic Management Plan approved under the Alpine Resorts (Management) Act 1997.*



- Any comprehensive development plan, incorporated into this scheme, for the resort.
- The capability of the land to accommodate the proposed use or development, addressing site quality attributes including soil type, soil fertility, soil structure, soil permeability, aspect, contour and drainage patterns.
- How the use or development relates to alpine land use and natural resource management.

22. It is noted that neither of the two comprehensive development plans incorporated into the Scheme as these relate to the Mount Buller Alpine Village relate to the subject site.

23. The following sections include a discussion of how the proposal responds to the above decision requirements.

## Applicable Overlays

### Environmental Significance Overlay – Schedule 1 (ESO1)

24. Schedule 1 to the Environmental Significance Overlay (ESO1) applies in respect of the subject site.



Figure 11: Aerial plan showing ESO1 map layer - red oval marks the approximate location of the subject site (Source: VicPlan maps, 2024)

25. This means that a planning permit is required to construct or carry out works including to construct a fence, in accordance with Clause 42.01-2 of the Scheme.
26. The environmental objectives set out at Clause 2.0 of ESO1 relate to the preservation and enhancement of the Mountain Pygmy-possum habitat and identified linkages and movement corridors.
27. Aside from furthering the objective of the ESO1, the decision guidelines relevant to this proposal note the need for the responsible authority to consider the extent to which the proposed works will impact upon existing habitat and the views of the Department of Environment, Land, Water and Planning (now known as the Department of Energy, Environment and Climate Action).

### Design and Development Overlay – Schedule 3 (DDO3)

28. The subject site is affected by Schedule 3 to the Design and Development Overlay (DDO3).
29. Accordingly, a planning permit is required to construct or carry out works in accordance with Clause 43.02-2 of the Scheme.





Figure 12: Aerial plan showing DDO3 map layer - red oval marks the approximate location of the subject site (Source: VicPlan maps, 2024)

30. The objectives DDO3 Schedule relevant to this proposal are as follows:
- *To ensure that development within the Mt Buller skifields creates and enhances an identifiable individual resort character.*
  - *To ensure development is not visually intrusive when viewed from key public vantage points within the Village, from Mt Buller Access Road and surrounding skifields.*
  - *To ensure development within the skifields is visually attractive and functionally effective all year round, particularly at key interfaces with the Village such as the Village Square, Helicopter Flat and lease sites having frontage to the skifields.*
  - *To minimise the visual impact of snowfield infrastructure and facilities upon the landscape values of the Resort.*
  - *To ensure development is sited and designed to avoid and minimise impacts to indigenous vegetation, fauna and natural features.*
31. The DDO3 Schedule decision guidelines relevant to this proposal are:
- *Whether the proposal meets the objectives of this overlay.*
  - *The Mt Buller Alpine Resort Village Design Guidelines 2014.*
  - *The Mt Buller Master Plan 2010 (revised 2014).*
  - *Whether the proposed development is designed and constructed to achieve long lasting durability in the alpine conditions all year round.*
  - *Whether siting of the proposed development is responsive to the topography and natural features of the landscape.*
  - *Whether the proposed development impacts on the year-round pedestrian and skier use and amenity of Athletes Walk, the Village Square and Black Forest Walk.*

*Erosion Management Overlay – Schedule 1 (EMO1)*

32. The subject site and all of the surrounding area is affected by the controls set out at Schedule 1 of the Erosion Management Overlay (EMO1).
33. This means that among other things, a planning permit is required to remove, destroy, or lop vegetation on the subject site in line with the requirements set out at Clause 44.01-3.

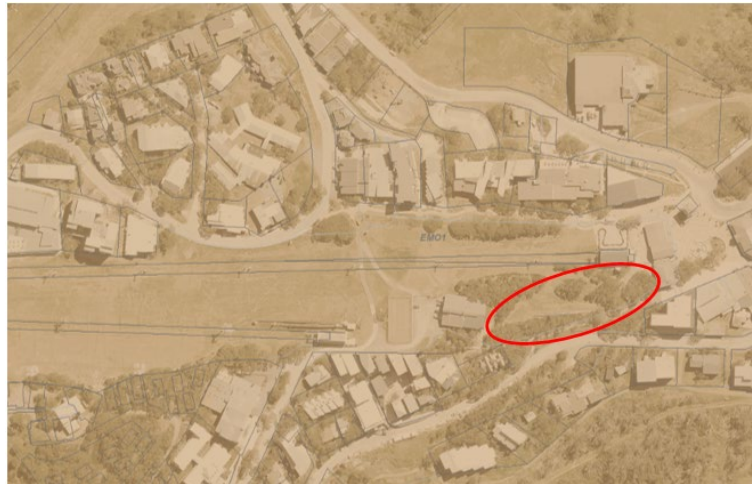


Figure 13: Aerial plan showing EMO1 map layer - red oval marks the approximate location of the subject site (Source: VicPlan maps, 2024)

