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SLOPES - Review of the Disability (Access to Premises - Building) Standards 2010 - Submission

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18 June 2015 at 14:59

Dear SLOPES Members and Associates

SLOPES on behalf of our Member Clubs has recently lodged a submission on this topic.

A copy of the submission is attached.

The background is set out in this email received by SLOPES from NPWS:

The NSW Department of Planning & Environment has become aware the Department of Industry and Science, in conjunction with the Attorney-General's Department, is calling for submissions on the effectiveness of the Disability (Access to Premises – Buildings) Standards 2010 (Premises Standards).

Below is a link to the Department of Industry and Science's website for your information:

<http://www.industry.gov.au/industry/IndustrySectors/buildingmetalsandconstruction/Pages/PremisesStandardsReview.aspx>

Please note the closing date for submissions is 11.59pm AEST on Monday, 15 June 2015.

Our submission will be made public on the website of the Department of Industry & Science.

We will keep you informed of any correspondence on this topic as it has important implications for all lodges.

Regards

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Frank Zipfinger
President
SLOPES

 **SLOPES - Disability access to premises submission.pdf**
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**SUBMISSION BY SLOPES – THE SKI LODGES ORGANISATION OF PERISHER,
SMIGGINS AND GUTHEGA INC (ABN: 97 748 239 046)**

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REVIEW OF THE DISABILITY (ACCESS TO PREMISES – BUILDING) STANDARDS 2010

This submission has been prepared by the Ski Lodges Organisation of Perisher Smiggins and Guthega (SLOPES) on behalf of the 88 ski clubs in the Perisher Range Resort area of Kosciusko National Park (KNP). The 88 ski clubs are all Members of SLOPES. Its Associated Members include four commercial lodges in Perisher and Smiggins and the Cross-country Ski Association, NSW Ski Patrol, Tourism Snowy Mountains and the Perisher Chamber of Commerce

Relevant Background Information for Consideration with Submission

Characteristics of SLOPES Members

By way of introduction to this submission the following relevant facts relating to the Club members of SLOPES are noted:

1. The SLOPES ski clubs were formed to promote the sport of skiing.
2. The SLOPES ski clubs operate club accommodation lodges in Perisher, Smiggins and Guthega.
3. Each lodge is subject to a lease with the National Parks and Wildlife Service (NPWS) of the Office of Environment and Heritage in NSW Government.
4. The SLOPES ski clubs do not own their lodges but have the right under the terms of the lease to manage, maintain and operate their lodges. This responsibility includes maintaining insurance on the lodges. The lodges (and the land on which they are located) are owned by NSW Government.
5. The users of the lodges are the members of the clubs and, in some instances, their invited guests.
6. The majority of SLOPES Clubs are set up as Co-operative Societies or companies limited by guarantee.
7. The SLOPES Clubs are not for profit organisations.
8. Most of the SLOPES Ski Club lodges are managed and maintained by unpaid volunteers from the members.
9. The Ski Clubs pay Rent and Municipal Services Fees to National Parks and Wildlife Service.

10. Members of the ski clubs pay annual membership levies to the club similar to any sporting club to continue as a member. When first joining the club there may be a joining fee or purchase of shares in the co-operative depending on the set up of the Club.
11. All the Ski Club lodges are licenced by NPWS to accommodate a maximum number of beds and hence people at any one time (children under five not being counted). Every lodge must keep an Accommodation Register that may be inspected by NPWS. Every Ski Club must display the NPWS sign that indicates the number of beds/people the lodge is licensed to accommodate.
12. Ski Club lodges are not rental accommodation.

Building Classification of Ski Club lodges

The building classification of the ski club lodges under the Building Code of Australia falls into Class 1b or Class 3. Those with fewer than 12 beds are Class 1b.

The building classification of the ski club lodges where Class 3 is applied differs from other forms of accommodation such as boarding houses, guest houses, hotels or motels in that the persons accommodated are related in so far as they are members of the Club. They are familiar with their Club lodge accommodation as they regularly attend the premises. The use of the lodge by members is on a short term basis generally requiring pre-booking to enable all members to have the opportunity to enjoy the sport of skiing during the limited ski season.

