

**JOINT SUBMISSION OF THE MOUNT BULLER AND MOUNT STIRLING, FALLS CREEK, MOUNT HOTHAM
AND SOUTHERN ALPINE RESORT MANAGEMENT BOARDS**



Ian Swan

Executive Officer, Alpine Resorts Coordinating Council
PO Box 500 EAST MELBOURNE
VIC 3002

Dear Ian,

Thank you for seeking our input on the scope of the proposed review of the Alpine Leasing Policy and Implementation Guidelines.

We have worked together to develop a combined response on the issues that we believe should be explored through the review.

The current policy has been in place for over 15-years and is due for a significant review and update to keep pace with changes to whole-of-government and Board objectives for the Alpine Resorts. There have also been substantial changes to policy and legislation dealing with the management of Crown Land and properties.

In our view, the most critical strategic areas that the review needs to explore are:

- The calculation of lease terms. The SISP is a strategic tool that encourages maximum development of each site to secure long lease terms. Whilst this objective was appropriate during the early stages of resort development, it is no longer considered relevant or appropriate. The resorts are now mature assets and the development focus should shift to respond to broader range of factors such as climate change, vegetation retention, accommodation diversity and the suitability of each individual site for intensive development or otherwise. If the SISP is to be retained, it must be adapted to take into account the strategic development objectives of each resort and individual sites.
- Consistent application across the resorts. A key outcome of the review should include a consistent approach to implementing the new policy and guidelines. The current policy and guidelines are subjective and require many issues to be considered without providing any specific guidance on how these issues should be considered or their relative importance. This results in different outcomes in similar situations which raises equity and transparency issues.
- Performance transparency. Our communities support a robust process for the effective management of Crown Land. However, they are increasingly seeking assurances that our processes are also efficient. Our communities are also seeking more certainty on expected timeframes. The review should scrutinise each step in the process to verify that it is necessary and procedurally efficient. The review should also set target timeframes for key stages and public performance reporting. The Smart Planning reforms are a good example of process improvements that have taken place at the Department in recent years.

- Lease applications and the role of the business plan. The lease application process should be simplified with a standard application form and clear directions on how to complete the form, including the level and type of detailed information needed. The process to develop a lease application template, should also explore in detail the value of the 'business plan'; why it is needed, what it is used to determine, how the information should be considered and commercial in-confidence considerations.

In addition to these critical strategic issues, the review should also address a range of technical and procedural issues to ensure that the revised policy and guidelines are fit for purpose, efficient and effective.

The attached document elaborates on the above critical strategic issues and outlines a number of technical and procedural issues which the review should address. The document also responds to the specific questions raised in the email dated 11 October 2018.

We are eager to work with the review to prepare a revised policy and new guidelines that align with current government policy and community expectations.

Yours Sincerely,

Louise Perrin

Gail Conman

Jon Hutchins

Stuart Smythe



Acting C.E.O
Mount Buller ARMB

C.E.O
Southern Alpine RMB

C.E.O
Mount Hotham ARMB

C.E.O
Falls Creek ARMB

Att: Input on the Review scope for the Alpine Leasing Policy and Implementation Guidelines

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Attachment - Input on the Review scope for the Alpine Leasing Policy and Implementation Guidelines

What are the weaknesses of the current policy?

The current policy is 15-years old and includes several elements that no longer serve the needs of the Boards or the Department, as outlined below.

a) Lease term and the SISP

Issues to consider and feedback:

