



CONSERVATION AGREEMENT

between the

MINISTER FOR THE ENVIRONMENT AND HERITAGE

on behalf of the

COMMONWEALTH OF AUSTRALIA

and

BULLER SKI LIFTS PTY LTD

ABN 20 006 242 066

in relation to the

**PROTECTION AND CONSERVATION OF BIODIVERSITY UNDER THE
*ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999***

in relation to the

rehabilitation and management of the Area at the Mount Buller Ski Resort

VICTORIA

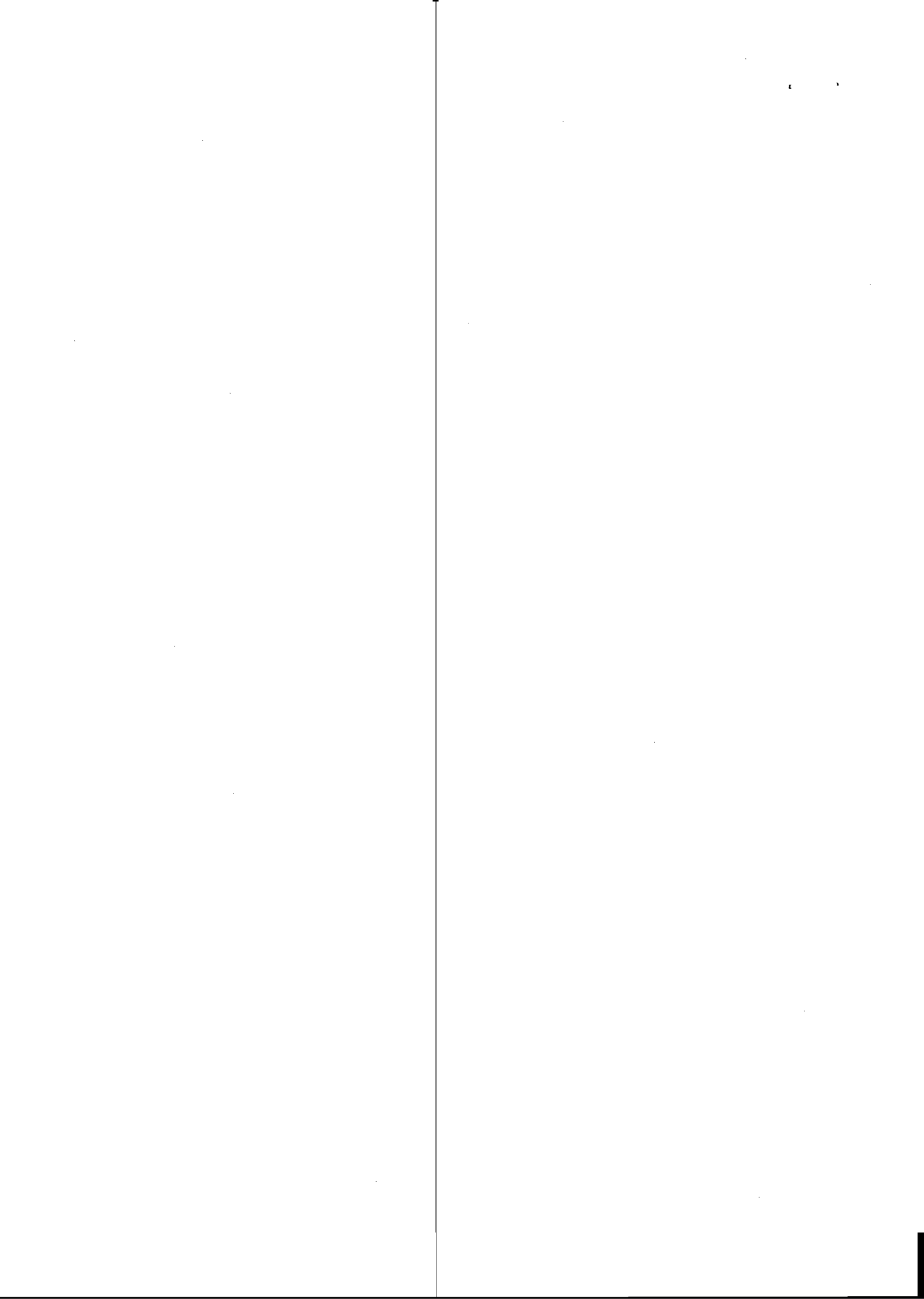


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THIS CONSERVATION AGREEMENT is made on day of 2005.

