



SNOWY MOUNTAINS SPECIAL ACTIVATION PRECINCT

Planning Recommendations Report

June 2021

SNOWY MOUNTAINS SPECIAL ACTIVATION PRECINCT PLANNING RECOMENDATIONS REPORT

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EXECUTIVE SUMMARY

The aim of this Planning Recommendations Report is to describe, and provide justification for, proposed amendments to the *State Environmental Planning Policy (Kosciuszko National Park – Alpine Resorts) 2007* (Alpine SEPP), *State Environmental Planning Policy (Activation Precincts) 2020* (Activation Precincts SEPP) and the *Snowy River Local Environmental Plan 2013* (Snowy River LEP). The changes will identify the proposed 'Snowy Mountains Special Activation Precinct' and include provisions for lands within that Precinct under each of these environmental planning instruments.

Figure S1 shows the Snowy Mountains Special Activation Precinct investigation area and the application of existing environmental planning instruments, being the Alpine SEPP and the Snowy River LEP. Figure S1 also identifies the Sub-Precincts that are the subject of proposed changes to the Activation Precincts SEPP, the Alpine SEPP and the Snowy River LEP, respectively.

Technical investigations have been carried out to support planning of the Snowy Mountains Special Activation Precinct. These technical investigations are to support the preparation of the Draft Snowy Mountains Special Activation Precinct Master Plan, as well as upfront technical assessments to support a streamlined planning approval pathway. These investigations demonstrate the need for a tailored legislative framework for the Snowy Mountains Special Activation Precinct. This is due to:

- The need to protect and enhance sensitive environmental values present in the Kosciuszko National Park and surrounds
- The need to protect public safety in the Alpine region
- The need to appropriately plan for a diverse range of land use types throughout the Snowy Mountains Special Activation Precinct.

Based on the review of the current legislative framework, review of the technical studies, collaboration with stakeholders and consideration of the Draft Snowy Mountains Special Activation Precinct Master Plan, this Planning Recommendations Report recommends a proposed legislative framework. The recommended framework involves amendments to three (3) environmental planning instruments that apply within the Snowy Mountains Special Activation Precinct investigation area, which are described separately in this Discussion Paper, namely:

- **Jindabyne Region** – A proposed amendment to the **Activation Precincts SEPP** (*Applies only to the 'Jindabyne Catalyst Sub-Precincts' in the Jindabyne Region – see Figure S1*). The proposed new Schedule for the Snowy Mountains Special Activation Precinct (Jindabyne Region) will include:
 - Identification of catalyst development sites as Sub-Precincts, to which the Activation Precincts SEPP will apply
 - Provision for exempt and complying development
 - Provision for a streamlined Development Application process that utilises upfront evidence and design guidance to enable shorter timeframes for assessment.
- **Jindabyne Region Growth Areas** – A proposed amendment to the **Snowy River LEP** (*Applies only to the identified 'Growth Areas Sub-Precincts' in the Jindabyne Region – see Figure S1*). The proposed new Self-Repealing State Environmental Planning Policy (referred to as the Self-Repealing SEPP) will amend the Snowy River LEP. The proposed rezoning of land in key sites of change and introducing provisions to support streamlined planning approval for development that is consistent with the Draft Snowy Mountains Special Activation Precinct Master Plan. Development will be facilitated through the Draft Snowy Mountains Special Activation Precinct Master Plan and a new or updated Development Control Plan.

- **Alpine Region** – A proposed amendment to **Alpine SEPP** (*Applies only to the identified 'Alpine Sub-Precincts' in the Kosciuszko National Park – see Figure S1*). The proposed amendments to the Alpine SEPP include:
 - Inclusion of additional development areas as Alpine Sub-Precincts (locations that contain existing development)
 - An amended land use table and development standards
 - Authority to prepare a master plan for the Alpine Sub-Precincts
 - Requirement to prepare a Development Control Plan (the Alpine Development Control Plan) to guide development
 - Expand/clarify exempt development provisions to more clearly define the nature of exempt development in the Alpine Sub-Precincts
 - Introduce complying development pathway for minor building or maintenance works and basic operational works. For example, replacing existing ski infrastructure (structural components and parts) with upgraded infrastructure where it results in the same capacity and scale, or snow gutters/awnings on existing lodge buildings. The purpose of this is to avoid minor works, which cannot strictly meet exempt development controls, requiring development consent
 - An amendment is required to support streamlined planning approval for development in the Alpine Sub-Precincts that is consistent with the Draft Snowy Mountains Special Activation Precinct Master Plan. Strategic planning and a carrying capacity analysis will support the amendment to the Alpine SEPP in order to facilitate redevelopment within the Alpine Sub-Precincts through the Draft Snowy Mountains Special Activation Precinct Master Plan and a new Alpine Development Control Plan.

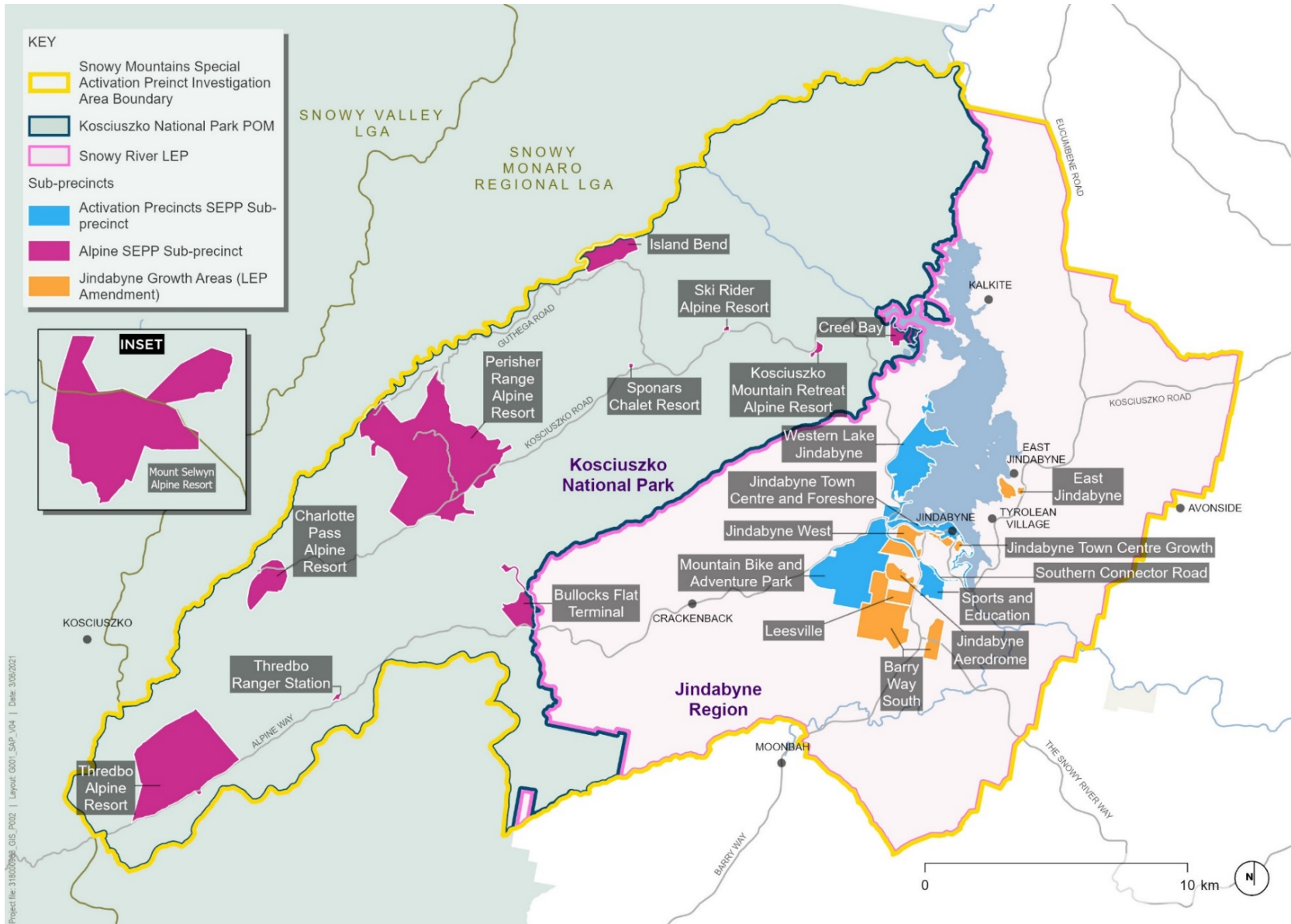


Figure S1 Snowy Mountains Special Activation Precinct Sub-Precincts

Figure S2 illustrates the legislative framework for the Snowy Mountains Special Activation Precinct under these three environmental planning instruments.

The amendments to each of these environmental planning instruments are designed to support the vision for the Snowy Mountains Special Activation Precinct as described in the Master Plan as well as to implement the relevant findings of supporting technical studies. The relevant sections of the Snowy Special Activation Precinct Master Plan will be adopted under each of the environmental planning instruments.

Figure S2 Snowy Mountains Special Activation Precinct: Environmental Planning Instruments

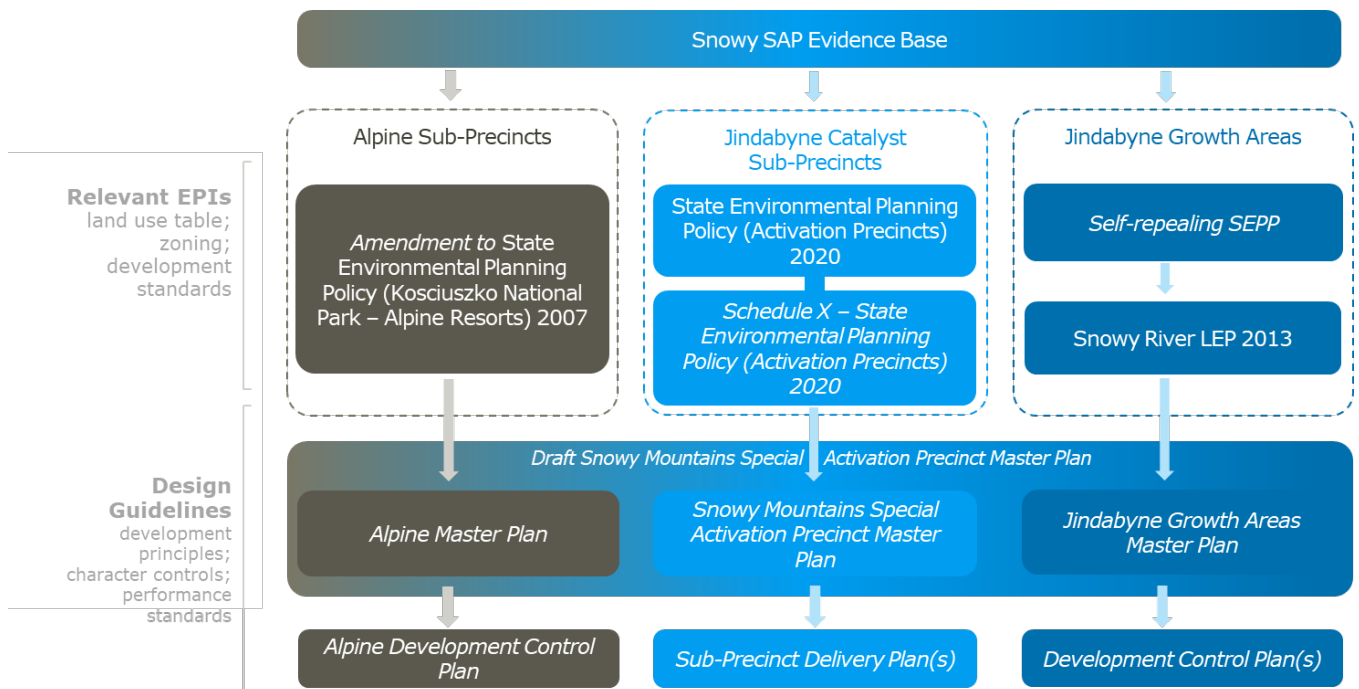


Table S1 describes the planning approval pathways proposed for under the three environmental planning instruments that will continue to apply within the Snowy Mountains Special Activation Precinct investigation area.

Table S1 Planning approval pathways

Precinct	Applicable environmental planning instrument and planning provisions	Applicable Delivery Plan or Development Control Plan	Minor, low impact development	Site is identified as Environmental Sensitive Land	Development is consistent with the relevant environmental planning instrument and Delivery Plan/DCP	
					Yes	No
Jindabyne Catalyst	Activation Precincts SEPP	Relevant Delivery Plan	Exempt development using specific provisions contained in the Activation Precincts SEPP	Activated Development Application process	Complying development	Activated Development Application process
Jindabyne Growth	Snowy River LEP	Snowy River Development Control Plan	Exempt development using specific provisions contained in the Snowy River LEP	Development Application	Complying development or Development Application as required under the Snowy River LEP	Development Application
Alpine Region	Alpine SEPP	Alpine Development Control Plan	Exempt development using specific provisions contained in the Alpine SEPP	Activated Development Application process	Complying development	Activated Development Application process

1. INTRODUCTION

1.1 Purpose

The Planning Recommendations Report describes the legislative planning framework for the Snowy Mountains Special Activation Precinct.

The NSW Government announced the establishment of a Special Activation Precinct (SAP) in the Snowy Mountains in November 2019. The Snowy Mountains Special Activation Precinct will focus on ways to increase year-round tourism to grow the regional economy, create year-round employment opportunities, and attract more visitors to the region from Australia and the world.

The Snowy Mountains Special Activation Precinct investigation area is made up of land in two jurisdictions (Figure 1), which are:

- **Jindabyne Region:** Land within the Snowy Monaro Local Government Area, but outside the Kosciuszko National Park, which has been identified as having particular potential for development for tourism and related uses.
- **Alpine Region:** Land within the Kosciuszko National Park that has been identified as having potential for development for tourism and related uses.

The Snowy Mountains Special Activation Precinct investigations included a range of technical assessments and preparation of a Structure Plan and Draft Snowy Mountains Special Activation Precinct Master Plan. The vision for the Snowy Mountains Special Activation Precinct includes:

- increasing year-round tourism to grow the regional economy
- creating year-round employment opportunities
- investing in the region's infrastructure to meet the growing needs of residents, seasonal workers and temporary visitors
- attracting more visitors to the region, transforming the Snowy Mountains into Australia's Alpine Capital.

To achieve the vision for the Snowy Mountains Special Activation Precinct, changes to environmental planning instruments are required to support the vision for the Snowy Mountains Special Activation Precinct by streamlining planning approval pathways.

1.2 Proposed amendments

The aim of this Discussion Paper is to describe, and provide justification for, proposed amendments to the *State Environmental Planning Policy (Kosciuszko National Park – Alpine Resorts) 2007* (Alpine SEPP), *State Environmental Planning Policy (Activation Precincts) 2020* (Activation Precincts SEPP) and the *Snowy River Local Environmental Plan 2013* (Snowy River LEP). The changes will identify the proposed 'Snowy Mountains Special Activation Precinct' and include provisions for lands within that Precinct under each of these environmental planning instruments.

Figure 1 shows the Snowy Mountains Special Activation Precinct investigation area and the application of existing environmental planning instruments, being the Alpine SEPP and the Snowy River LEP. Figure 1 also identifies the Sub-Precincts within the Snowy Mountains Special Activation Precinct that are the subject of proposed changes to the Activation Precincts SEPP, the Alpine SEPP and the Snowy River LEP, respectively.

Technical investigations have been carried out to support planning of the Snowy Mountains Special Activation Precinct. These technical investigations are to support the preparation of the Draft Snowy Mountains Special Activation Precinct Master Plan, as well as upfront technical assessments to support a streamlined planning approval pathway. These investigations demonstrate the need for a tailored legislative framework for the Snowy Mountains Special Activation Precinct. This is due to:

- The need to protect and enhance sensitive environmental values present in the Kosciuszko National Park and surrounds
- The need to protect public safety in the Alpine region
- The need to appropriately plan for a diverse range of land use types throughout the Snowy Mountains Special Activation Precinct.

The Planning Recommendations Report describes amendments to three (3) environmental planning instruments that apply within the Snowy Mountains Special Activation Precinct investigation area, namely:

- **Jindabyne Region** – A proposed amendment to the **Activation Precincts SEPP** to introduce a new Schedule for the Snowy Mountains Special Activation Precinct (Jindabyne Region). Development will be facilitated through the Draft Snowy Mountains Special Activation Precinct Master Plan and new Delivery Plans. (Applies only to the 'Catalyst Sub-Precincts' in the Jindabyne Region – see Figure 1)
- **Jindabyne Region Growth Areas** – A proposed amendment to the **Snowy River LEP** via a new Self-repealing State Environmental Planning Policy (referred to as the Self-Repealing SEPP) that rezones land in key sites of change and introduces provisions to support streamlined planning approval for development that is consistent with the Draft Snowy Mountains Special Activation Precinct Master Plan. Development will be facilitated through the Draft Snowy Mountains Special Activation Precinct Master Plan and a new or updated Development Control Plan. (Applies only to the identified 'Growth Areas Sub-Precincts' in the Jindabyne Region – see Figure 1)
- **Alpine Region** – A proposed amendment to **Alpine SEPP** to support streamlined planning approvals. Development will be facilitated through the Draft Snowy Mountains Special Activation Precinct Master Plan and a new Development Control Plan. (Applies only to the identified 'Alpine Sub-Precincts' in the Kosciuszko National Park – see Figure 1).

The Draft Snowy Mountains Special Activation Precinct Master Plan provides strategic and design guidance for these three areas. The sections of the Draft Snowy Mountains Special Activation Precinct Master Plan that are relevant to each area will be adopted under the provisions of each environmental planning instrument.

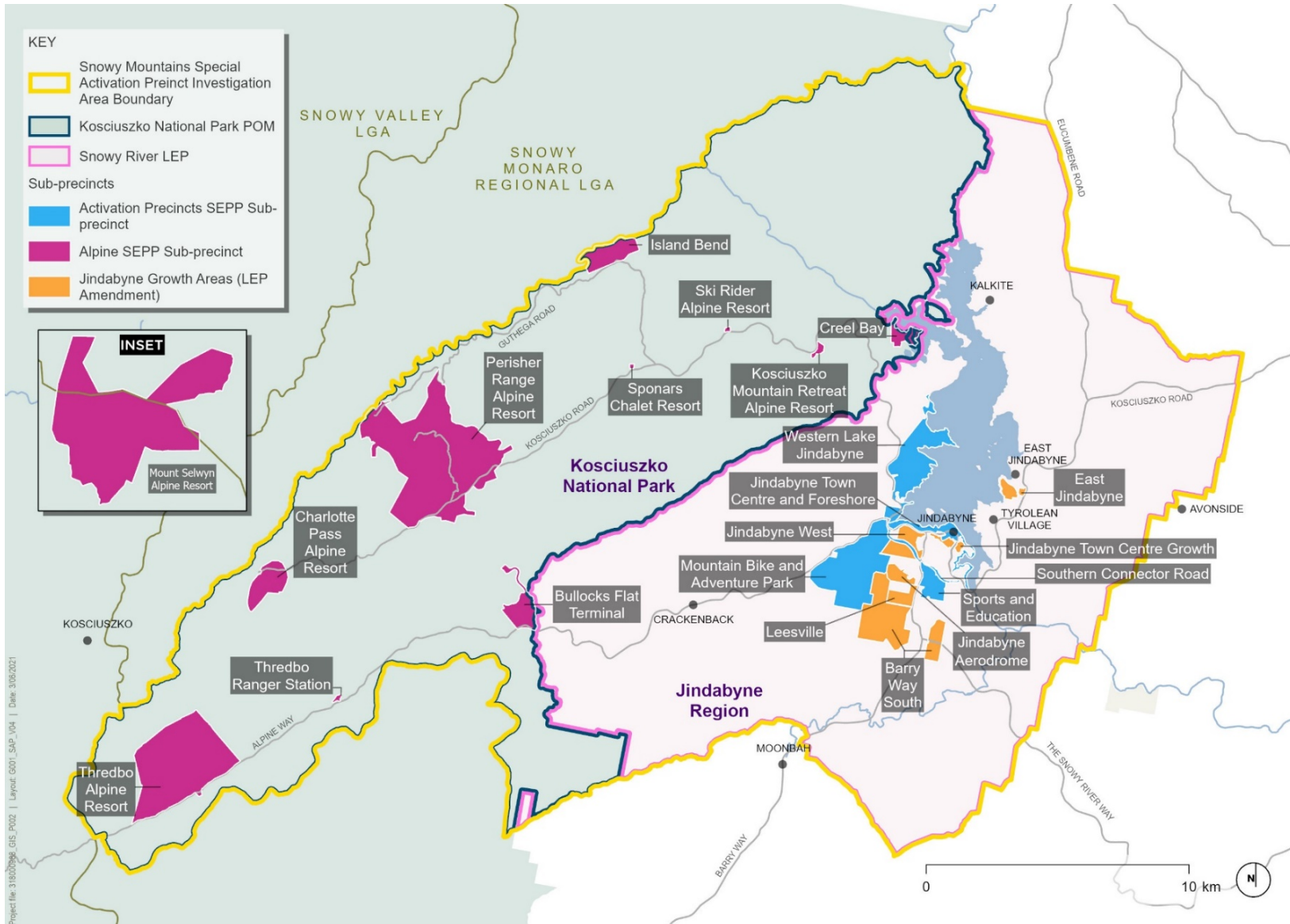


Figure 1 Snowy Mountains Special Activation Precinct Sub-Precincts

1.3 Background

The Planning Recommendations Report informs, and is informed by, a large number of documents created through the Snowy Mountains Special Activation Precinct program, as illustrated in Figure 2.

This Planning Recommendations Report is informed by the preceding Legislative Options Review (which was tested by a broad stakeholder group), a set of specialist environmental and economic studies and the design guidance contained in the Snowy Mountains Master Plan.

A key departure point for the development of the Snowy Mountains Special Activation Precinct legislative framework is that the current legislative arrangements are not sufficiently transparent or streamlined. Further, as a result, that an appropriate balance has not been struck between encouraging investment and maintaining or improving the environmental and social conditions in the Region.

In order to achieve the vision for the Snowy Mountains Special Activation Precinct, it is clear that a reshaped governance structure is required, which reflects the changes in policy and supports the new framework.

During the Snowy Mountains Special Activation Precinct legislative framework review, the decision has been made to retain the Alpine Resorts SEPP (with amendments) and apply the Activation Precincts SEPP to catalyst sites within the Jindabyne Region only. The rationale for this approach is based on the following:

- Preserving the existing safeguards under the Alpine SEPP that are tailored to the specific requirements of the Alpine Region in the context of the Thredbo landslide in 1997 and the location in the Kosciuszko National Park, which requires protection of highly sensitive ecological and heritage values. Refer to Section 4.5.2 for description of the history of the Alpine SEPP. Rather than being replaced by the Activation Precincts SEPP, the Alpine SEPP is retained as it provides:
 - A robust existing framework for managing development within the Alpine Sub-Precincts
 - Embedded protections to safeguard environmental values of the Kosciuszko National Park and to protect public safety for people visiting the Alpine Sub-Precincts.
- Targeted application of the Activation Precincts SEPP to catalyst developments, being key sites of change, that deliver the vision for the Snowy Mountains Special Activation Precinct. This enables detailed upfront planning and assessment to be carried out for these Sub-Precincts, for the purposes of specifying complying development in the Delivery Plan(s).
- Preserving the current consent authority (i.e. Snow Monaro Regional Council) and planning approval pathways for areas within Jindabyne Region that are not identified as catalyst developments, while supporting amendments to the Snowy River LEP to encourage development consistent with the vision for the Snowy Mountains Special Activation Precinct.

The next stage of the Snowy Mountains Special Activation Precinct legislative framework process involves a detailed statutory review, preparation of drafting instructions and the preparation of design guidelines (Development Control Plans and Delivery Plans), which together will support the implementation of the Snowy Mountains Special Activation Precinct Master Plan.

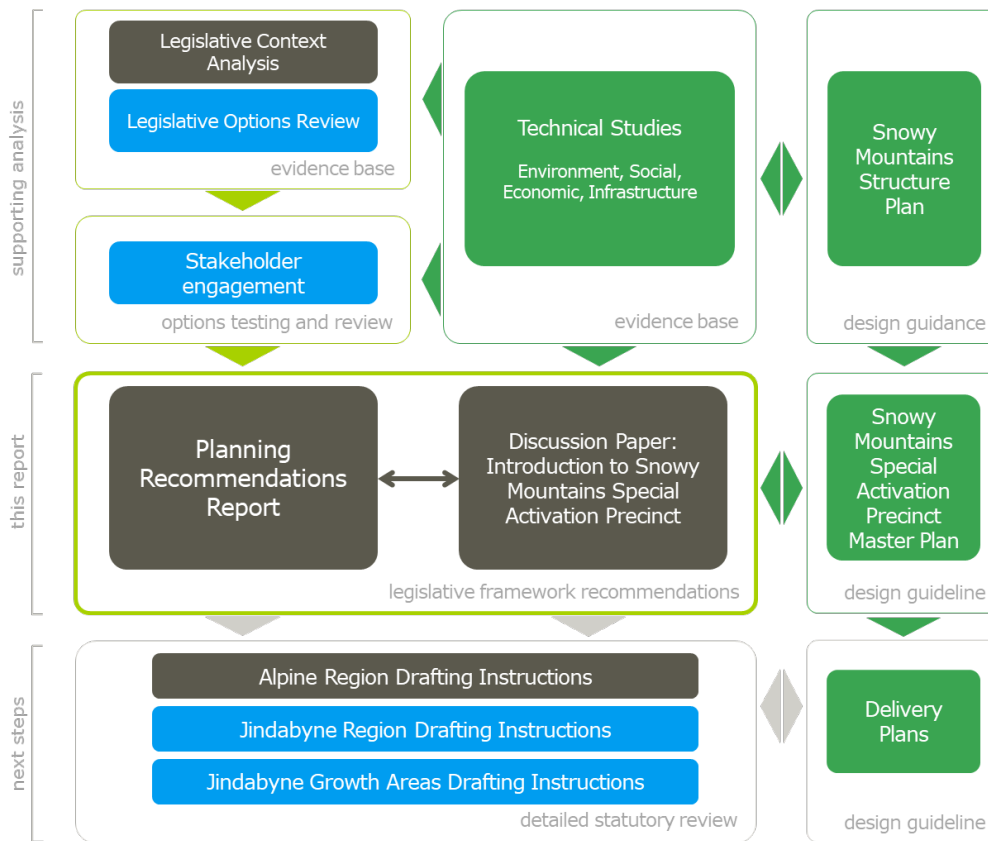


Figure 2 Structure of Planning Recommendations Report

1.4 Structure of this Planning Recommendations Report

This Planning Recommendations Report provides a description of the overarching framework for Snowy Mountains Special Activation Precinct, including the key elements and considerations for both the Alpine Resorts and the Jindabyne Region.

This report comprises the following sections.

1. **Introduction:** Purpose of this report and background to the recommendations
2. **Snowy Mountains Special Activation Precinct Investigation Area:** Locality plan and description of the Snowy Mountains Special Activation Precinct investigation area
3. **Special Activation Precinct Program:** Description of the key elements of the Special Activation Precincts program
4. **Current Snowy Mountains Legislative Framework:** Description of current legislation and environmental planning instruments
5. **Considerations for Snowy Mountains Special Activation Precinct Legislative Framework:** Key issues and considerations for the application of a new legislative framework to the Snowy Mountains Special Activation Precinct
6. **Recommended Snowy Mountains Legislative Framework:** Recommended amendments to support the new legislative framework for the Snowy Mountains Special Activation Precinct.
7. **Alpine Region Governance Structure:** Proposed governance structure applicable to the Alpine Region and Kosciuszko National Park to support the vision of the Snowy Mountains Special Activation Precinct
8. **Summary and conclusions.**

The description of specific amendments to existing environmental planning instruments is provided in the *Discussion Paper: Introduction of the Snowy Mountains Special Activation Precinct* (Appendix 1).

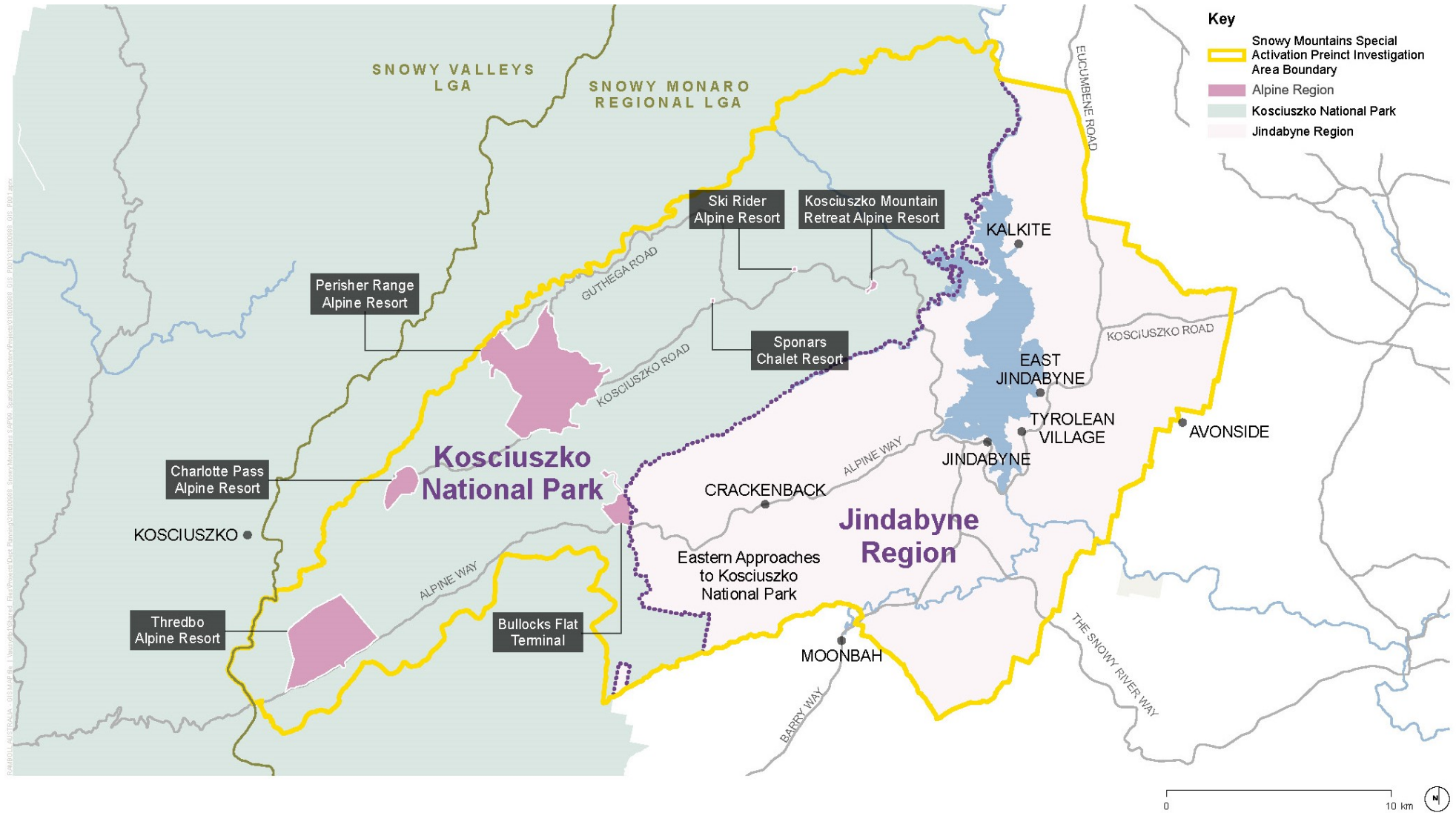
2. SNOWY MOUNTAINS SPECIAL ACTIVATION PRECINCT INVESTIGATION AREA

Key features of the Snowy Mountains Special Activation Precinct investigation area are described in Table 1 and illustrated in Figure 3.

Table 1 Key features of the Snowy Mountains Special Activation Precinct investigation area

Jindabyne Region	
Comprises all land outside Kosciuszko National Park within the Snowy Mountains Special Activation Precinct investigation area boundary	
Key features of land the Jindabyne Region	Land within the Snowy Monaro Local Government Area (LGA) Lake Jindabyne and foreshore (including Jindabyne Dam) Lakeside villages of: <ul style="list-style-type: none"> • Jindabyne Town Centre • East Jindabyne • Tyrolean • Kalkite Approaches to Kosciuszko National Park (Crackenback and Alpine Way) Surrounding rural and environmental conservation lands
Kosciuszko National Park	
Kosciuszko National Park covers the western portion of the Snowy Mountains Special Activation Precinct	
Key areas of the Kosciuszko National Park within the Snowy Mountains Special Activation Precinct investigation area boundary	Localities within the Kosciuszko National Park, including: Ngarigo Camping, Thredbo Diggings Campground, Sawpit Creek, Waste Point, Island bend, Ranger Station (Alpine Way), Mt Paralyzer, Twin Valleys. Areas of Exceptional Recreational Significance (Management Unit) – including: Perisher Range, Thredbo and Charlotte Pass Management Units Main Range Management Unit Areas of Exceptional Natural and Cultural Significance (Management Unit) – Alpine areas between Thredbo, Charlotte Pass and Perisher Zones: Back Country Zone, Visitors Services Zones
Alpine Region*	
Alpine Sub-Precincts within Kosciuszko National Park	
Alpine Sub-Precincts	Thredbo Charlotte Pass Perisher Resort (includes: Perisher, Smiggin Holes, Guthega and Blue Cow) Bullocks Flat Terminal
Alpine Accommodation	Ski Rider Sponars Chalet Kosciuszko Mountain Retreat (Tourist Park). Island Bend Creel Bay Thredbo Ranger Station

*Note: Mount Selwyn is not part of the Snowy Mountains Special Activation Precinct investigation area, but will be retained under the Alpine SEPP.



3. SPECIAL ACTIVATION PRECINCTS PROGRAM

3.1 Jobs and economic development in Regional NSW

The NSW Government is committed to supporting economic development and job creation in regional NSW. Regional NSW has one of Australia’s largest and most diverse regional economies, with an array of industries including agriculture, energy and resources, and strong tourism, service and manufacturing sectors. Across NSW, economic or industry specialisations have arisen from locational or competitive advantages, access to a large, skilled workforce, investment, and/or the ability to co-locate supporting or product or value- add industries or activities.

The purpose of the Special Activation Precincts program is to create streamlined planning pathways and secure investment in catalyst infrastructure, to create economic opportunity and growth. The creation of Special Activation Precincts aligns with the existing Department of Planning, Industry and Environment’s Regional Plans and the Department of Premier and Cabinet’s Regional Economic Development Strategies, which set the strategic vision and economic engines for each Functional Economic Region across NSW.

3.2 Special Activation Precincts: Program objectives

Special Activation Precincts are existing or proposed employment precincts in regional NSW that have been identified by the NSW Government as having potential for growth, and where planning and investment will be prioritised. The Special Activation Precinct program is an important part of the NSW Government’s 20-Year Economic Vision for Regional NSW and will be delivered through the \$4.2 billion Snowy Hydro Legacy Fund.

The Special Activation Precinct consists of five core components:

 <p>Streamlined planning</p>	<p>The Department of Planning, Industry and Environment conducts technical studies to inform the development of master plans and to ensure that land uses, and development occurs in the right locations for each precinct. This up-front planning takes the burden away from investors wanting to grow or start up a business in the precincts.</p>
 <p>Government-led studies</p>	<p>Once the master plan and other supporting planning instruments are endorsed, this will provide investors with streamlined planning and environmental approvals. This may include providing for land uses that suit complying development or approval exemptions.</p>
 <p>Government-led development</p>	<p>The Regional Growth NSW Development Corporation will support orderly development, sensitive to market drivers, landowners and infrastructure delivery and will lead and coordinate the delivery, through Delivery Plans according to the master plan.</p>
 <p>Infrastructure investment</p>	<p>Government will upgrade existing, or invest in new, or upgrade roads, water, power, digital connectivity and social infrastructure for each precinct, removing barriers for investors to establish and grow.</p>
 <p>Business Concierge</p>	<p>The Regional Growth NSW Development Corporation offers targeted business concierge services to attract investment and support businesses to establish and grow in each precinct.</p>

3.3 The key agencies involved in the Special Activation Precinct program

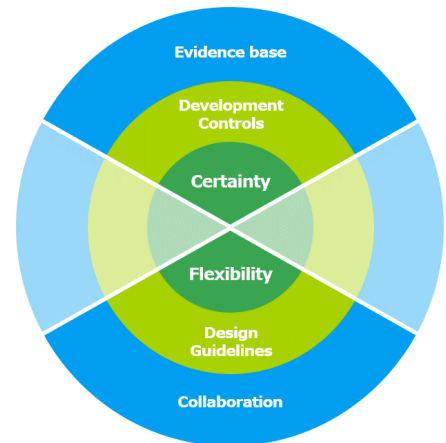
The Special Activation Precinct Program is a collaboration between the following key agencies:

- The **Department of Regional New South Wales** is the lead agency for the Special Activation Precincts Program, part of the \$4.2 billion Snowy Hydro Legacy Fund. Overseeing the funding, planning and development of each precinct, the Department of Regional NSW works closely with the Department of Planning, Industry and Environment and the Regional Growth NSW Development Corporation to create a Master Plan, identify and invest in common user enabling infrastructure, and provide ongoing concierge services to help investors establish and grow in regional NSW.
- The **NSW Department of Planning, Industry and Environment (the Department)** is responsible for the planning of Special Activation Precincts in regional NSW. The Department leads the master planning process, including community and stakeholder engagement, the technical studies required to inform the preparation of a structure plan and development of the simplified planning framework for each Precinct.
- The **Regional Growth NSW Development Corporation** is the agency responsible for delivering and implementing Special Activation Precincts. Regional Growth NSW Development Corporation is working with all levels of Government, the private sector and the community to secure economic development and investment attraction opportunities to these unique areas. Regional Growth NSW Development Corporation is a one-stop shop to support investors and will develop catalyst, enabling infrastructure, support the attraction and facilitation of investment in the Special Activation Precincts, providing support on planning and environmental approval processes, and create strategic partnerships to foster education, training and collaboration opportunities.
- The **NSW National Parks and Wildlife Service (NPWS)** is a key landowner and partner in the development of the Snowy Mountains Special Activation Precinct and have provided strategic and technical guidance, with a focus on the Alpine Region and matters related to biodiversity, cultural heritage, and alpine tourism. Exhibition of the Master Plan will occur concurrently with the proposed amendments to the *Kosciuszko National Park Plan of Management (2006)* (Kosciuszko National Park POM). The proposed amendments will enable the delivery of the core elements of the Master Plan and adjust parkwide policy on built accommodation within the National Park.
- The **Snowy Monaro Regional Council (SMRC)** is a key partner in the development of the Draft Snowy Mountains Special Activation Precinct Master Plan and will continue to have a regulatory and approval role for development in certain Sub-Precincts outside the Kosciuszko National Park. In addition, SMRC existing and future infrastructure, as well as advocacy and influence, will play a key role in realising the vision of the Snowy Mountains Special Activation Precinct.

3.4 Streamlining development approvals – a key goal for activation precincts

The key characteristics of a streamlined planning approval pathway are:

- **Certainty:** Achieved through sufficient evidence to formulate appropriate design guidance and controls that both deliver clear and consistent direction for proponents and provide confidence that controls are in place to manage potential impacts and mitigate risks of development
- **Flexibility:** The ability to introduce innovation through development is achieved through suitably drafted design guidelines that enable innovation, but establish a clear direction upon which proponents can base design responses.



Both of these factors rely on a sufficient **evidence base** (drawn from detailed technical, economic, social and legislative studies) and on **agency collaboration** (including on respective policy settings, legislation and approval mechanisms) to, firstly, allow for the drafting of the new legislative framework (supported by clear development controls and design guidance) and, secondly, to apply it to Proposals to ensure the robust streamlined planning approval that we aspire to achieve, occurs.

Methods for streamlining the development approval process include:

- Reducing the cost of Development Applications (preparation and fees).
- Reducing the time frame for development assessment and approval

These can be achieved either through legislative amendment to regulations or environmental planning instruments or via management/governance solutions, supported by:

- **Upfront design:** Front-loading the design task by having a detailed master plan (including suitability controls) to give guidance to Proponents with regard the likely acceptability of solutions (e.g. character and built form)
- **Upfront technical studies:** Front-loading the assessment of development by providing Proponents access to detailed technical investigations (biodiversity, transport, heritage, ground conditions, social impact and the like), relieving them of the burden to undertake these studies themselves
- **Stakeholder collaboration:** Strong collaboration and cross-agency endorsement of the vision, principles and design for future development in the Snowy Mountains Special Activation Precinct area
- **Government support:** Government-led policy preparation and investment in enabling infrastructure and implementation of catalyst development opportunities.

The key benefit of applying a streamlined planning approval pathway to development within the Snowy Mountains Special Activation Precinct investigation area is reducing time and costs associated with applications for development approval, to both proponents and approval authorities. Inevitably, this improves the attractiveness of the area for private investment.