- The review should consider that State-wide changes to Crown Land Leasing policy and ensure overall policy consistency is achieved. It should also consider policy alignment with other government objectives. For instance, does the SISP's focus on level of development align with current policy settings regarding the protection of native vegetation, animals and cultural heritage.
- The review should critically assess the degree to which the SISP supports or inhibits achievement of Principle 1 – Demonstrated Public and Economic Benefit which states that the Resorts should aim to deliver a range of experiences across summer and winter, at a range of price points for visitors.
- For alpine tenants, particularly commercial tenants, their ability to invest in their business, grow new product offerings and generate employment opportunities is directly linked to lease term. For this reason, the review should consider the importance of lease term in the uniquely commercial context of the Alpine Resorts. It should also consider the role lease term can play in facilitating climate change mitigation planning.
- The review should consider whether the SISP, which focusses on level of development, should be the primary criteria for setting lease term. This approach marginalises other factors that could encourage greater sustainability and commercial vitality within the resorts. For instance, a leasing policy that ties lease terms to alignment with strategic objectives could directly encourage desired development such as greater summer operation and long term community and commercial sustainability.
- The review should be seen as an opportunity to reset the policy and guidelines so they encourage applicants to consider the resorts strategic objectives and tailor their development and/or business plans to support the ongoing sustainability of the resorts.
- As the resorts move towards a climate where the viability of activities may vary on a year-by-year basis, it will become increasingly important that lease term decisions focus on sustainability rather than the extent of development alone. The review should consider how the policy can support community and commercial sustainability and assist effective climate change mitigation.

- If the SISP is retained, the review should consider how to manage tenant requests to re-align boundaries to remove parts that are difficult to develop and thereby improve their SISP assessment. What will be the impact of this reactive and unplanned approach to managing site boundaries? Who will be required to pay for the direct and indirect costs associated with boundary re-alignment processes, which can be resource intensive.

b) Consistent application across the resorts.

- The policy states that the SISP is a guide only but does not provide any detail on how it is to be used as a guide and under what circumstances it can be deviated from. Over time, this has resulted in inconsistent practices developing across the resorts, which has raised equity and fairness issues.
- Approval in Principle is currently sought to seek Expressions of Interest to release land and again when an offer is received. The Boards would prefer to seek Approval in Principle when an offer is being recommended for acceptance only. This will ensure the Department has the information required to make a more informed decision around the merits of any land release proposal and remove duplication and inefficiency.
- The Boards believe there are sufficient protections to ensure that Expressions of Interest processes do not propose the release of unsuitable land, including the Alpine Resorts Planning Scheme, the requirement of Approval in Principle to register new plans of Crown Allotment and ministerial endorsement of Board Master Plans.
- The review may consider and make recommendations on what information Boards must request as a part of land release Expressions of Interest processes. Standardised templates may also be produced.
- The review should develop a clear and consistent process for releasing land and supporting site redevelopment. For instance, is there a preference for an Agreement to lease or Development Agreement approach. Template documents should also be produced to reduce development cost and ensure consistency.

c) Performance transparency.

- The review process should ensure consistency with the principles outlined in the Public Participation in Government Decision-Making: A Better Practice Guide developed by the Victorian Auditor-General's Office.
- The review should consider technological solutions to improve process efficiency and business continuity and disaster recovery.
- The current process includes a level of duplication and inefficiency as the same information is assessed at the Approval in Principle and Ministerial Sign-off stages. The review should critically assess whether the two approvals are required in all circumstances or on an exception basis. If the two approvals are needed, the review should clarify the requirements at each stage to reduce procedural inefficiencies and minimise approval timeframes.

- The Approval in Principle process states that no representation may be made about a proposed Lease until Approval in Principle is received. However, in reality it is not possible for the Boards to finalise an Approval in Principle application without having discussions with lessee about lease term and special conditions. This issue is currently resolved by advising lessees that all discussions are “subject to Approval in Principle”. The review provides an opportunity to clarify the level of communication that Boards may have with lessees.
- Public Notification by newspaper no longer aligns with public expectation and is becoming an unnecessary cost burden to the Boards. There may be an opportunity to achieve increased efficiency and transparency through the use of a combination of Engage Victoria, DELWP website and Board websites.
- There are no provisional timelines for processing applications for Approval in Principle and Ministerial Approval. Extensive delays and a lack of transparency around these processes can pose a reputational risk to the Boards and Department and may jeopardise the viability of proposals for development.

d) Lease applications and the role of the business plan

- As the primary tool for guiding process and determining Lease term, the revised policy and guidelines need to provide applicants with clearer guidance on how to tailor their proposals to optimise lease terms. The review should develop a standardised lease application form.
- The policy currently states that the Business Plans shall remain confidential between the Tenant and the Board. The Boards do not oppose sharing information to ensure decision makers are appropriately informed, but there is an opportunity to provide additional clarity around what information is required and what additional information may be requested to assist decision making.
- The review should consider whether staff accommodation should be given preferential treatment such as longer lease terms or more favourable lease charges.