PARTIES

This is an agreement between:

Ian Campbell, Minister for the Environment and Heritage on behalf of the Commonwealth of Australia, c/- the Department of the Environment and Heritage, John Gorton Building, King Edward Terrace, Parkes in the Australian Capital Territory (“the Commonwealth”)

and

Buller Ski Lifts Pty Ltd (ABN 20 006 242 066), 344 Mansfield Street, Thornbury, in the State of Victoria (“BSL”).

LOCATION

This Agreement relates to the protection and conservation of the habitat of the *Burramys parvus* in the Area at Mount Buller where BSL operates ski and alpine tourism ventures.

A Map of the area that this Agreement relates to is attached at Schedule 1 (the “Area”).

PURPOSE

- A. Subsection 305(1) of the EPBC Act provides that the Minister may, on behalf of the Commonwealth, enter into an agreement for the protection and conservation of biodiversity in the Australian jurisdiction.
- B. The Minister and BSL have agreed that BSL should provide rehabilitation and restitution of damage to the habitat of *Burramys parvus* in the Area at Mount Buller caused by the Activities of BSL.
- C. The Minister is satisfied that management of the Area in accordance with this Agreement will result in a net benefit to the protection and conservation of the *Burramys parvus* and is not inconsistent with the principles under the EPBC Act.
- D. This Agreement has the effect of binding the Commonwealth and BSL, including any person that is a successor to the whole or any part of any interest that BSL has in the Area or any part of the Area when this Agreement is entered into.
- E. The Minister and BSL acknowledge and agree that, subject to BSL entering into this Agreement and completing the works in accordance with this Agreement, the Minister will not pursue further action against BSL in relation to the Activities.

OPERATIVE PART

1. Interpretation

1.1 In this Agreement, unless a contrary intention appears:

Activities means slashing of native vegetation at the Outer Edge Ski Run and clearance of batters and road works at part of the return trail in the vicinity of Robins Run and Powder Keg .

Area means the ski area as defined by Comprehensive Development Zone Two of the Mt Buller and Mt Stirling Alpine Resorts Planning Scheme and at Schedule 1.

BSL means Buller Ski Lifts Pty Ltd and any person that is a successor to the whole or any part of any interest that Buller Ski Lifts Pty Ltd has in the Area or any part of the Area.

ARMB means the Alpine Resort Management Board.

Burramys parvus means the Mountain Pygmy Possum which is listed as an endangered species under the EPBC Act.

DEH means the Australian Government Department of the Environment & Heritage.

DSE means the Department of Sustainability and Environment (Victoria).

EPBC Act means the *Environment Protection and Biodiversity Conservation Act 1999* and any statutory modification, substitution or re-enactment of that legislation or legislative provision.

Minister means the Minister administering the EPBC Act or a delegate of the Minister under the EPBC Act.

Measures for Protection and Conservation means the “Measures for Protection and Conservation of *Burramys parvus* (the Mountain Pygmy Possum) within the Mount Buller Resort Victoria” dated December 2005 a copy of which is contained in Schedule 2 to this Agreement.

Recovery Plan means the “Recovery Plan for the Mountain Pygmy-Possum *Burramys parvus* on Mt Buller, Victoria” as agreed between BSL, ARMB and the DSE from time to time.

Writing means any representation of words, figures or symbols capable of being rendered in a visible form.