34. The objectives of the EMO1 relevant to this application are:

- *To ensure that applications for development are supported by adequate investigation and documentation of geotechnical and related structural matters.*
- *To ensure that development is appropriate to be carried out either conditionally or unconditionally, having regard to the results of those geotechnical and related structural investigations.*
- *To ensure that development is only carried out if identified geotechnical and related structural engineering risks are effectively addressed.*

35. The EMO1 decision guidelines that are relevant to this application are as follows:

- *The objectives of this schedule.*
- *The recommendations of any relevant Preliminary Geotechnical Assessment and Quantitative Risk Assessment.*
- *The advice of any geotechnical practitioner who has reviewed the application.*
- *The comments of the relevant Alpine Resort Management Board in relation to a site development plan.*


*Bushfire Management Overlay – Schedule 1 (BMO1)*

36. The subject site as well as the adjoining Mt Buller Alpine Village and surrounds is affected by the BMO1 control.



Figure 14: Aerial plan showing BMO1 map layer - red oval marks the approximate location of the subject site (Source: VicPlan maps, 2024)

37. A planning permit is required to construct or carry out works associated with a leisure and recreation use pursuant to Clause 44.06-2.

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38. The Statement of bushfire objectives to be achieved set out at clause 1.0 of the BMO1 is:
- *To require tailored bushfire protection measures unique to Victoria's alpine resorts.*
  - *To acknowledge the bushfire protection measures and protection of human life being achieved through emergency management arrangements unique to Victoria's alpine resorts.*
39. The decision guidelines which the BMO1 requires responsible authorities to consider as appropriate are set out below:
- *The view of the relevant fire authority.*
  - *Any relevant emergency or fire management plan.*
40. Any approval granted to construct a building or construct or carry out works under the BMO headline control must include the mandatory condition in respect of buildings and works (set out at Clause 44.06-5).

## Particular and General Provisions

### Provisions that Require, Enable or Exempt a Permit

41. A permit is also required pursuant to Clause 52.17-1 of the Scheme to remove, destroy or lop native vegetation, including dead vegetation.
42. The purpose of Clause 52.17 is to ensure that there is no net loss to biodiversity as a result of the removal, destruction or lopping of native vegetation in line with the three steps set out in the *Guidelines for the removal, destruction or lopping native vegetation* (Department of Environment, Land, Water and Planning, 2017) (the Guidelines) as follows:
1. *Avoid the removal, destruction or lopping of native vegetation.*
  2. *Minimise impacts from the removal, destruction or lopping of native vegetation that cannot be avoided.*
  3. *Provide an offset to compensate for the biodiversity impact if a permit is granted to remove, destroy or lop native vegetation.*
43. An application to remove, destroy or lop native vegetation under Clause 52.17-1 must comply with the application requirements set out in the Guidelines.





## Referrals

44. The application was referred to the following groups:

Provision / Clause	Organisation	Response and date received
<b>Section 55 Referral – Determining</b> Clause 7.0 of EMO1 Schedule	Alpine Resorts Victoria	No objection subject to conditions - 13 May 2024
<b>Section 52(1)(c)</b> Clause 8.0 of CDZ1 Schedule	Alpine Resorts Victoria	No objection subject to conditions - 13 May 2024
<b>Section 55 Referral – Determining</b> Clause 7.0 of CDZ2 Schedule Clause 4.0 of ESO1 Schedule	Department of Energy, Environment and Climate Action	No objection subject to conditions - 24 April 2024
<b>Section 55 Referral – Determining</b> Clause 44.06-6 of the BMO headline provision	Country Fire Authority	No objection - 17 May 2024
<b>Section 52(1)(b)</b>	Mansfield Shire Council	No objection – 5 April 2024