Age and Circumstances of Ski Club Lodges

The majority of ski club lodges were constructed in the 1950s to 1970s. Many of them are timber buildings on concrete block and stone foundations in one or several levels. They were constructed under previous building standards that applied at the time of their construction including Ordinance 70 that pre-dated the Building Code of Australia.

A few more recent clubs lodges were built to replace old lodges damaged and demolished.

Various local requirements were incorporated into the lodges that are unique to KNP such as provision of one or more internal fire hose reels that would not normally be required for the size of the buildings. Many of the lodges were approved when the consent authority was Snowy River Shire Council and the park was managed by Kosciusko State Trust prior to it becoming a National Park.

Some of the lodges have heritage significance.

NPWS through its consultant James Alexander and Associates carried out building audits of the ski club lodges in 2005 based on the *deemed-to-satisfy* (DTS) provisions of the Building Code of Australia 2005. Many lodges had to carry out various upgrades either to meet the DTS provisions of the BCA or, after consultation, provide *Alternative Solutions* to the DTS provisions depending on the circumstances of the lodge building. These audits in some cases required alterations to the Clubs and in a few cases it has required alterations and additions. Delays in carrying design and approval of the alterations and additions as well as staging due to cost have overlapped the introduction of the Premises Standards and added to the complexity.



Approval of Development including Alterations and Additions of Ski Club Lodges

The consent authority for development in Kosciusko National Park is the NSW Department of Planning and Environment. The statutory framework for development approvals in the ski resorts is in *State Environmental Planning Policy (Kosciusko National Park – Alpine Resorts) 2007* (SEPP (KNP)). Most development requires approval as there is limited exempt development nominated in the SEPP (KNP). For example, even replacement of damaged or deteriorated cladding if different in nature from the existing cladding must be less than 5% of the surface regardless of whether the alternative cladding is an improvement to the deteriorated cladding.

Any development application required triggers the Premises Standards whether or not it is for minor alterations such as replacing the cladding of a lodge when deteriorated with a new material or more extensive alterations.

Building in Kosciusko National Park

Construction standards under the Building Code of Australia for alpine areas are subject to the additional provisions of *AS 1170.3 2003 Structural design actions – Snow and ice conditions* and the *Guidelines for Design of Structures in Snow Areas HB 106-1998*.

The BCA in separately considering construction requirements in alpine areas acknowledges the particular circumstances of snow conditions in the alpine areas, for example, fire egress doors must open IN rather than out in the direction of egress to allow for snow build up against fire doors.

Building for People with Disabilities

The same special considerations of snow conditions need to be made for providing access for people with disabilities in the alpine areas. This is currently not the case. It includes addressing the limitations imposed by snow conditions on access for a person with ambulant disabilities as well as issues of safe evacuation of a person with disabilities in snow conditions in an emergency.

Sections of the Perisher Range ski resort area and many of the club lodges do not have over-snow transport to the entry to the club lodge. Access to the ski club lodge requires walking through the snow from the arrival location from either a commercial over-snow vehicle, a car park or the ski tube train.

Also there is the relevant consideration of the topography of much of the Perisher Range ski resort area which is steep and hazardous in snow conditions.

Construction of access ramps compliant with AS 1428, for example, have the potential to have an adverse impact on the sensitive alpine environment depending on the scale of construction required. NPWS is particularly concerned to minimise the footprint of development in the main range areas of KNP.

In summer, although not its primary use time, the area is classified as a high bush fire prone area and subject to bush fire regulations.

During the winter season if access and lifts are able to be provided it is problematic to have maintenance servicemen attend premises in a timely manner and carry out repair work to lifts or services for people with disabilities in snow conditions. Maintaining safe access on ramps in snow conditions (removal of snow, ice build-up and slip issues) is a major liability issue.