- 1.2 In this Agreement, unless the contrary intention appears:
- (a) words importing a gender include any other gender;
 - (b) words in the singular include the plural and words in the plural include the singular;
 - (c) clause headings are inserted for convenient reference only and have no effect in limiting or extending the language of provisions to which they refer;
 - (d) words importing persons include a partnership and a body whether corporate or otherwise;
 - (e) all references to dollars are to Australian dollars;
 - (f) reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Commonwealth as amended or replaced from time to time;
 - (g) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
 - (h) reference to an Item is to an Item in the Measures for Protection and Conservation;
 - (i) any Schedule or any attachments form part of this Agreement;
 - (j) where any conflict arises between the terms and conditions contained in the clauses of this Agreement and any part of a Schedule or attachment (if any), the terms and conditions of the clauses prevail;
 - (k) reference to a Schedule or an attachment is a reference to a Schedule or an attachment to this Agreement, including as amended or replaced from time to time.

1.3 This Agreement records the entire agreement in relation to its subject matter.

1.4 Any reading down or severance of a particular provision does not affect the other provisions of this Agreement.

2. Commencement and Duration

2.1 This Agreement commences on the date on which it is made and continues for five years after its commencement (unless terminated in accordance with the EPBC Act or this Agreement).

3. Protection and Conservation of the Area

3.1 The Area is to be managed in accordance with the Measures for Protection and Conservation.

- 3.2 The Commonwealth, may but is not obliged to, carry out any work to remedy a breach of this Agreement.

4. Alteration to the Measures for Protection and Conservation

- 4.1 This Agreement including the Measures for Protection and Conservation may be changed by written agreement between the Commonwealth and BSL or otherwise in accordance with the EPBC Act.

5. Notification of Change of Control

- 5.1 BSL shall notify the Minister of any agreement entered to effect any change of control of the Area, or any portion of the Area. That notice shall detail the name and address of all parties to the agreement and the nature of the change of control. BSL shall ensure that all other parties to the agreement are informed of this Agreement and of the effect of section 307 of the EPBC Act.
- 5.2 Nothing in this Agreement shall render a person liable for any breach of its terms committed after that person ceases to hold any interest in the Area or any part of the Area.

6. Taxes, Duties and Government Charges

- 6.1 All relevant taxes, duties and government charges imposed or levied in Australia, now or in the future, in connection with this Agreement will be borne by BSL.

7. Access to the Area

- 7.1 BSL grants the Minister, and any persons authorised in writing by the Minister, reasonable access to the Area for the purpose of:
- (a) monitoring compliance with this Agreement;
 - (b) conducting any works which are required to remedy any breach of this Agreement and /or to protect and conserve *Burramys parvus*; and
 - (c) obtaining information necessary to provide advice in relation to the implementation of the Agreement.
- 7.2 The Minister will ensure that all laws, permits, licences and other authorisations are obtained and complied with for the purposes of carrying out any works specified in sub-clause 7.1. BSL agrees to do all things reasonably necessary to assist the Minister in obtaining such permits, licences or authorisations.

8 Assignment and novation

- 8.1 BSL must not novate its obligations, and must not assign its rights, under this Agreement, without obtaining prior approval in writing from the Minister.

9. Dispute resolution

- 9.1 Any dispute arising during the course of this Agreement will be dealt with as follows:

- (a) first, the party claiming that there is a dispute will send to the other a notice setting out the nature of the dispute ("Notice");
- (b) secondly, the parties will try to resolve the dispute by direct negotiation;
- (c) thirdly, the parties have 10 business days from the date of the Notice to reach a resolution or to agree that the dispute will be submitted to mediation or some other form of alternative dispute resolution procedure;
- (d) fourthly, the parties will try to resolve the dispute by arbitration; and
- (e) lastly, if:
 - there is no resolution or agreement; or
 - there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within 15 business days of the submission, or such extended time as the parties may agree in writing before the expiration of the 15 business days,then, either party may commence legal proceedings.