## Conditions relating to Site Environmental Management Plan (SEMP)

45. Both the Department of Energy, Environment and Climate Action and Alpine Resorts Victoria have requested that conditions be included on the permit requiring amendments to the proposed SEMP. For the sake of completeness and to remove any uncertainty, DTP drafted conditions with the intention of addressing the overlapping concerns of both agencies. The redrafted conditions were circulated to both agencies for their review and comment in June 2024. Both agencies confirmed by emails dated 24 June 2024 and 4 June 2024 that they supported the re-drafted condition wording. Accordingly, it is recommended that any permit that may issue in respect of this application include condition wording consistent with the wording circulated on 13 June 2024.

## Notice

46. The application is not exempt from the notice requirements of section 52(1)(a), (b) and (d), the decision requirements of section 64(1), (2) and (3) and the review rights of section 82(1) of the *Planning and Environment Act 1987* in respect of applications to:

- construct or carry out works (including construct a fence) under the CDZ2 control (Clause 37.02-4)
- construct or carry out works, construct a fence and destroy or lop any vegetation (including dead vegetation) under the ESO1 control (at Clause 42.01-2).

47. The application was not advertised other than to the municipal authority under section 52(1)(b) as it was considered not to cause material detriment to any person because:

- The proposed vegetation removal and site rehabilitation works are proposed to be undertaken within an area historically used for beginner ski lessons within the existing Mount Buller Ski Fields to facilitate a more appropriate use and the area.
- The proposed vegetation removal will make additional room for activities that have been undertaken on the site for many years and which are consistent with the predominant recreational land use of this part of the Mount Buller ski fields located closest to the centre of the Mount Buller Alpine Village. The site is sufficiently removed from adjoining accommodation so as to ensure no material detriment is caused to the occupants of those apartments/ ski lodges.



## Key Considerations

49. The following are deemed the key considerations in assessing the acceptability of the proposal:
- Environmental and biodiversity impacts
  - Environmental risk
  - Alpine land use and natural resource management

## Strategic Direction and Land Use

50. The *Planning Policy Framework* encourage appropriate land use and development which enhances the built environment, supports economic growth, meets the community expectations on retail and commercial provision, delivers diversity in housing supply to meet existing and future needs, and integrates transport and infrastructure planning.
51. The relevant planning policy has been considered in assessing the application. The application is consistent with the strategic direction of the following policies:
- Clause 12.01-1L – Protection of biodiversity in alpine resorts – minimises the removal of vegetation and avoids the destruction and fragmentation of more significant areas of landscape habitat in the vicinity of the site.
  - Clause 12.01-2S – Native vegetation management – will ensure that there is no net loss to biodiversity as a result of the removal, destruction or lopping of native vegetation.
  - Clause 13.02-1S – Bushfire planning- by strengthening the resilience of Mount Buller Alpine Village to bushfire through risk-based planning that prioritises the protection of human life.
  - Clause 13.04-2L – Erosion and landslip in alpine resorts - by ensuring that geotechnical hazards are managed so as to minimise risk to property and persons.
  - Clause 17.04-1S – Facilitating tourism – the application will serve to improve and expand the operation of an appropriately sited existing tourist facility (beginner ski lesson area) in a way which is compatible and builds on the assets and qualities of surrounding activities and attractions.

## Buildings and Works

52. The zoning and overlay provisions have been considered in the application.
53. The purpose of the zoning and overlay controls have been considered and it is noted that the proposed works will enable the expanded use of the subject site for active recreation in accordance with sound environmental management and land capability practices.
54. The decision guidelines of the subject site's zoning and overlays has been considered and it is noted that:
- The proposed works will serve to create a more orderly use of the popular ski field area most proximate to the Mount Buller Alpine Village which will ensure other more biodiverse landscapes in the vicinity of the site will not be unnecessarily fragmented.
  - The expanded beginner ski lesson area is responsive to the topography and natural features of the landscape and is consistent with the priorities listed in the *Mt Buller Master Plan 2010* (as revised in 2014).
  - The Department of Energy, Environment and Climate Action has acknowledged that the proposed works are unlikely to impact existing Mountain Pygmy-possum habitat areas.
  - A geotechnical practitioner has reviewed the application and considers the proposed works present a low risk provided that the recommendations set out in the proposed Preliminary Geotechnical Risk Assessment are observed.
  - Alpine Resorts Victoria (as the relevant Alpine Resort Management Board) has accepted the proposed Preliminary Geotechnical Risk Assessment subject to the inclusion of additional conditions on the permit.