e) Technical issues

- There is a lack of clarity around the impacts of the *Retail Leases Act 2003*. The existing policy notes that a paper would be issued after the *Retail Leases Act* was passed, however this never occurred. Whether the Act has implications for Standard Alpine Leases is currently untested, which poses a risk to the Boards.
- Lease renewals that involve a change of the Head Lessee entity, even though the beneficial ownership remains the same, have been deemed dutiable. However, if the renewal is completed before the Head Lease is transferred the transaction is not dutiable. It would be beneficial if the review could provide guidance around the treatment of such cases.
- The provisions relating to Registration of Crown Leases needs to be updated along with the Strata Leasing section, especially in light of changes to lodgement and conveyancing processes

that have occurred since 2016.

- Not all Sub-Leases across resorts are registered. Some Sub-leases do not conform to the requirements for registration and can not be registered in their current form. There is an opportunity to strike a policy position with respect to record keeping. Maintaining a database at DELWP may address planning permit process concerns around contacting sub-tenants when notification is required.
- The Boards lack mechanisms other than default under the Standard Alpine Lease to deal with matters of compliance. This can frustrate the enforcement of Building Standards of Occupancy obligations, as default may be disproportionate to the level of non-compliance. The review should consider amendments to the Standard Alpine Lease to enable enforcement of compliance requirements, such as financial and non-financial penalties. Building safety is critical given the remote location of the resorts and the difficulty that emergency services may experience in visiting sites, particularly during winter.
- There is an opportunity to align Building Standards of Occupancy requirements across the resorts.
- There is an opportunity to consider building performance measures, lifecycle and energy usage as a part of Building Standards of Occupancy to establish the Resorts as a best practice leader in encouraging environmentally sensitive construction methods and building maintenance. This could be achieved by considering such metrics as a part of the Criteria for Determination of Lease Term.

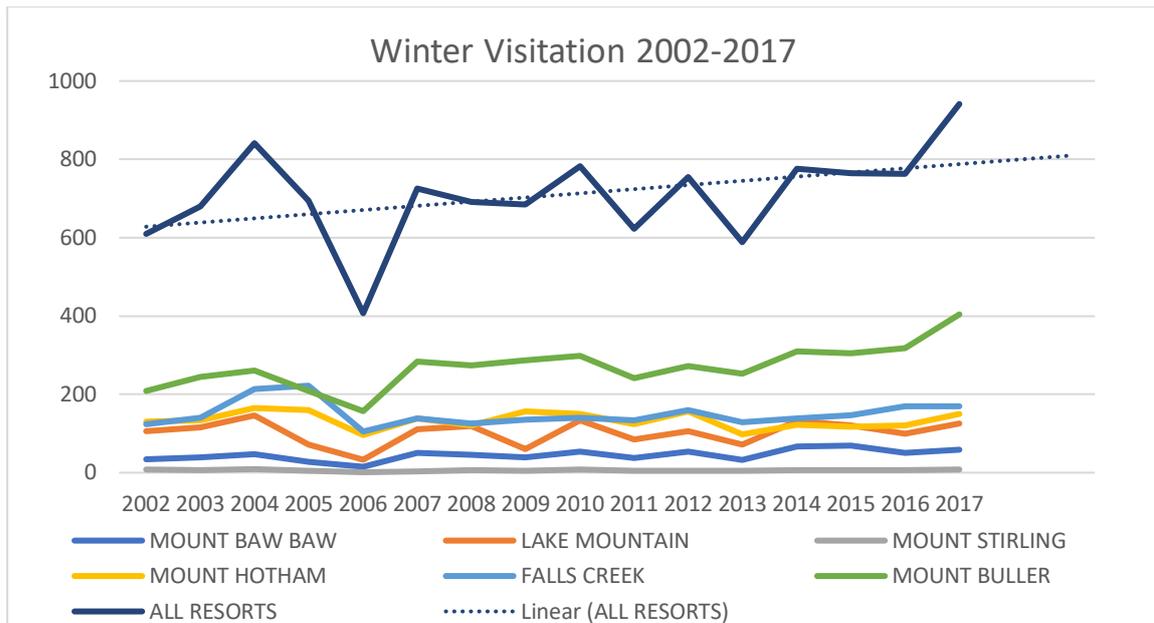
What are the strengths of the current policy?

