

**JOINT SUBMISSION TO THE OFFICE OF ENVIRONMENT & HERITAGE REGARDING
THE REVIEW OF GOVERNANCE ARRANGEMENTS FOR THE PERISHER RANGE
RESORTS AND CHARLOTTE PASS VILLAGE**

1 EXECUTIVE SUMMARY

- 1.1 OEH has initiated the Governance Review (also known as the Management Review) in respect of the Perisher Range Resorts and the Charlotte Pass Village. The OEH vision behind the Government Review is expressed by OEH as follows:

Vision

NSW Government has a vision for the Perisher Range and Charlotte Pass Resorts to create a world-class tourism destination with year-round visitor activities, that is financially sustainable and, given its location in Kosciuszko National Park, environmentally responsible.

- 1.2 Perisher, SLOPES and the Chamber between them are the 3 major stakeholder groups within the Perisher Range Resorts, being respectively the snow resorts operator, the 88 club lodges and the commercial accommodation and food and beverage operators.

- 1.3 Perisher, SLOPES and the Chamber:

- (a) welcome and support the initiative of the Governance Review because in their view:
 - (i) co-operation rather than competition between the relevant PRR stakeholders should achieve a better result for all, and
 - (ii) the current model is not conducive to delivering the co-ordinated, visionary sustainable future for the PRR which can be optimally achieved (and is inherent in the Vision),
- (b) broadly support the Vision, including the goal of year round activities in PRR but acknowledge that in order for this to succeed any governance model must be conducive to investment in and operation of such activities, recognising that summer activities yield lower revenue and margins and require significant investment,
- (c) in principle support a head lease governance model along the lines of the Walker Reports, provided the head lease arrangement in Walker's words "*adequately copes with the different kinds of strain which it would create, as between the different stakeholders, and addresses appropriately the justified concerns expressed by opponents or critics of any head-lease arrangement*" (noting this model at OEH's recent stakeholder consultation meetings was referred to as "Option 1" and that the StraightTalk "Second workshop outcomes" report of May 2016 concludes "*For both*

Perisher Valley and Charlotte Pass participants option one was the most strongly supported management model.”,

- (d) make no specific submissions in relation to the Governance Review insofar as it impacts on the particular circumstances of the Charlotte Pass Village,
- (e) strongly oppose a recommissioning of IPART on the same or similar terms of reference as in the 2005 IPART Review as, in our view, that process (as the passing of time and actual results in revenues and expenses have demonstrated) was flawed on various grounds but, in particular, in not taking proper account of all revenue streams to the NSW government including the above market rentals paid by stakeholders, KNP park use fees, proceeds from NPWS bed sales in 2008 and lease extension premiums, all of which are underpinned by MSU charges imposed on stakeholder organisations and their members and guests and from which the government and NPWS (in its broader NSW operations) benefit to the detriment, in many cases, of the Perisher Range Resorts, and
- (f) in this joint submission set out a statement of certain relevant points on which they agree in principle in the hope that, by doing so, this will expedite, clarify and facilitate the processes and the successful outcomes of the Governance Review.

2 BACKGROUND AND DEFINITIONS

- 2.1 The purpose of the Governance Review is described in the OEH Letter as follows

“The purpose of the review is to determine a governance model that will best deliver a sustainable future for the Perisher Range and Charlotte Pass Resorts.

Ideally, the new model will allow the NSW National Parks and Wildlife Service (NPWS) to withdraw from the delivery of municipal services and lease management, and encourage private sector investment and additional year-round activities and visitation.”

- 2.2 The fundamental purpose is *“to determine a governance model that will best deliver a sustainable future for the Perisher Range and Charlotte Pass Resorts”*.

- 2.3 The hoped for additional objectives as expressed by OEH in the OEH Letter are that the new model will:

- (a) allow NPWS to withdraw from the delivery of municipal services and lease management,
- (b) encourage private sector investment, and
- (c) encourage additional year-round activities and visitation.

2.4 Perisher, SLOPES and the Chamber:

- (a) support the OEH objectives set out in clause 2.3 above,
- (b) consider that the lack of a head lease over the Perisher Range Resorts has inhibited efforts for those resorts to achieve their optimal potential for the benefit of all stakeholders, and
- (c) submit that a head lease governance model, properly negotiated and implemented (as per clause 1.3(c) above and with appropriate consultation with SLOPES, Perisher and the Chamber as the 3 major stakeholder groups within the Perisher Range Resorts) should provide a better framework for the resolution or settlement of any subsisting or emerging issues as between the relevant PRR stakeholders.

3 WALKER REPORTS

3.1 The Walker Reports advised the NSW Government as to *"the most appropriate form of leasing to apply to the whole of the Perisher Range Resorts"* (Walker I para 1).

3.2 Set out in Annexure 2 to this Joint Submission are extracts from the Walker Reports which summarise:

- (a) the Principal Recommendation and the Inseparable Subsidiary Recommendation, and
- (b) the Head Lease Matters, being issues to be addressed in putting in place any head lease arrangement.