Key premise of Special Activation Precinct program is to support streamlined development approval through mechanisms that:

change regulations, not law

3.5 Snowy Mountains Special Activation Precinct investigations

The technical studies will inform development standards and controls to support streamlined planning approval pathway for the Snowy Mountains Special Activation Precinct investigation area. The specialist studies, including the structure planning, would assess the precinct-wide or common issues and integrate those into the master plan to be prepared by the Department. The studies investigate site-specific conditions for targeted sites with the view to supporting design decisions and to resolve critical constraints.

By conducting these studies and integrating the outcomes into the legislative framework via the Master Plan and Delivery Plan/Development Control Plan, this would reduce the onus on proponents to assess precinct-wide issues as part of the individual Development Applications. Further, the suite of studies strengthens confidence in the evidence base and design guidelines to support streamlined planning approval pathways.

Studies carried out to inform the Snowy Mountains Special Activation Precinct investigations include:

- Structure planning:
 - Snowy Mountains Special Activation Precinct Draft Structure Plan Report
 - Tourism Development Study
 - Sports Infrastructure Study
 - Housing and Accommodation
 - Social Infrastructure
 - Jindabyne Sport and Rec Centre Master Plan Report
 - Public Space Report
- Economic:
 - Economic Development Study
- Environment and heritage:
 - Bushfire Assessment Study
 - Aboriginal Heritage Study
 - Biodiversity Assessment Report
 - Salt Impact Management Plan
 - Ecologically Sustainable Development Report
 - Hydrogeology Study
 - Geotechnical Study
- Engineering:
 - Transport Study
 - Infrastructure and Services Study
 - Renewable Energy Study
 - Flooding Study
- Airport Infrastructure Report.

4. CURRENT SNOWY MOUNTAINS LEGISLATIVE FRAMEWORK

4.1 Overview

The Snowy Mountains Special Activation Precinct has particular characteristics that need to be taken into consideration in developing a legislative framework. These include, amongst others, a large number of existing planning instruments and approval pathways.

These need to be understood in order to consider a future framework. In this section we briefly describe those respective instruments and the potential planning approval pathways that, as a consequence, are available to proponents.

Table 2 identifies the key controlling environmental planning instruments that apply within the Snowy Mountains Special Activation Precinct.

Table 2 Application of current key legislative instruments

Location	Instrument / Legislation	Application
Jindabyne Region	Snowy River LEP	<ul style="list-style-type: none"> Applies to all land within the previous Snowy River LGA (now part of amalgamated Snowy Monaro LGA). Applies zoning to Kosciuszko National Park (E1) but does not control development on land within the Kosciuszko National Park, which instead is subject to Kosciuszko National Park POM and Alpine SEPP.
Alpine Region	Alpine SEPP	<ul style="list-style-type: none"> Applies to land defined as being Alpine Sub-Precincts within the Kosciuszko National Park, which aligns with land leased for Alpine Resorts under the <i>National Parks and Wildlife Act 1974</i>.
Alpine Region	Kosciuszko National Park POM	<ul style="list-style-type: none"> Applies to all land within the Kosciuszko National Park. Includes provision and framework for leasing land within the Kosciuszko National Park for Alpine Sub-Precincts. Defines the carrying capacity (cap on development) for Alpine Sub-Precinct leases. Applies to all land within the Kosciuszko National Park, including Alpine Sub-Precinct land.

Note: The Activation Precincts SEPP will apply to land in the Snowy Mountains Special Activation Precinct once a new schedule to the SEPP is gazetted.

Figure 4 shows the key planning instruments that comprise the current legislative framework in the Snowy Mountains Special Activation Precinct.

Figure 5 illustrates the key provisions under the current planning framework that influence the assessment and approval of development with the Snowy Mountains Special Activation Precinct.

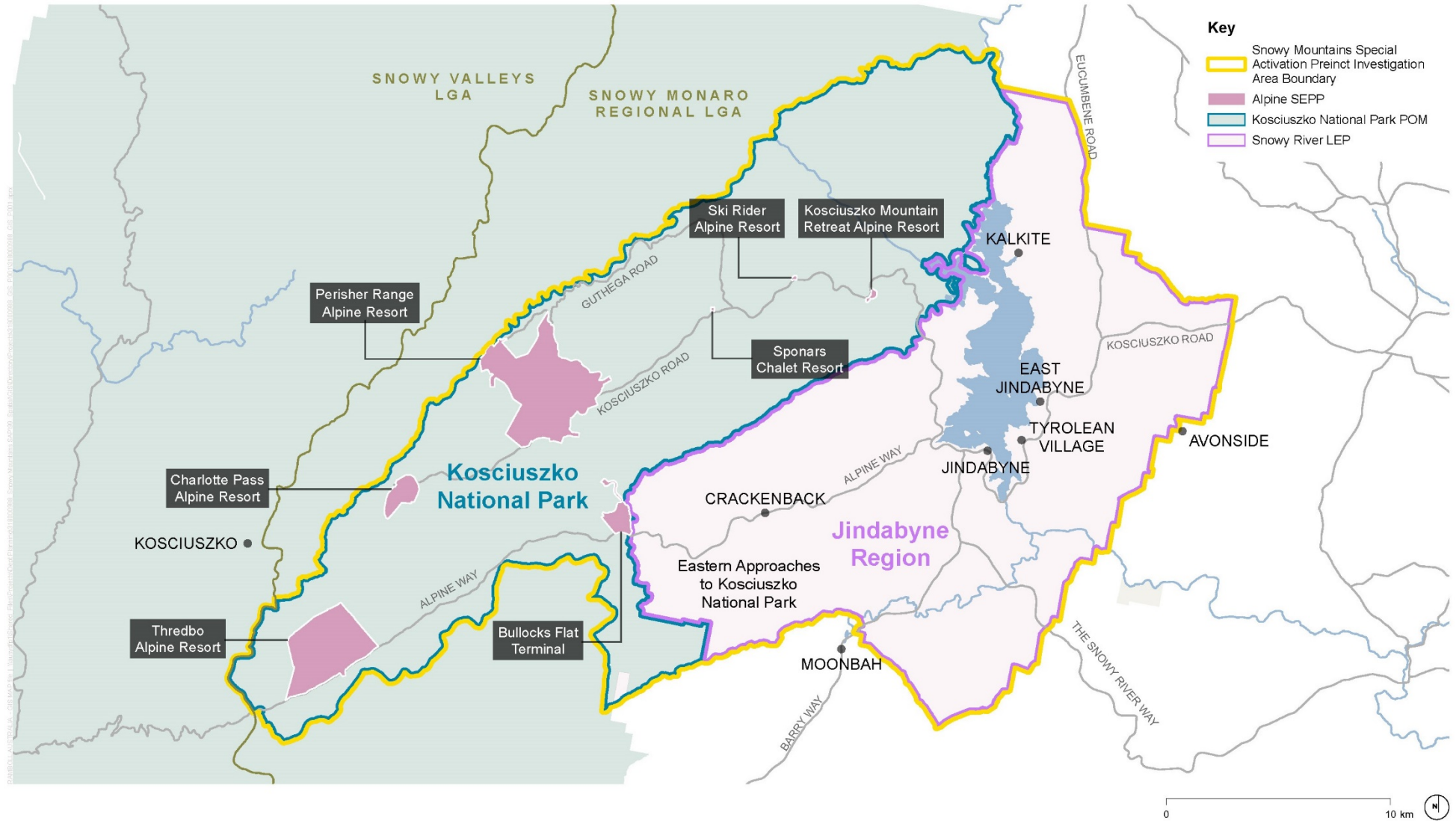


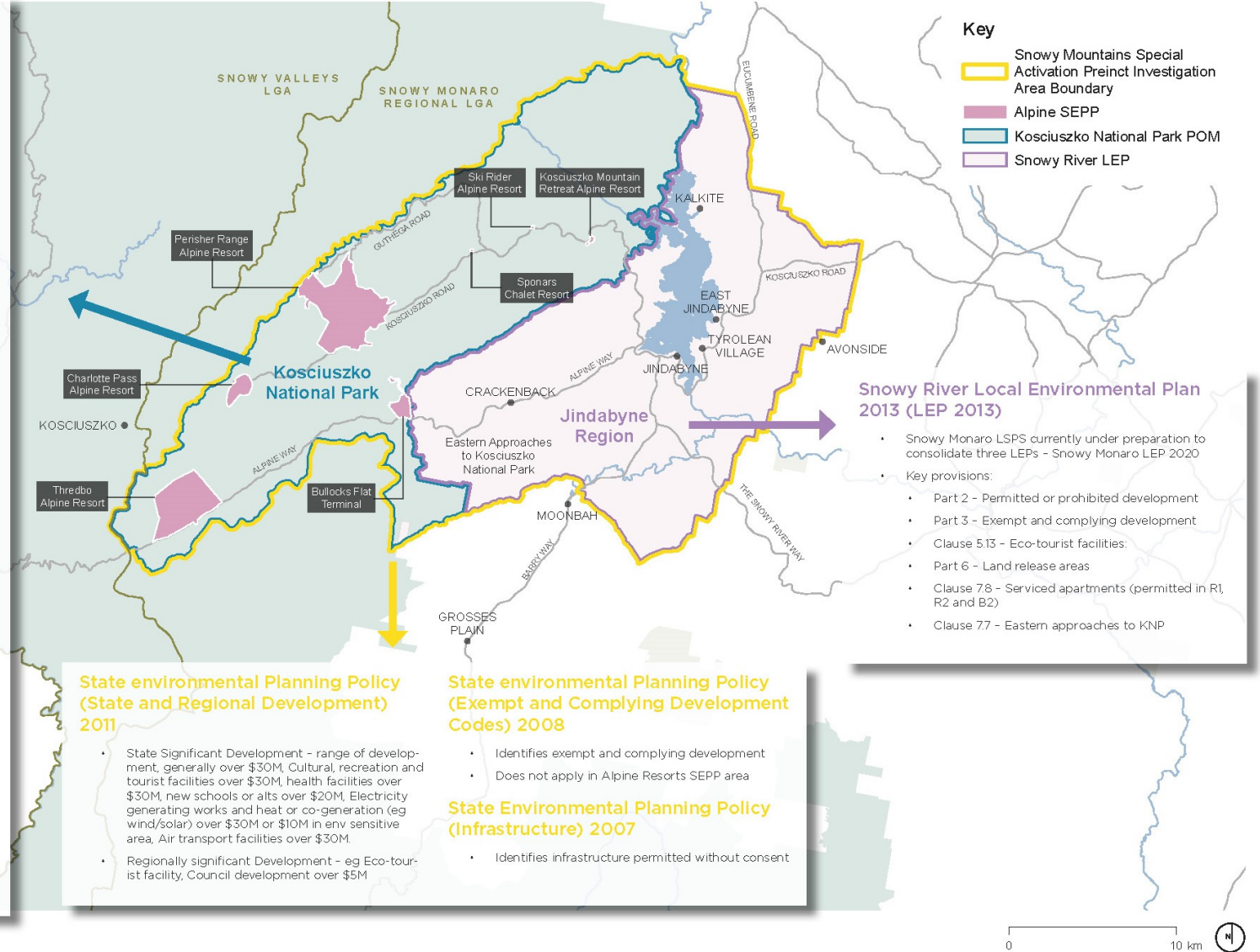
Figure 4 Current legislative framework

State Environmental Planning Policy - (Kosciuszko National Park - Alpine Resorts) 2007 (Alpine SEPP)

- State Environmental Planning Policy - (Kosciuszko National Park - Alpine Resorts) 2007 (Alpine SEPP)
- Subject land (Alpine Resorts) Note: Mount Selwyn part of Alpine SEPP subject land, but not included in SAP
- Consent authority (all development): Minister for Planning and Public Spaces (majority delegated to DPIE officers)
- Clause 19 and Schedule 2 describes exempt development
- Complying development limited to only conversion of fire alarms under certain circumstances
- Geotechnical identified land: structural and geotechnical requirements applying to development within the Alpine Resort areas
- SEPP specifies development permissibility Referral of all DAs to NPWS for comment
- Development applications may only proceed if it is also permissible under the relevant lease, license or other authority granted under the NPW Act 1974
- Under Clause 14(2)(a) of Codes SEPP, the Codes SEPP does not apply to land to which the Alpine SEPP applies

Kosciuszko National Park Plan of Management (KNP POM)

- Principal park management document adopted under Part 5 of the NPW Act 1974 - Applies to entire KNP (including resorts)
- Resort land:
 - Alpine Resorts operate under leases and licenses granted under the NPW Act 1974
 - KNP POM details requirements for the Alpine Resorts for issuing and management of leases and licenses, including limits on overnight accommodation within the resorts
 - DPIE, in assessing DAs, is required to have regard to the objectives, policies and actions outlined in the Kosciuszko National Park Plan of Management (concurrence of NPWS is required)
- Protection of Aboriginal cultural heritage within the Alpine Resorts is administered under the NPW Act 1974
- Approval under Part 5 of the EP&A Act is required for all works within the KNP (excluding Alpine Resorts), except as required by the SRD SEPP



Snowy River Local Environmental Plan 2013 (LEP 2013)

- Snowy Monaro LSPS currently under preparation to consolidate three LEPs - Snowy Monaro LEP 2020
- Key provisions:
 - Part 2 - Permitted or prohibited development
 - Part 3 - Exempt and complying development
 - Clause 5.13 - Eco-tourist facilities:
 - Part 6 - Land release areas
 - Clause 7.8 - Serviced apartments (permitted in R1, R2 and B2)
 - Clause 7.7 - Eastern approaches to KNP

State environmental Planning Policy (State and Regional Development) 2011

- State Significant Development - range of development, generally over \$30M. Cultural, recreation and tourist facilities over \$30M, health facilities over \$30M, new schools or alts over \$20M, Electricity generating works and heat or co-generation (eg wind/solar) over \$30M or \$10M in env sensitive area, Air transport facilities over \$30M.
- Regionally significant Development - eg Eco-tourist facility, Council development over \$5M

State environmental Planning Policy (Exempt and Complying Development Codes) 2008

- Identifies exempt and complying development
- Does not apply in Alpine Resorts SEPP area

State Environmental Planning Policy (Infrastructure) 2007

- Identifies infrastructure permitted without consent

Figure 5 Key provisions of the current legislative framework

4.2 Planning approval pathways under *Environmental Planning and Assessment Act 1979*

Exempt development

Exempt development comprises minor and insignificant development for which a development consent or building approval is not required. Exempt development is of minimal environmental impact, is deemed to satisfy with the *Building Code of Australia* (part of the *National Construction Code*), and does not require fire engineering measures.

Exempt development, along with the relevant standards/conditions, is listed in a relevant environmental planning instrument as being exempt.

Complying development

A combined planning and construction approval for straightforward development that can be determined through a fast-track assessment by a council or an accredited certifier. Complying development is listed in a relevant environmental planning instrument as being complying development. The environmental planning instrument also identifies the relevant standards, conditions and thresholds for complying development.

Complying development is an existing planning approval pathway under *Environmental Planning and Assessment Act 1979*, which comprises a fast-track development approval pathway combining the Development Consent with a Construction Certificate, through issue of a Complying Development Certificate.

Examples of these prerequisite controls include:

- (a) meet the relevant provisions of the *Building Code of Australia*, and
- (b) in the case of development other than for the purposes of environmental protection works or recreation areas—not be carried out on land identified as within an environmentally sensitive area, and
- (c) not be carried out on land on which a heritage item or Aboriginal object is located or that is within a heritage conservation area or Aboriginal place of heritage significance, and
- (d) not be for the purpose of remediation work within the meaning of *State Environmental Planning Policy No 55—Remediation of Land*, and
- (e) not be within land identified as bush fire prone if the proposal is for a Special Fire Protection Purpose, as defined by the *Rural Fires Act 1997*, and
- (f) other conditions to be considered based on detailed review of applicable environmental planning instruments.

There may be particular zones or locations where additional requirements are warranted for complying development, in order to ensure minor impacts in light of unique site conditions or where additional design guidance is required to achieve the vision. This would be assessed as part of a detailed statutory review that is prepared to inform drafting instructions (see Section 8.2 for description of next steps).

Where applicable legislation or environmental planning instruments reference 'Development Applications', 'consent authority' or 'integrated development', the relevant provisions would not apply to complying development. Accordingly, careful consideration of the application of Acts, Regulations or environmental planning instruments that currently reference these terms will need to be considered as part of the drafting of new provisions.

Development Application

The Development Application pathway under Part 4 of the *Environmental Planning and Assessment Act 1979* applies to development identified as 'permitted with consent' in the relevant environmental planning instrument.

A Development Application on land within the Snowy Mountains Special Activation Precinct would benefit from greater collaboration and front-loading the development assessment as part of the Master Plan and Delivery Plan/Development Control Plan preparation process. Activation Precinct Certificate would be a pre-requisite for consent authority in evaluating and determining each proposed development.

A traditional local Development Application pathway is illustrated in Figure 6.

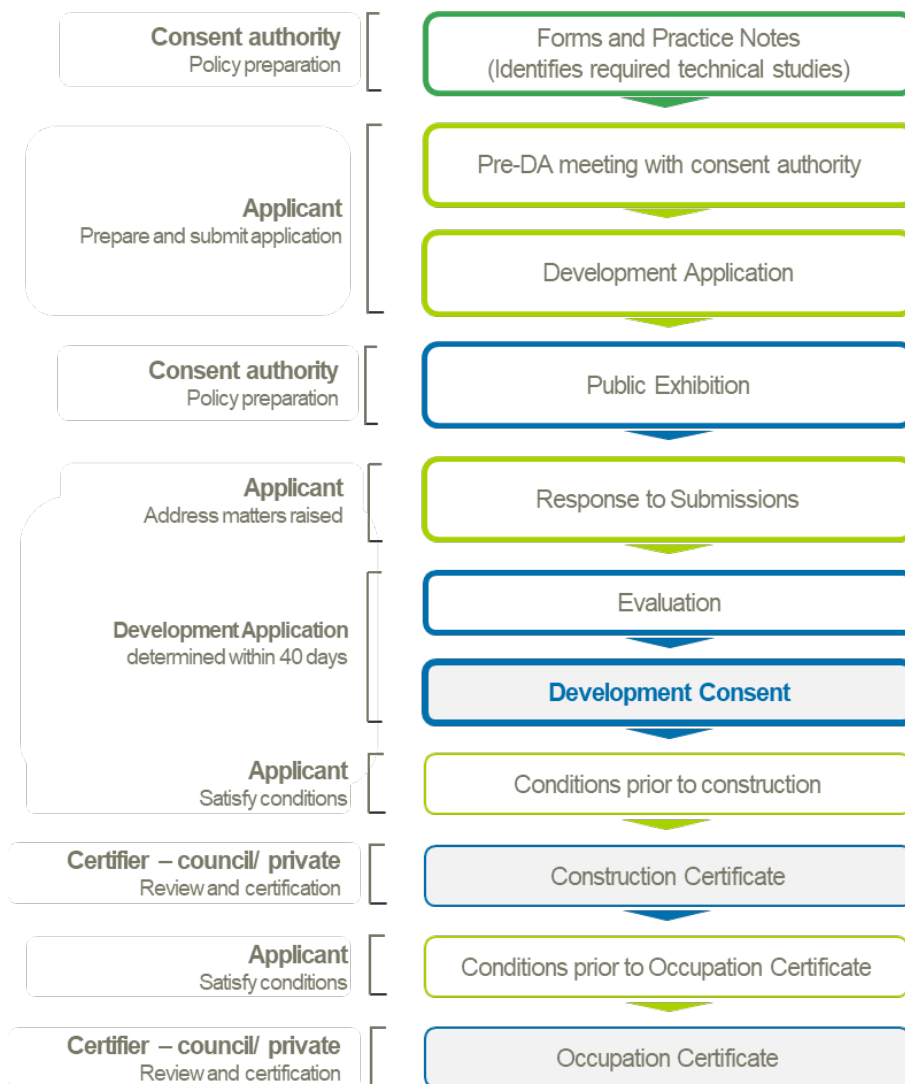


Figure 6 Traditional Development Application pathway

Table 3 identifies the broad categories for development that requires consent within the Snowy Mountains Special Activation Precinct and identifies the potential Development Application pathways.

Table 3 Potential pathways for development that requires consent

Type of Development	Description
Local development	<p>Development that requires consent under a specified environmental planning instrument provision (Activation Precincts SEPP, Alpine SEPP, Snowy River LEP) would be local development, if it is not declared to be of state or regional significance.</p> <p>Local Development Applications are accompanied by a Statement of Environmental Effects (SEE), prepared in accordance with Part 4 of the <i>Environmental Planning and Assessment Act 1979</i>, which assessed a range of matters for consideration, including specific site conditions and potential impacts on the surrounding environment.</p> <p>Local development may also trigger additional requirements of either integrated or designated development, as described below.</p>
	<p>Designated development</p> <p>Development that is categorised as potentially high-impact (e.g. likely to generate pollution) or are located in or near an environmentally sensitive area (e.g. a wetland). There are two ways a development can be categorised as 'designated development':</p> <ul style="list-style-type: none"> the class of development can be listed in Schedule 3 of the <i>Environmental Planning and Assessment Regulation 2000</i> as being designated development, or a LEP or SEPP can declare certain types of development to be designated. <p>Development Application for designated development is subject to detailed impact assessment and preparation of an Environmental Impact Statement.</p> <p>Examples: breweries and distilleries, ceramic and glass industries, sewage treatment plants, contaminated soil treatment works.</p> <p>These kinds of developments that would trigger designated development are not envisaged, on land to which the relevant SEPP applies, under the Draft Snowy Mountains Special Activation Precinct Master Plan.</p>
	<p>Integrated development</p> <p>Development that requires a permit/approval from another government body as listed in Section 4.46 of the <i>Environmental Planning and Assessment Act 1979</i>, before consent can be granted.</p> <p>Integrated development cannot be turned off in the Snowy Mountains Special Activation Precinct, unless an amendment to the <i>Environmental Planning and Assessment Act 1979</i> is made (amendments to law are not proposed). Refer to Section 6.4 for description of the proposed approach to reduce exhibition periods for integrated development.</p> <p>Example: Development requiring an Environmental Protection Licence from the NSW Environment Protection Authority; Land-water interface development, such as wharfs, boat ramps etc, requiring approval from NSW Department of Primary Industries.</p>
State Significant Development and State Significant Infrastructure	<p>Development listed in Section 4.36 of the <i>Environmental Planning and Assessment Act 1979</i> is State Significant Development, and Development listed in Section 5.12 of the <i>Environmental Planning and Assessment Act 1979</i> is State Significant Infrastructure</p> <p>Requires preparation of an Environmental Impact Statement to accompany Development Application and the consent authority is the Minister for Planning and Public Spaces.</p> <p>Although State Significant Development is not generally envisaged as part of the Snowy Mountains Special Activation Precinct, bespoke provisions may be required to avoid inconsistency.</p>

Development without consent

Development that is specified under an environmental planning instrument (LEP or SEPP) as being 'permitted without consent' does not require a development consent. Instead an assessment of environmental factors in accordance with Part 5 of the *Environmental Planning and Assessment Act 1979* is required.

Where a public authority carries out development without consent, these are subject to an assessment under Part 5 of the *Environmental Planning and Assessment Act 1979*. This enables the public authority to self-assess the potential environmental impacts of the proposed activity. Typically, the public authority will have internal procedures and assessment requirements for assessments under Part 5, including standards forms, templates and delegations of authority to make decisions.

Under Part 5, an Environmental Impact Statement (EIS) is required where there is potential for significant impacts to be generated by the proposal. To determine whether an EIS is required under Part 5 of the *Environmental Planning and Assessment Act 1979*, a Review of Environmental Factors is prepared in accordance with Clause 228 of the *Environmental Planning and Assessment Regulation 2000*. Where an EIS is required under Part 5, the SRD SEPP provides that the proposal then becomes State significant and is subject to approval under the SRD SEPP. Part 5 would remain a possible planning approval pathway for public infrastructure within the Snowy Mountains Special Activation Precinct. The Part 5 assessment process may remain the most expedient process to achieve approval for public infrastructure.

4.3 Jindabyne Region

4.3.1 Consent authority

The current consent authorities in Jindabyne Region are as follows:

- SMRC for development within the Jindabyne Region (or Southern Regional Planning Panel)
- Minister for Planning and Public Spaces for State Significant Development and State Significant Infrastructure.

Principal certifiers for development in Jindabyne Region may be either SMRC or private certifiers.

4.3.2 Snowy River LEP

Overview

SMRC was established on 12 May 2016, as an amalgamation of the three former LGA: Snowy River, Cooma Monaro and Bombala. Land within the Snowy Mountains Special Activation Precinct investigation area is subject to the provisions of the Snowy River LEP, as follows:

- **Kosciuszko National Park:** Land within the Kosciuszko National Park is zoned E1 under the Snowy River LEP, under which uses that are listed as permitted without consent are those uses authorised under the *National Parks and Wildlife Act 1974*, there are no identified uses permitted with consent and all other development is prohibited. Development within the Kosciuszko National Park is assessed in accordance with Part 5 of the *Environmental Planning and Assessment Act 1979*, the *National Parks and Wildlife Act 1974* and Kosciuszko National Park POM (refer to Section 4.5 for description of planning framework in Kosciuszko National Park).
- **Alpine Sub-Precincts:** As described in Section 4.5.3, the Alpine SEPP overrides the Snowy River LEP to the extent that it applies to land within the Alpine Sub-Precincts.
- **Jindabyne Region:** Development on land within Jindabyne Region is subject to the Snowy River LEP as well as other environmental planning instrument's described in Section 2.5.

Current land use zoning under Snowy River LEP is shown in Figure 7.

SMRC has recently finalised the *Snowy Monaro Local Strategic Planning Statement* to guide consolidation of the three applicable local environmental plans within the amalgamated local government area¹. The *Snowy Monaro Local Strategic Planning Statement* provides an overarching planning framework for the Snowy Monaro region taking into account the Snowy Monaro community’s environmental, social and economic land use needs over the next 20 years. The *Snowy Monaro Local Strategic Planning Statement* sets short, medium and long-term actions to deliver the priorities for the community’s future vision and establishes a framework against which achievements can be measured.

Planning Priority 3 of the *Snowy Monaro Local Strategic Planning Statement* aims to “support development of the Snowy Mountains as Australia’s premier year-round alpine destination”. Further, the *Snowy Monaro Local Strategic Planning Statement* states that SMRC will “work with the NSW Government on the development of a Special Activation Precinct (SAP) in Jindabyne Region and Kosciuszko National Park to balance an increased tourism profile for the region with the needs of the local community”.

Key provisions

The key provisions of the Snowy River LEP are described as follows.

- Part 2: permitted or prohibited development: Describes the provisions relating to zoning or land and the land use table. This part establishes which land uses, within the relevant land use zone, are:
 - Permitted without development consent
 - Permitted with development consent, including:
 - Uses requiring a Development Application
 - Uses that are exempt development
 - Uses that are complying development
 - Prohibited
- Part 3: Exempt and complying development: Describes provisions relating to Exempt and complying Development. Along with other exclusions, Clause 3.3 (Part 3) provides that exempt or complying development may not be carried out on land identified within Scenic Protection area of Lake Jindabyne.
- Clause 5.13 Eco-tourist facilities: Describes the requirements for eco-tourism facilities where such uses are permitted with development consent.
- Part 6 Land Release Areas: Outlines the requirements for public utility infrastructure to service land release areas and the requirements for a Development Control Plan that must be prepared prior to development on land in a land release area.
- Part 7 Additional local provisions:
 - 7.1 Flood planning: Requirements for development below the flood planning Level
 - 7.2 Terrestrial biodiversity: Requirements for development on land identified as Biodiversity land
 - 7.3 Riparian land and watercourses: Requirements for development on land identified as Riparian Land or Watercourse



¹ For the purposes of this Planning Recommendations Report, the relevant local environmental plan is the *Snowy River Local Environmental Plan 2013*.

- 7.4 Wetlands : Requirements for development on land identified as Wetland
- 7.5 Active street frontages: Requirements for development on land with identified active street frontages (certain streets within Jindabyne town centre)
- 7.6 Development within the Lake Eucumbene and Lake Jindabyne scenic protection areas: Requirements for development on land identified as Lake Jindabyne on the Scenic Protection Area Map
- 7.7 Development within the eastern approaches to Kosciuszko National Park: Requirements for development on land identified as Eastern Approaches to Kosciuszko National Park on the Scenic Protection Area Map
- 7.8 Serviced apartments: Requirements for serviced apartments on land upon which, according to the land use table, serviced apartments are permitted with consent
- 7.9 Essential services: requirement for development consent not to be granted unless the consent authority is satisfied that 'adequate arrangements' have been made for:
 - the supply of water
 - the supply of electricity
 - the disposal and management of sewage
 - stormwater drainage or on-site conservation
 - suitable vehicular access.

Southern Regional Planning Panel

Sydney and Regional Planning Panels were introduced to NSW in 2009 to strengthen decision making on regionally significant Development Applications and other planning matters. SMRC are a member of the Southern Regional Panel, which is an independent body of experts appointed by the State Government and SMRC.

The Planning Panels:

- Determine regionally significant Development Applications, certain other Development Applications and section 4.55(2) and section 4.56 modification applications
- Act as the Planning Proposal Authority (PPA) when directed
- Undertake rezoning reviews
- Provide advice on other planning and development matters when requested; and
- Determine site compatibility certificates under the *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*.

It is the responsibility of the SMRC to carry out an assessment of a proposal (including the public exhibition of the application and assessment of submissions received) for a Panel's determination of a relevant Development Application. The purpose of the public panel meeting is for the panel to hear those who wish to express their view on a Development Application before a decision is made.



Figure 7 Land use zoning map

4.4 Activation Precincts SEPP

4.4.1 Architecture of the Activation Precincts SEPP

The Activation Precincts SEPP is a place-based approach to activate strategic locations of State or regional significance that enable economic development and jobs creation.

The purpose of the Activation Precincts SEPP is to provide the statutory planning framework for each Special Activation Precinct. The Activation Precincts SEPP supports simplified planning processes to streamline development in Special Activation Precincts where development is consistent with an approved Master Plan and meets the relevant development standards.

The primary planning instruments under the Activation Precincts SEPP are the Master Plan and Delivery Plan, as illustrated in Figure 8.

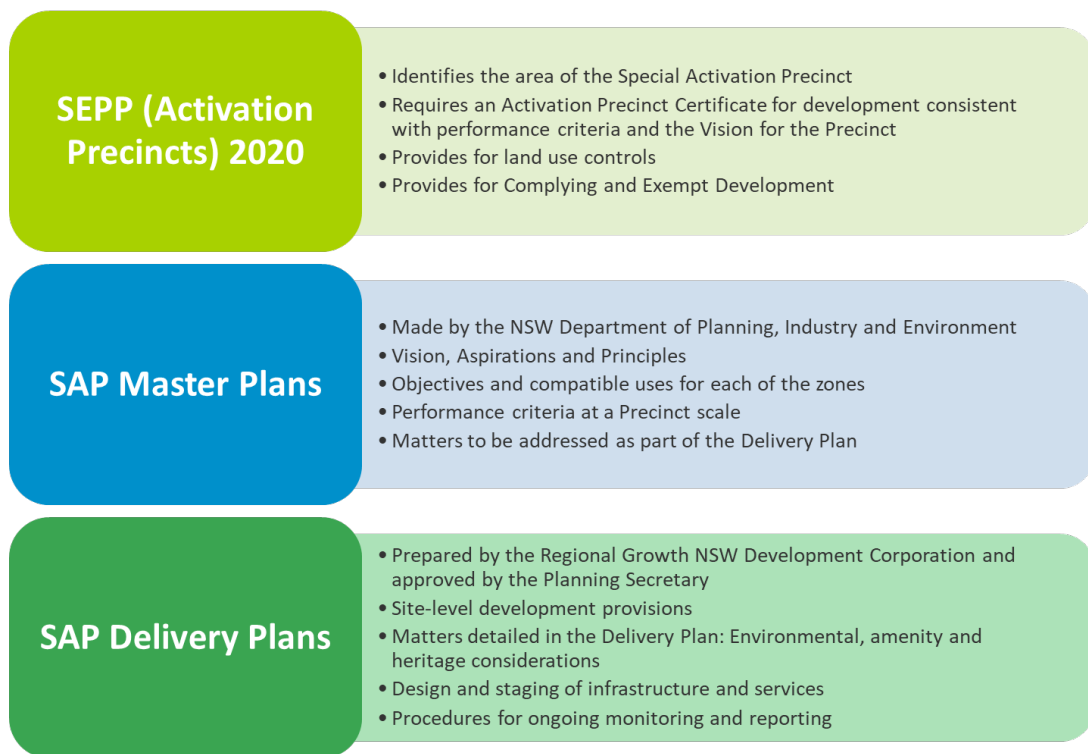


Figure 8 Key elements of the Activation Precincts SEPP

The Activation Precincts SEPP provides that:

- Each Schedule to the Activation Precincts SEPP will outline a land use table and development standards for each Activation Precinct. The land use table will outline the planning approval pathways for land uses, including exempt, complying and prohibited development.
- A Master Plan must be prepared for each Activation Precinct (prepared by the Department and approved by the Minister for Planning and Public Spaces) that identifies the vision, objectives and performance criteria, heritage provisions and limitations on development within each Special Activation Precinct.
- A Delivery Plan is prepared by Regional Growth NSW Development Corporation (approved by the Planning Secretary) for each Activation Precinct (Note: more than one Delivery Plan can be prepared for each Activation Precinct). Delivery Plans include more detailed infrastructure planning, specific development controls applicable to development and description of how

development is to achieve the master plan vision and objectives (i.e. design guideline). A Delivery Plan must be prepared and endorsed prior to development occurring.

- Proposed development in proximity to a Special Activation Precinct will need to align, support and complement the future intent and desired land uses in each precinct or Sub-Precinct.

The Activation Precincts SEPP prevails over other SEPPs and Local Environmental Plans (LEPs) to the extent of any inconsistency.

In the case of proposed development that involves a permitted land use that does not meet the development standards in order to be considered exempt or complying development under the Activation Precincts SEPP, development consent must be obtained under Part 4 of the *Environmental Planning and Assessment Act 1979*.

It is proposed that the Master Plan and Delivery Plans prepared under the Activation Precincts SEPP are reviewed every five (5) years. This review may result in either no change, amendment or replacement of the Master Plan. In accordance with Clause 8(5) of the Activation Precincts SEPP, the Minister for Planning and Public Spaces would approve an updated or replacement Master Plan. Amendments to the Master Plan will be based on sufficient upfront technical assessment and will also need to be reflected in the relevant Delivery Plans(s), which are approved by the Planning Secretary.

4.4.2 Activation Precinct Certificate

The Activation Precincts SEPP requires that development on land within a Special Activation Precinct must be consistent with the provisions of the Activation Precincts SEPP, the Master Plan and the relevant Delivery Plan. To verify that each development is consistent, an Activation Precinct Certificate is required.

Under Clause 50C and Clause 129 of the *Environmental Planning and Assessment Regulation 2000*, an Activation Precinct Certificate is required to accompany an application for development consent and an application for a complying development certificate, respectively.

An Activation Precinct Certificate is issued by Regional Growth NSW Development Corporation. This means that prior to development approval, an approved Master Plan and Delivery Plan must be in force for that land.

Clause 12 of the Activation Precincts SEPP states that an Activation Precinct certificate can be issued for development on land to which the Activation Precincts SEPP applies only if:

- there is a master plan and Delivery Plan that apply to the land concerned, and
- the issuing authority is of the opinion that the development is consistent with the master plan and Delivery Plan.

It is noted that public authorities are not required to obtain an Activation Precinct Certificate, other than the Regional Growth NSW Development Corporation. Further, exempt development does not require an Activation Precinct Certificate.

4.4.3 Exempt development

Types of low impact land uses will be identified as exempt development, and will not require planning or building approval, where they meet the development standards outlined in the Activation Precincts SEPP. Development that will be exempt development includes, but not limited to development involving: change of use, demolition, paths and paving, rainwater tanks, maintenance works, street furniture, minor structures and specified signage.

4.4.4 Complying development

A key objective for Special Activation Precincts is to create a streamlined planning approval pathway for specified types of uses, where the planning and environmental risks can be managed strategically through the Master Plan and via upfront technical assessment. The complying development pathway will be the default planning approval pathway for development within the catalyst sites. The Department needs to be satisfied that the complying development pathway provides the same protections as a development application process.

Specified tourist and employment uses, that would otherwise require a development application under the current planning framework, are proposed to be able to be undertaken as complying development in the Snowy Mountains Special Activation Precinct (Jindabyne Region). Complying development will not be advertised and will not require an Environmental Impacts Statement nor Statement of Environmental Effects.

Under the Activation Precincts SEPP, complying development must comply with a pre-determined conditions, which will be specified in Schedule X: Snowy Mountains Special Activation Precinct and meet the relevant requirements of the *Building Code of Australia* and relevant legislation.

Under Clause 129 of the *Environmental Planning and Assessment Regulation 2000*, an Activation Precinct Certificate is precondition of complying development under Activation Precincts SEPP.

The planning framework seeks to provide a comparable level of impact assessment through the following:

- Upfront strategic environmental and planning studies that informs the Master Plan to include measurable criteria for environmental performance and land use controls designed to minimise land use conflict.
- To be complying development, the development must:
 - comply with the Building Code of Australia
 - not be for the purpose of remediation work within the meaning of *State Environmental Planning Policy No 55—Remediation of Land*, and
 - not be a major hazard facility as defined by the *Work Health and Safety Regulation 2017*, and
 - be carried out in accordance with the relevant provisions of the Blue Book, and
 - not be carried out within 1m of any public sewer, if the development comprises the erection of a building, except with the written approval of the authority that has management or control of that sewer, and
 - not involve the removal of asbestos, unless that removal is undertaken in accordance with Code of Practice: How to safely remove asbestos dated August 2019 published by SafeWork NSW published by the WorkCover Authority, and
 - not be located:
 - within the licence area of a pipeline for gas, or for petroleum or other liquid fuels, licensed under the *Pipelines Act 1967*, or
 - within 20m of the centreline (measured radially) of a relevant pipeline, or within 20m of land the subject of an easement for a relevant pipeline.

- must be installed in accordance with the manufacturer’s specifications, if applicable.
- In the case of development other than for the purposes of environmental protection works or recreation areas—not be carried out on land identified as within an environmentally sensitive area on the Activation Precincts SEPP Snowy Mountain Activation Precinct Environmentally Sensitive Areas Map
- Must not be carried out on land on which a heritage item or Aboriginal object is located or that is within a heritage conservation area or Aboriginal place of heritage significance.

All complying development must be carried out in accordance with the relevant Delivery Plan.

Environmentally sensitive areas (comprising high value vegetation, key fish habitat, category 2 land under the *Local Land Services Act 2013*, historical heritage and areas of Aboriginal cultural heritage significance) are to be mapped in the Activation Precincts SEPP. Development in these areas will not be complying development, recognising that development assessment in these areas should be subject to a site-specific impact assessment and that the application should be publicly notified prior to determination.

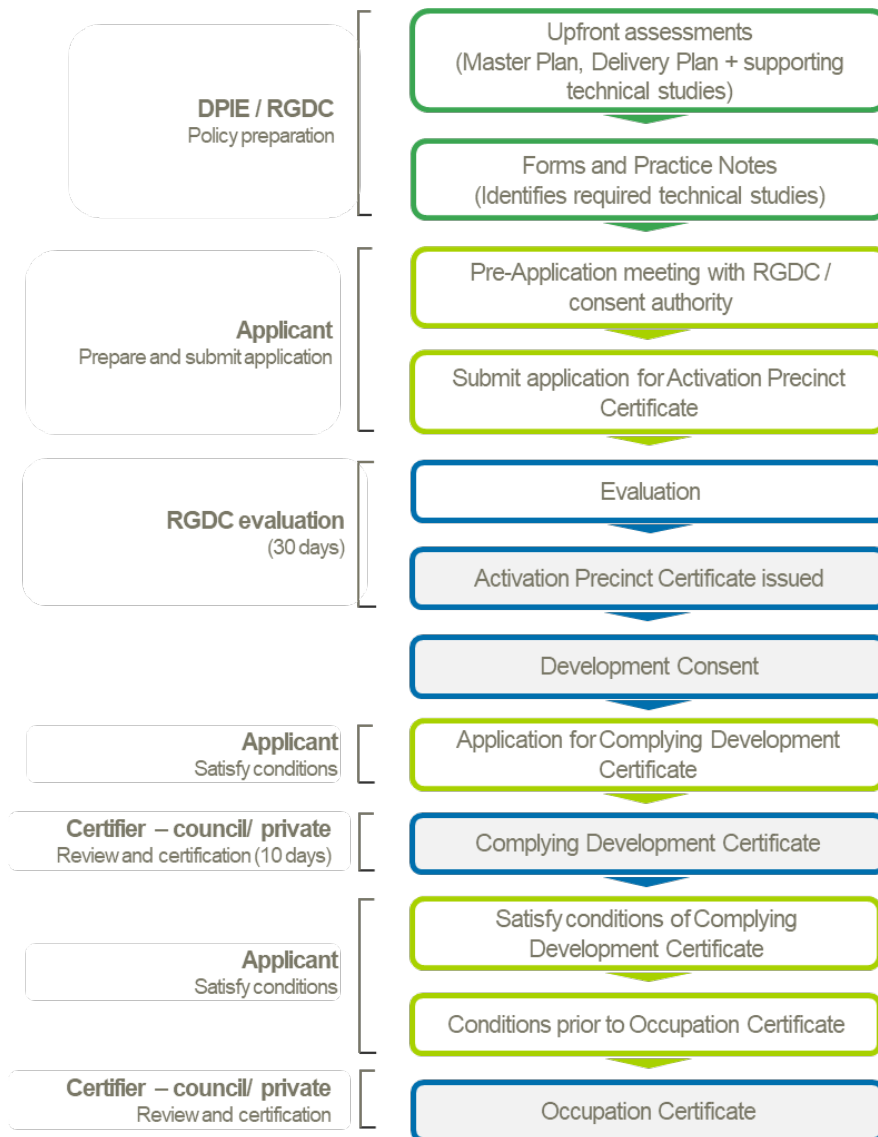


Figure 9 Activation Precincts SEPP complying development pathway

4.4.5 Roles and responsibilities under the Activation Precincts SEPP

Figure 10 illustrates the roles and responsibilities of government agencies and key stakeholders under the Activation Precincts SEPP.