- The Leasing Cycle as envisaged is fair and appropriate. This includes first right of refusal and renewal rights, with ongoing obligations under the Lease.
- The principles are consistent with Public Sector standards of conduct. However, the implementation of some of these principles could be improved to better align with contemporary standards.
- The framework provides a high level of oversight and due diligence.
- The recoverability of costs is an important component of the policy that should be retained. There is an opportunity for Boards and DELWP to rationalise costs by conducting processes in a more efficient and transparent manner. There is also an opportunity to recover more costs such as the cost of undertaking Building Standards of Occupancy reports during the lease term.
- Building Standards of Occupancy provide a mechanism for managing occupation on a long-term basis.
- The rental and valuations provisions are consistent with the state-wide approach and are equitable for tenants and lessors.

- The provisions around granting of a Lease not being an endorsement of a Business Plan by the Boards or the Crown is important and must remain.
- The provisions around Improvements and End of Lease Term are equitable and should remain, especially as stranded assets may become a risk in the face of climate change.
- The requirements for Boards to consent to any assignment, sub-lease or mortgage are a strength and ensure that Boards maintain a good level of oversight of activities taking place on land under their management.

What has changed since 2002 when the policy was prepared?

- In 2004 a list of Objectives was inserted in to the Alpine Resorts (Management) Act 1998.
- The *Retail Leases Act 2003* has been introduced, which may have impacts on Standard Alpine Leases.
- The *Public Health and Wellbeing Act 2008* has been introduced, which affects many tenants in the Alpine Resorts.
- The *Traditional Owners Settlement Act 2010* has been introduced.
- The *Climate Change Act 2017* has been introduced.
- The Leasing Policy for Victorian Crown Land was introduced in 2018.
- The *Residential Tenancies Bill 2018* may have impacts on sub-leases within the resorts.
- Operational changes to conveyancing have been introduced in Victoria, including electronic processing in most cases. This may have implications for how Consents to transfer are handled.
- The statewide approach to bushfire risk management changed markedly post-2009, which provides new BAL and clearing requirements.
- The future impacts of Climate Change continue to be modelled in more detail, making a greater body of knowledge available to decision makers around how to adapt and respond in the future.
- Broadly speaking, the Alpine market is transitioning from being driven primarily by winter-oriented property development and investment to year-round sustainability and activity driven approach.
- Winter Visitation has trended up by 30% between 2002 and 2017. Resorts that have maintained a high level of amenity and activity diversity enjoy the most stable increases in visitation year-on-year.
- There is increasing demand for nature-based tourism activities including guided walks, mountain biking, and camping and opportunities to offer these types of activities for a fee.



What are the opportunities that need to be considered to ensure the new policy is able to address / take advantage of?

- Market research and surveys indicate that there is a growing market of first- and second-generation migrant Australians and international visitors seeking snow and alpine experiences.
- Nature-based tourism has emerged as a marketable concept that is gaining in popularity, as demonstrated by the Shipwreck Coast walk in Tasmania and growing success of regional Mountain Biking facilities around Victoria.
- Electronic processes such as Smart Planning and electronic conveyancing demonstrate significant opportunities for process efficiency. Likewise, sites such as Engage Victoria represent changes in the way that the public may be engaged with.
- Capacity has been built in Recognised Aboriginal Parties which provide opportunities in the area of land management and tourism.
- Operators and developers continue to express interest in involvement in the Alpine Regions.
- Building practice has evolved to better consider environmental performance along with energy and thermal efficiency.
- Conservation practices provide opportunities to celebrate the rare and endangered Flora and Fauna present in Victoria's alpine regions.

How will the Alpine Resort Boards be engaged in the review and what would you like to see?