- The Country Fire Authority has reviewed the permit application and raises no objections.

## Public Realm

### Expanded tourist facility

55. The proposed works will enable the future realignment of the existing moveable carpet lifts to allow for an expanded use of this ski field teaching area during the snow season. The application suggests that the works will improve the existing experience for beginner skiers allowing them to learn the fundamental skills in a safe and pleasant environment that is easily accessible from the centre of the Mount Buller Alpine Village.
56. The native vegetation removal works will make way for an additional area of beginner ski field terrain which accords with local policy imperatives to provide for year-round recreation, having regard to (among other things) the environmental, social, ecological and safety considerations (Clause 17.04-1L-Alpine tourism). The expansion of this highly valued alpine tourism resource will build on the assets and qualities of the Mount Buller Alpine village while supporting growth in alpine tourism into the future.

### Landscaping

57. The application is supported by a proposed Site Environmental Management Plan which indicates that retained vegetation will be protected through the establishment of tree protection zones that will be roped off and clearly identifiable through the use of bunting.
58. Following the completion of works on the site, it is proposed that site rehabilitation and vegetation management (including weed management) of the areas designated on the proposed Works Plans will be undertaken in accordance with the Mount Buller Ski Field Vegetation Management Plan most recently endorsed on 20 December 2023 under permit no. 2011011306-2 as it relates to the Mt Buller Ski Field Area, Mount Buller Alpine Resort.
59. This is considered to be an acceptable approach to the site rehabilitation and vegetation management of the site in a way that will avoid unnecessary duplication. That said, it is considered appropriate in the circumstances for the permit to include a condition expressly requiring that any endorsed Site Environmental Management Plan endorsed under the permit expressly state that all site rehabilitation and vegetation (weed) management proposed to be undertaken on site must comply with the Mount Buller Ski Field Vegetation Management Plan as endorsed under permit no. 2011011306-2.

### Infrastructure

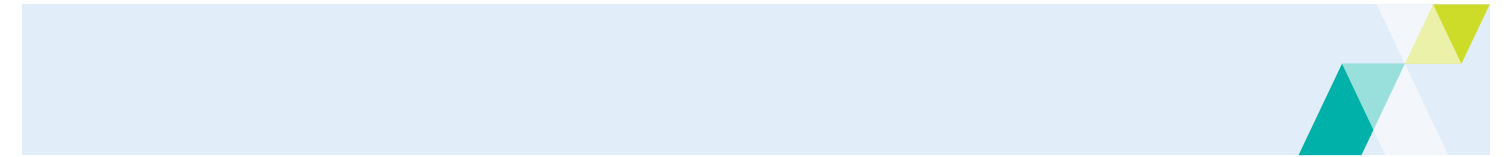
60. The proposed Site Environmental Management Plan makes provision for “any cross drains damaged from vehicle movements will be repaired and reinstated (profile, depth and vegetation cover)” (see p.3) for erosion management as well as to assist fauna (such as, Broad-toothed Rats) that rely on these channels as runways.
61. It is noted that damage caused to infrastructure (such as stormwater drains etc) can, over time, have serious geotechnical implications. Accordingly, Alpine Resorts Victoria has recommended conditions relating to the potential damage caused to infrastructure among the conditions it requires be included on the permit as a result of its status as a determining referral authority status under Schedule 1 to the Erosion Management Overlay.
62. On that basis, it is recommended that infrastructure condition wording as modified by DTP, and subsequently reviewed and accepted by Alpine Resorts Victoria, be included on the permit.

## Environmental Risks

### Bushfire Risk

63. As is noted in policy the alpine areas are “particularly prone to bushfires with extensive areas of vegetation cover and steep slopes” (Clause 02.01 Context). This, along with the increasingly discernible impacts of climate change, is an important consideration for planning decision-makers who are required to consider the measures set in place by applicants to protect people from bushfire risk.