- 9.2 Despite the existence of a dispute, the parties will (unless requested by either party in writing not to do so) continue to perform the Agreement in relation to any matters that are not in dispute.

- 9.3 This clause does not preclude either party from commencing legal proceedings for urgent interlocutory relief or otherwise under the EPBC Act.

10. Termination or variation with agreement

- 10.1 This Agreement may be terminated or varied in the manner specified by the EPBC Act or otherwise as agreed by the Commonwealth and BSL.

11. Termination or variation by the Minister

11.1 If the Minister is satisfied that this Agreement is not capable of achieving its purpose, the Minister may, in accordance with subsection 308(4) of the EPBC Act, without the consent of BSL:

- (a) terminate the Agreement; or,
- (b) vary the Agreement in any way the Minister thinks necessary to ensure that it becomes capable of achieving its purpose.

11.2 If the Minister under the preceding subclause varies the Agreement, BSL may, by notice in writing to the Minister, terminate the Agreement.

11.3 The rights of the Minister under this Agreement are in addition to any rights the Minister has under the EPBC Act.

12. Negation of employment, partnership and agency

12.1 BSL agrees not to represent itself, and to ensure that its officers, employees, agents and subcontractors do not represent themselves, as being an officer, employee, partner or agent of the Commonwealth, or as otherwise able to bind or represent the Commonwealth.

12.2 BSL is not by virtue of this Agreement an officer, employee, partner or agent of the Commonwealth, nor does BSL have any power or authority to bind or represent the Commonwealth.

13. Waiver

13.1 If a party does not exercise (or delays in exercising) any of its rights, that failure or delay does not operate as a waiver of those rights.

13.2 Whole or partial exercise by a party of any of its rights does not prevent the further exercise of any right.

In this clause 'rights' means rights or remedies provided by this Agreement or at law.

14. Costs

14.1 Each Party will bear their own costs of and in relation to this Agreement (including all taxes, levies etc. for which the Party may be liable) unless otherwise provided for in this Agreement.

15. Notification of matters adversely affecting environmental values

15.1 BSL will:

- (a) advise the Minister of any proposed action or even including actions proposed or undertaken by a third party which could adversely affect the environmental values under protection, conservation or management by this Agreement;
- (b) respond promptly to all communications from the Minister relating to the Agreement.

16. Notices

16.1 Any notice, request or other communication to be given under this Agreement is to be in writing and dealt with as follows:

- (a) if given by BSL to the Commonwealth – marked for the attention of EPBC Compliance and Audit Section at The Department of the Environment and Heritage GPO Box 787 Canberra ACT 2606 or as otherwise notified by the Commonwealth; or

- (b) if given by the Commonwealth to BSL – sent to the registered address of BSL.

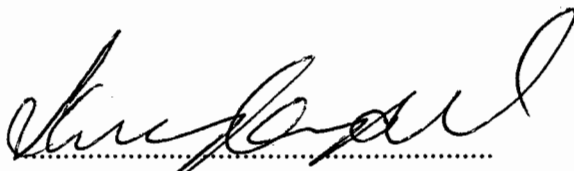
16.2 Any notice, request or other communication is to be delivered by hand, sent by pre-paid post or transmitted electronically, and if it is sent or transmitted electronically a copy is to be sent to the addressee by pre-paid post.

16.3 A notice, request or other communication will be deemed to be received:

- (a) if delivered by hand, upon delivery;
- (b) if sent by pre-paid ordinary post within Australia, to a place within the mainland of Australia, upon the expiration of 20 business days after the date on which it was sent; and
- (c) if transmitted electronically, upon receipt by the sender of an acknowledgment that the communication has been properly transmitted to the recipient.