- The Resort Management Boards should be a key partner with DELWP in conducting this review, as they implement the policy on a day-to-day basis and have the most exposure to public perspectives on the current regime.
- The Resort Management Boards can support public consultation processes in collaboration with the DELWP, the Alpine Resorts Co-ordinating Council and other relevant bodies.
- The Resort Management Boards' input must be considered and addressed as a part of the review process, particularly input around process efficiency and effectiveness.
- This could be achieved through a combination of the following:
 - An officer level working group to draft recommendations and proposed policy language.
 - The Resort Management Boards making an officer available to the review to assist with drafting and review of the guidelines.
 - Providing an opportunity for the Resort Management Boards to provide feedback on draft documents before they are finalised.
- The Resort Management Boards are eager to collaborate as outlined in the Minister's Directions of 16 March 2018 to ensure that any future policy best meets the needs of the Resorts and appropriately manages the interests of tenants.
- Close consultation with DELWP Land Management Policy Unit will ensure that the policy reflects the principles and desired outcomes reflected in the Leasing Policy for Victorian Crown Land 2018, while recognising the unique challenges and opportunities present in the Alpine Resorts.

Who else should be involved?

- The Alpine Resorts Industry Advisory Group (ARIAG)
- Parks Victoria
- DELWP Planning, Climate Change, Vegetation and Land Management Units
- Traditional Owners' Groups and Recognised Aboriginal Parties
- Office of Valuer General and Surveyor General
- Ratepayer associations from the resorts
- Chamber of commerce associations from the resorts

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Alpine Leasing Policy Position Statement

(Version June 2019)

The following statement has been prepared to identify issues with the current Alpine Leasing policy. It is subject to review and update.

1. Strategic Identified Site Potential (SISP)

- The inclusion of SISP (strategically identified site potential) encourages overdevelopment and rewards development to the maximum building volume allowable under the planning scheme. The financial expenditure that is required to meet SISP for a suitable lease term can ignore the qualitative aspects of existing and/or proposed developments.
- The application of SISP to large sites with currently appropriate development but which produce low SISP ratings, results in unreasonably short lease renewal terms being offered.
- Strict bureaucratic adherence to SISP provisions has failed to adequately cater for site- and resort-specific circumstances.
- The SISP is too rigid and discriminates against clubs and leaseholders who don't have access to substantial funds in their own right to enable development to satisfy SISP requirements for a long-term lease. This in turn forces clubs and leaseholders to enter into arrangements with others to redevelop and so lose control of their site and their autonomy.
- SISP runs contrary to environmental aims and values because it encourages large developments which means an accompanying loss of vegetation & amenity in an Alpine environment.
- SISP is in conflict with the 2012 Alpine Strategic Plan.
- SISP calculations do not allow for issues such as site access, ramps or steep sites where development is impractical.

2. Business plans

There is a current requirement to provide three years of audited financial statements as part of a business plan for a new lease application. This doesn't appear to be mentioned in the Alpine Leasing Policy or Guidelines. This requirement should be waived as it has nothing to do with the lessee's ability to meet financial obligations. The lease states what the obligations are and should be enforced accordingly.



3. **Consistent approach**

There appear to be different interpretations of leasing application requirements between RMB's. VSA recommend that a single approval authority for all Alpine leases should be established to facilitate consistency taking care to ensure the individual circumstances of each resort and application are considered effectively.

Recommendation 3.1 of the Final Report of the State Services Authority "Review of Alpine Resort Areas", June 2008 ("the SSA Report") should be adopted.

3.1 That DSE develop more rigorous assessment and monitoring mechanisms to enable it to comprehensively review lease proposals and ensure that resort specific design outcomes are dealt with through the Alpine Resorts Planning Scheme and not through local guidelines as part of leasing negotiations.

4. **Lease negotiations – Approval In Principle (AIP)**

VSA believe that the AIP process should be streamlined so that it meets the intended process> It was supposed to "shorten the time taken to negotiate new leases". It has done nothing of the sort. Information required to be submitted by a board to the Minister for approval in principle is similar to that required for final lease application. This means that the workloads for all involved including applicants, the boards and departmental staff have been increased with no commensurate reduction in approval times.

The VSA supports the SSA Report recommendation at 2.1 that any local variations such as in principle approval processes be removed.