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64. In this instance the application is supported by a Bushfire Management Statement which among other things, states that the level of bushfire risk to the site from the landscape beyond can be mitigated to an acceptable level given that the site is located within the Mount Buller Alpine Village and forms part of the ski slope areas which are subject to summer vegetation management which includes machine (tractor) slashing. The Country Fire Authority has reviewed the Bushfire Management Statement and has informed DTP that it does not object to the permit application.
65. Accordingly, it is considered appropriate that any permit issued is accompanied by the endorsement of the Bushfire Management Statement and include the mandatory permit condition in respect of any works permit set out at Clause 44.06-5 of the Scheme.

### Geotechnical Risks

66. Maintaining the geotechnical stability of land within the alpine resorts is important from an environmental and safety perspective. Among other things, planning policy acknowledges that vegetation cover is a key influence on soil stability. Clause 13.04-2L (Erosion and landslip in alpine resorts) highlights the need to ensure that “geotechnical hazards are managed throughout the resorts so as to minimise risk to property and persons”.
67. To that end, the permit application is supported by a Preliminary Geotechnical Assessment technically verified by a suitably qualified and experienced geotechnical practitioner who is employed by a corporation which has professional indemnity insurance of not less than \$2 million.
68. The Preliminary Geotechnical Assessment states:

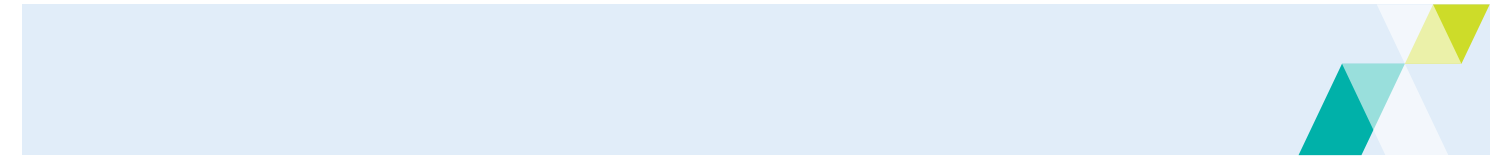
*“Visual inspection noted the presence of a grass understorey amongst snow gym trees with their roots embedded into typical shallow alpine topsoil (<50mm) overlying a basaltic weathering profile consisting of residual black soil containing clay with gravel cobbles and boulders, a weathering product of the underlying Paleogene (Priabonian to Rupelian) aged (38-28 MA) Bryce Plain Basalt.*

*It is interesting to note the geology found at the Site is different to that indicated by Geology Maps which indicate the presence of older Mount Stirling Granodiorite...*

*The area of the Site in which vegetation removal is proposed has an overall slope of approximately 10°. Localised steep batters of 65-85° are present where basalt outcrop exposures were observed.*

(p. 6, Preliminary Geotechnical Assessment)

69. The main geotechnical hazard identified in respect of the permit application is rockfall. Both listed scenarios set out at Table 1 of the Preliminary Geotechnical Assessment are regarded to be unlikely and the risk is therefore graded as “Low”.
70. The Preliminary Geotechnical Assessment recommends that:
- The mitigation measures listed in the geotechnical risk assessment summary at Table 1 be adopted.
  - Risk mitigation measures are to be addressed with contractors/sub-contractors prior to works.
  - Tree lopping to ground level leaving the stump and root ball to maintain slope stability.
71. It is notable that the report states that no site investigation was undertaken and that the site inspection was visual only. In those circumstances, and bearing in mind the observations cited above, it is considered that the caveat at section 8 of the report that:
- [r]ecommendations and opinions contained in this report are based on the interpretation of field observations at point locations and information from published geological maps. The nature and continuity of the subsoil away from the test locations are inferred, but it must be appreciated that actual conditions could vary from the assumed geotechnical model. If conditions other than those described are encountered, Taylor Engineering and Design should be engaged to assess whether the recommendations should be revised (Emphasis added).*
72. Accordingly, it is recommended that any permit issued in respect of the application include a condition requiring all works to be undertaken on site in accordance with the recommendations set out in the endorsed Preliminary

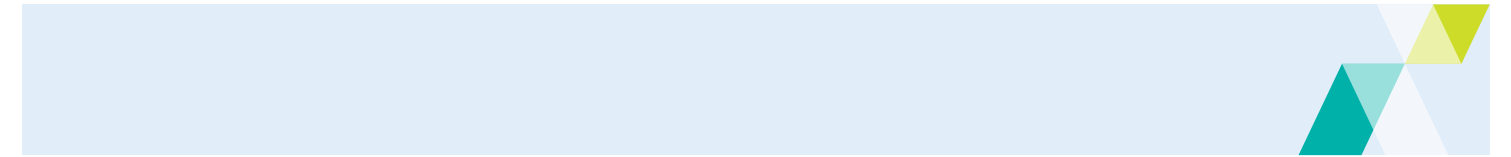


Geotechnical Assessment as well as a condition requiring the permit holder to seek further geotechnical assessment and advice in the event the geotechnical conditions vary from those described in the endorsed Preliminary Geotechnical Assessment.