The above comments primarily concern people with ambulant disabilities. Nevertheless a person with sight disabilities may be able to walk to premises but would require the assistance of a companion for safety in walking in snow conditions. Tactile indicators have reduced function in snow conditions.

ABCB Workshop during Preparation of the Premises Standards 2003

During preparation of the Premises Standards a full day workshop following an inspection of the area was held in Jindabyne on 28 October 2003 and hosted by the Department of Planning. The purpose of the workshop was to discuss the particular circumstances of the alpine areas. SLOPES attended the workshop along with representatives of the Human Rights and Equal Opportunities Commission, Disabled Winter Sport Australia Incorporated, Perisher Pty Ltd, Kosciusko Thredbo Pty Ltd and Eric Martin and Associates (access consultant).

The workshop acknowledged that there were particular circumstances applying to the alpine areas that required further investigation. It also acknowledged that there were locations in the alpine areas where provision for fully compliant access for wheelchairs and facilities for people with disabilities was not practical or safe.

SLOPES wrote following the workshop to the Department of Planning and to the Australian Building Codes Board to press for the setting up of an Access Panel that would review the application of the Premises Standards in alpine areas, provide direction when acknowledging the constraints of the environment and topography and give consistency in decision making for alternate solutions and potential unjustifiable hardship situations. This has not occurred and means that the particular circumstances of the alpine areas are still left in confusion and uncertainty.

Response to Relevant Questions in the Review

SLOPES has considered the questions raised and provides the following responses to questions relevant to the circumstances of SLOPES member ski clubs. The responses are provided in the context of the background comments and circumstances of the ski club lodges summarised above.

In responding to the questions SLOPES is also mindful of the objectives of the Premises Standards especially to *ensure dignified, equitable, cost-effective and reasonably achievable access to buildings, and facilities and services within buildings, is provided for people with a disability.*

SLOPES is also mindful of the broad range of disabilities either temporary or permanent that exist in the community and that at any one time approximately 20% of the population has some form of disability of which about 4% requires the use of a wheelchair. Thus while full wheelchair access may be problematic, other forms of disability may be accommodated.

Accommodation Buildings

Consideration of the triggers for the Premises Standards in the Class 1b and Class 3 buildings have impacted the decision making of some clubs. Postponement of building alterations has been reported to SLOPES and rather than upgrading cladding, for example, there has been replacement with the same reported rather than an upgrade that would require a development application and hence trigger the Premises Standards. This situation is counter-productive for the on-going best practice maintenance of the lodges.

The fact that an Access Panel has not been set up nor particular investigation carried out to understand the issues of application of the Premises Standards in alpine areas leaves major uncertainty for the clubs. Some clubs have indicated to SLOPES they are delaying any alterations to the lodges because of the uncertainty. This is not healthy for the ski and building industry in the local area that supports the local economy of the Monaro area.

Clubs have not just the issue of resolving access requirements for people with disabilities to their buildings but also the requirement to maintain that access in a safe and operational manner in snow conditions after being provided. This means the clubs have a long-term liability attached to their operations in snow conditions that is not considered by the Premises Standards.

Alternative solutions if required to the circumstances in the alpine areas require the appointment of consultants, and even with consultant advice, leaves the Department of Planning as the consent authority and the Accredited Certifier for the Construction Certificate to determine whether the alternative solution is reasonable. It may also involve a claim for unjustifiable hardship because of topography or lack of over-snow transport that similarly requires a determination of acceptance by the consenting body. The appointment of access consultants has been found by affected clubs to be expensive and still subject to determination by the approving body to development. The approving body also has the liability of its decision to accept an alternative solution or an unjustifiable hardship claim.

As noted earlier in this submission the particular circumstances of access for people with disabilities in the alpine areas require detailed and separate consideration and review to provide a consistent direction and interpretation of the Premises Standards for the conditions. In this regard SLOPES notes the other objective of the Premises Standards was to *provide greater certainty for the building industry* in providing access to buildings under the DDA which in the case of the alpine areas it has not achieved.