SIGNED AS AN AGREEMENT

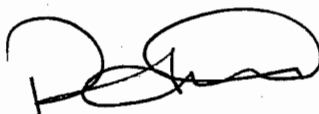
SIGNED for and on behalf of the
COMMONWEALTH of AUSTRALIA
by


.....
(signature)

The Hon Senator Ian Campbell
Minister for the Environment and Heritage


Date:

In the Presence of Witness:


.....
(signature)

Peta Leane
.....
(name)

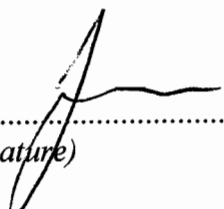
SIGNED for and on behalf of
BULLER SKI LIFTS PTY LTD
by


.....
(signature)

Mr Nick Whitby
Chief Executive Officer

Date: 18/1/06

In the Presence of Witness:


.....
(signature)

RAYMOND CLARKE.
.....
(name)

SCHEDULE 1: Map of the area

ALPINE RESORTS PLANNING SCHEME - LOCAL PROVISION



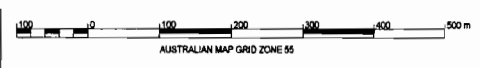
Mount Buller
Alpine Village

Mount Buller
Alpine Resort

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This map should be read in conjunction with additional Planning Overlay Maps if applicable as indicated on the PDCC 10 sheets.

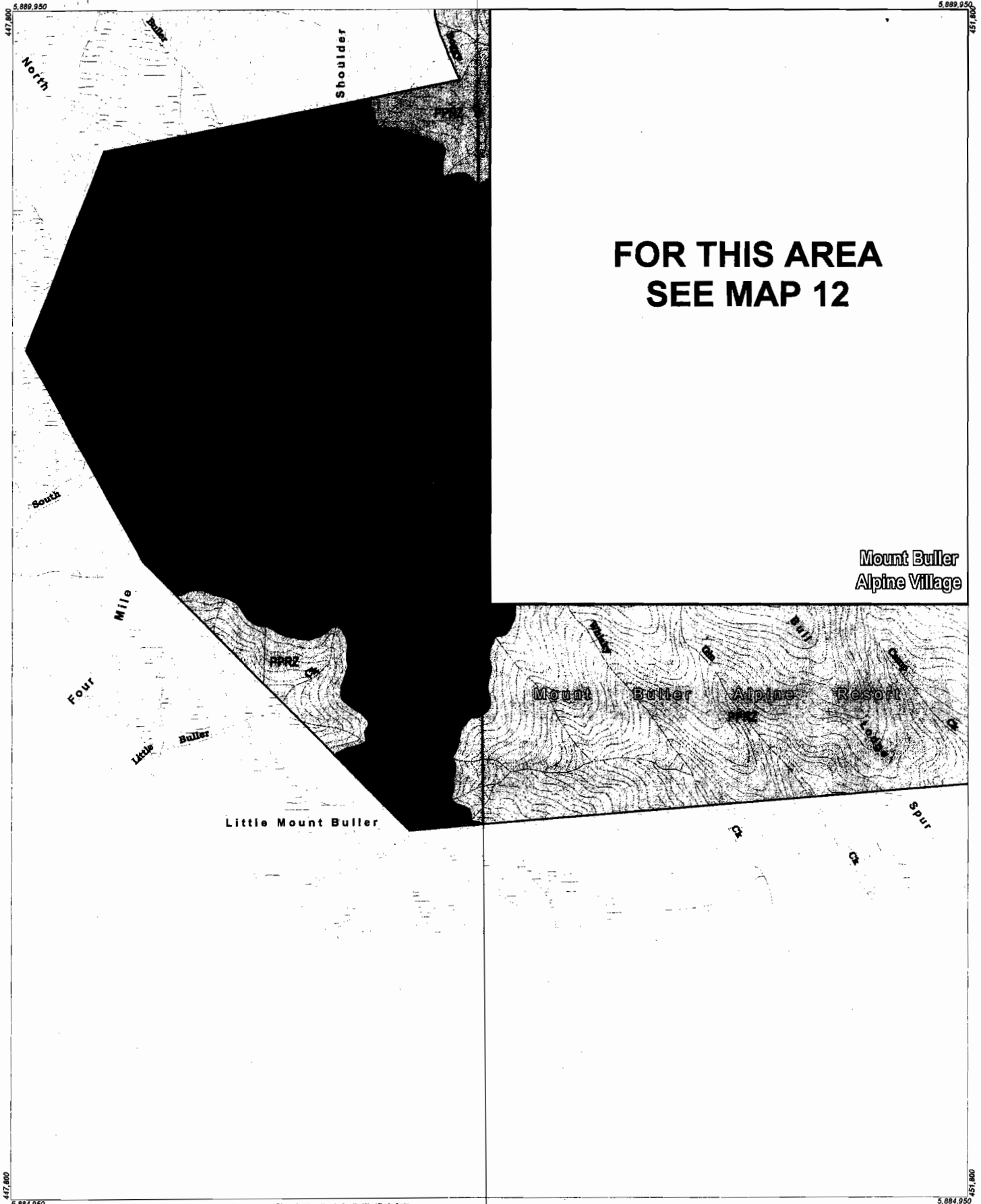
Public Land	Public Park and Recreation Zone
Road Zone Category 1	Special Purpose
Comprehensive Development Zone 1	Comprehensive Development Zone 2