This governance arrangement 'front loads' the evidence gathering, strategic design, policy setting, land management responses prior to the issuing of an Activation Precinct Certificate, placing high importance on the Activation Precinct Certificate as the primary tool for delivering outcomes aligned with the vision for Snowy Mountains Special Activation Precinct. As a proponent initiates the process to seek approval, where an Activation Precinct Certificate is required, the concierge service offered by Regional Growth NSW Development Corporation will guide the proponent through the process.

The key link between the planning approval pathway and the responsibilities of other agencies, including SMRC and other agencies or asset owners, occurs during the Activation Precinct Certificate evaluation phase. The collaboration is a key element to ensure relevant considerations and approvals are obtained within a streamlined planning approval pathway. Regional Growth NSW Development Corporation is responsible for leading this collaboration.

Where an Activation Precinct Certificate is not required, the Regional Growth NSW Development Corporation role would be limited to business concierge services only. The type of concierge services available where an Activation Precinct Certificate is not required would need to be confirmed by Regional Growth NSW Development Corporation.

As illustrated in Figure 10, the roles of key agencies to deliver the Snowy Mountains Special Activation Precinct include (Also refer to Section 3.3 for description of the roles of key agencies):

- **Department of Regional New South Wales:** Project sponsor and lead for regional infrastructure delivery, business case preparation and funding
- **Regional Growth NSW Development Corporation:** Business Concierge, Activation Precinct infrastructure and investment delivery agency, preparation of Delivery Plans, and Issuing Authority for Activation Precinct Certificates.
- **Department of Planning, Industry and Environment – Planning and Assessment:** Consent authority for development within Sub-precincts, preparation of legislative or regulatory amendments
- **National Parks and Wildlife Service:** Stewardship owners and macro-environmental responsibilities within Kosciuszko National Park, including lessor for Alpine Sub-Precincts and agent of the Minister for Energy and Environment (landowner)
- **Snowy Monaro Regional Council:** Consent authority and municipal services in Jindabyne Region
- **Principal Certifier:** Certification of Complying Development Certificates, which is currently performed only by private certifiers within the Alpine Sub-Precincts. *Note: Consideration may be given to whether SMRC could act as principal certifier in Alpine Sub-Precincts, leveraging Council's access to a range of internal technical specialists to cover the broad range of issues present in Alpine Sub-Precincts.*
- Other important collaborations:
 - New South Wales Environmental Protection Authority
 - Transport for New South Wales
 - Local Aboriginal groups (return to Country requires real collaboration throughout policy setting and implementation phases)
 - Education New South Wales
 - Commonwealth Department of Agriculture, Water and the Environment.

Responsibilities

Activation Precincts SEPP: Minister for Planning and Public Spaces

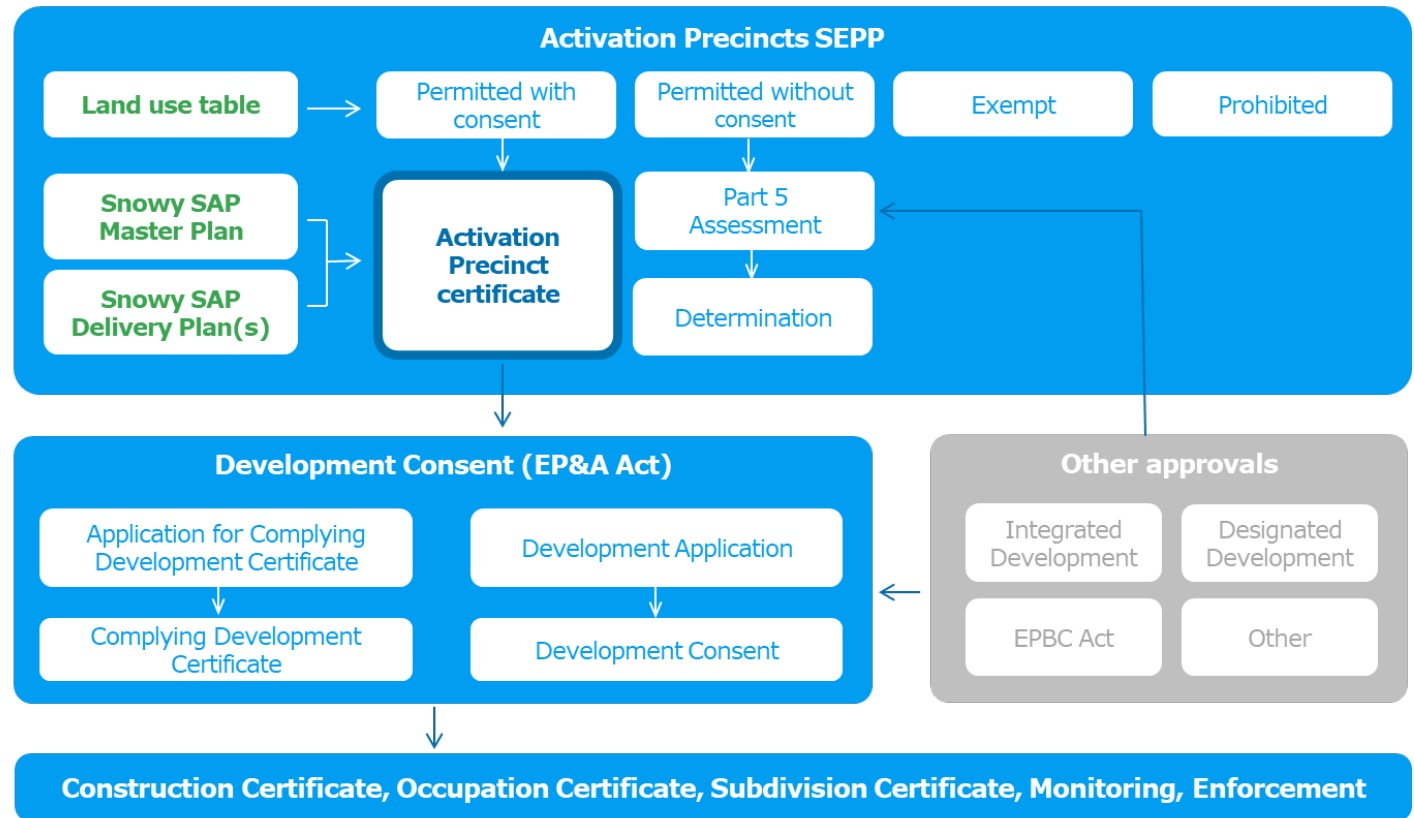
Snowy Special Activation Precinct Master Plan: Minister for Planning and Public Spaces

Delivery Plan(s): Planning Secretary

Issuing Authority (Activation Precinct Certificate): Regional Growth NSW Development Corporation

Consent Authority

1. Complying Development Certificate: Principal Certifier (private certifier or SMRC)
2. Development Consent:
 - SMRC (note delegations and role of regional planning panel)
 - Minister Planning and Public Spaces (note delegations)



Note: Under the EP&A Regulation, an Activation Precinct certificate is required to accompany an application for development consent and an application for a complying development certificate on land within an Activation Precinct.

Figure 10 Activation Precincts SEPP legislative architecture

4.5 Alpine Region

4.5.1 Current Alpine Sub-Precincts governance structure

Roles and responsibilities

The existing governance roles of NPWS and the Department within the Alpine Sub-Precincts are described in Figure 11.

Department of Environment and Conservation	Department of Planning
Strategic and operational planning for Kosciuszko National Park.	Strategic planning for the alpine resorts e.g. Development Control Plans.
Protection of the park's natural and cultural values.	Responsibilities under the <i>Environmental Planning and Assessment Act 1979</i> for all development and building matters under Parts 3, 4 & 4A e.g: <ul style="list-style-type: none"> • Pre-application liaison; • Referral of development applications; • Advertised development; • Land use permissibility; • Accommodation capacity; • Heritage conservation; and • Specific development control measures for each of the alpine resorts.
Lease compliance e.g. environmental performance, rental and health inspections.	
Lease amendments e.g. negotiate terms and conditions.	
Responsibilities for environmental protection under the <i>Protection of the Environment Operations Act 1979</i> and the <i>National Parks and Wildlife Act 1974</i> .	
Law enforcement e.g. skidoo use.	
Municipal services e.g. water, sewage and waste disposal for particular resorts.	
Public health e.g. pool/spa testing and kitchen/food stall inspections.	
Responsibilities under the <i>Environmental Planning and Assessment Act 1979</i> for certain activities carried out by, or on behalf of, public authorities under Part 5.	

Source: Kosciuszko National Park POM, page 166

Figure 11 Summary of Roles and Responsibilities in Alpine Resort Management Units

Lease and licence arrangements

The Alpine Sub-Precincts are operated by private organisations under a system of leases and licences granted by the Minister for the Environment under the *National Parks and Wildlife Act 1974*.

Within the Alpine Sub-Precincts, a Development Application may be made by a lessee of the land within the ski resort area, without the need for landowners' consent, in accordance with Clause 49, and Clause 12 of Schedule 6, of the *Environmental Planning and Assessment Regulation 2000*. In the case of the current Alpine Sub-Precincts, the landowner is the Minister for Energy and Environment.

In terms of the current development consent process in Alpine Sub-Precincts, confirmation that a proposal meets the requirements of the relevant lease may not occur prior to submitting a Development Application, resulting in potential delays during the Development Application process. NPWS have raised the issue that ideally a lessee should in the first instance approach the lessor whether the development is in accordance with the lease before proceeding.

Conversely, a licensee or a person/corporation that is not a lessee within the ski resort or within other areas in Kosciuszko National Park must obtain written consent of the Minister for Energy and Environment.

Currently, there are a number of licences for buildings and infrastructure in the Perisher Alpine Resort. In this regard, the Perisher operational ski area is affected by a consolidated mountain lease (CML) which consists of a ski area licence (for most of the ski area) and multiple leases over ski infrastructure, such as ski lift lines, buildings, ski tube. Perisher (in contrast to Thredbo, Charlotte Pass or Selwyn) does not have a contractual "lessor consent" provision in their CML for any improvements or works. Consequently, the operator of Perisher must apply for landowner's consent under the *Environmental Planning and Assessment Act 1979* for development that is within a licence area (even though part of the development may be in its lease area). For example, a new ski lift would generally occur on land within a lease and land within a licence area.

Refer to Section 7.4 for a description of the proposed changes to license holders' rights to submit a Development Application or an application for Complying Development Certificate.

Consent authority

The current consent authority for development in Alpine Region under the Alpine SEPP is the Minister for Planning and Public Spaces.

Principal certifiers for development in Alpine Region are private certifiers only. It is noted that there is currently, no complying development possible under the Alpine SEPP.

4.5.2 History of current Alpine Sub-Precincts legislative planning framework

The Department of Planning Office opened in 2002 and Minister for Planning commenced consent authority functions as result of:

- Thredbo Landslide July 1997: On Wednesday 30 July 1997, 18 people lost their lives in the Thredbo Landslide. Bimbadeen Lodge and Carinya Lodge were destroyed as a result of a burst water main and melting snow that cause part of the roadway to collapse.
- Coroner's Report June 2000: The NSW government commissioned Coroner Derrick Hand to carry out an inquest into the deaths arising from the landslide.
- Walker Report December 2000: Bret Walker SC was also engaged to consider changes to roles and responsibilities as a result of the landslide.

In 2001, the government determined:

- Consent authority functions in the Alpine Sub-Precincts should be transferred from the Minister for Environment to the Minister for Planning, meaning building regulation and environmental assessment is now the responsibility of the Department of Planning, Industry and Environment (the Department) rather than the National Parks and Wildlife Service (NPWS) which held the role up until 2002.
- A State Environmental Planning Policy should be prepared to regulate development in the Alpine Sub-Precincts.
- The Alpine Sub-Precincts were retained within Kosciuszko National Park.
- Alpine Way and Kosciuszko Road were excised from Kosciuszko National Park, transferring responsibility to NSW Roads and Traffic Authority (now Transport NSW).
- The NPWS retained a land management role, including administering leases in the Alpine Sub-Precincts and for preparation and implementation of the Plan of Management.

To implement the Government decisions legislation, the following key legislative amendments were made:

- Environmental Planning and Assessment Amendment (Ski Resort Areas) Act 2001: This has now become Schedule 1 of the Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017.
- Environmental Planning and Assessment Amendment (Ski Resorts) Regulation 2002: This now included within Schedule 6 of the *Environmental Planning and Assessment Regulation 2000*.
- State Environmental Planning Policy No 73 – Kosciuszko Ski Resorts: Commenced in September 2002 and since repealed in December 2007. Replaced by Alpine SEPP.

In 2014, the NSW Department of Planning and Infrastructure (now the Department) commissioned a review of the consent authority functions in the Alpine Region by David Harley AM. This report is entitled *Review of consent authority functions in the NSW Alpine Resorts* (cabinet in confidence). The report included recommendations regarding a consent authority regime for local and regional development under the *Environmental Planning and Assessment Act 1979* (*Environmental Planning and Assessment Act 1979*).

4.5.3 State Environmental Planning Policy (Kosciuszko National Park—Alpine Resorts) 2007

Objectives

The Alpine SEPP is the primary environmental planning instrument for the Alpine Sub-Precincts². The Alpine SEPP aims to protect the natural and cultural heritage of land within the Alpine Sub-Precincts and to encourage environmentally sustainable development.

The objectives of the Alpine SEPP are as follows.

(a) to encourage the carrying out of a range of development in the alpine resorts (including the provision of services, facilities and infrastructure, and economic and recreational activities) that do not result in adverse environmental, social or economic impacts on the natural or cultural environment of land to which this Policy applies,

*(b) to put in place planning controls that contribute to and facilitate the carrying out of ski resort development in Kosciuszko National Park that is **ecologically sustainable in recognition of the fact that this development is of State and regional significance,***

*(c) to **minimise the risk to the community** of exposure to environmental hazards, particularly geotechnical hazards, bush fire and flooding, by generally requiring development consent on land to which this Policy applies.*

² Lands to which the Alpine SEPP applies are currently referred to as 'Alpine Resorts'. Under the proposed amendments to the Alpine SEPP, these lands (along with the proposed new lands) are referred to as 'Alpine Sub-Precincts'.

Key provisions

The Alpine SEPP applies to the ski resort areas in Kosciuszko National Park, and to Kosciuszko Road and the Alpine Way. Refer to the SEPP Land Application Map. Note, the Alpine SEPP does not apply to land outside these areas, within the Kosciuszko National Park.

It is noted that the Alpine SEPP boundaries can be amended by amending the gazetted maps within the Alpine SEPP. This would need to follow normal SEPP amendment process and be done in consultation with the Minister for Energy and Environment. In order to clarify the effect of key legislative instruments to the Alpine Sub-Precincts, further consideration of the alignment of Alpine Sub-Precincts boundaries under the Alpine SEPP, the Kosciuszko National Park POM and the lease boundaries would be required during Stage two of this study.

The existing ski resort areas located in Kosciuszko National Park and captured under the Alpine SEPP include the following:

- Main resort areas (tourist accommodation and ski facilities: Thredbo, Charlotte Pass, Mount Selwyn and Perisher Range (made up of Perisher, Smiggin Holes, Guthega and Blue Cow and also includes Bullock Flat)
- Minor resorts (tourist accommodation only with no ski facilities): Ski Rider, Sponars, Kosciuszko Mountain Retreat (Tourist Park).

The following environmental planning instruments do not apply to land to which Alpine SEPP applies:

- *State Environmental Planning Policy No 64—Advertising and Signage*
- *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Note: Clause 1.4 does not apply to the Alpine SEPP)
- Snowy River LEP (Note: The Snowy River LEP does not apply to Kosciuszko National Park. LEP is under review as part of consolidated LEP for Snowy Monaro local government area).

Key requirements of the Alpine SEPP include:

- Development to be subject of assessment of environmental impacts to protect the unique alpine environment
- Geotechnical and land stability issues associated with construction in steep alpine environments to be rigorously assessed
- Development proposals to be referred to the NPWS for comment in accordance with *National Parks and Wildlife Act 1974*.

In accordance with the *National Parks and Wildlife Act 1974* and *National Parks and Wildlife Regulation 2019*, dwellings are prohibited in the resort areas. The Alpine SEPP reflects that the resort areas are for the purposes of tourist accommodation only. Leases are issued for tourist accommodation purposes and it is an offense to permanently reside in Kosciuszko National Park unless an exemption applies (e.g. staff).

The permitted uses for each alpine resort outlined in the Alpine SEPP Land Use Table for each resort. There are no land use zones within the resorts, instead land use permissibility specified under the land use table is linked to each alpine resort.

Exempt development

Clause 19 and Schedule 2 of the Alpine SEPP describes exempt development within the alpine resorts. Exempt development listed in Schedule 2 of the SEPP relates to advertisements, public notices of public authorities, signs relating to safety, building identification signs or business identification signs, internal building alterations, change of use of a building, installation and use of street furniture, maintenance, development carried out on ski slopes (including signage, structures, fences and maintenance), antennae, satellite dishes and aerial, erection of minor structures, laying of paving, and demolition.

In accordance with Clause 19 of the Alpine SEPP, to be exempt development the development is required to meet the provisions of the Building Code of Australia, not be designated development, not relate to a heritage item that is listed on the State Heritage Register under the *Heritage Act 1977* and not be carried out on land that is an Aboriginal place within the meaning of the *National Parks and Wildlife Act 1974*.

In particular Clause 19(3)(a) of the Alpine SEPP specifies that the development “*must meet the relevant deemed-to-satisfy provisions of the Building Code of Australia*” (Note: this requirement is also included in the Codes SEPP (cl 1.16(1)(a)), which applies to the whole State). The *Building Code of Australia* is a large and technical document. Volume 1 contains 750 pages and Volume 2 contains 599 pages. It is understood this contributes to lessees’ frustration in interpreting exempt development for ski lodges.

Complying development

The Alpine SEPP does not include complying development and Codes SEPP does not apply to alpine resorts. The implication is that even minor development (alts and adds) requires development consent in the alpine resorts where it does not meet the exempt development standards.

The majority of applications (even for repairs and maintenance) trigger the requirement for a Development Application due to stringent exempt development provisions and no complying development provisions in the SEPP.

Interface with Kosciuszko National Park and NPWS

Under Clause 17 of the Alpine SEPP, development proposals in the alpine resorts are to be referred to Department of Planning, Industry and Environment (the Department) Energy, Environment and Science (EES) for comment. The NPWS provides consideration of:

- *National Parks and Wildlife Act 1974* – consideration of objectives of the Act
- Kosciuszko National Park POM provisions – particularly Chapter 10 management objectives
- Leasing considerations – is it a permitted use of the lease or is a new lease required or is there any requirement for a lessor’s consent separate to development process (Property and Commercial Branch)
- *Biodiversity Conservation Act 2016* – is it within a Threatened species mapped area
- *Plumbing and Drainage Act 2011* – NPWS appointed regulatory authority under this Act for Kosciuszko National Park – must receive all compliance certificates
- Aboriginal heritage considerations – Has due diligence been performed in accordance with the Due Diligence Code – NPWS provides aboriginal heritage impact permits as an integrated agency (s 4.46, *Environmental Planning and Assessment Act 1979*)
- European heritage considerations – NPWS Heritage Team will provide comments on any items listed within Schedule 3 of the Alpine SEPP
- Public Health considerations – *Food Act 2003* and *Public Health Act 2010* (environmental health) – regulatory authority under both Acts for Kosciuszko National Park.

NPWS also consider leasing issues in their referral comments, including (but not limited to) whether the proposal is a permitted use under existing lease, or does a new lease need to occur. Refer to Section 7.4 for discussion of Alpine Sub-Precinct leases.

Clause 18 of the Alpine SEPP stipulates that consent to a Development Application may be granted under the SEPP even if the application has not established that the development is consistent with the Kosciuszko National Park POM .

Clause 18 gives the Department the ability to proceed to assess a Development Application under Part 4 and approve a Development Application that might then require a POM amendment. According to the Department, to date all applications have been in accordance with the POM. The implications of Clause 18 should be considered as part of formulating the future legislative framework, including whether the ability to grant consent in this manner should be removed.

Matters to be considered by consent authority

Assessment requirements are merit based as there are no prescriptive development controls in Clause 14 and 15 of the Alpine SEPP and no Development Control Plan related to the SEPP. Assessment of developments is based on existing character, built form and amenity impacts such as privacy, overshadowing noise and cultural heritage.

Key assessment issues under the Alpine SEPP include the following:

- Environmental / Biodiversity Conservation Act
- Bushfire
- Existing character / built form
- Adjoining amenity
- Cultural heritage
- Geotech policy
- Safety.

The above key assessment issues will be considered when developing the planning framework for the Alpine Region.

Clause 14 of the Alpine SEPP outlines matters to be considered by consent authority including geotechnical, earthworks, stormwater drainage, visual impact and protection of native flora and native fauna. *Perisher Range Resorts Master Plan* and *Perisher Blue Ski Resort Ski Slope Master Plan* are listed in Clause 14 of the SEPP as matters for consideration. Clause 15 of the SEPP outlines assessment requirements to be considered for buildings, including building height, building setback and landscaped areas.

4.5.4 Kosciuszko National Park POM

Overview

The Kosciuszko National Park POM (Kosciuszko National Park POM) is prepared under the *NSW National Parks and Wildlife Act 1974*. The Kosciuszko National Park POM is a tool for NPWS to guide the long-term management of the broad range of values contained in Kosciuszko National Park (Kosciuszko National Park). The Kosciuszko National Park POM is an environmental management framework providing objectives, policies and actions. The Kosciuszko National Park POM aims to improve the condition of the natural, cultural and recreational values of Kosciuszko National Park.

The Kosciuszko National Park POM is prepared in accordance with Part 5 of the *National Parks and Wildlife Act 1974* and, in accordance with Section 81(4) of the *National Parks and Wildlife Act 1974*, it is mandatory for all operations within Kosciuszko National Park (which includes the alpine resorts) to be consistent with the Kosciuszko National Park POM .

All alpine resort leases and licences (note: leases and licences are issued under the *National Parks and Wildlife Act 1974*) state that operators must be consistent with the Kosciuszko National Park POM . The legislative requirement for all leases and licences to be consistent with Kosciuszko National Park POM is Section 81A of *National Parks and Wildlife Act 1974*.

Section 10.2 of the Kosciuszko National Park POM states, "*Prior to granting consent for a development in the alpine resorts or associated sites, the Minister for Planning must be satisfied that it will be authorised by or under the National Parks and Wildlife Act 1974. The Minister for the Environment or the Director-General of the Department of Environment and Conservation is the determining authority for most activities undertaken by or on behalf of public authorities in these parts of the park*".

In regard to applications for development or works within the Alpine Sub-Precincts, NPWS have a referral / commenting role under Clause 17 of the Alpine SEPP. Under the leasing system, NPWS have a lessor's consent role outside of the Development Application/ planning process.

For the purposes of the Snowy Mountains Special Activation Precinct, the Kosciuszko National Park is arranged into two areas (comprising of management units), which are:

- *Back Country* (comprising of Main Range, Yarrangobilly and Cooleman Management Units): areas surrounding the alpine resorts; and
- *Alpine Resorts* (comprising of Perisher, Thredbo, Selwyn and Charlotte Pass Management Units and Visitor Services zoned land): boundaries of the resorts reflect the existing leases.

The Kosciuszko National Park POM is a large document containing the following layers, which are described in further detail in the Key Provisions section below.

- Management Zones
- Management Units
- Management Strategies for the following three categories:
 - Elements of the Landscape;
 - People and the Landscape; and
 - Recreation.

Relevant management units and zones under the Kosciuszko National Park POM are illustrated in Figure 12.

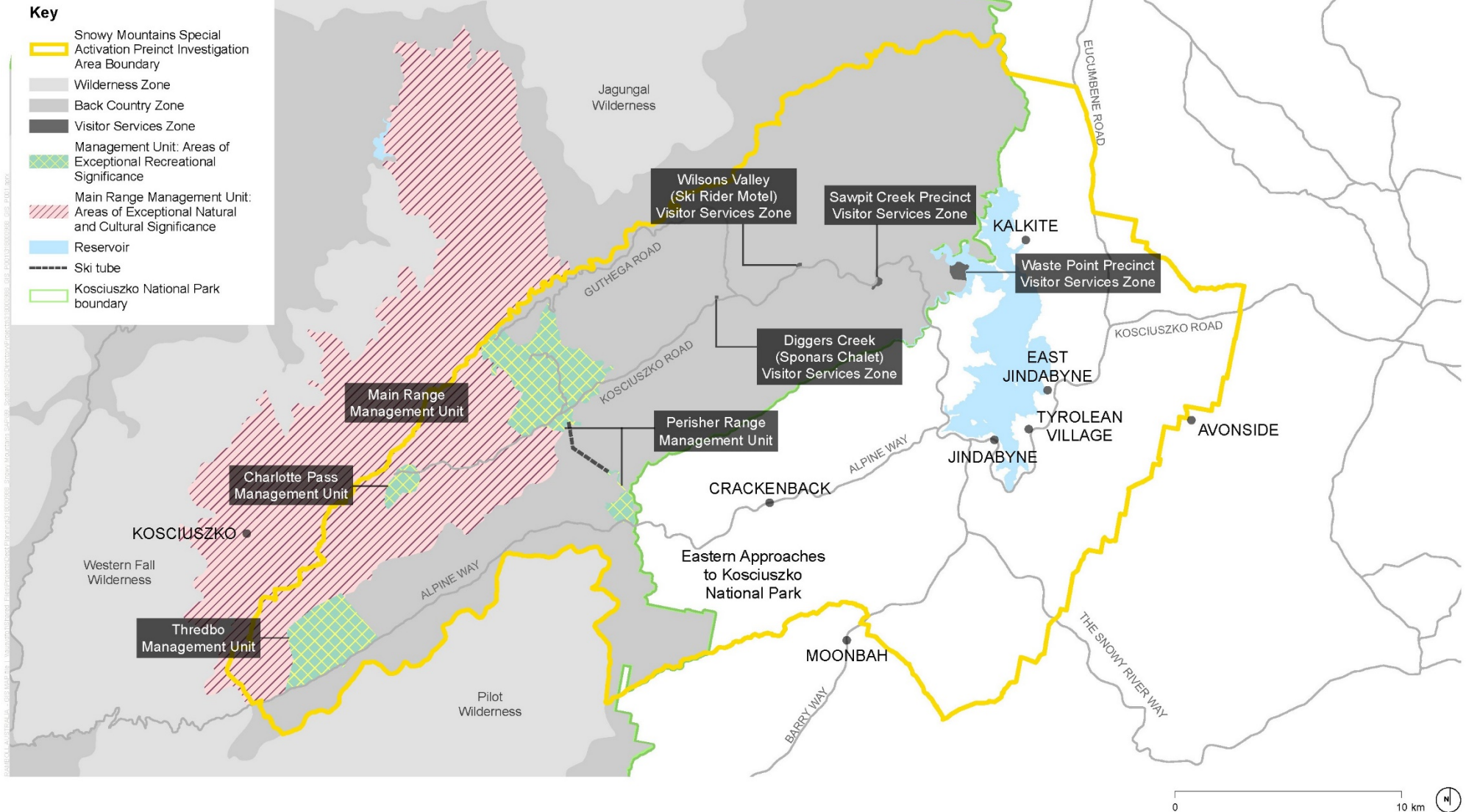


Figure 12 Kosciuszko National Park POM

Key provisions

Management zones

Kosciuszko National Park is subdivided into the following five management zones, which are detailed in Chapter 5 (Park Zoning) of the Kosciuszko National Park POM :

- Wilderness Zone – Wilderness areas declared under the Wilderness Act 1987
- Back Country Zone – Those parts of the park without public road access and not within declared wilderness areas. Back Country Zone applies within the Snowy Mountains Special Activation Precinct investigation area and is focussed on passive recreation activities such as snow shoeing, walking tracks, snow play, back-country tour skiing, rock climbing, camping and the like.
- Minor Road Corridors – Corridors along minor public roads and associated visitor developments
- Major Road Corridors – Corridors along major sealed and unsealed public roads and associated visitor developments
- Visitor Services Zone – Includes discrete development and accommodation nodes and several operational centres, comprising the following locations:
 - The four alpine resort management units (Charlotte Pass, Thredbo, Selwyn, Perisher Range) and associated sites which cover a total of 3046 ha of the park
 - Eight areas in addition to the alpine resorts, of these eight, four are within the Snowy Mountains Special Activation Precinct investigation area:
 - Wilsons Valley (Ski Rider Motel – lease area)
 - Diggers Creek (Sponars Chalet – lease area and associated facilities)
 - Sawpit Creek precinct (campground, education centre and offices, landfill, car parks and former service station)
 - Waste Point precinct (staff and visitor accommodation and workshop).

The intent of the zones within the Kosciuszko National Park POM is to present a hierarchal scale from Wilderness, Back Country, Minor Road Corridors, Major Road Corridors to Visitor Services zone. The zones provide a range of recreational settings from relatively remote and undeveloped country (i.e. the Wilderness Zone and Back Country Zone) to areas where visitor infrastructure is provided (i.e. Visitor Services Zone). The Wilderness Zone and Back Country Zone represents the least-developed end of the recreational spectrum where only rudimentary facilities, if any, are provided, such as camping areas and walking tracks. Minor and Major Road Corridors through to the Visitor Services Zone represent those parts of the park most intensively developed for recreation.

Schedule 4 (Appropriate Recreational Activities) and Schedule 6 (Standard of Visitor Facilities) of the Kosciuszko National Park POM provide descriptions of appropriate activities and infrastructure standards as they apply to each zone.

The roads with Kosciuszko National Park are managed according to the following:

- Minor Roads (Management Objective 5.4):
 - This zone comprises the unsealed minor roads in the park that are open for public vehicular use, which range from two-lane roads to narrow trails in steep terrain. Many of these roads are suitable for conventional vehicles with only a few offering recreational driving opportunities in which four-wheel drive is required.
 - The Service is responsible for all of the roads located within this zone with the exception of the Yarrangobilly Road (MR 324) which is managed by Transport for NSW. The Link Road between Smiggin Holes and Guthega (also managed by the Transport for NSW) and all minor roads servicing the resort areas are included in the Visitor Services Zone.

- Major Roads (Management Objective 5.5):
 - This zone comprises the major public road network in the park and associated visitor facilities. It consists of the following ten roads, with a total length of 380 km, all of which are suitable for use by conventional vehicles (subject to snow conditions during winter).
 - The Service is responsible for the management of the roads in this zone except for the Alpine Way, Kosciuszko Road and Snowy Mountains Highway, all of which are managed by the Roads and Traffic Authority, and subsidiary roads managed by lessees. Maintenance work on the Barry Way is undertaken by SMRC.

Management units

Seven management units are layered over the management zones. The management units contain places and values of exceptional significance. Within these management units the prescriptions associated with the underlying management zones apply, in addition to those described for the particular management unit.

Three designated management units contain significant natural and cultural values that are highly vulnerable to human-induced disturbance and contain specific management measures to ensure their protection. These three management units are described in Chapter 9 (Areas of Exceptional Natural and Cultural Significance) of the Kosciuszko National Park POM and include the following:

- Main Range
- Yarrangobilly
- Cooleman Plain.

It is noted that Yarrangobilly and Cooleman Plain are located outside of the Snowy Mountains Special Activation Precinct area.

The Main Range Management Unit surrounds the area between Perisher, Charlottes Pass and Thredbo. There are 55 specific management objectives.

The other four management units contain exceptional recreational significance. These units are described in Chapter 10 (Areas of Exceptional Recreational Significance) of the Kosciuszko National Park POM and cover the resort areas of:

- Charlotte Pass
- Thredbo
- Selwyn
- Perisher Range.

It is noted that the minor resort areas of Ski Rider, Sponars and Kosciuszko Mountain Retreat (Tourist Park), which are within the Alpine SEPP area, are not in the same Management Units for Charlotte Pass, Thredbo, Selwyn and Perisher Range.

Mount Selwyn is not included in the Snowy Mountains Special Activation Precinct investigation area. As part of the Snowy Mountains Special Activation Precinct, Mt Selwyn is intended to be subject to the same legislative process as other ski resorts, but is not included within the relevant Master Plan.

Management objectives, principles and actions

The Kosciuszko National Park POM sets out management objectives, principles and actions that guide management and development within the Kosciuszko National Park. The management objectives comprise of a statement about what is to be achieved by management. The policies and actions outline how the management objective is to be achieved.

The Kosciuszko National Park POM outlines:

- Management objectives for each Management Zone (Chapter 5)
- Management objectives, policies and actions for each Management Unit (Chapters 9 and 10)
- Management objectives policies and actions for each sub-section under Elements of the Landscape (Chapter 6), People and the Landscape (Chapter 7), and Recreation Activities (Chapter 8).

Recreation Activities

Enhancing recreational resources are essential to attract people to Kosciuszko National Park and for Kosciuszko National Park to serve as a key recreational and economic hub in the region. Chapter 8 (Recreation) of the Kosciuszko National Park POM sets out the management objectives, principles and actions for permitted recreation in the Kosciuszko National Park, including resort-based recreation.

Alpine Resort Areas

Boundaries of the alpine resorts area generally reflect the existing leases. It is noted that the Alpine SEPP boundaries are not exactly the same as the lease boundaries, there are some minor variations.

Alpine resort area leases and licences state that operators must conform and abide with the Kosciuszko National Park POM .

Alpine resort areas are located in the Visitor Services Zone of the Kosciuszko National Park POM . Management objectives are provided for this zone in Chapter 5.6. Schedule 4 of the Kosciuszko National Park POM outlines recreation activities permitted within the Visitor Service Zone.

- Chapter 10.2 of the Kosciuszko National Park POM contains the management objectives, policies and actions for Alpine Resort Management Units and Chapters 10.3 to 10.6 of the Kosciuszko National Park POM contain management objectives, policies and actions for each individual Alpine Resort Management Unit (i.e. Charlotte Pass, Thredbo, Selwyn and Perisher Range).
- As outlined in Section 10.2 of the Kosciuszko National Park POM , the four alpine resorts operate under a system of leases granted to private organisations in accordance with the provisions of the *National Parks and Wildlife Act 1974*. Each lease contains individual conditions and tenure periods and grants certain rights and obligations on each lessee. Both the NPWS and the Department are responsible for administration and planning in the alpine resort management units and associated sites. The NPWS is responsible for managing the resort leases and other commercial agreements.

Section 7 of this report describes the leasing framework for alpine resorts under the *National Parks and Wildlife Act 1974*.

Chapter 12 of the Kosciuszko National Park POM sets out the management objectives, policies and actions for an environmental management system for all leases and licensees with Kosciuszko National Park.

It is noted that the leasing framework for alpine resorts falls under the *National Parks and Wildlife Act 1974* and that the process for amending leases and the POM is lengthy and complicated (discussed in further detail below). Amendments to the leases and POM are therefore not often undertaken.

The leases and licences granted in respect of the alpine resort areas are granted by the Minister for Energy and Environment in accordance with Part 12 of the *National Parks and Wildlife Act 1974*. Leasing is handled by the Property and Commercial Branch of NPWS.

Environment

As outlined in the Kosciuszko National Park POM, one of the fundamental issues underlying the management of recreation in the Kosciuszko National Park is the need to ensure that all activities are undertaken in places and in ways that are environmentally sustainable.

Schedule 1 of the Kosciuszko National Park POM sets out the significant natural and cultural values of Kosciuszko National Park. There is an opportunity for the Snowy Region to be a market leader in this sphere (as indicated by Thredbo Resort). Development should respect environmental sensitivities both for their intrinsic value and for attracting visitors (there is evidence from visitor surveys supporting this). Activities and land uses proposed in the Alpine Region should therefore ensure that they are not contrary to environmental objectives outlined in planning instruments.

Carrying capacity (bed limits)

Since the inception of planning legislation in the alpine resorts area, bed limits have been a tool to set limits on development and tourism (carrying capacity). Beds are allocated to a NPWS lease and are an integral part of the market land value and rental revenue for NSW Government. It is however noted that this does not necessarily apply at Thredbo given the age of the lease (Note: Kosciuszko National Park POM states that the term of the Thredbo head lease runs from the 29 June 1962 to 28 June 2007 with a further 50 year option) and that Thredbo manages the individual sale of beds within its resort area with its sub-lessees. Thredbo is however still required to not exceed the bed allocation listed in the Kosciuszko National Park POM. In Thredbo beds sales are managed by Thredbo and information is provided to the Property and Commercial Branch.

Chapter 10 and Schedule 8 of the Kosciuszko National Park POM outline bed limits applicable to each of the resort areas. Bed limits are contained within Management Objectives 10.2.1 (14 to 24) of the Kosciuszko National Park POM. These are the operative provisions that cannot be changed without an amendment to the Kosciuszko National Park POM. Bed limits within Schedule 8 of Kosciuszko National Park POM must accord with the maximum bed limits set in that provision. Bed numbers in Schedule 8 can be updated without having to do a POM amendment.

Schedule 8 provides the following maximum bed limits for each resort:

- Perisher: 4952 beds
- Thredbo: 4810 beds
- Charlotte Pass: 607 beds
- Selwyn: 50 beds (essential servicing staff only)
- Ski Rider: 339 beds
- Sponars: 100 beds
- Kosciuszko Mountain Retreat: 339 beds

Management objective 18.19.1.2 states: *"With the exception of the alpine resorts, limit visitor accommodation levels to existing capacities and levels specified in existing lease agreements"*.

Management objective 18.19.1.6 states: *"Renew the lease for Ski Rider Motel until 2025. This renewal is conditional upon the motel being relocated during the term of the lease or removed on expiry of the lease in order to reduce the extent of ribbon development and improve visual amenity. The site will then be rehabilitated and rezoned from Visitor Services Zone to Major Road Corridor"*.

It is understood that current utilisation of bed allocations for Thredbo and Perisher are:

- Thredbo has utilised 4356 of its total allocation of 4810 beds, meaning there are 454 beds remaining.
- Perisher has utilised 4089 of its total allocation of 4952, meaning there are 863 beds remaining (2 of those as unallocated staff beds at Bullocks Flat).

Therefore, based on Schedule 8 there is capacity for more beds to be provided in Perisher and Thredbo.

In accordance with Management Objective 10.2.1(22), an amendment to increase the accommodation limits can only be considered within the alpine resort management units when all of the following matters have been adequately addressed:

- The potential impacts of the increase on the natural and cultural values of the park
- The impact of climate change on the proposed increase
- The consistency of the proposal with the relevant environmental planning instrument and other relevant strategies and plans
- Alternative measures of carrying capacity have been assessed
- There is demonstrated demand for additional overnight accommodation in the resort that cannot be provided elsewhere in the park or by adjacent communities
- The resort management unit where the accommodation increase is proposed has an environmental management system in place and is able to demonstrate improvements in environmental performance over a period of at least five years
- The physical capacity of existing infrastructure servicing the resort management units can meet the demand of additional visitors without adversely impacting on park values
- There is an economic benefit to local communities within and adjacent to the park.

In regard to the point above about alternative measures of carrying capacity, Management Objective 10.2.1(6) of the Kosciuszko National Park POM states that NPWS was required to *"Coordinate a program designed to investigate alternative mechanisms for measuring and regulating the carrying capacity of each resort. Liaise with the Department of Planning, resort lessees and licences and other relevant organisation on the design and implementation of the program"*. This hasn't been completed or prioritised to date, but a carrying capacity model is under preparation as part of the Snowy Mountains Special Activation Precinct investigations.

In terms of public safety, monitoring and controlling overnight bed numbers, by defining the maximum number of people within a lodge, is beneficial to prevent overcrowding. Further, the number of people within a lodge is linked to the Building Code of Australia (BCA) classification for tourist accommodation and relevant fire safety requirements for different classes of buildings.

The process regarding the use of maximum bed numbers within leases should be explored further and consultation with the NPWS Property and Commercial Branch and in the context of carrying capacity considerations.