## Sustainability

### Native Vegetation

73. It is accepted that the applicant has adopted the three-step approach to avoid, minimise and offset the loss of native vegetation (see p.23 of the Flora and Fauna Assessment).
74. Worth noting is the observation made at section 3.1 of the Flora and Fauna Assessment that:
- Large sections of the study area have been highly modified for the construction of or access to amenities that service the Mount Buller Alpine Resort. These include carparks, access roads, chairlifts, signage, fencing, buildings and a playground. Native vegetation can be found surrounding these facilities, as well as sporadically between them. Much of the native vegetation within the study area has been cleared for ski field development and now supports predominantly introduced vegetation.*
- While the study area supports few large trees with significant hollows, and is relatively fragmented, the broader area does provide habitat for a range of fauna species (p. 9).*
75. Of the 12 large trees occurring within patches of native vegetation located on the subject site it is proposed that five are removed. The Flora and Fauna Assessment confirms that this equates to the removal of 0.121 hectares of patch vegetation comprising the five large trees.
76. In circumstances where the application proposes to remove <0.5 hectares of native vegetation in total, the relevant assessment pathway under the Guidelines is the 'intermediate' pathway. The Native vegetation removal report submitted in support of the application (NVR Ref: BIO\_2022\_137) confirms that any approval granted in respect of the past permitted and proposed native vegetation removal must include a condition that requires a general offset of 0.107 general habitat units with a minimum strategic biodiversity value score of 0.680 within Goulburn Broken Catchment Management Authority (CMA) or the Mount Buller Alpine Resort (unincorporated) Council.
77. The decision guidelines for applications to remove native vegetation under the intermediate assessment pathway are set out at Table 6 of the Guidelines. The application is considered acceptable based on the following considerations:
- the proposed use or development has been appropriately sited or designed to avoid and minimise impacts on native vegetation.
  - the proposal includes a commitment to undertake site rehabilitation and manage vegetation in accordance with previously identified landscape values.
  - an offset that meets the offset requirements for the native vegetation to be removed has been identified and can be secured in accordance with the Guidelines.
  - the impacts on biodiversity based on the following values of the native vegetation to be removed are considered acceptable:
    - removal of 0.121 hectares of patch vegetation (including 5 large trees)
    - a condition score ranging from 0.57 to 0.64.
    - a strategic biodiversity value score of 0.850.
    - the vegetation proposed to be removed is not located in an area mapped as an endangered Ecological Vegetation Class.
    - the vegetation does not comprise any sensitive wetlands or coastal areas.

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78. The Flora and Fauna Assessment includes an offset statement indicating that the applicant intends to purchase the offset credits from the Victorian native vegetation credit register and that these are readily available.
79. In light of the above, it is considered appropriate that the proposed vegetation removal is permitted subject to the provision of an offset to compensate for the loss in biodiversity value as a result of the removal of the native vegetation. On that basis, it is recommended that any permit issued in respect of the application include a permit condition requiring an offset to compensate for the loss in biodiversity value relating to the removal of native vegetation from the subject site.

### Environmental and biodiversity impacts

80. Among other measures intended to reduce the impacts of the proposed works, the proposed Site Environmental Management Plan indicates that all vegetation will be lopped by hand and all branches and logs will be carried across the site and placed into a rubber tired 4WD truck for removal from the subject site in order to minimize any potential ground disturbance. It is noted that this is an appropriate measure to ensure that the impacts of the vegetation removal works on any surrounding biodiversity are minimised.
81. The site's subsequent rehabilitation in accordance with the Mount Buller Ski Field Vegetation Management Plan as approved under permit no. 2011011306-2 (which based on a recommendation referred to above, is to be secured by way of a condition on the permit) will serve to ensure that the "improved environmental outcomes that protect the health and longevity of the natural environment in which the ski field occurs" (p.9) as envisaged by that endorsed document might be realised.