Amendment C10
Printed 1992/2004

INDEX TO ADJOINING
METRIC SERIES MAP

ALPINE RESORTS PLANNING SCHEME - LOCAL PROVISION



**FOR THIS AREA
SEE MAP 12**

**Mount Buller
Alpine Village**

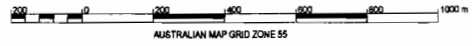
Little Mount Buller

Mount Buller Alpine Resort


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This map should be read in conjunction with additional Planning Overlay
Maps (if applicable) as indicated on the INDEX TO MAPS.

-  Public Land
-  Public Park and Recreation Zone
-  Special Purpose
-  Comprehensive Development Zone 2



INDEX TO ADJOINING
METRIC SERIES MAP



Amendment C18
Passed: 19/9/2004



ZONES

MAP No 11

SCHEDULE 2

Measures for Protection and Conservation

of *Burramys parvus* (the Mountain Pygmy Possum)

within the

Mount Buller Resort

Victoria

December 2005

1. INTRODUCTION

- 1.1 The Measures for Protection and Conservation ("Measures") form part of the Conservation Agreement ("Agreement") between the Minister and BSL under section 305 of the EPBC Act and are to be read in conjunction with the Agreement.

2. PURPOSE

- 2.1 The purpose of these Measures is to provide rehabilitation and restitution of damage to the habitat of *Burramys parvus* (the Mountain Pygmy Possum) in the Area (as defined in the Agreement) at Mount Buller caused by the activities of Buller Ski Lifts Pty Ltd ("BSL"). In particular, the Measures:
- (a) prescribe active management practices and controls to be implemented by BSL;
 - (b) detail habitat restoration to be undertaken by BSL, and
 - (c) detail *Burramys parvus* population enhancement activities, including research, that is agreed to be undertaken by BSL.
- 2.2 The implementation of the Measures is to contribute to the conservation of *Burramys parvus* (the Mountain Pygmy Possum) under the Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999* ("EPBC Act").

3. GENERAL PROTECTION AND CONSERVATION PRESCRIPTIONS

- 3.1 BSL is to implement a protection and conservation regime for the Area which will have a net benefit to the protection and conservation of *Burramys parvus* (the Mountain Pygmy Possum).
- 3.2 BSL will undertake the following management practices:
- (a) Operate the alpine resort in accordance with the Recovery Plan (as defined in the Agreement).
 - (b) Develop an Environmental Management System ("EMS") to ensure ongoing activities do not have an unacceptable impact on *Burramys parvus* and to ensure that that the terms of the Recovery Plan and the Agreement are met. The EMS must be developed to the reasonable satisfaction of the Minister. The draft EMS is to be submitted to the Minister for approval within 90 days after the commencement of the Agreement. In approving the EMS, the Minister may make any modification or impose any condition to ensure that the EMS meets the objectives of the Agreement. BSL must commence implementation of the EMS within fourteen days of the date that the Minister approves the EMS and must ensure the ongoing implementation of the plan.
 - (c) Implement an independent auditing system to ensure ongoing implementation of the EMS. Audits must be undertaken at six monthly

intervals for two years following commencement of the Agreement, and thereafter, annually, in November. The results of the audit must be made available on either the ARMB or BSL website for the term of the Agreement.