Plan of Management Amendment Process

The POM amendment process is a statutory process. Sections 73A and 73B of the *National Parks and Wildlife Act 1974* sets out the POM amendment procedure, which includes the following:

- A public exhibition for at least 45 days
- The amendment and submissions received from the public exhibition are referred to the Regional Advisory Committee for consideration and advice
- The amendment, submissions and any advice from the Regional Advisory Committee (RAC) are referred to the National Parks and Wildlife Advisory Council (Advisory Council) for consideration and advice
- After considering the submissions, the advice of the Advisory Council and any further comments from the RAC, the Minister may adopt the amendment to the plan or may refer the amendment back to the National Parks and Wildlife Service and Advisory Council for further consideration.

Before amending a Plan of Management, the Minister must also consider a range of factors set out in section 72AA of the *National Parks and Wildlife Act 1974* (refer to s 73B(7)). Within NPWS CPOM drafting and amendments are done by the Partnerships, Planning and Heritage Branch.

Amendments to the Kosciuszko National Park POM may be necessary to achieve the agreed outcomes for the Snowy Mountains Special Activation Precinct. These amendments may include modifying the development descriptions so that the range of uses envisaged are permissible under the *National Parks and Wildlife Act 1974* or if expansion or modifications of the alpine resort boundaries or visitor services zone boundaries are required. Therefore, the exhibition period for amendments to the Kosciuszko National Park POM and their subsequent consideration by the statutory advisory bodies under the *National Parks and Wildlife Act 1974* should be acknowledged as part of the Snowy Mountains Special Activation Precinct legislative framework and the Partnerships, Planning and Heritage Branch consulted as part of the process.

4.5.5 Land within the Kosciuszko National Park (excluding Alpine Sub-Precincts)

The current planning framework for works within Kosciuszko National Park outside of the Alpine Sub-Precincts is outlined below.

- Environmental Assessment under Part 5 of the *Environmental Planning and Assessment Act 1979* is required for works within the Kosciuszko National Park (excluding Alpine Sub-Precincts), except as required by State Environmental Planning Policy (State and Regional Development) 2011. A Review of Environmental Factors (REF) is typically the form of assessment required for activities proposed on land reserved under the *National Parks and Wildlife Act 1974*. A REF is a policy document, it is not a legislated document. the Department – EES (Minister for Energy and Environment) is the determining authority for all REFs for activities within national parks. The National Parks and Wildlife Service (NPWS) is part of EES.
- Certain activities are exempt from the need for an REF. Section 5.4 of the *Environmental Planning and Assessment Act 1979* states that a REF will not be required in any of the following circumstances:
 - A modification of an activity, whose environmental impact has already been considered, that will reduce its overall environmental impact.
 - A routine activity (such as the maintenance of infrastructure) that the Minister for Environment determines has a low environmental impact and that is carried out in accordance with a code approved by the Minister for Environment.
 - An activity (or part of an activity) that has been approved, or is to be carried out, by another determining authority after environmental assessment in accordance with Part 5. That is, if another determining authority has already prepared an REF (or EIS or SIS) and otherwise complied with Part 5 in respect of an activity, other determining authorities who

- may have a role in granting approvals for the activity do not need to prepare an REF or consider an EIS.
- In addition to the above, some environmental planning instruments identify certain types of exempt development, which also do not require preparation of an REF. Under NPWS procedure, development that is exempt development under these SEPPs requires proponents to prepare and submit a Conservation Risk Assessment (CRA) to NPWS, instead of a REF. Note that also that in accordance with NPWS procedure, some routine maintenance activities by NPWS only require an environmental risk checklist to alert relevant staff to the presence of sensitive values that may be a risk from the works.
 - Projects that are declared to be State Significant Development or State Significant Infrastructure, in accordance with the State and Regional Development SEPP do not require an REF. Instead, they are assessed according to separate provisions of the *Environmental Planning and Assessment Act 1979*.
 - State controlled roads are excised from the Kosciuszko National Park, including Kosciuszko Road, Snowy Mountains Highway and Alpine Way. The roads authority for these roads is Transport for NSW. Approval under Part 5 of the *Environmental Planning and Assessment Act 1979* is required for works to roads where Transport for NSW is the roads authority. In accordance with Clause 16 of *State Environmental Planning Policy (Infrastructure) 2007* (ISEPP), prior to carrying out works to such roads, Transport for NSW is required to give written notice of the proposed works to NPWS and take into consideration any response provided. .

4.5.6 Land adjoining the Kosciuszko National Park

The Office of Environment and Heritage (Note: OEH are now part of ESS in the Department) prepared *Guidelines for Developments Adjoining Land Managed by the Office of Environment and Heritage* (Guidelines for Adjoining Development) dated 1 March 2013. The Guidelines for Adjoining Development were prepared for use by councils and other consent authorities when assessing Development Applications that adjoin national park land. The aim of the Guidelines for Adjoining Development is to avoid and minimise any direct or indirect adverse impacts on national parks.

Under the Guidelines for Adjoining Development, councils and other consent authorities are to consider the following issues and their impacts when assessing proposals adjoining national park land:

- erosion and sediment control
- stormwater runoff
- wastewater
- management implications relating to pests, weeds and edge effects
- fire and the location of asset protection zones
- boundary encroachments and access through national park lands
- visual, odour, noise, vibration, air quality and amenity impacts
- threats to ecological connectivity and groundwater dependent ecosystems
- cultural heritage.

5. CONSIDERATIONS FOR SNOWY MOUNTAINS SPECIAL ACTIVATION PRECINCT LEGISLATIVE FRAMEWORK

This section describes the considerations, benefits and risks of a new legislative framework for the Snowy Mountains Special Activation Precinct.

5.1 Need for change

It is clear that, under the current Snowy Mountains Special Activation Precinct legislative framework, good design and appropriate outcomes can be achieved. The current framework of environmental planning instruments and design guidelines is sometimes cumbersome and difficult to navigate for proponents and for the Agencies, particularly in the Alpine Sub-Precincts. In particular, there is currently no design guideline for the Alpine Sub-Precincts.

A clearer and more understandable framework would support both the proponent and the Agencies to achieve the Snowy Mountains Special Activation Precinct vision.

The challenge for the future legislation framework is to deliver flexibility for innovation and certainty for proponents while addressing:

- The varied nature of land uses envisaged under the vision for Snowy Mountains Special Activation Precinct and the alignment of definitions and planning approval pathways for these land uses
- The need to minimise impacts on sensitive environmental and scenic areas
- The need to treat all development within both the Jindabyne Region and the Alpine Region with high level of rigor in order to manage the risks and to ensure outcomes are in the public interest
- The need to encourage or facilitate innovation via a complying development framework, which is based on often prescriptive standards
- The differences between current legislative framework within and outside Kosciuszko National Park
- Promoting sustainable development within the region, including provision of adequate support for local residents and employers as well as services and opportunities for visitors
- The need to manage land use and environmental interfaces and interdependencies between the land within Kosciuszko National Park and land within the Jindabyne Region.

There is a clear need for a legislative framework that effectively promotes economic development while protecting the unique characteristics and values of the Snowy Mountains

5.2 Aims and objectives of a new Snowy Mountains Special Activation Precinct legislative framework

As described above, the Special Activation Precinct program seeks to streamline the approval process within defined precincts in regional NSW that have, as a result of infrastructure investment or unique characteristics, potential to generate economic growth and employment. This is particularly the case for the Snowy Mountains Special Activation Precinct where the potential exists to leverage the attractiveness of the Snowy Mountains region for tourists, to encourage investment in visitor related activities and infrastructure in ways that protect and celebrate the region's unique environmental, social and economic characteristics.

The objectives of the Snowy Mountains Special Activation Precinct is to establish a robust legislative framework that is:

- An **enabler** of decision-making and not an obstacle or hindrance
- Supported by clear links to the **vision** for the region and to the **evidence base**
- Establishes planning regime that is **holistic and integrated**
- Transparent, easily understood and **streamlined** (clear planning approval pathways, clear design/use guidance and clear criteria determining approval requirements)
- Reflects **contemporary** thinking regarding development control and planning principles
- Promotes community **economic and social prosperity**
- **Leverages investment** in achieving the vision
- **Protects and enhances important values**, sites and environments within the region and considers biodiversity implications and offsetting early in the planning process
- Supports the establishment of the Snowy Mountains Special Activation Precinct process as an **effective and efficient vehicle** for regional economic growth.

The proposed legislative framework will support these aims and objectives.

Streamline approval pathways
(cost, time and certainty)

Enable innovation, investment
and job creation

Protection of
social/environmental values

Enhance liveability: Encourage
social and economic prosperity

5.3 Considerations in developing the Snowy Mountains Special Activation Precinct legislative framework

5.3.1 Unique characteristics of the Snowy Mountains Special Activation Precinct

The approach adopted under Activation Precincts SEPP for Special Activation Precincts in Parkes and Wagga Wagga, doesn't cater for:

- The diversity of land uses encountered as part of the visioning and master planning for Snowy Mountains, such as tourism, accommodation
- The diversity of planning instruments, including those that apply to development in a *National Park – Kosciuszko National Park POM (POM)* or the Alpine SEPP.

The legislative approach recommended for the Snowy Mountains Special Activation Precinct reflects these unique characteristics of the Snowy Mountains region.

5.3.2 Key legislative considerations

Priority considerations for a new legislative framework for the Snowy Mountains Special Activation Precinct include:

- Application of a legislative framework in accordance with the Activation Precincts SEPP to two areas with distinct legislative frameworks
- Amendment to the Alpine SEPP that clarifies/expands exempt and complying development in the Alpine Sub-Precincts
- Application of Activation Precincts SEPP to Jindabyne Region and identification of exempt and complying development
- Manage interfaces and interdependencies between locations, land uses and planning instruments
- Need for a clear governance structure that integrates the roles of NPWS (macro-environmental management, property and leasing) and the Department (consent authority) in the Alpine Sub-Precincts, as well as other relevant government stakeholders (Regional Growth NSW Development Corporation, Department of Regional NSW, and the like), including the implications for establishing and navigating streamlined planning approval pathways
- Specialist assessments are a comprehensive evidence base for Complying/Exempt development standards (to underpin Master Plan and Delivery Plan/Development Control Plan)
- Need for a robust legislative framework to support efficient and effective delivery of vision and master plan outcomes.

5.3.3 Determine the level of site-specific impact assessment required

To support streamlining the development approval process, the Master Plan, supporting studies and amendments to the legislative framework should 'front-load' the assessment of precinct-wide issues as far as practical to reduce the level of impact assessment and specialist studies required for development.

Front-loading precinct-wide assessments as part of this would enable greater control of exempt and complying development by authorities through setting standards that guide development towards agreed outcomes. In order to achieve less detailed assessment requirements for specific development proposals, the specialist assessments carried for the master plan must balance the assessment of issues at the precinct scale with addressing key location or site-specific technical matters.

The degree to which front loaded assessments and design guidance can provide confidence and certainty regarding the development outcomes determines the planning approval pathway (refer to Section 3.3 for description of the relationship between evidence based planning and certainty of outcomes).

Front loading would address precinct-wide issues for developments during the strategic planning phase. Precinct-wide issues would include a range of physical impacts (biodiversity, traffic, movement, economic, social, heritage the like) and design (land use mix, design quality and character, recreation opportunities and the like).

Some of the site-specific issues would require more detailed site-specific investigations and design responses. Examples of technical matters that sufficient evidence of potential impacts may not be possible within front-loaded assessments, which may then require site-specific assessment and site-specific or bespoke conditions to be applied include:

- Presence or absence of threatened and endangered flora and fauna: Strategic assessment and bio-certification would front-load potential impacts for designated Sub-Precincts and calculate the offsets required.
- Presence or absence of Aboriginal Cultural Heritage
- Geotechnical matters and slope stability together with appropriate development type
- Bushfire protection including the implementation of asset protection zones and establishment of a bushfire attack level (BAL)
- Carrying capacity
- Infrastructure provision – including transport, energy generation, waste management and the like.

These aspects are discussed further in Section 6.5.

These site-specific responses would build upon the precinct wide assessments, such as Geotech, biodiversity, heritage, bushfire as part of either the complying development certificate or Development Application pathway. The pathway for such proposals would depend upon whether sufficient prerequisite controls can be formulated to address the 'delta'. Site conditions, particularly in the Alpine Sub-Precincts, change over time. This means there is a risk that prerequisite controls or standards based on an assessment of current conditions may not reflect conditions on site at the time of future development.

Within the Snowy Mountains Special Activation Precinct, there is a need to treat all development with a high level of rigor in order to manage risks and ensure outcomes are in the public interest.

Figure 13 illustrates the policy setting and the applicant's role and the resulting triggers that determine the applicable planning approval pathway. The default pathway for the Snowy Mountains Special Activation Precinct would be complying development, but certain factors may trigger requirement for a Development Application. Development consents and complying development certificates within the Snowy Mountains Special Activation Precinct require an Activation Precinct Certificate, unless specifically excluded by provisions under the relevant SEPP.

Section 6.4 provides a description of the proposed *activated* Development Application process formulated for the Snowy Mountains Special Activation Precinct.

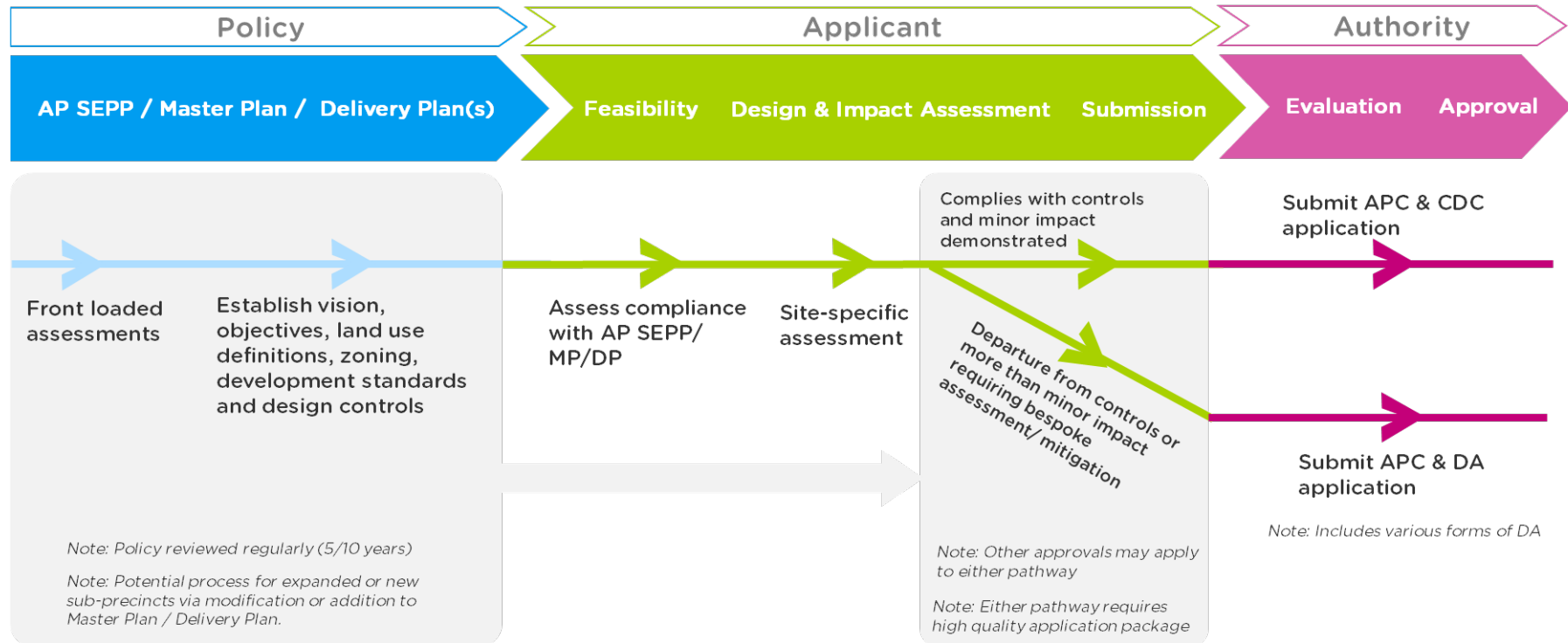


Figure 13 Approval pathway triggers

5.3.4 Challenges facing development in Jindabyne Region

There are a number of land use and building related challenges and considerations in relation to the Snowy River LEP. A summary of key challenges is provided as follows:

- The LEP is currently not supported by a master plan or detailed DCP for Jindabyne Region that guides merit assessments and establishes an up to date desired future character for the locality.
- The previous Snowy River Council (now SMRC) created a place based LEP prior to the standard instrument came into effect (and prior to council amalgamation). The current Snowy River LEP attempted to translate this into the standard template. However, the Standard template didn't facilitate a place based LEP approach.
- Feedback from SMRC suggests that tourist accommodation is not well considered under the current Snowy River LEP. Prior to the Standard Instrument there were local provisions for tourist uses in the LEP. The former *Snowy River Local Environmental Plan 2007* contained a use class of "rural holiday dwelling" and "holiday dwelling" respectively which dealt with the short-term rental of residential dwellings houses and units. Whilst this issue may be resolved in part by the introduction of the Short Term Rental Accommodation Code, depending on the definitions included in that instrument. The standard definition for tourism uses under the Standard Instrument has resulted in Air BnB uses being considered 'serviced apartments' under the LEP. The definitions relating to the various tourist accommodation types anticipated within the Snowy Mountains Special Activation Precinct would need to be considered in detail as part of formulating the new legislative framework.
- Clause 7.8 of Snowy River LEP addresses serviced apartments and identifies matters for consideration when assessing serviced apartments. However, the weaknesses of this approach are:
 - In the land use tables 'serviced apartments' are permitted with consent in zones R1 – General Residential, R2 – Low Density Residential, B2 – Local Centre and RU5 (which covers parts of East Jindabyne and all of Kalkite Village))
 - Under Clause 4.1A(2), residential flat buildings in the R1 Zone require a minimum lot size for 1050sqm, however that lot size does not apply to serviced apartments. The built form of serviced apartments can present as residential flats buildings on lots smaller than 1050sqm.
 - The local community have expressed confusion regarding the logic of allowing a large building in a residential zone that can be used by tourists but not allowing a similar scale building for permanent dwellings, which can result an in inconsistent built form within the same locality.
 - Needs better definitions to work with for tourism uses in rural areas – currently limited to bed and breakfast, farm stay or eco-tourist facility – each with their own difficulties.

5.3.5 Challenges facing development in Alpine Region

Challenges under Alpine SEPP

There are a number of land use and building related challenges and considerations in relation to the Alpine SEPP. A summary of key challenges to development in the Alpine Region is provided as follows:

- Exempt development within the Alpine Sub-Precincts is required to comply with the *Building Code of Australia* deemed to satisfy provisions. As the Alpine SEPP does not provide for complying development, combined with limited exempt development requirements and older building stock within the Alpine Sub-Precincts, this results in the majority of applications triggering the requirement for a Development Application. This means that development of minor environmental impact and significance is subject to a Development Application process. There is general support for an expanded exempt development schedule and the introduction of complying development categories into the Alpine SEPP.
- Need to review and streamline the Alpine SEPP processes for Development Applications. Improvements to the process that would also create significant time and cost savings, include the process and timeframes for referrals between agencies and advertising requirements.
- The buildings in the Alpine Sub-Precincts generally date back to the 50s, 60s and 70s. It is difficult for these buildings to comply with current building codes. The existing buildings generally don't comply with fire safety and engineering requirements (including geotechnical standards). Due to it being costly to renovate and bring the old building stock up to standards,
- There are inconsistencies between the Alpine SEPP and other SEPPs, particularly ISEPP. One example of this is that Clause 25(1) of the Alpine SEPP requires development consent for sewage treatment works by or on behalf of a public authority, whereas ISEPP includes the use as Part 5 development.
- The Alpine Sub-Precincts are essentially small urban villages that are located in an area of very high biodiversity, water and heritage values (Kosciuszko National Park), causing a tension between the ongoing improvement of Alpine Sub-Precinct facilities and protection of important values. To support a streamlined planning approval pathway, the roles and interface between the Alpine SEPP and Kosciuszko National Park POM need to be clearly defined and linked to a clear governance structure.
- There is a tension between conservation (vegetation retention) and asset protection zones (clearing to provide bushfire protection). There does not appear to be a clear framework or set of criteria for Alpine Sub-Precincts to manage asset protection zones, requiring negotiated outcomes with NSW Rural Fire Service and NPWS for individual applications. The importance of site-specific assessments to manage bushfire risk is acknowledged, however the potential for a clear framework is currently under discussion with NSW Rural Fire Service.
- It is difficult to police how people are using their lodges. If they reside permanently or do not rent accommodation out to guests, it takes away tourist opportunities.
- There is the potential of overcrowding in the ski lodges, which requires ongoing monitoring and enforcement.
- When the area experiences significant increases in population in summer and winter the demand on services in these peak periods is evident, especially in terms of car parking, infrastructure capacity and access to the resorts. The challenge for the Snowy Mountains Special Activation Precinct legislative framework controls is how to accommodate the change in population and land use and infrastructure. Not only is infrastructure required to meet the demands, the character of the area also needs to be considered in order to attract people to visit the area year-round.
- The construction period in the Alpine Sub-Precincts is short as there is no construction during winter (between the June long weekend and October long weekend). Sites are difficult to access during winter when the roads are covered with snow and it is difficult to carry out

building works under snow conditions. Construction therefore mainly occurs during October to May each year.

- In terms of safety, fire response times are challenging as Fire and Rescue New South Wales response times to fire alarms can be dependent on weather quality (i.e. longer time in a blizzard). This places additional importance on safe and suitable land use mix, building design and construction standards.
- The current consent authority (the Department) functions under Alpine SEPP are appropriate considering the environmental sensitivities, potential risk profile (including natural disasters, bushfire, internal building fires, over-crowding of ski lodges) for development within the Alpine Sub-Precincts and the state significance of the region.
- The Alpine SEPP was designed to guide current development, rather than facilitate future development and guide expansion or new greenfield sites. Due to the boundaries of the alpine resorts area reflecting the existing leases, any expansion of a ski resort area is outside of the Alpine SEPP generates the need for a boundary amendment to the Alpine SEPP.
- There is provision in the Alpine SEPP for summer activation, however the Alpine SEPP is geared towards winter activities. The Alpine SEPP objectives do not speak to year round activities, for example, clause 2(b) of the Alpine SEPP: "*(b) to put in place planning controls that contribute to and facilitate the carrying out of ski resort development in Kosciuszko National Park that is ecologically sustainable in recognition of the fact that this development is of State and regional significance*". Amendments to the Alpine SEPP and associated design guidelines should clearly indicate that the framework for the area is for year-round activity.
- The tourist accommodation types provided in the ski resort areas are not adequately related to the tourist and visitor accommodation types defined in the Standard Instrument. The Standard Instrument includes various tourist and visitor accommodation uses such as backpacker accommodation, bed and breakfast, farm stay, hotel or motel, serviced apartments, camping grounds, caravan parks and eco-tourist facilities. However, there is no definition in the Standard Instrument for a ski lodge. These unique uses may then require special land use definitions as part of the revised legislative framework. It is noted that this issue is relevant to areas subject to Snowy River LEP also.

Challenges relating to the interface with Kosciuszko National Park POM

There are a number of land use and building related challenges and considerations in relation to the Kosciuszko National Park POM. A summary of key challenges is provided as follows:

- The Kosciuszko National Park POM is a large and complex management tool for NPWS. Consistent implementation of the Kosciuszko National Park POM relies on detailed knowledge of individuals within NPWS.
- Whilst the Kosciuszko National Park POM is delegated legislation, it is not as enforceable as the primary legislation such as the *Environmental Planning and Assessment Act 1979* and the *National Parks and Wildlife Act 1974*. As a result, NPWS have indicated that once development has been approved and implemented, the Kosciuszko National Park POM is not a good means to enforce declines in environmental or social standards.
- According to NPSW, the Kosciuszko National Park POM contains multiple management objectives although that are not being achieved, completed or implemented.
- Bed limits (carry capacity) have typically been used to fix the size of the resorts, though the relationship between accommodation levels and the environmental health of these areas is unclear. As outlined in the Kosciuszko National Park POM, there is insufficient information available to determine whether growth in visitation and infrastructure can be sustained at any of the resorts without increasing environmental degradation.
- A governance structure for the Snowy Mountains Special Activation Precinct is required that respects history of development in the alpine resorts, its context within the Kosciuszko National Park and the collective knowledge of stakeholders. This governance structure must

demonstrate clear and understandable interface between the obligations, plans and policies prepared under the *National Parks and Wildlife Act 1974* and policies and plans prepared under the *Environmental Planning and Assessment Act 1979*. Further, a multi-agency collaborative approach is required that coordinates assessment of development proposals.

5.3.6 Risks of streamlined pathway in Alpine Sub-Precincts

The key risks associated with applying streamlined planning approval pathway, including exempt or complying development, within the Alpine Sub-Precincts include:

- Complying development does not currently apply within the Alpine Sub-Precincts. Applying complying development to the Alpine Sub-Precincts may be seen as a relaxation of the Codes SEPP for an area of high development risk.
- Complying and exempt development must pre-empt all situations and thresholds to account for the full range of uses, development types, design and construction requirements in order to minimise the risk to human safety and property in the context of unique characteristics of the location. Key characteristics that may require site specific solutions that may not possible via front loaded assessments includes land stability risk, biodiversity values, heritage values and bushfire risk.
- Applying or expanding exempt or complying development in the Snowy Mountains Special Activation Precinct, requires catch all provisions to manage the specific impacts of development within the Alpine Sub-Precincts (e.g. Geotech, biodiversity, bushfire). These provisions would need to be comprehensive to ensure consistent outcomes that are safe and appropriate to the setting. The requirements would need to provide equivalence to the *Australian Standard for Construction of Buildings in Bushfire Prone Areas (AS3959)* and *NSW Rural Fire Service Planning for Bushfire Protection 2019*.
- An expanded complying development pathway in the Snowy Mountains Special Activation Precinct, including both Kosciuszko National Plan and Jindabyne Region, runs the risk of being overly complex due to the various pre-specified controls, standards and interface provisions required.
- Applying complying development to the Alpine Sub-Precincts would necessitate allowing performance-based solutions under the National Construction Code (NCC).
- Expanding complying development may require the certifiers to be skilled in assessing atypical considerations, such as bushfire, Geotech, biodiversity and heritage in order to certify a particular proposal. Bushfire certified practitioners would need a linkage back into the Building Professionals Board for review, audit and punitive actions to ensure integrity of the assessment process.
- The timeframes involved in front-loading the assessments to support confident application of complying development may not align with the timelines envisaged for the Snowy Mountains Special Activation Precinct.
- Interfaces with other legislation, regulations, codes and environmental planning instruments requires detailed review, including legal review, in order to align or incorporate relevant approvals, standards and procedures, as well as to effectively streamline development approvals.

Applying complying development and expanding exempt development to the Alpine Region, in principle could generate a streamlined planning approval pathway for proponents. The risks associated to such a framework are a product of the sensitivities of the proposed uses and unique conditions of the environment that is subject to development under these pathways. To minimise the risks, it is important that all necessary assessments be carried out to a commensurate level of detail and subsequent controls be put in place to provide certainty that the new application of exempt and complying development will deliver good planning and development outcomes.

5.4 NSW Planning Reforms

The Department of Planning, Industry and Environment is currently undertaking a suite of reforms to the NSW Planning System, including:

- Employment Zones Reform: Provide for greater flexibility in employment zones,
- Complying Development Reforms: Provides for reforms to the Codes SEPP to accelerate capital investment in employment zones using complying development certification.

As the Activation Precincts SEPP pre-dates these proposed reforms, it is worthwhile considering the implications for the Snowy Mountains Special Activation Precinct. Both of these reforms are relevant to the future planning framework for the Snowy Mountains Special Activation Precinct.

5.4.1 Complying Development Reform

The proposed reform of complying development are described under *Building Business Back Better* (the Department, March 2021). The Complying Development Reform provide for expansion of complying development beyond the current definitions of complying development in the Codes SEPP for Industrial (IN) and Business (B) land use zones.

Consistent with the intent of the Snowy Mountains Special Activation Precinct, the proposed reforms to complying development envisage a detailed 'plan' as the mechanism for enabling wider application of complying development:

- Complying Development Reform – envisage a 'master plan' to provide the development standards to support expansion of complying development beyond the Codes SEPP
- Activation Precincts SEPP – uses the Delivery Plan to provide development standards to support expansion of complying development.

The approach taken by the Complying Development Reform to require upfront technical assessment, design and prescribe development standards is consistent with the approach taken for Special Activation Precincts (under the Activation Precincts SEPP) to ensure good planning outcomes.

Building Business Back Better (the Department, March 2021) proposes to retain application of the Codes SEPP, while using the Master Plan to identify 'additional' complying development beyond that provided for under the Codes SEPP.

"The masterplan pathway would operate within existing land use zones and LEP development standards and can provide a well-considered and detailed development response to an established strategic planning vision. Appropriate locations for this type of approach could include town centres, industrial parks or business parks. This pathway could potentially unlock opportunity for land uses that would not normally be available under a complying development approval pathway in industrial or commercial zones. These could be new or innovative development concepts, development on certain environmentally sensitive land, or a design that is outside the development standards established in the Codes SEPP."
Source: *Building Business Back Better* (the Department, March 2021)

Building Business Back Better (the Department, March 2021) identifies the following land uses as targets for complying development:

- *Remove the distinction between first use and change of use, and add new land uses to the existing list of land use that may be complying development including:*
 - *data centres*
 - *recreational facilities (indoor)*
 - *local distribution premises*

- entertainment facility
- artisan food and drink industry (subject to liquor licence requirements and any LEP floor area requirements)
- veterinary hospitals
- depots
- health manufacturing facilities
- heavy industry in heavy industry zones.
- Allow CDC's to permit a change of use to a permissible land use that is already listed in the Codes SEPP, irrespective of the existing use of a premises
- Allow a wider range of land uses access to the building allowances in the Codes SEPP (see Part C Zone based building controls) including:
 - the new land uses listed above
 - commercial premises in a B5–B7 zone
 - function centres
 - health consulting rooms
 - medical centres
 - community facilities
 - health manufacturing facilities
 - vehicle repair station
 - wholesale supplies
 - amusement centres
 - boat building and repair facilities
 - vehicle body repair workshops
 - vehicle repair stations
 - information and education facilities
 - food and drink premises greater than 50 seats
 - neighbourhood supermarkets.

Building Business Back Better (the Department, March 2021) signals the level of detailed statutory review that is required to support a complying pathway for more complex development than current envisaged under the Codes SEPP. Specific land uses are identified and analysis carried out to signal the intent for complying development expansion, but more detailed regulatory review and collaboration is required.

5.4.2 Employment Zones Reform

The proposed reform of Employment Zones are described under *Proposed Employment Zones Framework Position Paper* (the Department, May 2021). The Employment Zones Reform provide for an "entirely new employment zones framework, rather than a collapsing or combining of current zones", for the *Standard Instrument – Principal Local Environmental Plan*.

The proposed changes to land use zones and definitions signals an opportunity for adopting these zones and definition under the Snowy Mountains Special Activation Precinct, particularly for areas within the Jindabyne Region and Jindabyne Growth Areas.

The new or amended land uses zones proposed under the Employment Zones Reform are described in Table 4.

Table 4 Employment Zones Reform – Proposed changes to land use zones

Land use zones	Description of proposed changes
Five new employment zones	<ul style="list-style-type: none"> • E1 Local Centre • E2 Commercial Centre • E3 Productivity Support • E4 General Industrial • E5 Heavy Industrial. <p>Local Centre and Commercial Centre zones represent zoning for centres; the General Industrial and Heavy Industrial are the key industrial zones; and Urban Support provides a transition between the centres and industrial zones.</p>
Additional employment zones	<ul style="list-style-type: none"> • MU Mixed Use • W4 Working Foreshore <p>Purpose of these zones is to accommodate land uses in existing B or IN zones that are not primarily productivity related</p>
Mixed use zones	<ul style="list-style-type: none"> • SP4 Local Enterprise <p>Purpose of the mixed use zones is to introduce a flexible mechanism to allow for bespoke planning for unique precincts. Introducing the SP4 Local Enterprise zone recognises that certain precincts and their proposed land use activities are unique and cannot be accommodated in another proposed zone. The SP4 zone will allow a planning authority to set the land use table.</p>
Working Foreshore	<p>The W4 Working Foreshore zone is a direct translation of the IN4 Working Waterfront yet due to the alignment of land uses and land application, is better grouped with waterways zones.</p>

Source: *Proposed Employment Zones Framework Position Paper* (the Department, May 2021)

Of the proposed new zones, the mixed use zone – SP4 Local Enterprise may be suited to adopt for the Jindabyne Town Centre Zone. This Planning Recommendations Report recommends that either a bespoke zone based on the current zones used in other Activation Precincts be used or the SP4 Local Enterprise Zone as proposed under the Employment Zones Reform.

The Employment Zones Reform proposes updated definitions for:

- Business premises
- Industrial retail outlet
- Kiosk
- Neighbourhood shop
- Shop top housing
- Crematorium.

The Employment Zones Reform also proposes new definitions for

- Circular economy facility
- Creative industries
- Data centre.

6. RECOMMENDED SNOWY MOUNTAINS LEGISLATIVE FRAMEWORK

6.1 Introduction

This section describes the proposed legislative framework applying to the Snowy Mountains Special Activation Precinct investigation area.

A key principle for the Snowy Mountains Special Activation Precinct legislative framework is to formulate a new planning framework that works within current legislation to enable a more streamlined approach to development. A key element of this is to change policy, not law, in order to establish more streamlined planning approval pathways for development, which encourages investment while maintaining or improving the environmental and social conditions.

Description of the specific amendments under each of the three environmental planning instruments within the Snowy Mountains Special Activation Precinct investigation area is provided in Appendix 1: *Introduction of the Snowy Mountains Special Activation Precinct – Discussion Paper*, including proposed land use zones, intent for complying development and associated maps.

In order to achieve the intent of the Snowy Mountains Special Activation Precinct legislative framework, a governance structure is required for the Alpine Region that reflects the change in policy and supports the streamlined planning approvals. This section also describes options for revised governance structure for the Alpine Region.

6.2 Planning hierarchy

6.2.1 Overview

The Snowy Mountains Special Activation Precinct legislative framework adopts a risk-based approach to determine appropriate application of streamlined planning approval processes for exempt development, complying development and Development Applications.

The proposed planning hierarchy is illustrated in Figure 14, which illustrates the effect of planning instruments that form the legislative framework for land within the Snowy Mountains Special Activation Precinct investigation area.

Careful consideration is required regarding the provisions that are included in either the environmental planning instruments versus the design guidelines in order to accord with the hierarchy (Figure 14) and legislative 'weight' that each instrument provides. For instance, provisions that are mandatory or important to establish the land use thresholds (e.g. zones and conditions of development) would be contained within the environmental planning instruments, whereas principles or merit-based controls are contained with the Master Plan, Delivery Plans or Development Control Plan (e.g. urban design and built form character).

The amendments to each of these environmental planning instruments are designed to support the vision for the Snowy Mountains Special Activation Precinct as described in the Draft Snowy Mountains Special Activation Precinct Master Plan as well as to implement the relevant findings of supporting technical studies. The Draft Snowy Mountains Special Activation Precinct Master Plan provides an integrated vision for development.

Consistency of planning approvals across the Snowy Mountains Special Activation Precinct investigation area is supported by:

- Preparation of an overall master plan, based on comprehensive suite of technical studies, that provides an integrated strategy for development within the Snowy Mountains Special Activation Precinct investigation area (including the three areas described as Jindabyne Catalyst Sub-Precincts, Jindabyne Growth Areas and Alpine Region Sub-Precincts as illustrated in Figure 15) (refer to Section 6.2.3 for description of the intent for the Snowy Mountains Special Activation Precinct Master Plan)
- Requirement for each Delivery Plan and Development Control Plan to be consistent with the Master Plan
- Requirement under the relevant environmental planning instrument for development to be consistent with the relevant Master Plan and either Delivery Plan or Development Control Plan.

The relevant sections of the Snowy Special Activation Precinct Master Plan will be adopted under each of the environmental planning instruments.

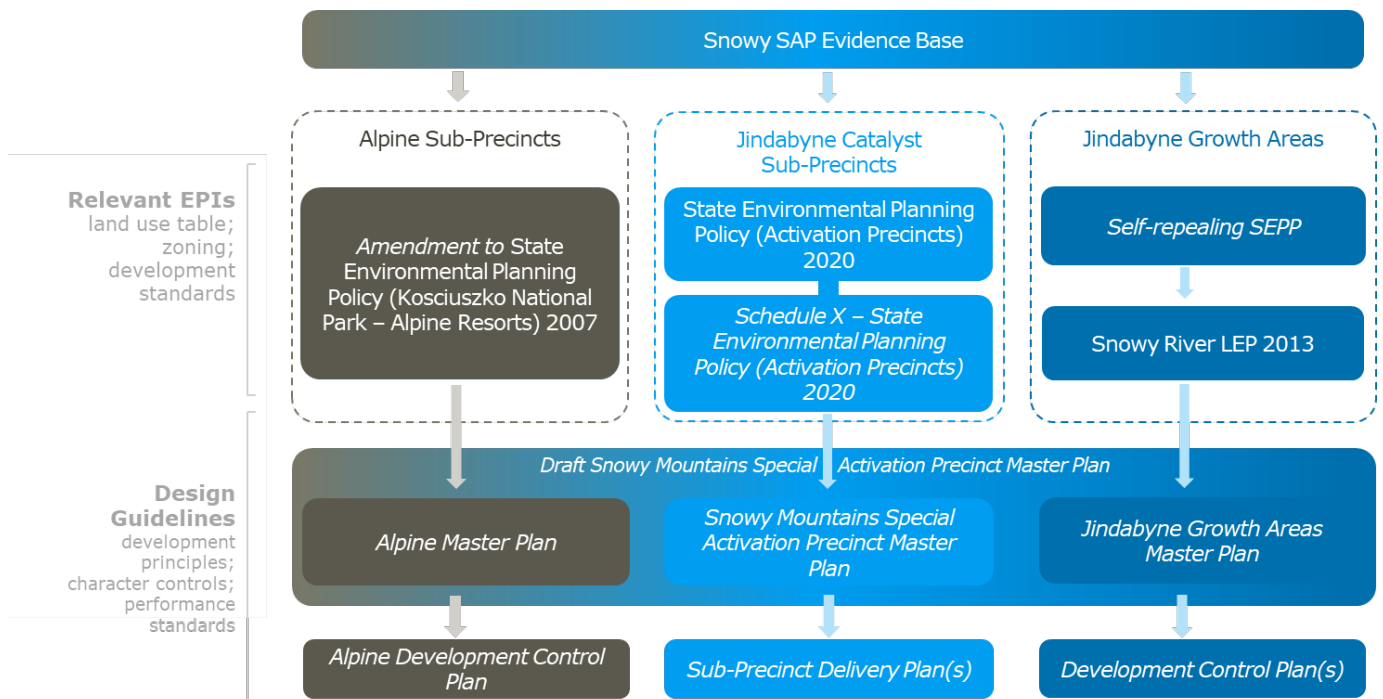


Figure 14 Snowy Mountains Special Activation Precinct: Environmental Planning Instruments

Table 5 describes the planning approval pathways proposed for under the three environmental planning instruments.

Table 5 Planning approval pathways

Precinct	Applicable environmental planning instrument and planning provisions	Applicable Delivery Plan or Development Control Plan	Minor, low impact development	Site is identified as Environmental Sensitive Land	Development is consistent with the relevant environmental planning instrument and Delivery Plan/DCP	
					Yes	No
Jindabyne Catalyst	Activation Precincts SEPP	Relevant Delivery Plan	Exempt development using specific provisions contained in the Activation Precincts SEPP	Activated Development Application process	Complying development	Activated Development Application process
Jindabyne Growth	Snowy River LEP	Snowy River Development Control Plan	Exempt development using specific provisions contained in the Snowy River LEP	Development Application	Complying development or Development Application as required under the Snowy River LEP	Development Application
Alpine Region	Alpine SEPP	Alpine Development Control Plan	Exempt development using specific provisions contained in the Alpine SEPP	Activated Development Application process	Complying development	Activated Development Application process

Note: Current planning approval pathways, including Development Applications, will apply where thresholds for streamlined planning approval are not met.

The following sections provide an overview of the content of the relevant environmental planning instruments, the Snowy Mountains Master Plan and the Delivery Plan/Development Control Plan.

6.2.2 Application of key environmental planning instruments

The Snowy Mountains Special Activation Precinct legislative framework will be controlled by three key environmental planning instruments, namely:

- **Activation Precincts SEPP (Jindabyne Catalyst Sub-Precincts)**
- **Snowy River LEP³ (Jindabyne Growth Areas)**
- **Alpine SEPP (Alpine Region).**

Figure 15 provides a conceptual illustration of the proposed legislative framework for Snowy Mountains Special Activation Precinct investigation area. This illustrates the interrelationship between the land areas that are within identified Sub-Precincts within the investigation area, as well as the key controlling planning instruments (Activation Precincts SEPP, Snowy River LEP and Alpine SEPP).

Refer to Section 6.3 for indicative Snowy Mountains Special Activation Precinct boundaries.

³ Note that SMRC is currently preparing a consolidated local environment plan to replace the three existing local environment plans within the amalgamated local government area of Snowy Monaro Region.