5. **Length of lease terms where building improvements required**

Section 14.1 of the Alpine Resorts Leasing Policy Implementation Details 2002 states that "in the case of development on a site already the subject of a long-term lease (in excess of 10 years), the development may proceed in accordance with a development lease ...".

This guideline has not been observed. Indeed, in many situations site holders have been granted ridiculously short-term leases like 5 or 7 years and just told that if they do a development within that time then a further lease will be granted. The site holder has no ability to raise finance with that type of short-term lease.

Further on many occasions in the past developments have been subject to the requirements of an Agreement to Lease ("ATL") with the lease attached.

But:

- ATLs are not seen by lending institutions as adequate security for a loan.
- Site holders are then forced to provide alternative security if they can or enter into arrangements with parties who can finance a loan from other sources so the site holder loses control of the site in that process.



- Development leases, properly enforced, are in the VSA's opinion are a far more acceptable method to encourage and facilitate development than ATLS because:
- as long as the ultimate lease term is adequate, say greater than 25-30 years, lending institutions will generally accept a development lease as security for finance;
- the development period in the lease should be adequate to enable the lessee to obtain planning permits, engage contractors, and complete all works specified in the lease without seeking extensions for the development period;
- the development lease can contain clear provisions that extensions to the development period will not be granted and so the development provisions will be strictly enforced (the lease terminated or ended if the development provision is not carried out). Mortgagees will be aware of these provisions and effectively become a partner with the Board in enforcing in the lease. The mortgagees would step in and encourage the lessee to undertake the necessary actions to ensure compliance.

6. **Building Compliance to Building Standards & Planning Scheme**

The Building Code of Australia (BCA) sets standards for building construction. The relevant Planning Scheme sets rules for building requirements. Lease renewal may require additional obligations on applicants such as compliance to the current building code where the floor area is not increased by 50% or greater seemingly in conflict with the BCA. Building finishes for existing structures compliant to the BCA or Planning Scheme may be inappropriately imposed for lease renewal.

VSA recommend that applications for lease renewal of an existing building should not have imposed additional requirements outside BCA or the Planning Scheme. Existing structures should not require upgrade to current BCA requirements unless an extension greater than 50% of the existing floor area is proposed (as per BCA requirements.)

7. **Strata leases**

The VSA believes strata leases are inappropriate for the following reasons:

- The ARMBs are land managers, not building managers. The ARMBs role is to lease land. If an ARMB is to issue leases in strata this would extend their role to that of being a building manager.
- The ARMBs are not resourced to carry out a building manager's role. The ARMBs workloads would increase as would related costs. Surveying and leasing costs would also increase substantially.
- The VSA believes that the current sub-leasing structure provides flexibility, economy and security at very high levels under the standard Alpine lease.



- The current structure mandated by ARMBs require sub-lessees to be shareholders of the head lessee. However, this could be made more prescriptive by requiring shares to be issued either:
 - (a) in proportion to the building area sub-let (so if the sub-let area is 10% of the lettable floor area, the sub-lessee is issued with 10% of the shares);
 - (b) every sub-lessee is entitled to one share for each sub-let area (so if they own one unit, they are entitled to one share, two units two shares and so on).
 - As shareholders of the head lessee with a registered head lease, the sub-lessees automatically receive a higher level of security (at nil cost) than they previously received without.
 - The sub-lessees can protect their interests further by registering their sub-lease subject to the provision of an acceptable sub-lease and survey plan. This option is identical to strata lease registration (although it does include extra costs, surveys and the like) but in this instance it is by choice and not a compulsory requirement and would not mean the ARMBs have an unnecessary, undesirable, unwanted and costly building manager role.
8. **Transfers of Leases where no change in Beneficial Ownership**
- A policy needs to be developed and implemented by the SRO and DWELP to ensure that when siteholders transfer their lease or enter into a new lease to an entity (that complies with the structure mandated by the ARMB's where there is no change in beneficial ownership, no duty is payable).

The following, as members of VSA, endorse this statement.

Mt Buller Ratepayers Association Incorporated (A0028384L);

Hotham Ski Association Incorporated (A0029772H);

Falls Creek Alpine Association Incorporated (A0044428Z); and

Mount Baw Baw Stakeholders Association Incorporated (A0039757Z).

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