3.3 BSL will undertake the following habitat restoration actions:

- (a) Actively plan and implement revegetation as per the Recovery Plan, in conjunction with ARMB.
- (b) Prepare and implement a plan (including an on-ground works specification) to improve connectivity at 'Outer Edge' by the creation of at least one surface corridor to 'Type 3' standard¹(Heinz 2005). Subject to the prior approval of the Minister, these works, or other works, may be carried out at an alternative location where the EMS identifies that an increased benefit to the conservation of *Burramys parvus* would occur. The works to be effected under the works specification must have a value exceeding \$20,000. The final works specification and location must be submitted to the Minister for approval within 60 days after the commencement of the Agreement. The works must be completed within 30 days after the granting of approval by the Minister, unless otherwise specified by the Minister in the approval.
- (c) Prepare and implement a plan (including an on-ground works specification) to install two areas of boulder field habitat to function as trials for a larger habitat recreation project. The two areas are located at the Funnel and in the "island" of degraded habitat that lies between the upper sections of Wombat and Little Buller Spur runs. The plan must include a monitoring program to measure the use of the habitat by *Burramys parvus*, and a requirement to annually report the findings of the monitoring to DSE and the Minister. The works to be effected under the works specification must have a value exceeding \$50,000 per site. The final plan and works specification must be submitted to the Minister for approval within 90 days after the commencement of the Agreement. The works must be completed in accordance with the works specification, unless otherwise specified by the Minister in the approval.

3.4 BSL will undertake the following population enhancement activities:

- a) Contribute funding to a cat, dog & fox predator control plan, that is designed to ensure that cats, dogs and foxes are prevented from affecting *Burramys parvus*, to be implemented by ARMB in accordance with the Recovery Plan. The contribution to the predator control program must have an annual cost of no less than \$15,000.
- b) Prepare a research proposal into *Agrostis infusa* (the Bogong Moth), which is an important food source for the *Burramys parvus* population. The research proposal must be designed to determine the larval habitat locations of, and limiting factors for, Bogong Moth populations. The

¹ Heinz, D. (2005) *Monitoring of the Mountain Pygmy Possum Population within the Mount Buller Alpine Resort, November 2004 & February 2005*. Unpublished report for Mount Buller Resort Management.

research proposal must identify possible funding sources for ongoing research. The research proposal must be submitted to the Minister for approval within 180 days after the commencement of the Agreement. The research proposal must have a value exceeding \$20,000.

- c) Prepare and implement a plan, in conjunction with ARMB, to investigate the effects of skiing, snow boarding and other recreational activities on *Burramys parvus* and its habitat at an appropriate alpine location. The plan must specify a program of investigation, and annual reporting of results to the Minister. The plan must be submitted to the Minister for approval within 180 days after the commencement of the Agreement. The program must have an initial cost exceeding \$20,000 and include a program of ongoing monitoring for five years.
- d) Implement works to address the loss and degradation of Mountain Pygmy-possum habitat at Mt Buller through sedimentation and changes to drainage from roads, tracks and ski areas. Works may include design, installation and ongoing maintenance of sediment traps, stabilisation of eroding areas of sediment traps. The works must have a value exceeding \$130,000. A plan for the proposed works must be submitted to the Minister for approval within 60 days after the commencement of the Agreement and works must be completed in accordance with the plan.

3.5 The consent of the Minister pursuant to clause 2 of the Measures does not constitute an approval, permit, licence, or any other form of authorisation provided for under the EPBC Act.