### Sustainable development in alpine areas

82. Policy aims to ensure that there is no net loss to biodiversity as a result of the removal, destruction or lopping of native vegetation (Clause 12.01-2S-Native vegetation management). In assessing applications that seek the removal, destruction or lopping of native vegetation, responsible authorities are required to apply the three-step approach in accordance with the Guidelines (discussed above).
83. Policy acknowledges that minimising the removal of vegetation where possible is key to ensuring the preservation and enhancement of threatened alpine flora and fauna species and communities. However, it is relevant to note that the proposed removal of native vegetation from the site (which is conveniently located very close to the alpine village and has been historically used for beginner ski lessons) will serve to avoid the further destruction and fragmentation of significant areas of landscape habitat further afield (Clause 12.01-1L-Protection of biodiversity in alpine resorts).
84. Elsewhere, planning policy focuses on the need to ensure that the alpine resorts maintain commercial and service facilities that meet the needs of all visitors (Clause 02.03-6 – Economic development) to facilitate tourism development and secure the ongoing economic viability of the resorts (Clause 17.04-1S). Policy set out at Clause 12.04-1L (Sustainable development – alpine resorts) provides some helpful strategies to reconcile competing policy imperatives (protection of biodiversity vs economic development of alpine areas) in order to achieve a more sustainable approach to development within alpine areas, such as:
- *Limit the development and management of skifield terrain and facilities to within the skifields as shown on the Strategic Land Use Framework Plans at Clause 02.04.*
  - *Ensure that development complements the natural features of the resorts.*
  - *Ensure the location and scale of development is respectful of views to the ski fields and mountain ranges.*
  - *Minimise the visual intrusion of and nestle development within the snowgum canopy.*
  - *Step development with the natural grades of the land.*
  - *Restrict the use of the skifields to snow based recreational activities...*
  - *Provide strong physical and visual links from village centres to the skifields and visitor arrival points.*
  - *Focus commercial activity, community facilities, skier congregations, skifield access points and transport hubs around the resort centres.*

- *Ensure passive and active recreational activities are in balance with the conservation and protection of the natural environment within and adjacent to the resorts.*

85. The application is regarded to be an acceptable response when considered in the context of the above policy imperatives.

## Other Matters

### Cultural Heritage

86. The Scheme acknowledges that Mount Buller Alpine Village forms part of the traditional lands of the Taungurung people (Clause 02.03-5).

87. Under the *Aboriginal Heritage Act 2006* a cultural heritage management plan is only required in respect of an activity where:

- All or part of the activity area for the activity is an area of cultural heritage sensitivity; and
- All or part of the activity is a high impact activity.

88. The subject site is in an area of acknowledged cultural heritage sensitivity.

89. According to r50(1) of the *Aboriginal Heritage Regulations 2018*,

*(1) The construction of a building or the construction or carrying out of works in an alpine resort is a high impact activity if the construction of the building or the construction or carrying out of the works would result in significant ground disturbance.*

90. The *Aboriginal Heritage Regulations 2018* define 'significant ground disturbance' at r.5 as the

*disturbance of—*

- (a) the topsoil or surface rock layer of the ground; or*
- (b) a waterway— by machinery in the course of grading, excavating, digging, dredging or deep ripping, but does not include ploughing other than deep ripping.*

91. The *Aboriginal Heritage Act 2006 - Practice Note: Significant Ground Disturbance* (see <https://www.firstpeoplesrelations.vic.gov.au/cultural-heritage-management-plan-resources-heritage-advisors>) makes clear at p. 4 that

*The responsible authority must be reasonably satisfied that the standard of proof presented by the applicant shows that all of the land in question has been subject to significant ground disturbance...*

*There will be cases when the responsible authority is simply not persuaded or where there remains genuine doubt about significance ground disturbance regardless of the level of inquiry. In these circumstances the default position is that a Management Plan is required. This is in line with the purpose of the Act and Regulations to provide for the protection of Aboriginal cultural heritage in Victoria.*

92. DTP informed the applicant that the application as originally submitted (which included grading works and the removal of tree roots) would constitute significant ground disturbance and therefore, a high impact activity. In doing so, DTP cited the Victorian Civil and Administrative Tribunal's advice to decision makers at paragraph 56 in the case of *Mainstay Australia Pty Ltd v Mornington Peninsula Shire Council & Ors* [2009] VCAT 145:

*If the decision maker (i.e. the responsible authority or, upon any review, this Tribunal) cannot be persuaded that the land has not been the subject of significant ground disturbance, the default position is that a CHMP is required. This accords with the purpose and intent of the AH Act and AH Regulations in providing for the protection of Aboriginal cultural heritage in Victoria. That purpose would be lost if planning decision makers are too ready to rely on 'inexact proofs, indefinite testimony, or indirect inferences', as a means of avoiding a requirement for a CHMP.*





93. The applicant's decision to amend the application to ensure the tree stumps will remain in situ and to remove any reference to grading works means that there will not be any significant ground disturbance associated with the proposed works. Accordingly, no cultural heritage management plan is required in respect of this application.
94. It should be borne in mind that any future permit application to undertake works which fall within the definition of significant ground disturbance (including tree root removal, installing a fence or to re-grade any part of the subject site) will need to be supported by an approved cultural heritage management plan.
95. Noting the applicant's aspirations to grade the land and to install fencing and the like, it is recommended that the permit include a condition expressly stating that no ground disturbance is permitted under the permit as well as a separate note confirming that any works constituting a 'significant ground disturbance' will require an approved cultural heritage management plan under the *Aboriginal Heritage Act 2006*.



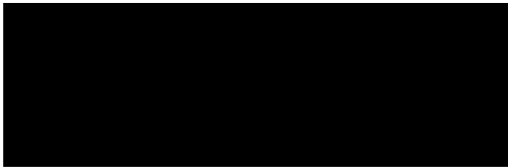
96. The proposal is generally consistent with the relevant planning policies of the Alpine Resorts Planning Scheme and will facilitate the delivery of a safer and more organised use of the area set aside for the Mount Buller Ski School within the Mount Buller alpine village area.
97. The proposal is generally supported by the various referral agencies subject to conditions.
98. It is **recommended** that Planning Permit No. PA2302041 for works associated with the removal and lopping of vegetation (including dead vegetation) from land at Crown Allotment No. 5A, Section no. A, Parish of Changu East (generally known as the Magic Forest Ski slope), MOUNT BULLER be issued subject to conditions and that the following approved documents be endorsed to form part of the permit:
- proposed Works Plans
  - Flora and fauna assessment for proposed ski area expansion (Project no. 31381), version 2, prepared by Biosis dated 14 March 2024
  - Preliminary Geotechnical Risk Assessment prepared by Taylor Engineering and Design Pty Ltd, Rev 3 dated 5 June 2024 (attaching a certificate of insurance current as to 1 February 2025)
  - Bushfire Management Statement, Version 2 prepared by Edward Mahon on behalf of Buller Ski Lifts, dated 11 January 2024
99. It is recommended that the applicant, the council and referral authorities be notified of the above in writing.

**Prepared by:**

I have considered whether there is a conflict of interest in assessing this application and I have determined that I have:

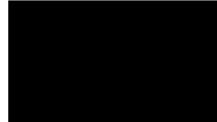
- No Conflict**
- Conflict and have therefore undertaken the following actions:
- Completed the **Statutory Planning Services declaration of Conflict/Interest form**.
- Attached the Statutory Planning Services declaration of Conflict/Interest form on to the hardcopy file.
- Attached the Statutory Planning Services declaration of Conflict/Interest form into the relevant electronic workspace.

Name:



Title:

Signed:



Phone:

Dated:

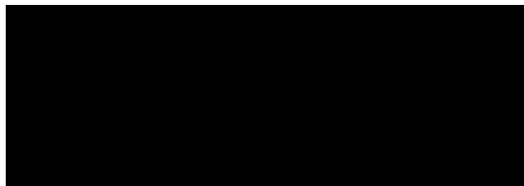
29 May 2024

**Reviewed / Approved by:**

I have considered whether there is a conflict of interest in assessing this application and I have determined that I have:

- No Conflict**
- Conflict and have therefore undertaken the following actions:
- Completed the **Statutory Planning Services declaration of Conflict/Interest form**.
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- Attached the Statutory Planning Services declaration of Conflict/Interest form into the relevant electronic workspace.

Name:



Title:

Signed:



Phone:

Dated:

27 June 2024