Furthermore SLOPES is aware that skiers with a disability that attend Perisher rarely do so without a companion assisting unless the disability is minor. It is reasonable for the Premises Standards to accept that in the alpine areas a person with disabilities will be assisted by a companion to visit the area and enjoy the sport of skiing. SLOPES is aware that the intention of the Premises Standards is to facilitate individual and dignified access of a person with disabilities which is inconsistent with the reality of operating in the alpine areas.

It is noted that the Perisher Range resort supports skiing for people with disabilities and provides a training and event venue for competitive skiing for people with disabilities. SLOPES is aware that its member ski clubs have had an Olympic champion in its membership.

Passenger Lifts

The retrofitting of lifts into older buildings is problematic. The experience of one member club has been that, while a platform lift could be provided, the space required for internal circulation to access the lift was not achievable. Furthermore in introducing the lift into the building it was reported that its provision compromised fire safety including the smoke management and separation into fire compartments in the lodge.

Accessible Car Parking

Car parking in snow conditions is less able to be regulated because any line marking may be covered by snow. More space is required for parking to provide for digging if required. If cleared the car parking area can be slippery and care needs to be taken in negotiating the



path from a parked vehicle. These considerations in alpine areas have not been addressed in the Premises Standards. The option of car parking to be provided underground is expensive and unrealistic. Nearly all of the car parking provided in the Perisher Range area is by the operator of the resort Perisher Pty Ltd, a few clubs or NPWS is open air. As a result there are issues attached to the requirements of the Premises Standards in provision of accessible car parking.

Way-finding

Any external way-finding signage has issues of liability attached to the path of travel in snow conditions that needs to be acknowledged by the Premises Standards.

Way-finding signage is accepted when located internally or in protected locations away from snow cover.

Emergency Egress

As noted previously in this submission there is a safety issue of emergency egress for a person with a disability in the alpine areas. While a person with disabilities may be able to be evacuated from a lodge initially, if that evacuation leaves the person in snow conditions in sub-zero temperatures there is a significant danger. Therefore, emergency egress in the alpine areas has the added complexity of not just evacuating from the lodge or building but also being able to quickly move the person to a safe and warm environment following the evacuation. The Premises Standards does not consider or try to deal with this situation that applies in alpine areas.

Lessee Concession

The lessee concession does not likely apply to the ski clubs under the terms of the leases with NPWS. Nevertheless NPWS is the owner of the lodges and is the final point in the liability chain for disabled access in the Perisher Range for the lodges. There is no provision in the ski club leases that passes on that responsibility to the clubs but for the requirement of the clubs to be responsible for maintaining the lodges and seeking appropriate approvals for any development affecting their lodges.

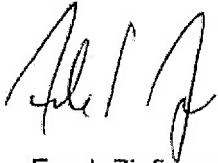
Unjustifiable Hardship

The unjustifiable hardship provisions of the Premises Standards and heads of consideration in Section 4.1(3) rely too heavily on the financial burden of providing access for people with disabilities when there should be equal emphasis on the practical considerations of access especially in the alpine areas. There is an intention that the wider context of benefits and detriments of providing access for people with disabilities for the individual and the broader community should be assessed in unjustifiable hardship but there is little guidance in this. The DDA requires the demonstration of hardship and it must be unjustifiable to be an effective defence. It does not deal adequately with safety and practicality as covered by the matters raised in this submission for the alpine areas.

Conclusion

This submission has been prepared by the Ski Lodges Organisation of Perisher, Smiggins and Guthega Incorporated (SLOPES). SLOPES has noted in this submission a number of complexities and considerations that need to be addressed in the Premises Standards that currently does not deal with the unique circumstances of snow conditions in alpine areas.

In conclusion SLOPES requests that further work be undertaken to address the circumstances of the alpine areas and provide a consistent framework for interpretation of the requirements of access for people with disabilities in snow conditions. In the short term an Access Panel needs to be set up for the alpine areas. In the long term specific provisions for the alpine areas need to be incorporated into the Premises Standards to address the realities of the alpine conditions.



Frank Zipfinger
President

15/6/2015