Amendments to planning instruments

Location	Amendments	Planning instrument
Kosciuszko National Park	Continued application of Part 5 approval pathway (NPW Act, ISEPP)	Kosciuszko National Park Plan of Management
Alpine Region Sub-precincts	Expand/clarify Exempt Development	Alpine SEPP Master Plan Development Control Plan
	Targeted application of Complying Development (specified development)	
	<i>activated</i> DA (with option for traditional DA)	
Jindabyne Catalyst Sub-precincts	Expand/clarify Exempt Development	AP SEPP Master Plan Delivery Plan APC certificate
	Targeted application of Complying Development (specified development)	
	<i>activated</i> Development Application (with option for traditional DA)	
Jindabyne Growth Areas	Consequential SEPP amendment (rezoning)	Snowy River LEP 2013 Development Control Plan
	Continued application of Exempt Development, Complying Development and DA pathway(s)	

Spatial illustration of Sub-Precincts

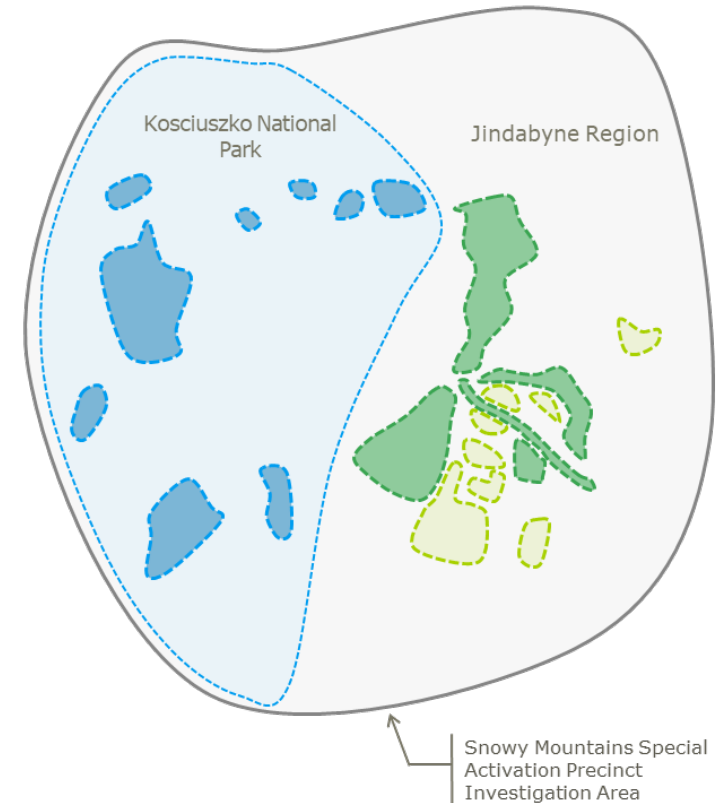


Figure 15 Conceptual illustration of Snowy Mountains Special Activation Precinct legislative framework

Activation Precincts SEPP

The proposed amendment to the Activation Precincts SEPP will introduce new controls for lands within the Snowy Mountains Special Activation Precinct (catalyst sites only). The Activation Precincts SEPP will include provisions guiding development on land within the identified Jindabyne Region catalyst sites.

The Snowy River LEP will no longer apply to land within the Snowy Mountains Special Activation Precinct.

The land includes the sites within the Jindabyne Region that have been identified as 'catalytic opportunities' to promote and facilitate the vision of the Special Activation Precinct including:

- Jindabyne Town Centre and Foreshore
- Mountain Bike and Adventure Park
- Western Lake Jindabyne
- Sports and Education Precinct
- Southern Connector Road.

These catalyst sites are referred to as 'Sub-Precincts' (shown in Figure 16) within the Snowy Mountains Special Activation Precinct and development will also be supported by transport connections in Jindabyne and Kosciuszko National Park including, but not limited to, park and ride facilities.

The Activation Precincts SEPP will also:

- Identify exempt and complying development for the Snowy Mountains Special Activation Precinct (Jindabyne Catalyst Precinct)
- Provide for a streamlined development application process that utilises front-loaded evidence and design guidance to enable shorter timeframes for assessment and decision making (referred to as an *activated* development application).

In accordance with the *Environmental Planning and Assessment Regulation 2000* (Clause 50C and Clause 129) each application for a Complying Development Certificate or development application, other than applications by public authorities (other than Regional Growth NSW Development Corporation), on land to which the Activation Precincts SEPP applies, must be accompanied by an Activation Precinct Certificate.

Snowy River LEP

It is proposed to amend the Snowy River LEP to rezone certain lands (Growth Areas) that are identified under the Draft Snowy Mountains Special Activation Precinct Master Plan as suitable for development that supports the vision for the Snowy Mountains Special Activation Precinct. These lands will remain subject to the Snowy River LEP.

Lands that are identified under the master plan as being suitable for rezoning to support the vision of the Snowy Mountains Special Activation Precinct, subject to upfront technical assessments, will be the subject of a self-repealing State Environmental Planning Policy (referred to as the Self-Repealing SEPP) to amend the Snowy River LEP. The Sub-Precincts that make up lands to which the proposed Self-Repealing SEPP applies, includes lands within the Jindabyne urban area, lands to the south of Jindabyne, as well as lands in the East Jindabyne village.

Detailed description of the lands to be rezoned and associated LEP amendment is provided in Appendix 1 – *Introduction of the Snowy Mountains Special Activation Precinct – Discussion Paper*.

Alpine SEPP

Due to the long history of the Alpine Sub-Precincts and the importance of careful management of development within the Alpine Sub-Precincts, the existing Alpine SEPP is to be retained and the architecture of the Activation Precincts SEPP is to be introduced. The intention is to preserve the current safeguards established under the Alpine SEPP and inject a more streamlined planning approval pathway that is tailored to contemporary development trends. The proposed amendments to the Alpine SEPP are aimed towards streamlining development within the Alpine Sub-Precincts and leveraging the upfront of design and assessment conducted as part of the Snowy Mountains Special Activation Precinct investigations.

The land within Kosciuszko National Park that is captured under the Alpine SEPP will expand to include existing disturbed areas in a manner that is consistent with the *National Parks and Wildlife Act 1974*.

The existing Alpine SEPP provides for a range of permitted land uses within the identified Alpine Region. The current framework under the Alpine SEPP includes provision for exempt development and development permitted with consent. There is currently no complying development pathway under the Alpine SEPP.

An amendment is required to support streamlined planning approval for development in the Alpine Sub-Precincts that is consistent with the Draft Snowy Mountains Special Activation Precinct Master Plan. The relevant provisions of the Draft Snowy Mountains Special Activation Precinct Master Plan will be applied the Alpine Sub-Precincts. Strategic planning and a carrying capacity analysis will support the amendment to the Alpine SEPP in order to facilitate redevelopment within the Alpine Sub-Precincts.

The amendments to the Alpine SEPP will provide for:

- An amended land use table and development standards for each Alpine Sub-Precinct. The land use table is the basis for planning approval pathways for land uses, including exempt, complying and prohibited development.
- Provisions requiring preparation of a Master Plan and requirement for development to be consistent with the Master Plan. The Master Plan will include the vision, objectives and performance criteria and limitations on development that apply within the Alpine Sub-Precincts.
- Provisions requiring preparation of a Development Control Plan (the Alpine Development Control Plan) and requirement for development to be consistent with the Development Control Plan. The Alpine Development Control Plan will include design guidance, detailed infrastructure planning, ski field and trails planning, specific development controls applicable to development and description of how development is to achieve the master plan vision and objectives (i.e. design guideline).
- Current provisions of the Alpine SEPP will be amended to align with the vision and development guidelines under the Master Plan. For example, the provisions of Part 5 Miscellaneous Development under the Alpine SEPP would be updated to reflect changes in the Master Plan, so the Alpine SEPP and Master Plan are consistent.
- Proposed development in proximity to a Sub-Precinct (subject to approval under *National Parks and Wildlife Act 1974*) will need to align, support and complement the future intent and desired land uses in each precinct or Sub-Precinct.

Alongside the introduction of the above mechanisms, amendments to the Alpine SEPP will also:

- Expand/clarify exempt development provisions to more clearly define the nature of exempt development in the Alpine Sub-Precincts
- Introduce complying development pathway for minor building or maintenance works and basic operational works. For example, replacing existing ski infrastructure (structural components and parts) with upgraded infrastructure where it results in the same capacity and scale, or snow gutters/awnings on existing lodge buildings. The purpose of this is to avoid minor works, which cannot strictly meet exempt development controls, requiring development consent
- Provide for a streamlined Development Application process that utilises upfront evidence and design guidance to enable shorter timeframes for assessment and decision making (referred to as an *activated* Development Application).

6.2.3 Design Guidelines

The Alpine SEPP and the Activation Precincts SEPP will be supported through design guidance provided by:

- **Snowy Mountains Special Activation Precinct Master Plan:** Single master plan that applies to all land within the Snowy Mountains Special Activation Precinct. The relevant content of the Snowy Mountains Special Activation Precinct Master Plan will be applied to the Alpine Region (Alpine Master Plan) and the Jindabyne Growth Areas (Jindabyne Growth Areas Master Plan) via master plans adopted under the Alpine SEPP and Snowy River LEP respectively.
 - Prepared by: the Department
 - Approved by: Minister for Planning and Public Spaces
- **Delivery Plan:** One or more Delivery Plans will be prepared that apply to identified Sub-Precincts under the Activation Precincts SEPP.
 - Prepared by: Regional Growth NSW Development Corporation
 - Approved by: Planning Secretary
- **Development Control Plan:** Development Control Plans will be prepared under the relevant environmental planning instrument for the Alpine Region and the Jindabyne Growth Areas.
 - Alpine Development Control Plan:
 - Prepared by: the Department
 - Approved by: Planning Secretary
 - Jindabyne Growth Area Development Control Plan:
 - Prepared by: SMRC (with support from the Department as required)
 - Approved by: SMRC.

The Master Plan and Delivery Plan/Development Control Plan are prepared under the Snowy Mountains Special Activation Precinct program. Under Part 2 of the Activation Precincts SEPP, the Master Plan and Delivery Plans prepared for the Snowy Mountains Special Activation Precinct have statutory weight. In order for the Master Plan to apply to the Alpine Sub-Precincts and to Jindabyne Growth Areas, relevant content of the Draft Snowy Mountains Special Activation Precinct Master Plan would be incorporated into separate master plan applying to the identified Sub-Precincts and adopted via provisions in the Alpine SEPP and the Snowy River LEP.

Snowy Mountains Special Activation Precinct Master Plan

A single integrated and holistic master plan has been prepared that provides strategic guidance for development on land in the Snowy Mountains Special Activation Precinct investigation area.

The Master Plan articulates the vision, objectives and performance criteria, important values and constraints, and limitations on development within the Snowy Mountains Special Activation Precinct. The intention is that the relevant content of the Draft Snowy Mountains Special

Activation Precinct Master Plan will be adopted under each of the three environmental planning instruments as illustrated in Figure 14.

The content of the Draft Snowy Mountains Special Activation Precinct Master Plan includes following key elements (but not limited to):

1. **Strategic Context:** Describes the key drivers for change, important cultural heritage, work undertaken to date and outlines the planning framework.
2. **Vision and principles for the Snowy Mountains:** underpin the planning for the Snowy Mountains Special Activation Precinct and will be considered in the assessment of applications for planning approval with the precinct. The vision focus areas are:
 - Environmental resilience
 - Connection to Country
 - Carrying capacity
 - Housing diversity
 - Place and landscape
 - Social infrastructure
 - Economy and industry
 - Transport and connectivity
 - Infrastructure and services
3. **Structure plans:** Plans and desired future character descriptions for nominated Sub-Precincts within the Snowy Mountains Special Activation Precinct, including Jindabyne catalyst sites, Jindabyne Growth Areas and Alpine Sub-Precincts, as well as visitor access, visitor attractions and prospective developments.

The vision for Snowy Mountains

The Snowy Mountains is the rooftop of Australia where an unspoiled alpine landscape meets a dramatic climate that is unfound elsewhere on the continent. This is Australia's high country where visitors are drawn to our everchanging seasons, and with them, endless opportunities to experience the great outdoors. The rich culture and authentic character of our region is sewn through the patchwork of local experiences that inspire exploration and provoke adventure.

Draft Snowy Mountains Special Activation Precinct Master Plan

Delivery Plans

Delivery Plan(s) for the Jindabyne Catalyst Sub-Precincts within the Snowy Mountains Special Activation Precinct will be prepared by the Regional Growth NSW Development Corporation and be approved by the Planning Secretary. The Delivery Plan will contain specific development controls for particular development and establish the detailed built form controls that are the basis for issuing of the Activation Precinct Certificate. The Delivery Plan will incorporate relevant design guidance to ensure development achieves the vision and aspirations of the Master Plan Snowy Mountains Special Activation Precinct Master Plan.

Development Control Plans

Development Control Plan(s) for the Jindabyne Growth Areas within the Snowy Mountains Special Activation Precinct will be prepared and approved by SMRC.

An Alpine Development Control Plan for the Alpine Region within the Snowy Mountains Special Activation Precinct will be prepared by the Department and be approved by the Planning Secretary.

Development Control Plans will contain specific development controls for particular development and establish the detailed built form controls to be considered for development within the Sub-Precincts. The Development Control Plan will incorporate relevant design guidance to ensure development achieves the vision and aspirations of the Master Plan Snowy Mountains Special Activation Precinct Master Plan.

6.3 Land application

6.3.1 Sub-Precinct identification

The Activation Precincts SEPP, the Self-Repealing SEPP (amends the Snowy River LEP) and the Alpine SEPP apply to land within the identified Sub-Precincts only.

The Snowy Mountains Special Activation Precinct Master Plan identifies sites that have the potential to catalyse the future tourist development in the region, which is aligned with the vision for the Snowy Mountains Special Activation Precinct investigation area. These catalyst sites have been identified for 'government led' and 'government supported' development opportunities that have the potential to generate flow on economic and social benefits to the region. These catalyst sites are identified as Sub-Precincts under the Snowy Mountains Special Activation Precinct Master Plan and carried forward into the relevant SEPP.

Sub-Precincts reflect locations with common development themes and are arranged to provide clear direction for development via development principles and objectives. Each Sub-Precinct has been the subject of master planning design and technical surveys, which combine to establish a clear direction for future development.

Figure 16 shows the proposed boundaries of the relevant environmental planning instruments within the Snowy Mountains Special Activation Precinct investigation area, comprising:

- **Jindabyne Catalyst Sub-Precincts:** Land to which the Snowy Mountains Special Activation Precinct Schedule X under the Activation Precincts SEPP will apply
- **Jindabyne Growth Areas:** Land to which the proposed amendments to the Snowy River LEP (via a Self-Repealing SEPP) will apply
- **Alpine Region Sub-Precincts:** Land to which the Alpine SEPP (as amended) will apply.

Proposed land use zones for the identified Sub-Precincts are described in Appendix 1 – *Introduction of the Snowy Mountains Special Activation Precinct – Discussion Paper*.

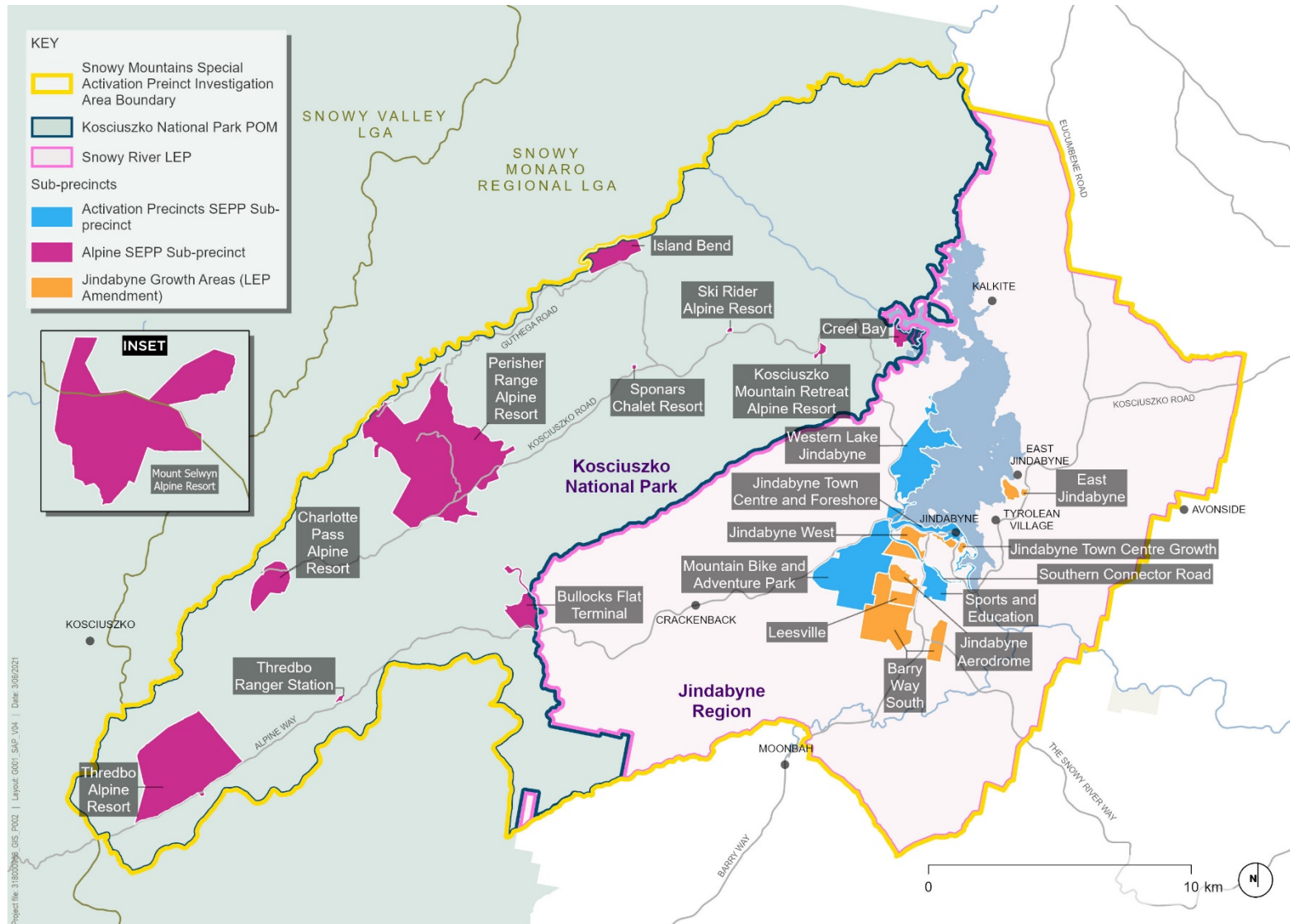


Figure 16 Snowy Mountains Special Activation Precinct – Sub-Precincts identification

6.3.2 Jindabyne Catalyst Sub-Precincts

The land includes the sites within the Jindabyne Region that have been identified as ‘catalytic opportunities’ to promote and facilitate the vision of the Special Activation Precinct including:

- Jindabyne Town Centre and Foreshore
- Mountain Bike and Adventure Park
- Western Lake Jindabyne
- Sports and Education Precinct
- Southern Connector Road.

These sites will be referred to as ‘Sub-Precincts’ within the Snowy Mountains Special Activation Precinct and development will also be supported by transport connections in Jindabyne and Kosciuszko National Park including, but not limited to, park and ride facilities.

Table 6 describes the Sub-Precincts to be captured under a new Snowy Mountains Special Activation Precinct Schedule X under the Activation Precincts SEPP.

Table 6 Proposed Jindabyne Catalyst Sub-Precincts

Catalyst Sub-Precinct	Location	Land use intent
Jindabyne Town Centre	Jindabyne town centre and waterfront	Waterfront hotel, mixed commercial, tourist facilities, public realm improvements
Mountain Bike and Adventure Park	South west Jindabyne (Alpine Way)	Mountains bike trails, adventure tourist facilities (luge, downhill coaster), kiosk
Western Lake Jindabyne	Western waterfront of Lake Jindabyne	Hotel, resort facilities, waterfront infrastructure, golf course, caravan and camping, tourist accommodation
Sports and Education Centre	South Jindabyne (Barry Way)	Education facilities (TAFE, School), Alpine Sports facilities, sports fields, accommodation
Southern Connector Road	East west corridor south of Jindabyne urban area	Roads and associated infrastructure

6.3.3 Jindabyne Growth Areas

To encourage development on sites that are identified by the Draft Snowy Mountains Special Activation Precinct Master Plan as opportunity sites, it is proposed that specified Sub-Precincts are rezoned under the Snowy River LEP. The proposed rezoning would be facilitated by adopting the relevant sections of the Draft Snowy Mountains Special Activation Precinct Master Plan under the Snowy River LEP and a new or updated Development Control Plan.

Jindabyne Growth Area Sub-Precincts are not subject to the Activation Precincts SEPP and cannot proceed through the Activation Precincts SEPP planning approval pathways. Instead, development on land outside the catalyst sites, even if identified as having potential for development under the Snowy Mountains Special Activation Precinct Master Plan, is subject to the provisions of the Snowy River LEP and traditional planning approval pathways.

Table 7 describes the Sub-Precincts to be captured under a new Snowy Mountains Special Activation Precinct Schedule X under the Activation Precincts SEPP.

Table 7 Proposed Jindabyne Growth Area Sub-Precincts

Sub-precinct	Location	Land use intent
Jindabyne Town Centre Growth	Three central Jindabyne areas currently zoned a combination of R1 General Residential and R2 Low Density Residential	Medium density residential, community facilities, recreation facilities and appropriate commercial activities
Leesville Industrial Area	Land within and immediately adjoining the existing Leesville Industrial Estate currently zone a combination of IN1 General Industrial and small portion of RU1 Primary Production	General industrial uses
Barry Way South	Land in proximity to Bungarra and the Station currently zoned a combination of RU1 Primary Production, B1 Neighbourhood Centre, RE1 Public Recreation and SP3 Tourist.	Mixed tourist, residential and commercial activities that are consistent with the landscape setting and environmental values
Jindabyne West	Area of potential residential development current zoned R1 General Residential and R2 Low Density Residential	General residential
East Jindabyne Village	two areas within the East Jindabyne village currently zoned a combination of R1 General Residential, R5 Large Lot Residential and RE2 Private Recreation	General residential, with limited appropriate retail shops and public open space
Jindabyne Aerodrome	Land that is currently used for aerodrome, currently zoned RU1 Primary Production	Provide for continued operation of the Jindabyne Aerodrome

6.3.4 Alpine Region Sub-Precincts

Under the proposed amendments to the Alpine SEPP, the existing and proposed Alpine sub-Precincts are grouped according to their main purpose:

- **Alpine Resort** – Includes Sub-Precincts with tourist accommodation, associated buildings/infrastructure and contain skiable locations (e.g. Charlotte Pass, Perisher Range, Thredbo, Mount Selwyn)
- **Alpine Accommodation** – Includes Sub-Precincts with tourist accommodation and associated buildings/infrastructure but no skiing (e.g. Ski Rider, Sponars).

Table 8 describes the Alpine Region Sub-Precincts that are proposed to be captured under amendments to the Alpine SEPP.

Table 8 Proposed Alpine Region Sub-Precincts

Sub-precinct	Current status under Alpine SEPP	Land use intent
Alpine Resort Sub-Precincts		
Thredbo	Existing Alpine Resort	Ski lodges, ski infrastructure, tourist accommodation, adventure tourism facilities, commercial and administration, shops, food and beverage, infrastructure and transport facilities
Charlotte Pass	Existing Alpine Resort	Ski lodges, ski infrastructure, tourist accommodation, adventure tourism facilities, commercial and administration, shops, food and beverage, infrastructure and transport facilities
Perisher Resort (including Smiggin Holes and Guthega)	Existing Alpine Resort	Ski lodges, ski infrastructure, tourist accommodation, adventure tourism facilities, commercial and administration, shops, food and beverage, infrastructure and transport facilities
Mount Selwyn	Existing Alpine Resort	Ski lodges, ski infrastructure, tourist accommodation, adventure tourism facilities, commercial and administration, shops, food and beverage, infrastructure and transport facilities
Alpine Accommodation Sub-Precincts		
Bullocks Flat	Existing Alpine Resort	Tourist accommodation, adventure tourism facilities, commercial and administration, shops, food and beverage, infrastructure and transport facilities
Sponars Chalet	Existing Alpine Resort	Tourist accommodation, adventure tourism facilities, food and beverage, infrastructure and transport facilities
Ski Rider Motel	Existing Alpine Resort	Tourist accommodation, adventure tourism facilities, food and beverage, infrastructure and transport facilities
Kosciuszko Tourist Park	Existing Alpine Resort	Tourist accommodation (except for hotel), camping, adventure tourism facilities, food and beverage, infrastructure and transport facilities
Island Bend	New Alpine Resort	Tourist accommodation (except for hotel), camping, adventure tourism facilities, food and beverage, infrastructure and transport facilities
Creel Bay	New Alpine Resort	Tourist accommodation, adventure tourism facilities, food and beverage, infrastructure and transport facilities
Thredbo Ranger Station	New Alpine Resort	Tourist accommodation, camping, adventure tourism facilities, food and beverage, infrastructure and transport facilities

In addition to these areas, tourist facility works (viewing platform and access trail) are proposed to be carried out in Porcupine Rocks, which would be undertaken by NPWS under the *National Parks and Wildlife Act 1974* (Part 5 of the *Environmental Planning and Assessment Act 1979*).

Mount Selwyn is not incorporated in the Snowy Mountains Special Activation Precinct Master Plan but remains subject to the legislative framework under the Alpine SEPP.

Additional tourist accommodation is provided in two existing camping areas, Ngarigo Camping Thredbo Diggings Campground, which will remain within Kosciuszko National Park and under control of Kosciuszko National Park POM and *National Parks and Wildlife Act 1974*.

6.3.5 Kosciuszko National Park

The Alpine Sub-Precincts identified in the Master Plan and Delivery Plans are consistent and aligned with the boundary of the Alpine SEPP.

Land outside the Alpine Sub-Precincts, within the Kosciuszko National Park is subject to the *National Parks and Wildlife Act 1993* and the provision of the *Kosciuszko National Park POM*. Development on such land is subject to assessment and approval under Part 5 of the *Environmental Planning and Assessment Act 1979* and would take into consideration the planning framework, including Master Plan and Delivery Plan(s), under the Alpine SEPP.

6.4 Streamlining Development Applications

6.4.1 Outline

The key premise of the Snowy Mountains Special Activation Precinct is to streamline planning approval through expansion of the complying development pathway. However, impediment conditions exist that may limit the application of complying development for certain development. Where impediment conditions exist that preclude the ability for planning approval as complying development for certain development types, it is proposed that an *activated* Development Application may be utilised by proponents in order to achieve a streamlined development consent.

Where impediment conditions exist that preclude the ability for planning approval as complying development for certain development types, it is proposed that an *activated* Development Application may be utilised by proponents in order to achieve a streamlined development consent.

This Planning Recommendations Report recommends introduction of an *activated* Development Application process to the architecture of the Activation Precincts SEPP and (separately) to the Alpine SEPP, which streamlines the evaluation and assessment stage of traditional Development Applications on land to which these environmental planning instruments apply⁴.

The activated Development Application process leverages upfront technical studies, master planning and public exhibition to streamline the steps of a Development Application. The mechanisms to deliver a streamlined Development Application process are:

- **Practice Notes:** Describe the intent of the *activated* planning approval process and the requirements for assessment of Development Applications under the Activation Precincts SEPP (includes requirement for an Activation Precincts Certificate) and the Alpine SEPP (does not require an Activation Precincts Certificate). The assessment requirements will take into account the upfront technical assessments, the nature of specified development types and the environmental, social and economic conditions of development locations.
- **Community Participation Plans:** Describe the thresholds and requirements for specified development that is subject to either standard, reduced or no public exhibition periods. The rationale for reducing exhibition requirements for certain development applications, the Community Participation Plan would reflect the public exhibition of the Draft Snowy Mountains Special Activation Precinct Master Plan and associated technical studies, as well as the

⁴ Note: Does not apply under the Snowy River LEP.

exhibition of the Design Guidelines (Delivery Plan under the Activation Precincts SEPP and Development Control Plan under the Alpine SEPP).

It is noted that a detailed statutory review of the *activated* Development Application process and associated requirements for preparation of a community participation plan is required, which would involve discussion with relevant government agencies.

6.4.2 Streamlining Development Applications under Activation Precincts SEPP

For development in catalyst sites that is not complying development, planning approval will be required in the form of a local Development Application. Development applications within catalyst sites will be streamlined via:

- Reliance on upfront technical assessments and design guidelines to reduce assessment requirements for individual development applications (commensurate with the upfront assessment)
- Reducing evaluation and exhibition requirements for individual development applications.

Further, as Clause 50C of the *Environmental Planning and Assessment Regulation 2000* requires that an Activation Precinct Certificate be obtained for a Development Application, there is a need to streamline and avoid a 'two-step' process for Development Applications under the Activation Precincts SEPP.

The *activated* Development Application under the Activation Precincts SEPP involves a concurrent application for an Activation Precinct Certificate and a Development Application, as illustrated in Figure 17:

1. **Activation Precinct Certificate:** includes evaluation of the consistency of the proposed development with Master Plan and Delivery Plan (issues consider planning, land use, public interest, built form, design quality, transport, etc). Notification for proposals that are issued an Activation Precinct Certification do not require exhibition or notification as this is carried out as part of the Snowy Mountains Special Activation Precinct process.
2. **Activated Development Application:** matters for consideration are limited (through issuing of Practice Notes and Guidelines) to unique site conditions (such as impediment risks, including bushfire, Geotech, ecology, heritage).

A Development Consent cannot be determined until the Activation Precinct Certificate is issued.

Where an Activation Precinct Certificate has been issued for a development, exhibition is not required and the Development Application will consider only those matters not addressed under the Activation Precinct Certificate. A Community Participation Plan will be prepared that identifies which development does not require exhibition. A Practice Note will be prepared that will describe the application preparation and evaluation process for concurrent assessment of applications for Activation Precinct Certificate and Development Consent.

The Activation Precincts SEPP will specify the consent authority for specified development.

The *activated* Development Application process, applicable to land under the Activation Precincts SEPP, is illustrated in Figure 17.

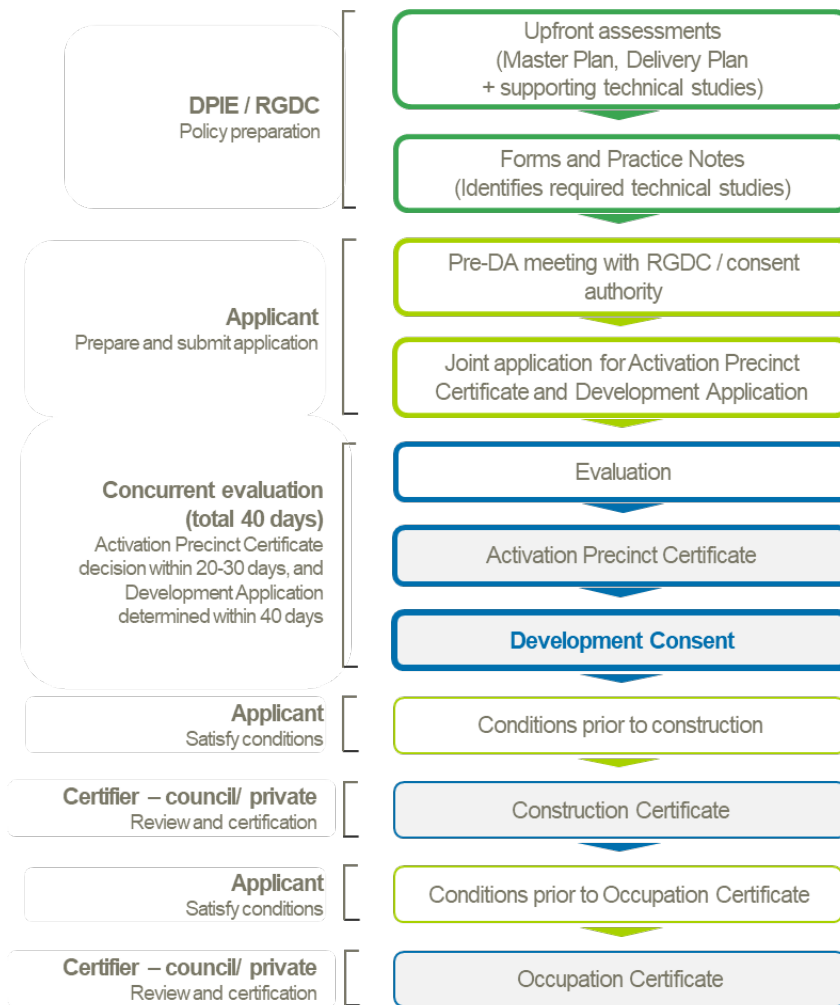


Figure 17 Activated Development Application and certificate process: Activation Precincts SEPP

Note: EPA involvement would be required for proposals that require an Environment Protection Licence.

6.4.3 Streamlining Development Applications under Alpine SEPP

For development that is not complying development⁵, approval will be subject to a Development Application that leverages available upfront assessment and exhibition of Master Plan, which is referred to as an *activated* Development Application. The upfront technical assessments and design guidance reduces the assessment requirements for applicants (commensurate with extent of upfront assessment) and reduce evaluation and exhibition timeframes.

The relevant Master Plan and Development Control Plan are required to be publicly exhibited. Where the proposal is consistent with the relevant Master Plan and the Alpine Development Control Plan exhibition of the associated Development Applications in the Alpine Region will not be required. A Community Participation Plan will be prepared that identifies which development does not require exhibition. A Practice Note will be prepared that will describe the application preparation and evaluation process for Development Applications.

⁵ Note: Development for a Special Fire Protection Purpose (including tourist accommodation), as defined by the Rural Fires Act 1997, on land that is bush fire prone cannot be Complying Development and is instead subject to a Development Application.

Where the proposal is for development that would be integrated development, additional assessment may be required. It is noted that, where nominated integrated development (defined under *Schedule 1 – Community participation requirements of the Environmental Planning and Assessment Act 1979*⁶) is proposed, exhibition requirements required by the *Environmental Planning and Assessment Act 1979* would apply.

The activated development applications process, applicable to land under the Alpine SEPP, is illustrated in Figure 18.

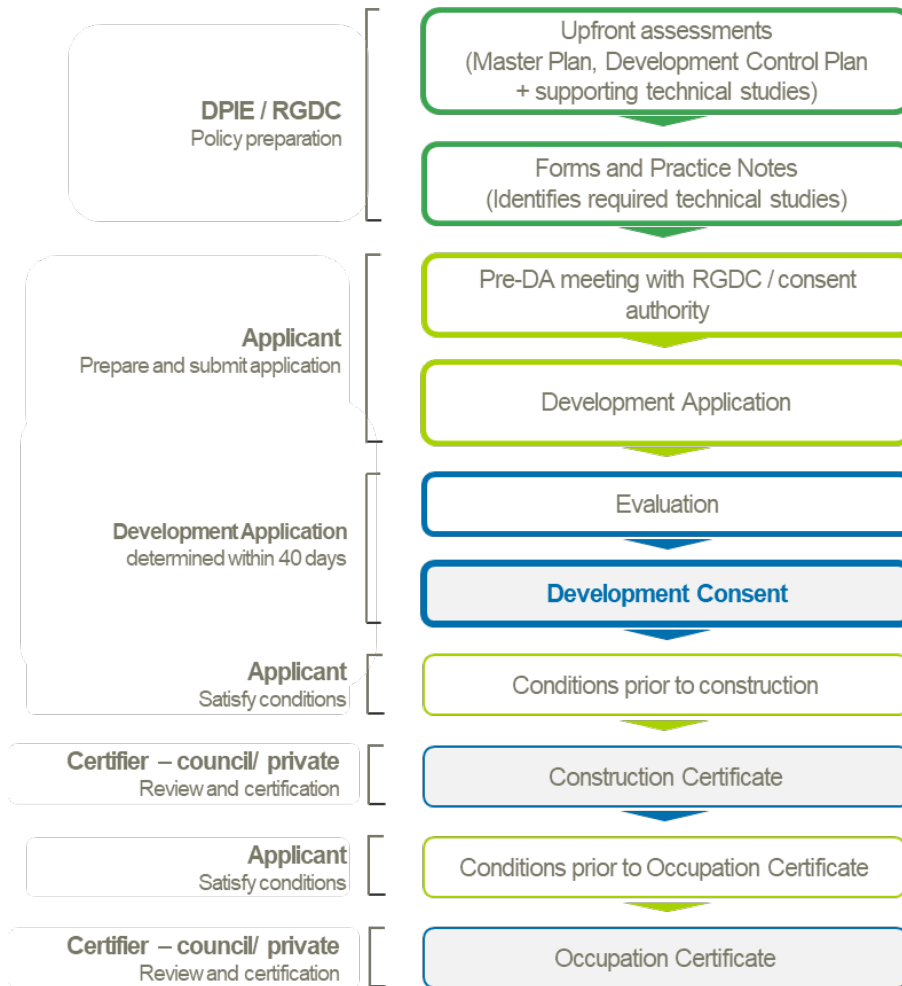


Figure 18 Activated Development Application and certificate process: Alpine SEPP

Note: EPA involvement would be required for proposals that require an Environment Protection Licence.

⁶ Nominated integrated development includes integrated development that requires approval in accordance with the *Environmental Planning and Assessment Act 1979*, under a provision of the *Heritage Act 1977* (section 4.46(1)), the *Water Management Act 2000* (specified in section 4.46(1)), or the *Protection of the Environment Operations Act 1997* (section 4.46(1)).

6.4.4 Exhibition requirements

In order to reduce public participation periods for specified development, it is proposed that a Community Participation Plan is prepared by the relevant authority. Under Schedule 1 of the AP&A Act, Community Participation Plans are able to reduce exhibition periods for development that does not trigger “*nominated integrated development*” under the *Environmental Planning and Assessment Act 1979*.

Under Schedule 1 (Clause 7) of the *Environmental Planning and Assessment Act 1979*, the minimum exhibition period for Development Applications that are not nominated integrated development, designated development, threatened species development or State significant development the minimum exhibition period is 14 days, unless the relevant Community Participation Plan specifies a period of public exhibition for that no public exhibition is required for the application.

Where the proposal is for development that would be integrated development, additional assessment may be required. It is noted that, where nominated integrated development (defined under *Schedule 1 – Community participation requirements* of the *Environmental Planning and Assessment Act 1979*⁷) is proposed, exhibition requirements required by the *Environmental Planning and Assessment Act 1979* would apply.

Under Clause 1 of Schedule 1 of the *Environmental Planning and Assessment Act 1979*, the minimum public exhibition period for a draft Community Participation Plan is 28 days.

Community participation plan: Development for which public exhibition periods cannot be reduced

Under Schedule 1 of the *Environmental Planning and Assessment Act 1979* the minimum exhibition period is 28 days for:

1. **Nominated integrated development** (Clause 8A, Schedule 1), which includes:
 - (a) Doing or carrying out of an act, matter or thing that impacts on a **State Heritage item** (section 57(1)) where approval is required under section 58 of *Heritage Act 1977*
 - (b) **Water use approval, water management work** approval or activity approval under Part 3 of Chapter 3 of the *Water Management Act 2000*
 - (c) Where an **Environmental Protection Licence** is required under the *Protection of the Environment Operations Act 1997* (as specified in section 4.46(1) of the *Environmental Planning and Assessment Act 1979*)
2. **Threatened species development** (Clause 8A, Schedule 1):
Where (Section 7.7(2) of *Biodiversity Conservation Act 2016* where the proposed development, if is likely to significantly affect threatened species, the application for development consent is accompanied by a **biodiversity development assessment report**
3. **Designated development** (Clause 8, Schedule 1):
Development identified in Schedule 3 of the *Environmental Planning and Assessment Regulation 2000*
4. **State significant development** (Clause 9, Schedule 1)

⁷ Nominated integrated development includes integrated development that requires approval in accordance with the *Environmental Planning and Assessment Act 1979*, under a provision of the *Heritage Act 1977* (section 4.46(1)), the *Water Management Act 2000* (specified in section 4.46(1)), or the *Protection of the Environment Operations Act 1997* (section 4.46(1)).

6.5 Key environmental and heritage provisions for the Snowy Mountains Special Activation Precinct

The sub-sections below provide a summary of the key environmental and heritage provisions that will be integrated into the legislative framework for the Snowy Mountains Special Activation Precinct investigation area. Appendix 4 provides a detailed review of key issues and legislative considerations.

6.5.1 Biodiversity

The Biodiversity Study (WSP) prepared for the Snowy Mountains Special Activation Precinct investigations identifies threatened ecological communities with the potential to occur within the Alpine Sub-Precincts. These include areas of area of sensitive biodiversity values within the meaning of the Biodiversity Conservation Act 2016 (BC Act) and critically endangered and endangered species under the *Environment Protection and Biodiversity Conservation Act 1999* (*Environmental Protection and Biodiversity Conservation Act 1999* (Cth)).

NSW Biodiversity Conservation Act 2016

Context

The *Biodiversity Conservation Act 2016* establishes the regime to protect biodiversity in NSW.

Under the *Biodiversity Conservation Act 2016* and *Biodiversity Conservation Regulation 2017*, Part 4 local development that either exceeds the Biodiversity Offset Scheme (BOS) threshold or is located in an area of sensitive biodiversity values must apply the Biodiversity Assessment Method to determine whether an offset obligation is to be met.

A Development Application under Part 4 of the *Environmental Planning and Assessment Act 1979* (other than State significant development or complying development) must be accompanied by a Biodiversity Development Assessment Report (BDAR), prepared in accordance with the Biodiversity Assessment Method (BAM), if it meets or is above the BOS threshold, or if the proposed development is likely to significantly affect threatened species.

Application of complying development

Applying complying development in an area of sensitive biodiversity values in the Snowy Mountains Special Activation Precinct (statutory logic):

1. The BOS (and requirement for BDAR) under the *Biodiversity Conservation Act 2016* applies to all Part 4 development apart from complying development.
2. Complying development under the Codes SEPP cannot be carried out on land that is critical habitat, or part of, a wilderness area (within the meaning of the *Wilderness Act 1987*) or environmentally sensitive land (under Codes SEPP, environmentally sensitive areas included land within National Parks (re CI 17A and CI 1.5 Interpretation)).
3. Accordingly, complying development undertaken in accordance with the Codes SEPP, by definition, would not generate impacts that either exceeds the Biodiversity Offset Scheme (BOS) threshold or is located in an area of sensitive biodiversity values, under the *Biodiversity Conservation Act 2016*.
4. The Activation Precincts SEPP and Alpine SEPP will effectively 'turn off' the Codes SEPP apart from specified provisions.
5. Complying development is development that is of a minor /straightforward nature. However, where there is potential for impact on an area of sensitive biodiversity values, such development is not likely to be of minor impact without sufficient avoidance or mitigation.

6. The proposed legislative framework specifies that certain development may be complying development on specified land. The approach includes identifying complying development where:
 - 6.1. the development is of a minor/straightforward nature, and/or
 - 6.2. the potential impacts of development are adequately managed through front-loaded assessment and prescriptive development control.
7. Consequently, complying development can apply within the Snowy Mountains Special Activation Precinct, provided sufficient front-loaded assessment (including Biodiversity Certification and Strategic Assessment where required), subject to adequate prerequisite provisions and development standards in the Activation Precincts SEPP and Alpine SEPP.

Approach to streamlining development approvals

Regardless of the planning approval pathway, streamlining approval for the Snowy Mountains Special Activation Precinct relies on front-loading the assessment and potential certification of biodiversity impacts to avoid individual applications from requiring site specific assessments.

It is proposed that, in order to sufficiently front load the assessment and facilitate streamlined planning approvals in the Snowy Mountains Special Activation Precinct, the Biodiversity Certification would be utilised. The Certification would apply to either identified Sub-Precincts or for the entire Snowy Mountains Master Plan, under the *Biodiversity Conservation Act 2016*. The intention would be to support identified development in the Snowy Mountains Special Activation Precinct that is in accordance with the Master Plan. This would include development and activities under Part 4 and Part 5 of the *Environmental Planning and Assessment Act 1979*, including through a complying development pathway.

The conditions of the Biodiversity Certification would be reflected in the relevant SEPP (for the purposes of complying development) as well as the Master Plan and Delivery Plans as appropriate.

Consultation between the Department, including the Environment, Energy and Science division and the Planning and Assessment division and NPWS is ongoing in order to determine the detailed application of the BOS for the Snowy Mountains Special Activation Precinct. The solution would integrate with the outcome of ongoing consultation with Commonwealth Department of Agriculture, Water and the Environment in relation to the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth).

Environmental Protection and Biodiversity Conservation Act 1999 (Cth)

Any action which could have a significant impact on a matter of national environmental significance (MNES) must be referred to the Minister for the Environment and Energy.

If development is proposed (regardless of approval pathway) that has the potential for impacts on MNES, the action would be referred to the Commonwealth Minister for the Environment (Department of Agriculture, Water and the Environment) under *Environmental Protection and Biodiversity Conservation Act 1999* (Cth). This would add time to the planning approval pathway.

Under the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth) a 'strategic assessment' may be conducted to assess impacts of actions under a policy, plan or program. This approach was adopted for Western Sydney Growth Centres, and involves front-loaded assessment of potential biodiversity impacts of a program of developments to avoid individual applications under the program requiring separate referrals under the Act.

Options to address the requirement for referral requirements under the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth) are subject to ongoing discussions with the Department of Agriculture, Water and the Environment, in conjunction with the ecological technical study. Options for addressing matters captured under the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth) include:

- The concept plans and development footprints for all Sub-Precincts are designed so as to avoid all impacts on MNES which would guarantee no referral or assessment under the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth) is required.
- A strategic assessment for the Sub-precincts to gain pre-approval for impacts on ecological values (avoiding the need for individual applications to seek separate approvals under the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth)), by either:
 - Referral of concept plans for the precincts most at risk of impacting MNES (i.e. Perisher and Charlotte Pass as we discussed). This way the ecological assessment could be front loaded and Commonwealth Department of Agriculture, Water and the Environment would potentially be able to assess and complete the referral process prior to the Delivery Plan being approved to avoid any delays. This option may generate additional considerations for the assessment that are associated with the identified Sub-Precinct being a component of a larger action (a consideration under the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth)).
 - Refer the entire Snowy Mountains Master Plan. This would potentially avoid any issues surrounding component of a larger action, as the master plan would capture the entire action.
- Proponent's refer each action individually (where there are likely to be impacts on MNES). This means that, if there is an impact on MNES, there is minimal streamlining in the process and would likely result in delays in commencement of work for each proponent. However, the proponents would utilise the front-loaded ecological assessment to identify development locations, designs and types that minimise the risk of significant impacts on MNES. Sufficient guidance would be provided in the Master Plan and Delivery Plans so that, if individual proposals are consistent with the controls therein, no referral is required.

The conditions of the Strategic Assessment would be reflected in the relevant SEPP (for the purposes of complying development) as well as the Master Plan and Delivery Plans as appropriate.

The Commonwealth Department of Agriculture, Water and the Environment has advised that further consultation is required before the preferred approach is confirmed. This consultation is ongoing. The solution would integrate with the outcome of ongoing consultation with EES and NPWS in relation to the *Biodiversity Conservation Act 2016*.

6.5.2 Aboriginal Cultural Heritage

The recommendations provided in the *Aboriginal Cultural Heritage Report* (OzArk, 2021) prepared as part of the Snowy Mountains Special Activation Precinct investigations state that proposed development within the Snowy Mountains Special Activation Precinct should be managed according to the mapped 'zones of archaeological potential'.

The areas surveyed as part of preparing the *Aboriginal Cultural Heritage Report* represent key areas of potential development in accordance with structure planning carried out to date.

The mapped 'zones of archaeological potential' are proposed to be incorporated into the Alpine SEPP and the Activation Precincts SEPP in order to determine permissibility and where further impact assessment is required. Despite the surveys and consultations carried out as part of the

Snowy Mountains Special Activation Precinct investigations, further assessment may be necessary once the development footprints and 'site specific impacts' are known with greater certainty.

The recommended approach to protect Aboriginal cultural heritage values for the Snowy Mountains Special Activation Precinct is based on the mapped archaeological potential of lands (OzArk, 2021). The categories of archaeological potential and the associated level of further assessment required, from the Aboriginal Cultural Heritage Report, is outlined below :

- "Works within areas defined as 'disturbed land' (as defined by Section 58 of the National Parks and Wildlife Regulation 2019) can generally proceed without further Aboriginal cultural heritage investigation. However, the 'disturbed lands' would need to be assessed to determine if the need to undertake test excavation has been completely removed by previous development. As Aboriginal objects are still possible in 'disturbed lands' any work in these areas should follow an unanticipated finds protocol to manage the unlikely event that Aboriginal objects are noted during work. This would include a 'stop work' provision and the requirement to assess the significance of the find with the Aboriginal community.
- "Works within areas defined as 'low ACH potential' should be assessed at a time when the impacts are known by following the appropriate assessment guidelines, currently the Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW. This assessment may involve a visual inspection of the impact area, test excavation if warranted, and the involvement of the Aboriginal community.
- "Works within areas defined as 'moderate ACH potential' or 'high ACH potential' should have an impact assessment undertaken. This assessment would include a visual inspection, possibly test excavation if warranted, and participation from the Aboriginal community. At the two previously recorded PADs (61-3-0097 and 61-3-0112) test excavation would be required to determine the nature of the subsurface deposits." (OzArk, 2021)

In light of these findings, it is proposed that the structure outlined in Table 9 be adopted in both the Alpine SEPP and the Activation Precincts SEPP.

Table 9 Zones of archaeological potential

Archaeological potential	Proposed permissibility
Disturbed Land	Potential to be complying development, subject to suitable unanticipated finds protocol. As part of preparing the relevant Delivery Plans, each location proposed for development should be "assessed to determine if the need to undertake test excavation has been completely removed by previous development".
Low Archaeological Potential	Complying development may be possible, subject to further assessment in accordance with the <i>Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW</i> as part of preparing the relevant Delivery Plans. Where known items or locations of Aboriginal archaeological value are known, a Development Application would be required.
Moderate and High Archaeological potential, or Where known heritage items are located.	Development Consent would be required. The Development Application would be required to include a heritage impact assessment.

Further review of this approach is required as part of the detailed Statutory Review and preparation of the Master Plan and Delivery Plans and in light of any further archaeological investigations or consultation that may be carried out.

6.5.3 Bushfire

Current requirements

Under Section 100B of the *Rural Fires Act 1997* development that is defined as a Special Fire Protection Purpose (SFPP) requires a bushfire safety authority to be prepared in accordance with *Planning for Bushfire Protection* and cannot be complying development. Further description is provided in Appendix 3.

Special Fire Protection Purposes include:

- (a) a school,
- (b) a child care centre,
- (c) a hospital (including a hospital for the mentally ill or mentally disordered),
- (d) a hotel, motel or other tourist accommodation,
- (e) a building wholly or principally used as a home or other establishment for mentally incapacitated persons,
- (f) seniors housing within the meaning of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*,
- (g) a group home within the meaning of *State Environmental Planning Policy No 9—Group Homes*,
- (h) a retirement village,
- (i) any other purpose prescribed by the regulations.

Considerations for bushfire planning in the Snowy Mountains Special Activation Precinct

The key considerations include:

- Current mapping (Note: at the time of writing, the revised mapping has been prepared by SMRC and submitted to NSW Rural Fire Service for certification) shows that all areas within the Kosciuszko National Park and large portions of Jindabyne Region are bushfire prone. Further, large areas of Jindabyne region (all undeveloped areas) are identified as bushfire prone under revised mapping (grasslands).
- Alpine Sub-Precincts are located in high risk bush fire area and there is potential that all land within the Snowy Mountains Special Activation Precinct investigation area (except currently developed/urbanised areas of Jindabyne town and villages) becomes bush fire prone as a result of amended mapping.
- There is a tension between ecological protection and clearing vegetation for the purpose of providing Asset Protection Zones.
- Alpine Sub-Precincts are based on high number of visitors who are likely to be unfamiliar with their surrounds and bush fire emergency procedures
- The risk profile of the alpine areas is changing from a predominantly winter based destination to a year round destination that will bring more people into high risk areas in summer
- A potential front-loaded 'equivalent' bushfire safety authority assessment for the Snowy Mountains Special Activation Precinct (targeting development within Sub-Precincts) would need to be highly detailed and updated regularly to cater for changing vegetation conditions and management of proposed and existing Asset Protection Zones or other bushfire management measures. At the systemic level, sufficient guidance needs to be provided so that consistent outcomes are generated and clear guidance is provided to guide certifiers in relation to bushfire requirements.
- In the situation that a bushfire safety authority is prepared for the Sub-Precincts (potential options for consideration), the conditions associated with that authority to guide/control subsequent development would be included within the legislative hierarchy to ensure development aligns with the conditions of that authority. Conditions associated with the

authority would need to be included, as appropriate within the relevant Master Plan and Delivery Plan/Development Control Plan.

Recommended approach to bushfire

The legislative framework for the Snowy Mountains Special Activation Precinct is prepared based on the continued application of Section 100B of the *Rural Fires Act 1997*. Accordingly, there development of Special Fire Protection Purposes (as defined under the RF Act) would not be complying development on land that is bushfire prone within the Snowy Mountains Special Activation Precinct.

In accordance with the Bushfire Assessment prepared as part of the Snowy Mountains Special Activation Precinct investigations, bushfire protection controls and management measures would be included within the Master Plan and detailed controls for development provided in the Delivery Plan/Development Control Plan. It is noted that further consultation is underway with the Rural Fire Service to clarify the approach to identifying bushfire mitigation measures and appropriate controls that apply within the Snowy Mountains Special Activation Precinct.

6.5.4 Geotech

It is understood that Geotech conditions may change depending on water content of soils and actions of subterranean water flows. Front loading the Geotech assessment carries risk of the conditions associated with development changing from the date of assessment to the date of development, which may necessitate additional assessment to be undertaken at the time of the proposed development to confirm the soil conditions have not changed. If not, the risk that foundations do not reflect the true Geotech conditions at the particular site.

The recommended approach for the Alpine Sub-Precincts is to require site specific assessment of Geotech conditions and design solutions as part of a Development Application. The Geotech controls under the Geotech Policy (outlines structural and geotechnical requirements for development in the Alpine Sub-Precincts) would be supplemented by the Risk susceptibility maps prepared as part of the Geotech Study (prepared as part of the Snowy Mountains Special Activation Precinct investigations). The Geotech Study concludes that Geotech conditions would not preclude development in any areas but would have a design (and potentially cost) implication for proposed development.

Complying development would include development that does not typically require new foundations or substantial changes to structural elements of buildings or civil works that would otherwise trigger the need for site-specific Geotech assessment.

Design and construction solutions to respond to Geotech conditions are likely to be performance based solutions, designed specifically to the site proposed for development. It is unlikely that a set of standard development standards would be able to consider the range of solutions for every site condition experienced within the Snowy Mountains Special Activation Precinct, particularly in relation to sensitive conditions prevalent in the Alpine Sub-Precincts. Accordingly, relevant assessments would be required to be prepared as part of submitting Development Applications within the Alpine Sub-Precincts.

Performance standards would be included in the Master Plan and Development Control Plan to guide development and identify high risk areas in accordance with the findings of the Geotech Study prepared as part of the Snowy Mountains Special Activation Precinct investigations. The controls would either require development to meet certain standards or signal where additional investigation is required prior to approving development proposals.

6.6 Summary of legislative amendments to achieve the vision

Based on the review of the current legislative framework, review of the technical studies, collaboration with stakeholders and consideration of the Draft Snowy Mountains Special Activation Precinct Master Plan, this Planning Recommendations Report recommends a proposed legislative framework. The recommended framework involves amendments to three (3) environmental planning instruments that apply within the Snowy Mountains Special Activation Precinct investigation area, which are described separately in this Discussion Paper, namely:

- **Jindabyne Region** – A proposed amendment to the **Activation Precincts SEPP** (*Applies only to the 'Jindabyne Catalyst Sub-Precincts' in the Jindabyne Region*). The proposed new Schedule for the Snowy Mountains Special Activation Precinct (Jindabyne Region), which will include:
 - Identification of catalyst development sites as Sub-Precincts, to which the Activation Precincts SEPP will apply
 - Provision for exempt and complying development
 - Provision for a streamlined Development Application process that utilises upfront evidence and design guidance to enable shorter timeframes for assessment.
- **Jindabyne Region Growth Areas** – A proposed amendment to the **Snowy River LEP** (*Applies only to the identified 'Growth Areas' in the Jindabyne Region*). The proposed new Self-repealing State Environmental Planning Policy (referred to as the Self-Repealing SEPP) will amend the Snowy River LEP. The proposed rezoning of land in key sites of change and introducing provisions to support streamlined planning approval for development that is consistent with the Draft Snowy Mountains Special Activation Precinct Master Plan. Development will be facilitated through the Draft Snowy Mountains Special Activation Precinct Master Plan and a new or updated Development Control Plan.
- **Alpine Region** – A proposed amendment to **Alpine SEPP** (*Applies only to the identified 'Alpine Sub-Precincts' in the Kosciuszko National Park*). The proposed amendments to the Alpine SEPP include:
 - Inclusion of additional development areas as Alpine Sub-Precincts (locations that contain existing development)
 - An amended land use table and development standards
 - Authority to prepare a master plan for the Alpine Sub-Precincts
 - Requirement to prepare a Development Control Plan (the Alpine Development Control Plan) to guide development
 - Expand/clarify exempt development provisions to more clearly define the nature of exempt development in the Alpine Sub-Precincts
 - Introduce complying development pathway for minor building or maintenance works and basic operational works. For example, replacing existing ski infrastructure (structural components and parts) with upgraded infrastructure where it results in the same capacity and scale, or snow gutters/awnings on existing lodge buildings. The purpose of this is to avoid minor works, which cannot strictly meet exempt development controls, requiring development consent
 - An amendment is required to support streamlined planning approval for development in the Alpine Sub-Precincts that is consistent with the Draft Snowy Mountains Special Activation Precinct Master Plan. Strategic planning and a carrying capacity analysis will support the amendment to the Alpine SEPP in order to facilitate redevelopment within the Alpine Sub-Precincts through the Draft Snowy Mountains Special Activation Precinct Master Plan and a new Alpine Development Control Plan.

7. ALPINE REGION GOVERNANCE STRUCTURE

7.1 Outline

An Alpine Region governance structure that supports a streamlined planning approval process is critical to achieve the objects of the Snowy Mountains Special Activation Precinct (as it is for other Special Activation Precincts). This section provides a summary of the recommended approach to a new governance structure for the Alpine Region, Kosciuszko National Park, in order to achieve the vision of the Snowy Mountains Special Activation Precinct and implement the proposed legislative framework.

A key element of the governance structure is the partnership between government agencies, proponents and key stakeholders, including Regional Growth NSW Development Corporation, NPWS and the Department. As discussed in Section 3, Regional Growth NSW Development Corporation will act as a business concierge for proponents to support development within the Snowy Mountains Special Activation Precinct. Through this business concierge role, it is expected that Regional Growth NSW Development Corporation will support proponents with preparing applications and engaging relevant government agencies prior to and during the planning approval pathway.

7.2 Principles for the modified governance structure

The goal of the Snowy Mountains Special Activation Precinct legislative framework is to formulate a new planning framework that works within current legislation to enable a more streamlined approach to planning approval. A key element of this is to change policy, not law, in order to establish more streamlined planning approval processes for development, which encourages investment while maintaining or improving the environmental and social conditions. However, in order to achieve this, it is clear that a governance structure is required that reflects the change in policy and supports the streamlined planning approvals.

The current governance structure for Kosciuszko National Park land within the Snowy Mountains Special Activation Precinct investigation area is under review to support the vision of the Snowy Mountains Special Activation Precinct. The aim of the Alpine Region governance structure is to:

1. Respect the current governance of the Alpine Sub-Precincts and the rationale for its current characteristics
2. Minimise conflicting roles/responsibilities
3. Establish confidence in the processes for evaluating, approving and monitoring development proposals
4. Engender collaboration in the governance structure in a manner that supports a streamlined process
5. Support the Activation Precincts SEPP framework (i.e. Master Plan, Delivery Plans and Activation Precinct Certification)
6. Provide certainty for proponents, government agencies and other stakeholders as to the requirements and outcomes of development
7. Ensure clear roles and responsibilities through the land ownership, land management, development approval and monitoring/enforcement in order to protect important Kosciuszko National Park environmental and cultural values alongside public safety.

7.3 Need for change

The need for a modified governance arrangement or clarification of governance roles within the Alpine Region is a consequence of the following conditions:

- **Inconsistency:** The current governance framework is inconsistent across the Alpine Sub-Precincts. Thredbo maintains a head lease arrangement and is responsible for municipal services (water, sewer and the like) and oversight of the entire Sub-Precinct. Whereas, Perisher maintains a mix of leases and a consolidated mountain licence (CML) direct to NPWS and NPWS is responsible for delivering and maintain municipal infrastructure.
- **Organisational proficiency:** Managing each Alpine Sub-Precinct in this context requires clear/consistent governance arrangements and responsibilities for managing the whole of resort infrastructure. NPWS as an organisation is focussed on managing National Parks and its systems are established for meeting obligations under the *National Parks and Wildlife Act 1974*. In order to effectively manage the Alpine Sub-Precincts, a governance arrangement should provide for the following key roles (in the context of protecting public safety):
 - Land management: Protect the intrinsic values of Kosciuszko National Park
 - Development control: Clear responsibilities and procedures for development approval
 - Operations: Effectively manage resort operations
 - Infrastructure: Deliver and maintain public infrastructure
 - Visitor experience: Enhance visitor experience within the Sub-Precincts

A system of governance that allocates the roles of governance to the best suited organisation would deliver the best overall outcomes. In this context, it is recommended that a system of governance be introduced that aligns the governance roles and responsibilities with the organisation that is best suited to that role.

- **New focus:** The nature of the Alpine Region has changed over time and the pressure on development within the resorts has increased. Further, with the renewed focus on activating the Alpine tourism, with the Alpine Region at the centre of the Snowy Mountains Special Activation Precinct Master Plan and vision, a governance arrangement is required that promotes the best use of resources, encourages investment and retains the necessary safeguards.
- **New development:** New licence or lease areas to be established for development of areas outside the existing Thredbo and Perisher lease areas require a consistent and transparent system of governance, aligned with the other resorts. A consistent approach across the Alpine Sub-Precincts would support both proponents/operators and approval authorities/landowner to deliver streamlined planning approvals and prioritisation of investment across the Alpine Region.
- **Preserve safeguards:** It is important to preserve the safeguards established through the Alpine SEPP and supporting legislative framework for protecting public safety and preserving the intrinsic values of the Kosciuszko National Park, while encouraging investment and enabling both Winter and Summer visitation.
- **Reliance on external agreements:** To achieve streamlined planning approval pathways, the current governance structure may require formal agreements between the Department, National Parks and Wildlife Service, Regional Growth NSW Development Corporation and Department of Regional New South Wales. These would effectively overlay a quasi-integrated governance structure. The risk of this approach includes lack of accountability and the potential for expectations to be misaligned.

7.4 Potential governance structure

This section presents a potential governance based on a partnership approach signalled by Regional Growth NSW Development Corporation for the Alpine Sub-Precincts. This option would utilise changes to policy, procedures and leasing arrangements to strengthen and clarify roles for the Alpine Sub-Precincts.

7.4.1 Overview

Based on the evaluation of 'need for change', the governance roles that are identified as being important for the delivery of the Snowy Mountains Special Activation Precinct and that may be modified through this governance review include:

- Clear roles and responsibilities established that distinguish land management from development approval
- Leasing arrangements are required that simplify the development and management roles and responsibilities, including:
 - Consider the requirement for proponents to obtain landowner's consent in the planning approval pathway within the Perisher Resort Sub-Precinct, specifically the Perisher Consolidated Mountain Licence area
 - Clarify responsibility for delivery of municipal services (sewer, water, etc) at Perisher Resort Sub-Precinct
 - Facilitate achievement of integrated Alpine Region vision and strategic planning (including integration of services, funding and tourist products between resorts).

The key elements of the proposed governance structure include:

- Separation of development control and ongoing environmental management in resorts and key sites within Kosciuszko National Park from Plan of Management, replaced by combination of Master Plan, Development Control Plan and Environmental Management System. The role and function of NPWS would then be focussed on stewardship (such as catchment management, macro-environment management), while resort operators are responsible for implementing the land management obligations set by NPWS (via approved Environmental Management System).
- The planning approval pathway would be 'concierged' by Regional Growth NSW Development Corporation and consent authority is the Department.
- NPWS role would be leasing and meeting *National Parks and Wildlife Act 1974* obligations.
- Each Alpine Sub-Precincts is required to adopt a suitable Environmental Management System to ensure the Alpine Sub-Precincts leaseholders are operating in a manner that is consistent with the *National Parks and Wildlife Act 1974*, as per Kosciuszko National Park POM and protecting intrinsic values of Kosciuszko National Park. NPWS would administer the Environmental Management System in accordance with the lease requirements or required under the Alpine SEPP.
- Environmental monitoring and compliance would be managed via the carrying capacity framework in accordance with the Environmental Management System and lease conditions. The lessor would be responsible for meeting obligations under the lease and the Environmental Management System (conditions based on the carrying capacity assessment e.g. bed limits). Compliance with lease obligations would be managed by NPWS and compliance with development consent conditions would be managed by the Department. Under a partnership approach, it would be important that a joint procedure be established with clear responsibilities for compliance and enforcement actions reaching back to the relevant mechanism.

7.4.2 Governance: A partnership approach

Figure 19 illustrates the relationship between the key enabling themes, that contribute to confidence in the legislative framework for the Snowy Mountains Special Activation Precinct.

These themes are:

- **Snowy Mountains Special Activation Precinct Evidence Base:** Provides the supporting technical analysis, design and Kosciuszko National Park carrying capacity to support both the planning framework and land management within the Kosciuszko National Park
- **Kosciuszko National Park Land Tenure and Management:** Informed by the evidence base the role of NPWS to manage leases (land tenure) and protect the unique values of the Kosciuszko National Park through land management mechanisms (*National Parks and Wildlife Act 1974* and Kosciuszko National Park POM), with strengthened requirement for an accredited Environmental Management System for each Alpine Sub-Precinct:
 - A suitable Environmental Management System would be required for each Sub-Precinct, which adopts the carrying capacity framework. The Environmental Management System would outline the measures in place to support realising or expanding the carrying capacity for each Alpine Sub-Precinct
 - Leases may be amended to require suitable Environmental Management Systems to be in force for each Alpine Sub-Precinct or key site
 - The leases would require management and development of the land within each Alpine Sub-Precinct to be in accordance with the Kosciuszko National Park POM and the carrying capacity framework
- **Alpine Region planning framework in the context of the Snowy Mountains Special Activation Precinct planning framework:** Synthesises the outcomes of the evidence base into appropriate controls and planning approval pathways for development, with the key planning instruments being the Alpine SEPP, Master Plan and Alpine Development Control Plan. Informed by the evidence base, policy setting, the planning approval pathway establishes robust process for evaluating specific development proposals.

Under this scenario, the key link between the planning approval pathway and the responsibilities of other agencies, including NPWS, SMRC and other agencies or asset owners, occurs prior to submission of Development Applications or applications for Complying Development Certificate. Collaboration is a key element to ensure relevant considerations and approvals are obtained within a streamlined planning approval pathway. Figure 19 demonstrates how a partnership arrangement may work in practice.

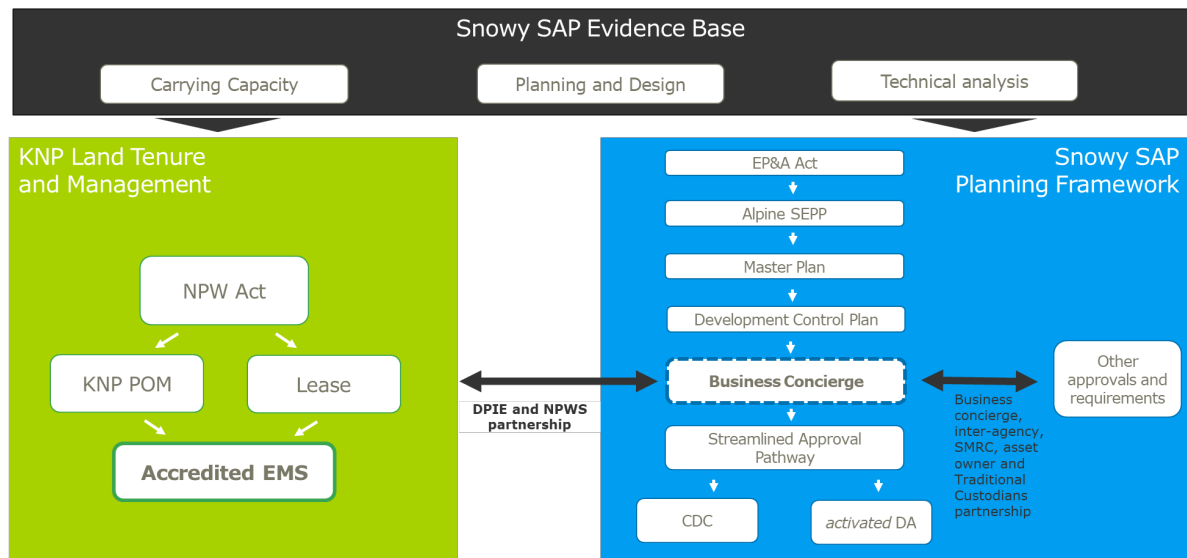


Figure 19 Potential Kosciuszko National Park governance relationship structure

7.4.3 Alpine Sub-Precinct lease arrangements

The current leasing arrangements for Perisher Sub-Precinct are a combination of (130+) strip leases, lodge leases and a CML, held by a range of lessees/licensee directly with NPWS as the lessor/licensor. This generates two key conditions:

- NPWS is required to manage all leases and deliver the public infrastructure (e.g. water and sewer), which is currently aging and in need of upgrade to cater for current and future Resort activity
- Where works are proposed in the CML area (i.e. not covered by a lease) approval from the Minister for Energy and Environment (landowner) is required prior to seeking approval from the Department (consent authority).

A more effective arrangement for leases/licences is required for Perisher that is consistent with other major resorts (Thredbo and Charlotte Pass) and that reduces complexity of landowner’s consent required for minor works.

The options for reforming the governance framework within the Alpine Sub-Precincts are described below. Refer to Appendix 5 for review of lease options.

- **Option One: Perisher licensee amendment**
 - Modification of *Environmental Planning and Assessment Regulation 2000* to enable licensees within the Perisher Resort Sub-Precinct to lodge Development Applications and complying development applications without the need for landowner’s consent.
 - This option has the potential to be in effect more quickly than other options.
- **Option Two: New head lease for Perisher Resort**
 - Maintain head lease with NPWS for Thredbo and Charlotte Pass, and incorporate Perisher into new head lease with NPWS
 - A single organisation would become head lessee, potentially Vail Resorts or Regional Growth NSW Development Corporation
 - Minister for Energy and Environment (NPWS) would continue as landowner of Perisher Resort Sub-Precinct
 - Head lease would include requirements for the head lessor to deliver and manage resort infrastructure, similar to those included for Thredbo Sub-Precinct, including maintenance of

the current safeguards to protect the intrinsic values of the Kosciuszko National Park and the safety of people working or visiting Perisher Resort Sub-Precinct

- **Option Three: Head lease in favour of Regional Growth NSW Development Corporation or other agency (Property NSW) for all Sub-Precincts**

- Either Regional Growth NSW Development Corporation or another government agency, such as Property NSW) would take on a Head Lease for the Alpine Resort Sub-Precincts within Kosciuszko National Park (Thredbo, Perisher, Charlotte Pass)
- Minister for Energy and Environment (NPWS) would continue as landowner of the Alpine Sub-Precincts
- Head lease would include requirements for the head lessor to deliver and manage resort infrastructure, similar to those included for Thredbo Sub-Precinct, including maintenance of the current safeguards to protect the intrinsic values of the Kosciuszko National Park and the safety of people working or visiting Perisher Sub-Precinct
- Note: A sub-option for consideration is for the single government organisation to take on leases for all development sites (Alpine Sub-Precincts) within Kosciuszko National Park, including the smaller sites such as (but not limited to) Sponars Chalet, Ski Rider and Kosciuszko Tourist Retreat.

- **Option Four: Excise Alpine Sub-Precincts from Kosciuszko National Park**

- The land ownership of the Alpine Sub-Precincts would transfer from the Minister for Energy and Environment (managed by NPWS) to a different Department of the NSW Government. Options may include:
 - Minister for Regional New South Wales, Industry and Trade and controlled by either DRNSW or Regional Growth NSW Development Corporation
 - Minister for Water, Property and Housing controlled by Property NSW.
- Would require a new body (potentially within the above departments) be established to take on the property, leasing, commercial management, land management and stakeholder engagement within the Sub-Precincts.

8. SUMMARY AND CONCLUSIONS

8.1 Elements of Snowy Mountains Special Activation Precinct legislative framework

The key element of an integrated, tailored legislative framework for the Snowy Mountains Special Activation Precinct is the application of streamlined planning approval pathways, supported by upfront evidence base, detailed master planning and clear governance structure(s) based on partnership between stakeholders.

Front loading of the legislative framework involves:

- Upfront master planning and design to establish clear development conditions, parameters and generate comprehensive land use and design principles, which manifest (as appropriate) in the provisions of the Activation Precincts SEPP, Alpine SEPP, Snowy River LEP, relevant design guidelines, including (as relevant) Master Plans, Development Control Plans and Delivery Plans
- Upfront technical assessments for common, precinct-wide and important site-specific issues, as the evidence base to support streamlined planning approval pathways (to underpin design guidelines). Upfront evidence provides confidence in the planning framework to deliver good planning outcomes, particularly to ensure development adequately addresses key conditions, including bushfire, Geotech, biodiversity and heritage values. This delivers certainty of approval pathway, reduces onus on proponents and provides certainty regarding anticipated outcomes.

Streamlined planning approvals in the Snowy Mountains Special Activation Precinct utilise the front-loaded assessments, public exhibition of investigations carried out (including this paper) and design guidance to support:

- Substantially reducing the assessment required from proponents as part of individual applications for approval
- Reduction in public exhibition for individual applications for development approval where proposals are consistent with the relevant SEPP, Master Plan and Delivery Plan/Development Control Plan
- Reducing the required authority evaluation timeframes by front-loading resolution of precinct-wide issues and impacts, as well as leveraging extensive collaboration carried out with government agencies as part of the Snowy Mountains Special Activation Precinct investigations
- Partnership approach with other government agencies 'concierged' by Regional Growth NSW Development Corporation to provide other approvals/licenses in a timely manner.

Due to certain impediment conditions evident in the Snowy Mountains Special Activation Precinct, a streamlined Development Application process is proposed, in addition to expanding exempt and complying development.

8.2 Next steps

A detailed statutory review is required for drafting the proposed amendments. Appendix 4 provides an indication of statutory issues that would be considered as part of the statutory review.

Key elements of the statutory review include:

- Detailed statutory and legal review of relevant environmental planning instruments, regulations and Acts, will need to confirm that amendments to legislation achieve the following:
 - Manage interfaces and interdependencies (Activation Precincts SEPP, Alpine SEPP, Snowy River LEP, Kosciuszko National Park POM and other SEPPs and Acts/ Regulations)
 - Establish robust framework to support efficient and effective delivery of vision and master plan outcomes, while enabling innovation (including development approval as well as monitoring and enforcement).
- Land uses in the Snowy Mountains Special Activation Precinct area are particularly diverse compared to other Special Activation Precincts. Bespoke definitions may be required, in addition to the land use definitions included in the Standard Instrument, to more clearly reflect the land uses anticipated. Such uses may include such as adventure tourism, ski lodges and other unique land uses with unique built or use characteristics.
- Collaboration and integration with the *Suite of Reforms*, currently under review by the Department, including, but not limited to, Complying Development Reform and Employment Zones Reform.

**APPENDIX 1
DISCUSSION PAPER: INTRODUCTION OF THE SNOWY MOUNTAINS
SPECIAL ACTIVATION PRECINCT**

APPENDIX 2 KEY LEGISLATION

NSW Acts and Regulations

Key NSW Acts and Regulations that influence formulation of the future legislative framework for Snowy Mountains Special Activation Precinct are described below. Other Acts and Regulations that apply to development or land within the Snowy Mountains Special Activation Precinct investigation area would be considered as part of formulating options for the future legislative framework as required.

Key NSW Acts and Regulations

<p>Environmental Planning and Assessment Act 1979</p>	<p>The Environmental Planning and Assessment Act 1979 (<i>Environmental Planning and Assessment Act 1979</i>) sets out the laws under which planning in NSW takes place. The main parts of the <i>Environmental Planning and Assessment Act 1979</i> that relate to planning instruments and development assessment / approval are Part 3 (Planning Instruments), Part 4 (Development Assessment) and Part 5 (Environmental assessment). The Minister responsible for the Act is the Minister for Planning and Public Spaces.</p>
<p>Environmental Planning and Assessment Regulation 2000</p>	<p>Division 2 of Schedule 6 of the EP&A Regs 2000 contains provisions relating to existing Part 5 approvals for ski resort areas, including the following:</p> <ul style="list-style-type: none"> • Conversion of convertible Part 5 approvals to development consents • Further development consent required in certain circumstances • Conversion of certain authorisations to construction certificates • Conversion of certain authorisations to Part 4A certificates • Construction of certain references in converted Part 5 approvals and construction certificates • Certifier • Pending applications for Part 5 approvals • Register to be kept • Appeals <p>Division 3 of Schedule 6 of the EP&A Regs 2000 contains modification of provisions in relation to ski resort areas, including the following:</p> <ul style="list-style-type: none"> • Modification of provisions of the Act in relation to ski resort areas • Modification of provisions of this Regulation in relation to ski resort areas • Statements of environmental effects for advertised development

	<p>It is understood that provisions are drafted to support the application of the Activation Precincts SEPP and would be incorporated into the <i>Environmental Planning and Assessment Regulation 2000</i> upon commencement of the Activation Precincts SEPP.</p>
<p>National Parks and Wildlife Act 1974</p>	<p>Development proposals within Kosciuszko National Park require a statutory approval under the <i>National Parks and Wildlife Act 1974</i> 1974 (e.g. lease, licence, easement or consent) in accordance with Part 12 of the <i>National Parks and Wildlife Act 1974</i> 1974.</p> <p>The alpine resorts are operated by private organisations under a system of leases granted by the Minister for Energy and Environment in accordance with Part 12 of the <i>National Parks and Wildlife Act 1974</i> 1974. Bed limits are allocated to a NPWS lease. Chapter 10 and Schedule 8 of the Kosciuszko National Park POM outline bed limits applicable to each of the resort areas.</p> <p>Under Clause 17 of the AR SEPP, development proposals in the resort areas are to be referred to the Department and consider the application of the National Parks and Wildlife Act 1974.</p> <p>Section 72 of the <i>National Parks and Wildlife Act 1974</i> 1974 requires POMs to be prepared for each national park. As per Part 5 of the <i>National Parks and Wildlife Act 1974</i> 1974, the Kosciuszko National Park POM is a legislated instrument and therefore in accordance with Section 81(4) of the <i>National Parks and Wildlife Act 1974</i> 1974, it is mandatory for all operations within Kosciuszko National Park (including the alpine resorts) to be in accordance with the Kosciuszko National Park POM .</p> <p>Sections 73A and 73B of the <i>National Parks and Wildlife Act 1974</i> 1974 sets out the POM amendment procedure. Before amending a POM the Minister must consider a range of factors set out in section 72AA of the <i>National Parks and Wildlife Act 1974</i> 1974.</p> <p>Section 81A of the <i>National Parks and Wildlife Act 1974</i> 1974 relates to leases, licenses and easements subject to a POM.</p>
<p>National Parks and Wildlife Regulation 2019</p>	<p>The National Parks and Wildlife Regulation 2019 sets out provisions to support achieving the objectives of the <i>National Parks and Wildlife Act 1974</i>. The Regulation details how activities are managed in national parks to ensure conservation values are protected and people can enjoy visiting parks in a safe and sustainable way. The Regulation includes rules for the entry of vehicles and animals to national parks, camping, preventing littering and damage, lighting of fires, and protection of vegetation.</p> <p>Division 3 of the Regulation contain regulation of conduct clauses. Clause 20 of Division 3 addresses the erection and occupation of structures. Clause 20 states that within a national park:</p> <p>(1) <i>A person must not—</i></p>

	<p>(a) erect, alter, extend or occupy any building in a park, or (b) install, use or occupy a moveable dwelling in a park, or (c) construct, operate or use any structure, installation, engineering work, plant, equipment, amusement device, fixture or improvement in a park, or (d) erect a hoarding or notice, or exhibit any commercial or political advertising matter, sign, bill or poster, in a park.</p> <p>A person does not commit an offence under Clause 20 for "anything done or omitted to be done:</p> <p>(a) with the consent of a park authority and in accordance with any conditions to which the consent is subject, or (b) if the act or omission occurred in or in relation to a ski resort area in Kosciuszko National Park and was necessary for the carrying out of—</p> <p>(i) development in accordance with a development consent (within the meaning of the Environmental Planning and Assessment Act 1979), or (ii) an activity, whether by or pursuant to an approval of a determining authority, if the determining authority has complied with Part 5 of the Environmental Planning and Assessment Act 1979, or (iii) a project approved under Part 3A of the Environmental Planning and Assessment Act 1979, or (iv) State significant infrastructure approved under Division 5.2 of Part 5 of the Environmental Planning and Assessment Act 1979, or</p> <p>(c) if the act or omission occurred in or in relation to a place in Kosciuszko National Park (other than a ski resort area) and was necessary for the carrying out of development in accordance with a development consent that is taken to have been granted to Snowy Hydro Limited under section 41(4) of the Snowy Hydro Corporatisation Act 1997.</p>
<p>Rural Fires Act 1997</p>	<p>The Rural Fires Act 1997 aims to prevent, mitigate and suppress bush and other fires whilst protecting people, property and infrastructure from damage whilst having regard to the principles of ecological sustainable development. Consultation is required to be undertaken with the Rural Fire Service and local Fire Brigades to determine the features required to minimise the threat of fire to the project.</p> <p>Bushfires are a known hazard within the Snowy Mountains Special Activation Precinct investigation area. Bushfire risk would be considered in the context of the Rural Fires Act 1997.</p>
<p>Protection of the Environment Operations Act 1997</p>	<p>The <i>Protection of Environment Operations Act 1997</i> (POEO Act) aims to reduce pollution of the environment and governs the way discharge of pollutants is to be managed. Under Section 48 of the POEO Act, an environment protection licence (EPL) from the NSW Environmental Protection Authority (NSW EPA) is required for scheduled activities listed in Schedule 1.</p>

**Biodiversity Conservation
Act 2016**

The *Biodiversity Conservation Act 2016* establishes a framework for assessing and offsetting biodiversity impacts from proposed development. A biodiversity offsets scheme delivers a transparent, consistent, and scientifically based approach to biodiversity assessment and offsetting.

The purpose of the *Biodiversity Conservation Act 2016* is to maintain a healthy, productive and resilient environment for the wellbeing of the community, now and into the future, consistent with the principles of ecologically sustainable development, and in particular:

- a) To conserve biodiversity at bioregional and State scale
- b) To maintain the diversity and quality of ecosystems and enhance their capacity to adapt to change and provide for the needs of future generations
- c) To improve, share and use knowledge, including local and traditional Aboriginal ecological knowledge, about biodiversity conservation
- d) To support biodiversity conservation in the context of a changing climate
- e) To support collating and sharing data, and monitoring and reporting on the status of biodiversity and the effectiveness of conservation actions
- f) To assess the extinction risk of species and ecological communities, and identify key threatening processes, through an independent and rigorous scientific process
- g) To regulate human interactions with wildlife by applying a risk-based approach
- h) To support conservation and threat abatement action to slow the rate of biodiversity loss and conserve threatened species and ecological communities in nature
- i) To support and guide prioritised and strategic investment in biodiversity conservation
- j) To encourage and enable landholders to enter into voluntary agreements over land for the conservation of biodiversity
- k) To establish a framework to avoid, minimise and offset the impacts of proposed development and land use change on biodiversity
- l) To establish a scientific method for assessing the likely impacts on biodiversity values of proposed development and land use change, for calculating measures to offset those impacts and for assessing improvements in biodiversity values
- m) To establish market-based conservation mechanisms through which the biodiversity impacts of development and land use change can be offset at landscape and site scales
- n) To support public consultation and participation in biodiversity conservation and decision-making about biodiversity conservation and,
- o) To make expert advice and knowledge available to assist the Minister in the administration of this Act.

Heritage Act 1977

The *Heritage Act 1977* (Heritage Act) also provides for the conservation of environmental heritage items in NSW. It is used to regulate the impacts of development on the State's European and Aboriginal heritage assets. Administered by the NSW Heritage Office, the Heritage Act details the statutory requirements for protecting historic buildings and places and includes any place, building, work, relic, movable object or precinct, which may be of historic, scientific, cultural, social, archaeological, natural or aesthetic value.

Commonwealth legislation

Key Commonwealth legislation that influences formulation of the future legislative framework for Snowy Mountains Special Activation Precinct are described below. Other Commonwealth legislation that apply to development or land within the Snowy Mountains Special Activation Precinct investigation area would be considered as part of formulating options for the future legislative framework, as required.

Key Commonwealth legislation

**Environmental Protection
and Biodiversity
Conservation Act 1999**

The *Environmental Protection and Biodiversity Conservation Act 1999* (Cth) provides a framework for protection of the Australian environment, including its biodiversity and its natural and culturally significant places.

Any action which could have a significant impact on a matter of national environmental significance (MNES) must be referred to the Minister for the Environment and Energy. The nine matters of national environmental significance protected under the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth) are:

- World heritage properties
- National heritage places
- Wetlands of international importance (listed under the Ramsar Convention)
- Listed threatened species and ecological communities
- Migratory species protected under international agreements
- Commonwealth marine areas
- The Great Barrier Reef Marine Park
- Nuclear actions (including uranium mines)
- A water resource, in relation to coal seam gas development and large coal mining development.

<p>National Construction Code</p>	<p>The National Construction Code 2019 (NCC) contains technical provisions for the design, construction and performance of buildings and plumbing and drainage systems within Australia.</p> <p>The NCC is made up of the:</p> <ul style="list-style-type: none"> • Building Code of Australia (BCA) • Plumbing Code of Australia. <p>Applications for a Construction Certificate or Complying Development Certificate that are lodged with the certifying authority on or after 1 May 2019 must be assessed against NCC.</p> <p>The NCC is a performance-based code containing all Performance Requirements for the construction of buildings. All new buildings, new building work, and new plumbing and drainage systems must comply with the NCC.</p> <p>The Performance Requirements can be met using either a Deemed-to-Satisfy (DTS) Solution, Performance Solution (Alternative Solution), or a combination of both.</p> <p>A DTS Solution follows the set guidelines from the NCC, which include materials, components, design factors, and construction methods that, if used, are deemed to meet the Performance Requirements.</p> <p>A Performance Solution addresses the Performance Requirements by using one or more of the Assessment Methods available in the NCC. A Performance Solution is often flexible in achieving the outcomes and encouraging innovative design and technology use and therefore are unique for each individual situation.</p> <p>Performance solutions under the National Construction Code can be utilised to provide more flexibility to development, particularly in the situation of renovating existing buildings that may not have been constructed under current standards. The application of the NCC to the Snowy Mountains Special Activation Precinct requires consideration during Stage two of this study, particularly in relation to existing buildings constructed under historic building standards and the application of current building standards to upgraded or renovated buildings.</p>
<p>Native Title Act 1993</p>	<p>Native title recognises the traditional rights and interests to land and waters of Aboriginal and Torres Strait Islander people. Under the <i>Native Title Act 1993</i> (Native Title Act), native title claimants can make an application to the Federal Court to have their native title recognised by Australian law.</p>

**APPENDIX 3
KEY LEGISLATIVE CONSIDERATIONS FOR SNOWY MOUNTAINS SPECIAL
ACTIVATION PRECINCT**

Applicability




Applies to entire Snowy Mountains Special Activation Precinct





Applies to Alpine Sub-Precincts



Applies to Jindabyne Region

Rank (1-3)	Issue	Relevant legislative requirements	Recommended legislative approach and considerations
	<p>Bushfire: Development that is defined as a Special Fire Protection Purpose (SFPP) cannot be complying development.</p>	<ul style="list-style-type: none"> • Section 100B of the Rural Fires Act states that development for the purposes of SFPP or subdivision for residential/rural residential purposes on land that is bushfire prone requires a Bushfire Safety Authority to be issued and cannot be complying development under the <i>Environmental Planning and Assessment Act 1979</i>: <ul style="list-style-type: none"> – Section 100B(1)(b) of Rural Fires Act states the Commissioner may issue a bush fire safety authority for development of bush fire prone land for a special fire protection purpose (SFPP) or subdivision for residential or rural residential purposes. – Under Section 100B(2) a bush fire safety authority authorises development for a purpose referred to in subsection (1) to the extent that it complies with standards regarding setbacks, provision of water supply and other matters considered by the Commissioner to be necessary to protect persons, property or the environment from danger that may arise from a bush fire. – Under Section 100B(5)9b) the SFPP is not then complying development for the purposes of the <i>Environmental Planning and Assessment Act 1979</i> "despite any environmental planning instrument". – SFPP means: <ul style="list-style-type: none"> (a) a school, (b) a child care centre, (c) a hospital (including a hospital for the mentally ill or mentally disordered), (d) a hotel, motel or other tourist accommodation, (e) a building wholly or principally used as a home or other establishment for mentally incapacitated persons, (f) seniors housing within the meaning of <i>State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004</i>, (g) a group home within the meaning of <i>State Environmental Planning Policy No 9—Group Homes</i>, (h) a retirement village, (i) any other purpose prescribed by the regulations. • NSW Rural Fire Service broad scale interpretation of Special Fire Protection Purpose (SFPP) development may set a precedent for development within other Alpine Sub-Precincts: For the Bushfire Recovery Rebuild of Mount Selwyn, NSW Rural Fire Service have taken the view that Selwyn is a resort and it is a tourist-related facility. Even though the resort is not proposing tourist accommodation on site. Accordingly, three recent DAs for the Mount Selwyn rebuild are considered integrated development. If NSW Rural Fire Service retain this view for all of Snowy Mountains Special Activation Precinct, this may have implications for commercial type development within resorts being complying development. Recent examples include: <ul style="list-style-type: none"> – DA 10639, Staff Accommodation – It is understood that NSW Rural Fire Service formed the view that 'Staff Accommodation' sits under 'Tourist Accommodation' definition in the Alpine SEPP, resulting in the proposal being SFPP – DA 10644, Main Commercial Building / Visitor Facilities (no accommodation of any form within the building) – It is understood that NSW Rural Fire Service consider the entire resort a tourist facility, resulting in this proposal being SFPP – DA 10647, Resort Operations Centre / Workshop (no accommodation of within the building) – It is understood that NSW Rural Fire Service consider the entire resort a tourist facility, resulting in this proposal being SFPP. 	<ul style="list-style-type: none"> • The legislative framework for the Snowy Mountains Special Activation Precinct is prepared based on the strict application of Section 100B of the RF Act. Accordingly, there development of Special Fire Protection Purposes (as defined under the RF Act) would not be complying development. • Considerations for bushfire planning in the Snowy Mountains Special Activation Precinct: <ul style="list-style-type: none"> – Current mapping (Note: at the time of writing, the revised mapping has been prepared by SMRC and submitted to NSW Rural Fire Service for certification) shows that all areas within the Kosciuszko National Park and large portions of Jindabyne Region are bushfire prone. Further, large areas of Jindabyne Region (all undeveloped areas) are identified as bushfire prone under revised mapping (grasslands). – Alpine Sub-Precincts are located in high risk bush fire area and there is potential that all land within the Snowy Mountains Special Activation Precinct investigation area (except currently developed/urbanised areas of Jindabyne town and villages) becomes bush fire prone as a result of amended mapping. – There is a tension between ecological protection and clearing vegetation for the purpose of providing Asset Protection Zones. – During bushfire events, people are not forcibly removed from high risk areas and, it is understood that some have chosen to stay in the Kosciuszko National Park in the past during such events. – Alpine Sub-Precincts are based on high number of visitors who are likely to be unfamiliar with their surrounds and bush fire emergency procedures – The risk profile of the alpine areas is changing from a predominantly winter based destination to a year round destination that will bring more people into high risk areas in summer – Clause 45 of the RF Regulation currently excludes certain development from the definition of SFPP. However, these purposes are specific uses that generally do not increase the bush fire risk to life or are minor changes to existing buildings. This clause does not appear to be based on front-loading assessments of bush fire risk, but rather identifying types of development that, by their very nature, are not likely to generate heightened bush fire risk. Further, development is typically linked to compliance with Planning for Bushfire Protection. – Clause 273 of the <i>Environmental Planning and Assessment Regulation 2000</i> also excludes certain development (comprising single, second or dual occupancy dwellings and ancillary buildings) that is; within an urban release area and the subdivision for which has been issued with a bushfire safety authority and the proposal is consistent with the bushfire safety authority. – The types of uses currently excluded from the definition of SFPP are those that are either development in accordance with an existing bushfire safety authority (<i>Environmental Planning and Assessment Regulation 2000</i>), infill development or are developments that typically would not generate high risk to people. – The front-loaded 'equivalent' bushfire safety authority assessment for the Snowy Mountains Special Activation Precinct would need to be highly detailed and updated regularly to cater for changing vegetation conditions and management of proposed and existing Asset Protection Zones or other bushfire management measures. At the systemic level, sufficient guidance needs to be provided so that consistent outcomes are generated and clear guidance is provided to guide certifiers in relation to bushfire requirements. – In the situation that a bushfire safety authority is prepared for the Sub-Precincts (potential options for consideration), the conditions associated with that authority to guide/control subsequent development would be included within the legislative hierarchy to ensure development aligns with the conditions of that authority. Conditions associated with the authority would need to be included, as appropriate within the Master Plan, Delivery Plans and possibly the OEMP. The location would depend on how strict/prescriptive the conditions are (more important conditions included higher up in the hierarchy of plans) and reflecting the theme/nature of the condition (for example, broader spatial elements may be including in the Master Plan design, design standards in the Delivery Plan(s) and operational requirements in either the Delivery Plan(s) or the OEMP). • Recent interpretations of SFPP (recent Development Applications for Mt Selwyn) may generate risk for the wider Snowy Mountains Special Activation Precinct investigation area and the physical extent of protection measures as well as the application of complying pathways to non-tourist accommodation. The view of NSW Rural Fire Service that all developments within Alpine Sub-Precincts are SFPP may set a precedent for all Alpine Sub-Precincts, risking the application of complying development certificate (per s100B). Further consideration as to whether this interpretation may be beyond the strict definitions of SFPP under Rural Fires Act and Planning for Bushfire Protection.



Rank (1-3)	Issue	Relevant legislative requirements	Recommended legislative approach and considerations
	<p>Bushfire: No clear framework or set of criteria for Alpine Sub-Precincts to manage asset protection zones</p>	<ul style="list-style-type: none"> There is no clear framework or set of criteria for Alpine Sub-Precincts to manage asset protection zones, requiring negotiated outcomes with NSW Rural Fire Service and NPWS for individual applications. The NSW Rural Fire Service Standards for Asset Protection Zones applies a broad brush approach to the establishment and ongoing management of Asset Protection Zones. The importance of site specific assessments to manage bushfire risk is acknowledged, however the potential for a clear framework should be considered in conjunction with the specialist bushfire investigation. 	<ul style="list-style-type: none"> Planning for the Alpine Sub-Precincts in the Master Plan represents an opportunity to develop a clear framework for Alpine Sub-Precincts to manage asset protection zones in conjunction with the specialist bushfire investigation.
	<p>Non-habitable Alpine and adventure facilities</p>	<ul style="list-style-type: none"> Application of complying development to non-Special Fire Protection Purposes within the Snowy Mountains Special Activation Precinct can proceed without the need for Bushfire Safety Authority and does not trigger Section 100B of the RF Act (which states SFPP cannot be complying development). Note: NSW Rural Fire Service would need to accept these uses as being of commercial nature and not SFPP Application of complying development to unique infrastructure and facilities would require that certification be provided by a suitably qualified engineer and Level 3 BPAD bushfire consultant. 	<ul style="list-style-type: none"> Application of complying development to non SFPP purposes would require formulation of sufficient level of standards or controls to ensure the structural integrity and safety of these structures for the user. Such complying development would need to consider the implications of Geotech, biodiversity and heritage impacts, particularly in the Alpine Sub-Precincts. Comprehensive standards would need to be established to cover all various types of development. The risk is that the standards do not cover all the unique requirements for the range of potential tourist and adventure facilities. Complying development provisions in NSW are designed to align with deemed to satisfy provisions of the NCC, Australian Standards. To allow facilities that are either not covered by the BCA or, due to unique characteristics or physical conditions, cannot meet the DTS provisions of the BCA, as complying development would require the complying development provisions to allow performance based solutions. This would necessitate that the private certifier be qualified to assess and certify performance based solutions as well as interpret Geotech and biodiversity assessments. This represents a departure from the intention of complying development as it applies to the rest of NSW. Australian Standards represent the minimum standards that are to be achieved, which may not provide for higher degree of risk associated with some facilities. Manufacturers specifications also represent important criteria for the facilities to comply with.



Rank (1-3)	Issue	Relevant legislative requirements	Recommended legislative approach and considerations
	Building standards	<ul style="list-style-type: none"> Throughout NSW, complying development is contingent upon the proposed development achieving the relevant requirements of the <i>Building Code of Australia</i> (under the National Construction Code). It is understood that complying development cannot be achieved for development in the Alpine Sub-Precincts without utilising the performance solutions provisions of the BCA (due to older building stock, building types, terrain and site conditions). Under Clause 130(1) and Clause 136A(1) of the <i>Environmental Planning and Assessment Regulation 2000</i>, complying development is required to meet the relevant requirements of the Building Code of Australia (BCA), which is part of the National Construction Code (NCC). Clause 130(1) reads: "(1) A certifier must not issue a complying development certificate for building work unless the proposed building (not being a temporary building) will comply with the <u>relevant requirements</u> of the Building Code of Australia (as in force at the time the application for the certificate was made)" [emphasis added] The requirements of the BCA include the Deemed To Satisfy (DTS) provisions as well as performance based solutions. Under Clause 130(2) of the <i>Environmental Planning and Assessment Regulation 2000</i>, "complying development that is required to comply with the deemed-to-satisfy provisions of Volume One, or Section 3 of Volume Two, of the Building Code of Australia, a complying development certificate cannot authorise compliance with a performance solution to the performance requirements corresponding to those deemed-to-satisfy provisions". This suggests that the requirement to comply with DTS provisions is specified in the relevant environmental planning instrument and must be explicitly described as pertaining to DTS (as opposed to 'relevant requirements', for example). Clause 130(2A) of the <i>Environmental Planning and Assessment Regulation 2000</i> includes additional requirements for 'building work that involves a performance solution under the Building Code of Australia in respect of a fire safety requirement'. Enforcements procedures: <ul style="list-style-type: none"> Under either exempt or complying development pathway, enforcement is 'complaint-based'. the Department currently carry out inspections, but primarily inspections are based on complaints lodged. Enforcement of privately certified complying development is complaint based. SMRC may choose to intervene, but it is the responsibility of the private certifier to enforce the conditions of a complying development certificate. If an issue arises, the Building Professionals Board may choose to investigate the certifier, but is unable to enforce physical rectification works. This is a risk for Alpine Sub-Precincts that would be entirely subject to private certification, where buildings may continue to exist in a non-compliant state. 	<ul style="list-style-type: none"> The Alpine SEPP include provisions for expanded/clarification of exempt development as well as introducing complying development for minor maintenance and operational works within the Alpine Sub-Precincts. Other development would be subject to a Development Application and applicants would be support through the process by Regional Growth NSW Development Corporation as business concierge. <ul style="list-style-type: none"> Exempt development must meet the DTS provisions of the BCA. However, there is an opportunity to expand the application of exempt development, particularly in Alpine Sub-Precincts, where the definitions of structural elements are either not clear or could be interpreted differently with suitable evidence or practice notes. Performance based provisions and DTS provisions of the BCA are available for complying development, but in the context of the high risk conditions in the Alpine Sub-Precincts, complying development pathway is available for only specified development that can be adequately controlled via prescribed controls. Considerations for drafting amendments to the Alpine SEPP, Master Plan and Deliver Plans are as follows: <ul style="list-style-type: none"> As most buildings within the Alpine Sub-Precincts are aged, upgrade works to these structures are not likely to comply with DTS provisions of the NCC. Further, the wider range of development types located in areas of unique landscape characteristics, development across the Snowy Mountains Special Activation Precinct investigation area may need to rely on performance based solutions. DTS provisions often limit the potential design innovation. Feedback received from stakeholders suggests that, due to the complexity of the BCA, it is not possible to include enough information in the application to confirm compliance with the BCA. Which therefore places more onus on the certifier and inspections to confirm compliance with the BCA. Buildings within the Alpine Sub-Precincts have the following unique characteristics, which add to the potential risks associated with high number of visitors in the Alpine Sub-Precincts: <ul style="list-style-type: none"> Visitors are likely to be unfamiliar with their surrounds and emergency procedures Visitors during winter have a high utilisation of internal heating and drying rooms Visitors often engage in behaviours that temporarily impair actions (e.g. consumption of alcohol) The existence of older building stock in Alpine Sub-Precincts means they were not built to current standards (particularly fire and safety). Renovations are expensive and trigger additional requirements to comply with contemporary building standards. It is understood that when faced with interpreting a standard, applicants would apply the most liberal interpretation those standards to minimise cost and time associated with the development. There is a risk of unsuitable outcomes as a result (considering the high risk nature of the conditions present in the Alpine Sub-Precincts).



Rank (1-3)	Issue	Relevant legislative requirements	Recommended legislative approach and considerations
	Tourist Accommodation vs residential housing vs STRA	<ul style="list-style-type: none"> Tourist accommodation is not well considered under the current Snowy River LEP. Prior to the Standard Instrument there were local provisions for tourist uses in the LEP. The former <i>Snowy River Local Environmental Plan 2007</i> contained a use class of "rural holiday dwelling" and "holiday dwelling" respectively which dealt with the short-term rental of residential dwellings houses and units. The standard definition for tourism uses under the Standard Instrument has resulted in Air BnB uses being considered 'serviced apartments' under the LEP. The definitions relating to the various tourist accommodation types anticipated within the Snowy Mountains Special Activation Precinct would need to be considered in detail as part of formulating the new legislative framework. Clause 7.8 of Snowy River LEP addresses serviced apartments and identifies matters for consideration when assessing serviced apartments. However, the weaknesses of this approach are: <ul style="list-style-type: none"> In the land use tables, 'serviced apartments' are permitted with consent in zones R1 – General Residential, R2 – Low Density Residential, B2 – Local Centre and RU5 (which covers parts of East Jindabyne and all of Kalkite Village). Under Clause 4.1A(2), residential flat buildings in the R1 Zone require a minimum lot size for 1050sqm, however that lot size does not apply to serviced apartments. The built form of serviced apartments can present as residential flats buildings on lots smaller than 1050sqm. The local community have expressed confusion regarding the logic of allowing a large building in a residential zone that can be used by tourists but not allowing a similar scale building for permanent dwellings, which can result in inconsistent built form within the same locality. A new Short Term Rental Accommodation framework is under development by NSW Government. <ul style="list-style-type: none"> The new framework will include: <ul style="list-style-type: none"> A new standard definition of STRA A 180 day cap for non-hosted STRA homes in Greater Sydney, with the ability for other councils to opt in The ability for hosted STRA homeowners to rent their homes out 365 days of the year Minimum fire safety standards A Code of Conduct that applies to hosts, guests, online booking platforms and letting agents. The STRA Code of Conduct and exclusion register applies from 18 December 2020. It is anticipated that the whole-of-government framework will be finalised in the first half of 2021. (Source: https://www.planning.nsw.gov.au/Policy-and-Legislation/Under-review-and-new-Policy-and-Legislation/Short-term-rental-accommodation, accessed March 2021) New STRA Code defines STRA as: <p><i>"the commercial use of an existing dwelling, either wholly or partially, for the purposes of short-term accommodation, but does not include tourist and visitor accommodation."</i></p> Intention is for STRA to enable the use of a dwelling for STRA as a part of its residential use where: <ul style="list-style-type: none"> The dwelling is permissible with consent in the zone No physical alterations or additions would be made to accommodate the STRA use, and The dwelling has a current development consent or existing use rights for its use as a dwelling. STRA Code would mean that, in Jindabyne Region (NOTE: assumes new BF maps show entire Snowy Mountains Special Activation Precinct investigation area as being BF prone land), STRA is: <ul style="list-style-type: none"> Exempt development where host is present onsite overnight year round (365 days). Complying development where host is not present on site overnight and located on bushfire prone land. In this case dwelling can be STRA for 365 days per year, but councils will be able to set the number of days, from 180 to 365 days. STRA Code does not apply where dwellings are prohibited. 	<ul style="list-style-type: none"> Amendment to the Activation Precincts SEPP (Schedule X – Snowy Mountains Special Activation Precinct) would include clear reference to the types of land uses envisaged in each Sub-Precinct. The focus of development within the Sub-Precincts would be on commercial tourist accommodation and is not expected to include utilising existing dwellings for tourist accommodation. Areas outside the Sub-Precincts, land subject to the Snowy River LEP, would be subject to the STRA Code. It is understood that a review of the STRA Code is ongoing within NSW Government, which should consider the factors relevant to the Jindabyne Region, including: <ul style="list-style-type: none"> Tourist and visitor accommodation is different to STRA in that the purpose is for tourist or visitors, whereas STRA is for short stays by people other than tourists/visitors to a locality. For instance, renting for staff accommodation would be STRA, but renting for families for a week to visit ski fields would be 'tourist and visitor accommodation'. Housing that is used permanently for tourist accommodation necessitates safety (and kept up to date over time) and access standards, and the impacts on social cohesion need to be managed. The Snowy Mountains Special Activation Precinct legislative framework presents an opportunity to formulate an integrated approach to controlling housing/accommodation within Alpine Sub-Precincts and the Jindabyne Region, in order to support all forms of housing for tourists, seasonal workers as well as permanent residents across the Snowy Mountains Special Activation Precinct. Anecdotally, residential housing is utilised for tourist accommodation without consent in the Jindabyne Region. Owners are renting out housing as short term rental accommodation on platforms such as Air BnB without seeking consent for changing use to tourist accommodation. Need to clearly distinguish between: <ul style="list-style-type: none"> dwelling for permanent residence tourist and visitor accommodation STRA. Potential options may include: <ul style="list-style-type: none"> Option 1: Potential to include Airbnb into definition of 'tourist and visitor accommodation' Option 2: Introduce definition for 'short term tourist and visitor accommodation' for properties that are occasionally used for Airbnb rather than being subject to additional requirements for traditional 'tourist and visitor accommodation' developments. This approach may involve an upper limit on days the property can be let in any year. For example, the former Wyong Shire Council (now Central Coast Council) permits STRA by amending LEP to allow existing rentals operating without complaint to continue. (Source: Legislative assembly of NSW)

Rank (1-3)	Issue	Relevant legislative requirements	Recommended legislative approach and considerations
	Biodiversity Offsets Scheme and Biodiversity Certification of Land	<ul style="list-style-type: none"> The <i>Biodiversity Conservation Act 2016</i> establishes the regime to protect biodiversity in NSW. Under the Biodiversity Conservation Act and Biodiversity Conservation Regulation, Part 4 local development that either exceeds the Biodiversity Offset Scheme (BOS) threshold or is located in an area of sensitive biodiversity values must apply the Biodiversity Assessment Method to determine whether an offset obligation is to be met. A Development Application under Part 4 of the <i>Environmental Planning and Assessment Act 1979</i> (other than State significant development ('SSD') or complying development) must be accompanied by a Biodiversity Development Assessment Report (BDAR), prepared in accordance with the Biodiversity Assessment Method (BAM), if it meets or is above the BOS threshold, or if the proposed development is likely to significantly affect threatened species. Section 7.3 of the <i>Biodiversity Conservation Act 2016</i> specifies the criteria to determine when a proposed development or activity is likely to significantly affect threatened species. A consent authority must consider the BDAR when determining whether to grant development consent for the proposed development. Public authorities carrying out an activity under Part 5 of the <i>Environmental Planning and Assessment Act 1979</i> have the option to be subject to the new offset scheme and include a BDAR. Under Clause 17 of the Alpine SEPP, the consent authority must refer an application to the National Parks and Wildlife Service. The NPWS provides consideration of the Biodiversity Conservation Act if the application is within a Threatened Species mapped area. The Biodiversity Offset Scheme threshold does not apply to exempt or complying development. 	<ul style="list-style-type: none"> The Biodiversity Assessment Report prepared as part of the Snowy Mountains Special Activation Precinct investigations identifies threatened ecological communities with the potential to occur. These include critically endangered and endangered species under the <i>Biodiversity Conservation Act 2016</i>. Impacts on biodiversity as a result of the proposed development in the Snowy Mountains Special Activation Precinct, that would trigger the need for a BDAR, are unavoidable. Regardless of the planning approval pathway, streamlining approval relies on front-loading the assessment and potential certification of biodiversity impacts to avoid individual applications from requiring site specific assessments. It is proposed that, in order to sufficiently front load the assessment and facilitate streamlined planning approvals in the Snowy Mountains Special Activation Precinct, the Biodiversity Certification would be utilised. The Certification would apply to either identified Sub-Precincts or for the entire Snowy Mountains Master Plan, under the <i>Biodiversity Conservation Act 2016</i>. The intention would be to support identified development in the Snowy Mountains Special Activation Precinct that is in accordance with the Master Plan. This would include development and activities under Part 4 and Part 5 of the <i>Environmental Planning and Assessment Act 1979</i>, including through a complying development pathway. The conditions of the Biodiversity Certification would be reflected in the relevant SEPP (for the purposes of complying development) as well as the Master Plan and Delivery Plans as appropriate. A precinct-wide assessment may be required in order to identify potential clearance and undertake an assessment consistent with the BAM in order to support complying development. Consultation between Environment, Energy and Science (the Department- EES), Planning and Assessment (the Department - P&A) and NPWS is ongoing in order to determine the detailed application of the Biodiversity Offset Scheme for the Snowy Mountains Special Activation Precinct. The solution would integrate with the outcome of ongoing consultation with Commonwealth Department of Agriculture, Water and the Environment in relation to the <i>Environmental Protection and Biodiversity Conservation Act 1999</i> (Cth).


Rank (1-3)	Issue	Relevant legislative requirements	Recommended legislative approach and considerations
	Environmental Protection and Biodiversity Conservation	<ul style="list-style-type: none"> • Actions that are likely to have a significant impact on matters of national environmental significance (including Ecologically Endangered Communities (EECs) would need to comply with the <i>Environmental Protection and Biodiversity Conservation Act 1999</i> (Cth)) and would require referral to the Commonwealth Department of Agriculture, Water and the Environment. • The Final Biodiversity Context Report (WSP, 2020) prepared for the Snowy Mountains Special Activation Precinct project identifies threatened ecological communities with the potential to occur within the Alpine Sub-Precincts. These include critically endangered and Endangered species under the Environment Protection and Biodiversity Conservation Act 1999 (<i>Environmental Protection and Biodiversity Conservation Act 1999</i> (Cth)). 	<ul style="list-style-type: none"> • Any action which could have a significant impact on a matter of national environmental significance (MNES) must be referred to the Minister for the Environment and Energy. • Currently, complying development does not apply within the National Park. • If development is proposed (regardless of approval pathway) that has the potential for impacts on a matters of national environmental significance (MNES), the action would be referred to the Commonwealth Minister for the Environment (Department of Agriculture, Water and the Environment) under <i>Environmental Protection and Biodiversity Conservation Act 1999</i> (Cth). This would add time to the approval pathway. • Options to address the requirement for referral requirements under the <i>Environmental Protection and Biodiversity Conservation Act 1999</i> (Cth) are subject to ongoing discussions with the Department of Agriculture, Water and the Environment, in conjunction with the ecological technical study. Options for addressing matters captured under the <i>Environmental Protection and Biodiversity Conservation Act 1999</i> (Cth) include: <ul style="list-style-type: none"> – The concept plans and development footprints for all Sub-Precincts are designed so as to avoid all impacts on MNES which would guarantee no referral or assessment under the <i>Environmental Protection and Biodiversity Conservation Act 1999</i> (Cth) is required. – A strategic assessment for the Sub-precincts to gain pre-approval for impacts on ecological values (avoiding the need for individual applications to seek separate approvals under the <i>Environmental Protection and Biodiversity Conservation Act 1999</i> (Cth)), by either: <ul style="list-style-type: none"> ▪ Referral of concept plans for the precincts most at risk of impacting MNES (i.e. Perisher and Charlotte Pass as we discussed). This way the ecological assessment could be front loaded and Commonwealth Department of Agriculture, Water and the Environment would potentially be able to assess and complete the referral process prior to the Delivery Plan being approved to avoid any delays. This option may generate additional considerations for the assessment that are associated with the identified Sub-Precinct being a component of a larger action (a consideration under the <i>Environmental Protection and Biodiversity Conservation Act 1999</i> (Cth)). ▪ Refer the entire Snowy Mountains Master Plan. This would potentially avoid any issues surrounding component of a larger action, as the master plan would capture the entire action. – Proponent’s refer each action individually (where there are likely to be impacts on MNES). This means that, if there is an impact on MNES, there is minimal streamlining in the process and would likely result in delays in commencement of work for each proponent. However, the proponents would utilise the front-loaded ecological assessment to identify development locations, designs and types that minimise the risk of significant impacts on MNES. Sufficient guidance would be provided in the Master Plan and Delivery Plans so that, if individual proposals are consistent with the controls therein, no referral is required. • The conditions of the Strategic Assessment would be reflected in the relevant SEPP (for the purposes of complying development) as well as the Master Plan and Delivery Plans as appropriate. • The Department of Agriculture, Water and the Environment has advised that further consultation is required before the preferred approach is confirmed. This consultation is ongoing. The solution would integrate with the outcome of ongoing consultation with EES and NPWS in relation to the <i>Biodiversity Conservation Act 2016</i>.
	Lease arrangements in Alpine Sub-Precincts	<ul style="list-style-type: none"> • Lessees of land within the Alpine Sub-Precincts can make Development Applications without seeking landowner’s consent, in accordance with Clause 49, and Clause 12 of Schedule 6, of the <i>Environmental Planning and Assessment Regulation 2000</i>. However, Perisher operator must still seek landowner’s consent from NPWS as the current Consolidated Mountain Lease and individual leases do not provide authority to lodge DAs. Further, the licence area for ski infrastructure does not constitute a lease for the purposes of the Regs. • Clause 12(2) of Schedule 6 of Regulation states: <i>12 Modification of provisions of this Regulation in relation to ski resort areas</i> <i>(1) The provisions of this Regulation are modified as set out in this clause in relation to a ski resort area.</i> <i>(2) Despite clause 49(1), a Development Application in relation to land within a ski resort area may be made by the lessee of the land.</i> 	<ul style="list-style-type: none"> • Subject to the preferred governance structure for the Snowy Mountains Special Activation Precinct, current requirement for NPWS to be consulted for Development Applications would be applied to complying development in the Alpine Sub-Precincts. This would occur during the Activation Precinct Certificate phase. • It is important to maintain a positive working relationship (Refer to Section 6.3.2 for description of partnership between government agencies) between Regional Growth NSW Development Corporation, NPWS, the Department and SMRC in order to negotiate good development outcomes and ensure monitoring and enforcement is able to be carried out effectively. • Landowners consent conditions are complex and may undermine the streamlined nature of complying development. Variations in lease arrangements across the Alpine Sub-Precincts may generate similar confusion as applied to complying development. Potential options to restructure the lease arrangements include head leases and modifying the current provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>.




Rank (1-3)	Issue	Relevant legislative requirements	Recommended legislative approach and considerations
	<p>Geotech issues require expertise to assess and controls may be outdated over time.</p>	<p>Geotech issues within the Alpine Sub-Precincts include:</p> <ul style="list-style-type: none"> It is understood that geotechnical conditions change season to season depending on water content of soils and actions of subterranean water flows. Front loading the Geotech assessment carries risk of the conditions associated with development changing from the date of assessment to the date of development, which may necessitate additional assessment to be undertaken at the time of the proposed development to confirm the soil conditions have not changed. If not, the risk that foundations do not reflect the true Geotech conditions at the particular site. Triggers (threshold) for needing a geotechnical assessment would likely be challenged by proponents through the application process. 	<ul style="list-style-type: none"> The recommended approach for the Alpine Sub-Precincts is to require site specific assessment of Geotech conditions and design solutions as part of a Development Application. Complying development would include development that does not require substantially altered load bearing or new foundations. Considerations include: <ul style="list-style-type: none"> Would need to establish clear triggers for geotechnical assessment (i.e. triggers pertaining to types of development and locations). Development proposals in sensitive Geotech areas would require updated assessments to ensure buildings are designed according to the site conditions. It is understood that front-loading Geotech, to support application of complying development in sensitive areas, would require substantive and prohibitively costly sampling and assessment. Such assessment may not be reliable in the future due to changing soil conditions over time. Accordingly, regardless of whether detailed Geotech assessment is completed during the Master Plan phase, further Geotech assessment would be required at the development proposal phase and appropriately qualified persons would be required to certify the design and construction methods are suitable. Design and construction solutions to respond to Geotech conditions are likely to be performance based solutions, designed specifically to the site proposed for development. It is unlikely that a set of standard development standards would be able to consider the range of solutions for every site condition experienced within the Snowy Mountains Special Activation Precinct, particularly in relation to sensitive conditions prevalent in the Alpine Sub-Precincts.
	<p>Complying development certification</p>	<ul style="list-style-type: none"> Certifiers would also need to consider the relevant controls and standards associated with Geotech, bushfire controls, ecological impact as described in this table. Application of a complying development pathway is subject to review by NSW Government and risks associated with complying development identified by recent reviews on this subject should also be considered (reference: Shergold and Weir Report). A complying development certificate is effectively a combined Development Application and Construction Certificate (CC). It is not possible to provide enough detail in an application for complying development certificate to confirm compliance with the entire BCA. High risk activities undertaken in Alpine Sub-Precincts include heating and drying rooms. Specific and comprehensive controls would need to be included if complying development. Unlike a development consent, Part 8 of the <i>Environmental Planning and Assessment Act 1979</i> provides that there is no right of review or appeal in relation to a determination of, or a failure to determine, an application for a complying development certificate. Third party objectors and councils are able to appeal to the Land and Environment Court to seek a complying development be declared invalid. Challenge to ensure that sufficient flexibility is enabled within the complying development framework to enable innovation and tourist uses that perhaps are not envisaged, but make environmental, economic and social sense to be located with the Sub-Precincts. Existing complying development certificate cannot be modified. Under Section 4.30 of the <i>Environmental Planning and Assessment Act 1979</i>, modification of a complying development is subject to the same requirements and process as required for a complying development certificate. Modification of a development to which a complying development certificate applies requires application for a new complying development certificate. Important Note: Under Codes SEPP Complying development may not be carried out on Environmentally sensitive areas (under Codes SEPP, environmentally sensitive areas included land within National Parks (re CI 17A and CI 1.5 Interpretation). 	<ul style="list-style-type: none"> The Codes SEPP would be 'turned off' by the Activation Precincts SEPP and relevant provisions of the Codes SEPP would need to be explicitly 'turned on' or incorporated into the new planning instrument for Snowy Mountains Special Activation Precinct (Activation Precincts SEPP, Master Plan and Delivery Plans). Related considerations in applying complying development to the Snowy Mountains Special Activation Precinct include: <ul style="list-style-type: none"> A complying development certificate would require private certifier to review all relevant provisions of the Activation Precincts SEPP, Master Plan and Delivery Plans to certify the proposed development is complying. This review would be based on the issuing of a Activation Precinct Certificate by Regional Growth NSW Development Corporation. Proponents who are unable to obtain complying development certificate, either through SMRC or a private certifier must then apply for a Development Application if they wish to continue with proposed development. Applications for complying development in Alpine Sub-Precincts are associated with commercial development, which does not have a requirement for a licenced builder as would be the case for residential development in rest of NSW. The leaseholders that present as applicants for development in the Alpine Sub-Precincts are typically private individuals or groups (i.e. non-commercial or not for profit groups). These groups are not commercial operators and may not have the same level of knowledge about design or construction of buildings in high risk areas. Lack of merit based third party appeal rights places high degree of importance on the public consultation process during the Master Planning and Delivery Plan phase. Explore the interface between existing instruments, with respect to exempt, complying and prohibited development. Consider the Codes SEPP in detail in order to confirm the application status of the Codes SEPP (inclusive of all relevant Codes) to both the Alpine Sub-Precincts and to Jindabyne Region. The proposed land uses under the structure plan would need to either align with the standard definitions under the Standard Instrument – Principal Local Environmental Plan or a new definition added to the Activation Precincts SEPP (supported by sufficient justification). Major projects carry with them potentially significant benefits, but also risks and potential impacts. For this reason, these developments are subject to environmental impact statements and public exhibition procedures. To applying complying development would necessitate high level of front-loaded impact assessment to guide the developments, along with clear and robust controls and merit assessment under the Activation Precinct Certificate process. Risk that that complying pathway does not comprehensively address all the micro-siting or site-specific impacts, nor the public engagement requirements, typically considered for large projects in NSW. This puts a high level of emphasis on formulating clear concepts during the master planning phase, undertaking impact assessment level assessment of these concepts and application of comprehensive controls and performance standards under the Delivery Plan. Often, the final design and siting of larger development projects dictates the actual impacts. There is a risk that front-loading the analysis does not reflect the final design and impacts or community feedback are not captured.

Rank (1-3)	Issue	Relevant legislative requirements	Recommended legislative approach and considerations
	<p>Complying development - include 'existing development' in Alpine Sub-Precincts as complying development</p>	<ul style="list-style-type: none"> Exempt development is limited to minor works and requires all work to comply with BCA. Note: Under Alpine SEPP, the works are required to comply with BCA, but are not required to rectify the BCA non-compliances in the remainder of the building (see clause 19(3)(and (b)). Clause 19 also requires the building subject of exempt development to have relevant fire safety certification and the building must not be a State heritage item under Heritage Act 1977. So limited use of exempt development provisions under Alpine SEPP. Alpine SEPP does not include complying development and Codes SEPP does not apply to Alpine Sub-Precincts. Implication is that even minor development requires development consent in the Alpine Sub-Precincts. Costly for applicants and either work is not done or work done that is not lawful. It is noted that under Codes SEPP, complying development may not be carried out on Environmentally sensitive areas. Under Codes SEPP, the meaning of 'environmentally sensitive areas' includes land within National Parks (Clause 17A and Clause 1.5 Interpretation). 	<ul style="list-style-type: none"> Approach is to introduce complying development within Alpine Sub-Precincts under Alpine SEPP for development that is of minor nature (operational or maintenance works). Minor upgrades to existing development (replacing windows or façade treatments etc) in Alpine Sub-Precincts should be considered complying development in the Alpine Sub-Precincts. Considerations for this approach include: <ul style="list-style-type: none"> Need to include key definitions and development standards to support complying development in the Alpine Sub-Precincts. This should enable alts and adds and minor work to Alpine Sub-Precincts (e.g. lodges) to be carried out as complying development. Precinct-wide issues would need to be resolved as part of the Snowy Mountains Special Activation Precinct investigation area Master Plan and supporting specialist studies to reduce onus on applicants and/or to establish clear controls that can be relied upon by authorities to ensure minimal impact. The approach is founded upon the principle that where development consistent with the MP or Delivery Plans, the proposed development can be supported/approved. However, where site-specific issues are present that cannot be addressed as part of a precinct-wide technical assessment, additional controls or bespoke assessments via a Development Application would be necessary for the specific proposal to address those unique conditions. It is intended that the Codes SEPP would not apply to development within the Snowy Mountains Special Activation Precinct (Note: it is likely that some provisions will remain applicable and in force via provisions in the relevant SEPP, subject to detailed 'clause by clause' statutory analysis of the Codes SEPP, Alpine SEPP and Activation Precincts SEPP). Adoption of complying development on land within the Kosciuszko National Park (including the Alpine Sub-Precincts) would represent a departure (relaxation) from the current provisions of the Codes SEPP that prevent complying development on land within National Parks. Sufficient evidence is required to support the application of complying development in the Alpine Sub-Precincts to support the justification of this approach.
	<p>Application of structural standards to development not covered by BCA</p>	<ul style="list-style-type: none"> Infrastructure such as ski making infrastructure, ski lifts/rope tows and adventure tourism facilities are not covered by the BCA and instead require engineering design tailored to the specific use and site conditions. This type of structure requires certification by a suitably qualified person. 	<ul style="list-style-type: none"> Where there is ambiguity between the BCA and Australian Standards, it is typically necessary to clarify the understanding of the relevant requirements with the relevant consent authority. This option may not be available under exempt or complying development. Instead complex performance solutions will be the responsibility of a private certifier.
	<p>Exempt development types</p>	<ul style="list-style-type: none"> Clause 19 and Schedule 2 of the Alpine SEPP detail exempt development provisions. In accordance with Clause 19 of the Alpine SEPP, to be exempt development the development is required to meet the provisions of the Building Code of Australia, not be designated development, not relate to a heritage item that is listed on the State Heritage Register under the Heritage Act 1977 and not be carried out on land that is an Aboriginal place within the meaning of the National Parks and Wildlife Act 1974. There is an overlap here with <i>National Parks and Wildlife Act 1974</i> and Regulation. Some forms of exempt development may require authorisation from NPWS. Note that exempt development is not a defence in certain cases under the <i>National Parks and Wildlife Act 1974</i> and NPW Regulation, including (but not limited to): <ul style="list-style-type: none"> Section 156A of the <i>National Parks and Wildlife Act 1974</i> (damaging reserved land) Clause 11 of the NPW Regulation (animals in the park) Clause 16 of the NPW Regulation (alcohol consumption). 	<ul style="list-style-type: none"> Approach to exempt development in the Alpine Sub-Precincts is to clarify the conditions and expand the development that is considered exempt under the Alpine SEPP. Opportunity to provide development standards and clear approval pathways for exempt and complying development that are consistent with the underlying land use zone. Exempt development should be limited to those works that won't impact on sensitive environments (for example, threatened species habitat) or where located within BAL-40 or BAL-FZ. A mechanism may be required under the Alpine SEPP in order to resolve the inconsistency between the <i>Environmental Planning and Assessment Act 1979</i> exempt development allowance and the NPW Regulation. Further investigation and analysis of potential mechanisms is required in order to clarify and (if required) resolve any inconsistency.
	<p>Fire safety under Part 5</p>	<ul style="list-style-type: none"> Class 1b and Class 2 to Class 9 buildings should go through the building certification requirements of Part 6 of the <i>Environmental Planning and Assessment Act 1979</i> (including Construction Certificate, Occupation Certificate) and be in the annual fire safety statement (AFSS) regime under Part 9 of the EP&A Regs. To achieve this it places a lot of importance on clause 168 of the EP&A Regs and how fire safety schedules (FSS) are issued. A FSS is not triggered under Part 5 or under Crown building certification. If a development does not have a FSS, is not subject to the AFSS regime. This puts ongoing testing and maintenance of essential fire safety measures in doubt when dealing with buildings under Part 5. A FSS only gets issued for Part 4 matters such as DAs for change of use, complying development certificate, Construction Certificate, Occupation Certificate and orders (as per cl 168). 	<ul style="list-style-type: none"> Potential to limit Part 5 to only Class 10 structures under the BCA or "a work" (i.e. s1.5(1)(d) of the <i>Environmental Planning and Assessment Act 1979</i> where no structure is proposed). Rationale for this is that all For non-government stakeholders there are a range of issues that need to be considered, even for parts of projects, as a result of Part 5 not link into Part 6 Certification and/or Section 6.28 of the <i>Environmental Planning and Assessment Act 1979</i> for Crown building work etc. Careful consideration is required for decisions that could lead to key fire safety legislative requirements not applying to non-government projects. Examples of the above situations include: <ul style="list-style-type: none"> Aspects of a 'snowmaking' project could be assessed under Part 5. However, the project can also include pump houses and other buildings. These types of buildings should be subject to Construction Certificate, Occupation Certificate and the AFSS regime. Chairlifts can include stations, chair maintenance and storage sheds, staff offices and control rooms. These types of buildings should also be subject to Construction Certificate, Occupation Certificate and the AFSS regime. Part 5 would be suitable for track construction and bridges associated with mountain bikes parks (and/or trail networks) but the projects themselves are also likely to include shops (equipment, hire, ticketing), office space, accommodation, onsite manager etc. These types of building should be subject to Construction Certificate, Occupation Certificate and the AFSS regime.



Rank (1-3)	Issue	Relevant legislative requirements	Recommended legislative approach and considerations
	<p>Carrying capacity mechanism and how to implement revised carrying capacity into the legislative framework</p>	<ul style="list-style-type: none"> The Kosciuszko National Park POM includes a limit on the bed numbers for each of the Alpine Sub-Precincts. There is no reference to bed limits in the Alpine SEPP. Accordingly, the bed limits are currently only managed within the <i>National Parks and Wildlife Act 1974</i> legislative framework (i.e. <i>National Parks and Wildlife Act 1974</i> leases and Kosciuszko National Park POM). Proposals to increase accommodation limits would be considered in accordance with the existing criteria set out in section 10.2.1 of the POM. Any increases would also require a formal amendment to the POM in accordance with statutory processes set out in the <i>National Parks and Wildlife Act 1974</i>. Bed limits (carrying capacity) have typically been used to limit the size of the Sub-Precincts and minimise impacts of Sub-Precincts activities on the values of the Kosciuszko National Park. Although the relationship between bed numbers and the environmental health of surrounding Kosciuszko National Park is tenuous. The Kosciuszko National Park POM describes that there is insufficient information available to determine whether growth in visitation and infrastructure can be sustained at any of the Sub-Precincts without increasing environmental degradation. Day visitors are not currently being measured. Need to determine the 'effects' or 'values' we are trying to manage and establish KPIs that reflect those values, i.e. 'no clearing of native vegetation' or 'no reduction in habitat of threatened species' etc. Then the enabling infrastructure required to support growth in visitors is measured against those KPIs. (i.e. for x visitors, a new STP is required that requires clearing, so it is beyond carrying capacity, or for x visitors, a new lane in each direction is required to maintain less than 1 hour transit time from Jindabyne to resorts so is beyond clearing limit and beyond carrying capacity). To seek specialist input from the carrying capacity Review Report. The process regarding the use of maximum bed numbers within leases should be explored further and consultation with the NPWS Property and Commercial Branch and in the context of carrying capacity considerations. Note: It is understood that the bed limits currently applying in the Visitor Services zones in Kosciuszko National Park are not subject of the carrying capacity scope of services and the Snowy Mountains Special Activation Precinct Carrying Capacity Analysis. Could carrying capacity be applicable outside the Kosciuszko National Park - perhaps for all (or just major) tourist operators/ accommodation to manage the overall accommodation or visitation 	<ul style="list-style-type: none"> Opportunity for a new carrying capacity framework that accounts for informal accommodation and increases in day visitors, and also regulates appropriate and effective management of declines in environmental values as they appear, and progress in resort and surrounding areas. It is noted that it is important to maintain bed limits within the legislation due to bed numbers being critical for leasing purposes. Bed numbers are also useful for the provision of utilities, such as sewage treatment plants which work on overnight accommodation. Carrying capacity is currently a NPWS tool for managing overall intensity of development within the Sub-Precincts. The bed limits are stipulated in Chapter 10 and Schedule 8 of the Kosciuszko National Park POM , which is an internal management tool for NPWS to manage use of land under its control. To amend the bed limits, an amendment to the Kosciuszko National Park POM is required. As the lessor, NPWS also include bed limits in current resort leases. Whether to include carrying capacity in to the legislative framework depends on the interrelationship between: leases, Kosciuszko National Park POM and development consent process. There are three mechanisms used to manage impact on Kosciuszko National Park: <ol style="list-style-type: none"> Kosciuszko National Park POM - Bed limits stipulated under Kosciuszko National Park POM Environmental Management System prepared by the resort operators (required by the leases under <i>National Parks and Wildlife Act 1974</i>) Alpine SEPP controls development and assessment of potential impacts on environment under <i>Environmental Planning and Assessment Act 1979</i>. Options for future framework: <ul style="list-style-type: none"> Retain the carrying capacity provision within the POM and leases under <i>National Parks and Wildlife Act 1974</i>. This preserves the explicit links to the Environmental Management System provisions of the leases and requires NPWS to monitor the carrying capacity. Bed numbers that match the carrying capacity would be stated in a schedule to the POM and able to be amended through an administrative process, rather than a full POM amendment. Potential for the carrying capacity to be managed by the POM and Leases and inclusion of a provision in the Activation Precincts SEPP that requires the carrying capacity set under the POM is not exceeded - this may generate overlapping assessments so needs to be complementary, and also acts as the clear nexus between POM and SEPP (<i>National Parks and Wildlife Act 1974</i> and EP& Act) for the Alpine Sub-Precincts: So the Department cannot approve a development that results in exceeding the carrying capacity established under the <i>National Parks and Wildlife Act 1974</i> - meaning a referral to NPWS is required and evidence provided that demonstrates the application does not exceed carrying capacity. For exempt and complying development the standards would need to match the carrying capacity, i.e. if comply with standards, the Carrying capacity would not be exceeded. Establish a regime for controlling the carrying capacity under the Activation Precincts SEPP. This would enable one approval process (acknowledge that NPWS would be responsible for leases as the land owner) to assess impacts and establish basis for expansion of resort operations within or beyond carrying capacity. Regardless of the option pursued, assuming there is a more performance based measure of carrying capacity, the framework should avoid overlap and doubling up of assessment of carrying capacity as it pertains to minimising impact on the key values of the Kosciuszko National Park. That is, if the proposal is consistent with the carrying capacity, therefore it can/may be taken to be minimising the impacts on the values of the Kosciuszko National Park that are measured within the carrying capacity assessment. Accordingly, the Development Application or Complying development process should account for the increased rigor in establishing the carrying capacity under the <i>National Parks and Wildlife Act 1974</i>. This requires nexus between the <i>National Parks and Wildlife Act 1974</i> and <i>Environmental Planning and Assessment Act 1979</i> for assessing individual Development Applications and/or setting development standards for complying development.












Rank (1-3)	Issue	Relevant legislative requirements	Recommended legislative approach and considerations
	<p>Spatial extent and aesthetic (sense of place, look and feel) and possible expansion of Sub-Precincts</p>	<ul style="list-style-type: none"> As an outcome of the master planning process, there is potential for new Alpine Sub-Precincts or development areas within the Kosciuszko National Park to be identified. The Alpine SEPP boundaries for the ski resort areas are based on the lease boundaries as they existed at the time the SEPP commencement. However, the Alpine SEPP boundaries are not exactly the same as the lease boundaries, there are some minor variations. The SEPP was designed to guide current development, rather than facilitate future development and guide expansion or new greenfield sites. Based on evidence provided by the relevant front-loaded assessments, the Snowy Mountains Special Activation Precinct Master Plan should clearly define proposed expansion the Alpine Sub-Precincts. Due to the boundaries of the Alpine Sub-Precincts area reflecting the existing leases, any expansion of a ski resort area that is outside of the Alpine SEPP currently results in a boundary amendment to the Alpine SEPP. The Snowy Mountains Special Activation Precinct could enable the option of expanding Sub-Precincts areas in the future, provided appropriate governance measures are put in place and evidence/controls are established so there is minimal impacts associated with expansion. Mechanism for expanding the Alpine Sub-Precincts precincts needs to consider POM, Leases and related issues (costs and environmental assessment). There is no consolidated environmental assessment framework to evaluate the expansion of ski areas. Expansion of the Alpine Sub-Precincts boundaries: <ul style="list-style-type: none"> lease implications under <i>National Parks and Wildlife Act 1974</i> amendment to Kosciuszko National Park POM required (lengthy process) under <i>National Parks and Wildlife Act 1974</i> Alpine SEPP was designed to guide current development, rather than facilitate future development and guide expansion or new greenfield sites. 	<ul style="list-style-type: none"> Opportunity to streamline the coordination across the Acts and existing planning instruments to evaluate potential expansion of the Alpine Sub-Precincts. Expansion may be constrained by the sensitivity of existing vegetation and habitats as well as the availability of suitable conservation offsets, including requirements associated with Federal and State threatened species legislation (<i>Environmental Protection and Biodiversity Conservation Act 1999</i> (Cth) and <i>Biodiversity Conservation Act 2016</i>). Consider the alignment of Alpine Sub-Precincts boundaries under the Alpine SEPP, the Kosciuszko National Park POM and the lease boundaries. Develop legislation that enables the option of expanding Sub-Precincts areas in the future, if there are minimal environmental impacts associated with expansion that are acceptable. Include new Alpine Sub-Precincts or development areas as Sub-Precinct within the Snowy Mountains Special Activation Precinct. Standards must provide for protection of environmental and cultural values sufficiently through the master planning process. Options: <ul style="list-style-type: none"> Establish criteria for expansion of the Sub-Precincts in line with the carrying capacity review KPIs/criteria. Would involve establishing a new approval process that links the leasing of Sub-Precincts (<i>National Parks and Wildlife Act 1974</i>), POM (<i>National Parks and Wildlife Act 1974</i>) and Activation Precincts SEPP (<i>Environmental Planning and Assessment Act 1979</i>). Establish firm boundaries for the Snowy Mountains Special Activation Precinct within the Kosciuszko National Park, based on the outcomes of the Snowy Mountains Special Activation Precinct Master Plan. Note: the process to amend these boundaries would not be explicit, but would involve amendments to Leases, Kosciuszko National Park POM and Activation Precincts SEPP. Identify 'investigation areas' for potential future Sub-Precincts expansion or new Sub-Precincts, with associated approval process and collaboration between NPWS and the Department to assess key matters (e.g. consistency with objectives and principles of the master plan) prior to approving amendment through defined process under the SEPP (i.e. approval by Minister Planning and Public Spaces with concurrence from Minister for Environment and Energy).

Rank (1-3)	Issue	Relevant legislative requirements	Recommended legislative approach and considerations
	<p>Making changes to the Act in relation to ski resort areas</p>	<p><i>Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017</i> Schedule 1 Transferred savings, transitional and other provisions—former Schedule 6 to the Act</p> <ul style="list-style-type: none"> • 'Part 8A: <i>Environmental Planning and Assessment Amendment (Ski Resort Areas) Act 2001</i>' of Schedule 1 describes the framework for transitioning to the new legislative framework established for the Alpine Sub-Precincts (Ski Resort Areas). • Relevant elements of Part 8A include: <ul style="list-style-type: none"> – Allows the Regulations to make provision for conversion of existing approvals (prior commencement of the Part) to Part 4 development consents (Clause 32B). – Allows the Regulations to modify provisions of the <i>Environmental Planning and Assessment Act 1979</i> in relation to functions of persons or authorities in relation to existing Part 5 approvals converted under this Part, except that the Minister for Planning and Public Spaces is the consent authority in all cases (Clause 32C) – the Minister is the consent authority for all Development Applications relating to land within a ski resort area (Clause 32C(2)(a)) • The Minister for Planning and Public Spaces can make a regulation may be made pursuant to this Part after consultation with the Minister for the Environment (Clause 32C(2)(b)) • The Minister for Planning and Public Spaces can make a State environmental planning policy or other environmental planning instrument for a ski resort area after consultation with the Minister for the Environment (Clause 32C(2)(c) and (d)) • If the Minister for Planning and Public Spaces recommends that a regulation, State environmental planning policy or other environmental planning instrument be made, against the advice of the Minister for the Environment, the Minister is to publish the reasons for making the recommendation (Clause 32C(2)) • In providing a response to the Minister for Planning and Public Spaces, the Minister for the Environment must take into account whether the proposed regulation, policy or instrument (Clause 32C(3)): <ul style="list-style-type: none"> – promotes the objects of the National Parks and Wildlife Act 1974, and – is consistent with the plan of management under that Act for the land concerned. • Chapter 7 of the Local Government Act 1993 does not apply to or in respect of a ski resort area and a regulation made for the purposes of this clause may modify the application of any provision of Chapter 7 of the Local Government Act 1993 in respect of a ski resort area (Clause 32D). • A regulation made pursuant to this Schedule cannot have the effect of making any provision prevail over the National Parks and Wildlife Act 1974 (Clause 32E). 	<ul style="list-style-type: none"> • The provisions of Part 8A must be considered as part of drafting the new legislative framework and confirming the mechanisms to streamline approval pathways in the Sub-Precincts (referred to as Ski Resort Areas in <i>Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017</i>). • The implications of these clauses require further analysis as part of preparing the Planning Recommendations Report.
	<p>Development affecting Crown land</p>	<ul style="list-style-type: none"> • Crown Land Parcels (Reserves and Lots/Deposited Plans) are identified in the Snowy Mountains Special Activation Precinct investigation area. In summary there are 105 parcels of Crown land within the Snowy Mountains Special Activation Precinct investigation area with a range of purposes. These lands are currently under the management of the Minister for Water, Property and Housing, SMRC and Local Land Services (Crown Lands Ref: DOC20/184969). 	<ul style="list-style-type: none"> • Development on Crown Land would be subject to the Activation Precincts SEPP development approval pathways, including complying development or Development Application (Note: refer to Section 6.4 for description of proposed Activated Development Application process). • There are two key issues for Crown Lands in this regard: <ol style="list-style-type: none"> 1) How the parcels of Crown Estate throughout the Snowy Mountains Special Activation Precinct investigation area (which operate under the Crown Lands Management Act 2016 and Roads Act 1993) will be indicated in the Master Plan 2) How the Activation Precincts SEPP will front load approval pathways for Crown land and roads impacted by planning and development proposals. • Recommend consultation with the Department-Crown Lands to discuss planning approval pathways and next steps.
	<p>Land classification</p>	<ul style="list-style-type: none"> • Classification and reclassification of council land: Under the Local Government Act all council owned land (and potentially crown land where Council is the crown land manager) needs to be classified as either community or operational. Council cannot sell community land and there are other restrictions in how it can be used. The only mechanisms to change the classification of council owned land is through an LEP or council resolution within 3 months of acquiring land. A SEPP cannot reclassify council land. 	<ul style="list-style-type: none"> • As it is likely there will be council owned land within sub precinct areas (or could be following redevelopment) the LEP would still need to apply in these areas at least to the extent possible to enable council to reclassify its land. • Often a reclassification might be accompanied by a zoning change and so where the zone has been set by the Activation Precincts SEPP there needs to be a process/mechanism available to change this where it might apply to SMRC land that is being reclassified.


Rank (1-3)	Issue	Relevant legislative requirements	Recommended legislative approach and considerations
	Application of Local Land Services Act 2013	<ul style="list-style-type: none"> The Local Land Services Act 2013 (LLS Act) categorises land to determine native vegetation management options for landholders. The LLS Act applies to the Snowy Mountains Special Activation Precinct, apart from land within the Kosciuszko National Park (Section 60A(b)), and would continue to apply under the revised legislative framework. For clearing to take place on regulated land under the LLS Act, guidance is provided by the Land Management (Native Vegetation) Code 2018. The LLS Act describes the situations where clearing native vegetation is authorised or approval can be sought from the Local Land Services for such clearing. The categories are as follows: <ul style="list-style-type: none"> Category 1 – exempt land – native vegetation clearing is allowed without approval from Local Land Services. Category 2 – regulated land – authorisation may be required from Local Land Services for native vegetation clearing. This may include clearing under the Land Management (Native Vegetation) Code 2018. Landholders also have a range of allowable clearing activities available to them for use without approval from Local Land Services. Category 2 – vulnerable regulated land is designated as steep or highly erodible lands, protected riparian land or special category land. Use of the Land Management (Native Vegetation) Code 2018 and allowable clearing activities are restricted in these areas. Category 2 – sensitive regulated land is designated as environmentally sensitive. Clearing under the Land Management (Native Vegetation) Code 2018 is not permitted in these areas, although there is a limited list of allowable clearing activities available. Excluded land is managed outside the land management framework. Other clearing controls may exist in these areas. Based on mapping (available on NSW Planning Portal), the Snowy Mountains Special Activation Precinct investigation area is impacted by Exempt Land, Vulnerable Regulated Land, Sensitive Regulated land. In addition to these categories, land within the Snowy Mountains Special Activation Precinct investigation area is mapped as being within the Werriwa and Monaro Advisory Layer: which shows the potential locations of two grassy woodlands (listed as critically endangered ecological communities (CEECs) on 28 June 2019 under the Biodiversity Conservation Act 2016): <ul style="list-style-type: none"> Monaro Tableland Cool Temperate Grassy Woodland in the South Eastern Highlands Bioregion Werriwa Tablelands Cool Temperate Grassy Woodland in the South Eastern Highlands and South East Corner Bioregions. To utilise the Land Management (Native Vegetation) Code to undertake land management activities, verification is required as to whether a particular patch of native vegetation shown on the Advisory Layer is part of the CEECs. This requires a site assessment by suitably qualified Local Land Services officers. 	<ul style="list-style-type: none"> The framework under the Code would continue to apply to clearing of vegetation in areas outside the Kosciuszko National Park. Where required (where clearing is not otherwise authorised by the LLS Act in accordance with the Code), approval from the Local Land Services would only be required for Category 2: Regulated land and only where a development consent is not required. This provision may require that clearing in support of complying development may require separate approval from the Local Land Services for such clearing. Further analysis of the implications of the LLS Act and supporting Code is required as part of a detailed statutory review.
	Application of ISEPP	<ul style="list-style-type: none"> ISEPP provides that certain works are permitted without development consent within the Snowy Mountains Special Activation Precinct. Under Clause 65 of ISEPP, this includes development for any purpose on land reserved under the <i>National Parks and Wildlife Act 1974</i>. The Department and NPWS experience complexities in applying ISEPP to proposed infrastructure works within the Kosciuszko National Park. There are different responsibilities within each of the Alpine Sub-Precincts areas for delivery and management of infrastructure, and consequently a range of approval requirements under ISEPP across the Alpine Sub-Precincts. Lease for Thredbo requires Thredbo operator to deliver infrastructure upgrades, but do not get benefit of ISEPP (as Thredbo is not public authority). Perisher and other Alpine Sub-Precincts infrastructure is delivered by NPWS, so NPWS can deliver under Part 5 in accordance with ISEPP. In accordance with Clause 8(1) of the ISEPP, it prevails over the Alpine SEPP in the event of an inconsistency. 	<ul style="list-style-type: none"> It is recommended that ISEPP remain applicable to works within the Snowy Mountains Special Activation Precinct, but that specific provisions be 'turned off' via the relevant SEPP where there may be a potential inconsistency. A detailed clause by clause review of ISEPP is required to confirm its application to the Snowy Mountains Special Activation Precinct.

Rank (1-3)	Issue	Relevant legislative requirements	Recommended legislative approach and considerations
	<p>Commonwealth standards for Equitable access</p>	<ul style="list-style-type: none"> The Commonwealth Disability (Access to Premises—Buildings) Standards 2010 aim to ensure that dignified, equitable, cost-effective and reasonably achievable access to buildings, and facilities and services within buildings, is provided for people with a disability. The standards apply to the following developments: <ul style="list-style-type: none"> new boarding houses or tourist accommodation new part, and any affected part, of existing tourist accommodation an existing public transport building that is still in use. The Codes SEPP includes a requirement for exempt and complying development to comply with the Commonwealth Disability Standards. In light of the current physical constraints in the Alpine Sub-Precincts and the age of current building stock, solutions to meet the Commonwealth Standard are likely to require performance solutions. 	<ul style="list-style-type: none"> To apply complying development to existing buildings in the Alpine Sub-Precincts, the Commonwealth standard may need to be turned off or relevant standards included in the Delivery Plans. More detailed statutory review and consideration of the potential for existing building stock within the Alpine Sub-Precincts is required in order to confirm the application of Commonwealth Disability Standards in the Alpine Sub-Precincts. Turning off the accessibility standards, creates a risk that buildings within the Snowy Mountains Special Activation Precinct may not have adequate provision of facilities for both visitors and for elite sportspeople (e.g. athletes competing or training in Paralympic events).
	<p>Application of KHP SEPP and implications for exempt and complying development</p>	<ul style="list-style-type: none"> The State Environmental Planning Policy (Koala Habitat Protection) 2019 (KHP SEPP) applies to the entire Snowy Monaro LGA (Central and Southern Tablelands Koala Management area), but does not apply to "land dedicated or reserved under the National Parks and Wildlife Act 1974", i.e. Kosciuszko National Park. Part 2 of the SEPP outlines development controls <ul style="list-style-type: none"> Section 8 – Assumption that there is no approved (by Planning Secretary) Koala Management Plan for the Snowy Mountains Special Activation Precinct investigation area. A draft KPOM was developed for the Cooma Monaro Shire (i.e. outside the study area and prior to council amalgamation) and shows the koala population in Cooma Monaro occurs to the east of Cooma (https://www.snowymonaro.nsw.gov.au/DocumentCenter/View/5537). Section 9 – doesn't apply as the area isn't identified on the Koala Development Application Map (pink mapping) <p><i>"Section 10: Development assessment process—other land</i></p> <p><i>A council is not prevented from granting consent to a Development Application for consent to carry out development on land if—</i></p> <p><i>the land—</i></p> <p><i>is not identified on the Koala Development Application Map, or</i></p> <p><i>(ii) does not have an approved koala plan of management applying to the land, or</i></p> <p><i>the council is satisfied that the land is not core koala habitat."</i></p> 	<ul style="list-style-type: none"> Potential constraint to development should Koala habitat be identified in areas for development. Although the study area isn't mapped as Koala Development Application Map (highly suitable habitat likely occupied by Koalas), much of the study area is mapped as Site Investigation area for KPOM (in blue), meaning that it is identified as land councils are to focus their survey efforts on to identify core koala habitat. The vegetation communities within the study area include a number of preferred feed trees (including Snow Gum, White Sally, Candlebark etc). However, likelihood of Koalas in the study area is modelled as low (OEH, 2014). Clause 8, 9 and 10 of KHP SEPP only applies to Development Applications. Whereas exempt or complying development is not. Under complying development process for areas within the SEPP that are mapped as blue investigation areas, then there is likely no provision for assessing whether the land is core habitat. To support a streamlined planning approval pathway, confirmation is required that the ecological investigation includes consideration of whether there is core Koala habitat in the Snowy Mountains Special Activation Precinct investigation area.

Rank (1-3)	Issue	Relevant legislative requirements	Recommended legislative approach and considerations
	Respect the revised regulatory and governance framework for Alpine Sub-Precincts established in 2001	<ul style="list-style-type: none"> The new legislative framework for Snowy Mountains Special Activation Precinct must respect the original intention/rationale that informed the current legislative framework. Key reports include: <ul style="list-style-type: none"> Coroner's Report (June 2000) - The NSW government commissioned Coroner Derrick Hand to carry out an inquest into the deaths arising from the landslide Walker Report (December 2000) - Bret Walker SC was engaged to consider changes to roles and responsibilities as a result of the landslide Harley Report (2014) - Review of consent authority functions in the NSW Alpine Resorts (cabinet in confidence). In 2001, the NSW Government determined: <ul style="list-style-type: none"> Consent authority functions in the alpine resorts should be transferred from the Minister for Environment to the Minister for Planning, meaning building regulation and environmental assessment is now the responsibility of the Department of Planning, Industry and Environment (the Department) rather than the National Parks and Wildlife Service (NPWS) which held the role up until 2002. A State Environmental Planning Policy should be prepared to regulate development in the alpine resorts. The alpine resorts were retained within Kosciuszko National Park. Alpine Way and Kosciuszko Road were excised from Kosciuszko National Park, transferring responsibility to NSW Roads and Traffic Authority (now Transport NSW). The NPWS retained a land management role, including administering leases in the alpine resorts and for preparation and implementation of the Plan of Management. Key requirements of the Alpine SEPP include: <ul style="list-style-type: none"> All development to be subject to the assessment of environmental impacts to protect the unique alpine environment Geotechnical and land stability issues associated with construction in steep alpine environments to be rigorously assessed Development proposals to be referred to the NPWS for comment in accordance with <i>National Parks and Wildlife Act 1974</i>. 	<ul style="list-style-type: none"> Front loading sufficient studies to support the new framework is an important element to streamline the approval pathways while respecting the current framework for the Alpine Sub-Precincts. Potential amendments to the Alpine SEPP need to consider the unique land uses covered within the Alpine Resorts and determine the most appropriate streamlined planning approval pathway (i.e. exempt, complying or Development Application). This also relies on the level to which the technical assessments are able to front-load the requisite assessment required to have confidence in the streamlined pathway (for example, assessment of the impacts and construction requirements for ski-lifts or snow making). It is important to carrying forward the important elements of the response to the Thredbo landslides. Changes made to protect safety of people in the Alpine Sub-Precincts must be the respected. Key provisions from the current Alpine SEPP to manage Geotech and personal safety, such as described in Clause 2 (Aim and objectives of Policy) of Alpine SEPP, which states: <p><i>"(2) The objectives of this Policy are as follows-</i></p> <ul style="list-style-type: none"> <i>...(c) to minimise the risk to the community of exposure to environmental hazards, particularly geotechnical hazards, bush fire and flooding, by generally requiring development consent on land to which this Policy applies".</i> Clause 14 (Matters to be considered by consent authority) of the Alpine SEPP provides a set of considerations for development in the Alpine Sub-Precincts, which should be considered in drafting provisions controlling development under the Activation Precincts SEPP. Clause 14 states: <p><i>"(1) In determining a Development Application that relates to land to which this Policy applies, the consent authority must take into consideration any of the following matters that are of relevance to the proposed development—</i></p> <ul style="list-style-type: none"> <i>...(b) the extent to which the development will achieve an appropriate balance between the conservation of the natural environment and any measures to mitigate environmental hazards (including geotechnical hazards, bush fires and flooding),</i> <i>...(f) the Geotechnical Policy—Kosciuszko Alpine Resorts (2003, Department of Infrastructure, Planning and Natural Resources) and any measures proposed to address any geotechnical issues arising in relation to the development</i> <i>(g) if earthworks or excavation works are proposed—any sedimentation and erosion control measures proposed to mitigate any adverse impacts associated with those works,</i> <i>(h) if stormwater drainage works are proposed—any measures proposed to mitigate any adverse impacts associated with those works,"</i>
	Snowy Mountains Special Activation Precinct investigation area boundary	<ul style="list-style-type: none"> Mount Selwyn is not included in the Snowy Mountains Special Activation Precinct investigation area, but will remain land to which the Alpine SEPP applies. 	<ul style="list-style-type: none"> Mount Selwyn will remain a Sub-Precinct under the Alpine SEPP. Mount Selwyn is subject to current Development Application. The outcomes of the current Development Application process would be integrated into the Master Plan and Delivery Plans to guide future development at the site. Subject to detailed review, Mount Selwyn would then be able to benefit from a streamlined planning approval pathway (subject to obtaining an Activation Precinct Certificate) consistent with other Alpine Sub-Precincts. If integration of Mount Selwyn is not possible, the Alpine Sub-Precinct should be excluded from the Master Plan and a Delivery Plan not prepared. Future development would be subject to a traditional Development Application pathway (unless meeting the relevant criteria for exempt or complying development).
	Legislation to encourage year-round activity.	<ul style="list-style-type: none"> There is provision in the Alpine SEPP for summer activation, however the SEPP is geared towards winter activities. The Alpine SEPP objectives do not speak to year round activities, for example, clause 2(b) of the Alpine SEPP: <p><i>"(b) to put in place planning controls that contribute to and facilitate the carrying out of ski resort development in Kosciuszko National Park that is ecologically sustainable in recognition of the fact that this development is of State and regional significance".</i></p> 	<ul style="list-style-type: none"> The amendments to the Alpine SEPP will include revision of the purpose statements and encouraging summer activation through appropriate land use table and development standards. Potential for managing summer and winter visitation and activities through slightly different planning controls (standards). For example events and cycling infrastructure may be only utilised during summer seasons where the climatic conditions are different, requiring different management.
	No planning guidelines to underpin the Alpine SEPP	<ul style="list-style-type: none"> There are no design guidelines that support the Alpine SEPP and provide more detail for applicants, such as a Development Control Plan, which would be utilised in most other areas of the state to provide additional guidance for proponents. Preparation of a Draft DCP was commenced in 2019 to guide development within the Alpine Sub-Precincts, but was not completed 	<ul style="list-style-type: none"> Opportunity to provide planning guidelines that provide more detail for applicants. The partially completed draft <i>Kosciuszko National Park Alpine Resorts Development Control Plan</i> will be used to inform the development of the Delivery Plan(s) for the Snowy Mountains Special Activation Precinct.
	Built heritage assets	<ul style="list-style-type: none"> Protection of heritage assets where necessary. Older building stock may have more heritage value than listed under Alpine SEPP. 	<ul style="list-style-type: none"> Amendments to the Alpine SEPP represent an opportunity to protect heritage assets through identification of buildings for heritage values. Provisions under the Alpine SEPP and Delivery Plans need to balance heritage protection with the need for improvements to buildings to address safety standards or structural integrity (e.g. fire safety, bushfire, energy efficiency and the like) Need to consider the vulnerability of the asset, the consequence of damage or loss and the impact of upgrading the construction to modern construction and bushfire mitigation standards

Rank (1-3)	Issue	Relevant legislative requirements	Recommended legislative approach and considerations
	<p>Application of the Biosecurity Act 2015</p>	<ul style="list-style-type: none"> The Biosecurity Act 2015 provides for <i>the prevention, elimination and minimisation of biosecurity risks posed by biosecurity matter, dealing with biosecurity matter, carriers and potential carriers, and other activities that involve biosecurity matter, carriers or potential carriers</i> (Section 3(1)). The Biosecurity Act applies to the entire State and controls actions that have potential to impact on biosecurity. A range of tools are included under the Act, including: <ul style="list-style-type: none"> Prohibited matter to control high risk pests Emergency powers General Biosecurity Duty that provides that people who deal with biosecurity matter or a carrier and who have knowledge of the biosecurity risks posed are to take reasonable steps to manage those risks Other instruments/tools including: Biosecurity Zones, Control Orders, Registration, Biosecurity Certificates, Biosecurity Directions and Permits. Local Land Services also prepares Weed management Plans aligned with the Biosecurity Act. Based on maps designed to be an indicative representation of the Biosecurity Zones listed in the Biosecurity Regulation 20178, the following Biosecurity Zones apply to the Snowy Mountains Special Activation Precinct: <ul style="list-style-type: none"> Alligator Weed Biosecurity Zone Bitou Bush Biosecurity Zone Grapevine Phylloxera Biosecurity Zone Potato Biosecurity Zone Water Hyacinth Biosecurity Zone. <p>https://www.dpi.nsw.gov.au/biosecurity/managing-biosecurity/legislation/factsheets</p>	<ul style="list-style-type: none"> Considerations and potential conditions to be included in the Delivery Plans include (but not limited to): <ul style="list-style-type: none"> Buffer zones Wash down facilities Designated parking areas Location to major potable water supply storages and watercourses – poultry production Dumping and burying rubbish on site. To support streamline development approval within the Snowy Mountains Special Activation Precinct, it is appropriate that Regional Growth NSW Development Corporation business concierge service seek to assist landowners and proponents with navigating the requirements in accordance with the Biosecurity Act and relevant guidelines. Considerations include: <ul style="list-style-type: none"> Management of farms, horticulture and production within the Snowy Mountains Special Activation Precinct may be subject to restrictions or requirements under the suite of plans and tools under the Biosecurity Act. Consideration of Biosecurity as part of the planning process should be carried out in a manner consistent with the Biosecurity Act and the guidelines published by Department of Primary Industries (October 2020): https://www.dpi.nsw.gov.au/_data/assets/pdf_file/0018/1271241/managing-biosecurity-risks-in-land-use-planning-and-development-guide.pdf <i>Agricultural land uses, whether or not they require development consent, are still subject to provisions under the Biosecurity Act 2015 and Biosecurity Regulation 2017. Proponents of these land uses should assess whether their activities and operations comply with their general biosecurity duty or other requirements of the Act.</i>
	<p>Simplified approval pathway</p>	<ul style="list-style-type: none"> Need to be clear as possible for the new framework and to illustrate clear linkages to existing and other legislation and Environmental Planning Instruments. 	<ul style="list-style-type: none"> Opportunity to present a clear, transparent and streamlined pathway for approval of development. Guidelines should include guidance regarding the preferred governance structure for the Alpine Sub-Precincts and for consultation requirements with other agencies throughout the Snowy Mountains Special Activation Precinct, including the obligations under leases (including operational and environmental management and tenure requirements). It is noted that Regional Growth NSW Development Corporation would provide a concierge service that would augment these guidelines. Potential to develop a 'Practitioners and Proponents Guideline' to describe the funnelling of development types and locations to existing environmental planning instruments or current legislation approval pathways and matters for consideration.
	<p>Collaboration</p>	<ul style="list-style-type: none"> Currently, there is very little collaboration between SMRC and the Department - Alpine Team and NPWS to guide development in the Snowy Mountains Special Activation Precinct investigation area. 	<ul style="list-style-type: none"> The Snowy Mountains Special Activation Precinct represents a significant opportunity for greater collaboration across the agencies. The legislative framework is supported by a governance structure that establishes partnership relationship between the key Agencies (SMRC, the Department, NPWS, Regional Growth NSW Development Corporation) facilitated by Regional Growth NSW Development Corporation to generate discussion and sharing of intelligence and development strategies. Collaboration between SMRC and the Department can support Development Application processes and establish consistent approach to development assessment across the region. Particularly where cross boundary issues are prevalent, such as Crackenback, roads, waste, accommodation (STRA and permanent etc), visitor activities.
	<p>Alpine SEPP allows for a Development Application to be granted even if the application has not established that the development is consistent with the Kosciuszko National Park POM</p>	<ul style="list-style-type: none"> Clause 18 of the Alpine SEPP stipulates that consent to a Development Application may be granted under the SEPP even if the application has not established that the development is consistent with the Kosciuszko National Park POM . Clause 18 gives the Department the ability to proceed to assess a Development Application under Part 4 and approve a Development Application that might then require a POM amendment. According to the Department, to date all applications have been in accordance with the POM. 	<ul style="list-style-type: none"> The proposed approach is to retain Clause 18 in the Alpine SEPP, but to integrate greater clarity and alignment between the development approval process and the land management role (aim to protect significant cultural and environmental values in the Kosciuszko National Park) through the governance structure, via collaboration during the Activation Precinct Certificate stage.

⁸ <https://www.dpi.nsw.gov.au/about-us/legislation/list/biosecurity-act-2015>

Rank (1-3)	Issue	Relevant legislative requirements	Recommended legislative approach and considerations
	<p>Interface between the Kosciuszko National Park POM and the Alpine SEPP</p>	<ul style="list-style-type: none"> Whilst the Kosciuszko National Park POM is delegated legislation, it is not as enforceable as the primary legislation such as the <i>Environmental Planning and Assessment Act 1979</i> and the <i>National Parks and Wildlife Act 1974</i>. As a result, NPWS have indicated that once development has been approved and implemented, the Kosciuszko National Park POM is not a good means to enforce declines in environmental or social standards. The Kosciuszko National Park is a land management tool for use by NPWS to manage use of land and activities within the Kosciuszko National Park and minimise adverse impacts on the environmental and social values associated with the Kosciuszko National Park. 	<ul style="list-style-type: none"> Perceived overlap between Kosciuszko National Park POM and the Alpine SEPP - causes confusion for applicants - new framework represents an opportunity to make the role of Kosciuszko National Park POM (i.e.: Land Management) vs SEPP (development control and approval) clear. The Kosciuszko National Park is an important tool (under <i>National Parks and Wildlife Act 1974</i>) for NPWS as the land manager, and should be retained as part of the future suite of instruments applicable to Kosciuszko National Park (including the Alpine Sub-Precincts). The legislative framework should interface with the POM, rather than overlapping or replacing. To investigate mechanisms for greater enforceability of performance standards or ongoing environmental management as part of the legislative framework (environmental planning instruments, planning approvals and conditions).