3.3 The Walker Reports were handed down in 2001-2002 and related only to the Perisher Range Resorts. In our view the conclusions of the Walker Reports remain relevant to the Governance Review despite:

- (a) the Charlotte Pass Village now being included in the Governance Review, and
- (b) the Walker Reports being delivered more than a decade ago.

3.4 Further, since the Walker Reports were delivered the terms of the leases granted to Perisher and to most club lodges and commercial operators have been extended until around 2058 with the result that lease tenure is much less of an issue now than it was at the time of the Walker Reports (although the terms and conditions of that tenure under a head lease arrangement are of concern and remain to be considered in detail and satisfactorily resolved).

4 JOINTLY AGREED PRINCIPLES

4.1 The Joint Stakeholders agree in principle that:

- (a) the Governance Review is a timely and necessary means of seeking to achieve the purpose and objectives set out in clauses 2.2 and 2.3 and to assist in delivering on the Vision,
- (b) the Walker Recommendations set out the governance model (ie a head lease) that is likely best to deliver a sustainable future for the Governance Review Resorts,
- (c) the Head Lease Matters are a good basis on which to address the concerns which any head lease arrangement will give rise to - but recognising there will no doubt be other concerns that will emerge from a more detailed consideration of the issues (and in particular that it is in this area that issues of conflict might arise not only as between OEH and the Joint Stakeholders but also possibly as between the Joint Stakeholders), and
- (d) they support the initiative of the Governance Review provided that it is conducted in a comprehensive, fair and transparent way and with due regard to the interests of all relevant stakeholders, including the Joint Stakeholders and their members in the case of SLOPES and the Chamber.

4.2 Without limiting clause 4.1(d), the Joint Stakeholders expect that:

- (a) there will be full transparency of all revenues connected with the Perisher Range Resorts and KNP (from PRR operators, users and others) including KNP gate fees, rentals and fees derived from all PRR leases and licences, fire levies, MSU charges and the like,
- (b) there will be full transparency of how those revenues are disbursed or allocated by or within government whether in connection with the Perisher Range Resorts or not,
- (c) there will be full transparency of all charges and expenses related to KNP and the PRR including in particular the municipal services in connection with the PRR, and
- (d) in any proposed head lease arrangement some reasonable component of PRR revenues would be allocated to defray the cost of PRR municipal services.

4.3 The above statement of agreed principles is subject to each of the Joint Stakeholders being separately satisfied as to the drafting of any statutory provisions or contractual documents or other arrangements affecting them in connection with the Governance Review.

- 4.4 The Joint Stakeholders reserve the right to disagree with each other on other issues where there may be conflicts and the need to separately represent the interests of their particular stakeholder group or groups requires this.

Dated 6th day of June 2016



SLOPES

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**Perisher Resorts Chamber
of Commerce**

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SCHEDULE OF DEFINITIONS

In this Joint Submission we use the following defined terms:

Chamber means the Perisher Resorts Chamber of Commerce.

Governance Review Resorts means the Perisher Range Resorts and the Charlotte Pass Village.

Governance Review means the governance model review announced in the OEH Letter.

Head Lease Matters means those items listed under the heading "HEAD-LEASE MATTERS TO BE DEALT WITH" in Attachment 2.

Inseparable Subsidiary Recommendation has the meaning given that expression in Attachment 2.

IPART Review means the Report dated June 2005 of the Independent Pricing and Regulatory Tribunal (IPART) titled "*Review of Infrastructure Pricing at Perisher Range Resorts*".

Joint Stakeholders means Perisher, SLOPES and the Chamber.

KNP means Kosciuszko National Park.

NPW Act means the National Parks & Wildlife Act 1974 (NSW).

NPWS means the National Parks & Wildlife Service.

Objectives mean the Governance Review purpose and objectives as set out in clauses 2.2 and 2.3.

OEH Letter means the OEH Letter issued by email on 15 December 2015 (a copy of which is Attachment 1).

OEH means the Office of Environment & Heritage.

Perisher means Perisher Blue Pty Ltd.

Perisher Range Resorts or **PRR** means the resorts of Perisher, Blue Cow, Bullocks Flat, Smiggin Holes and Guthega.

Principal Recommendation has the meaning given that expression in Attachment 2.

SLOPES means the Ski Lodges Organisation of Perisher Smiggins & Guthega Inc.

Vision has the meaning given that term in clause 1.1.

Walker Recommendations means the Principal Recommendation and the Inseparable Subsidiary Recommendation.

Walker Report I means the report of Bret Walker QC dated 16 November 2001.

Walker Report II means the report of Bret Walker QC dated 10 May 2002.

Walker Reports means Walker Report I and Walker Report II.

Attachment 1 - OEH email dated 15 December 2015



Frank Zipfinger <frank.zipfinger@gmail.com>

OEH Governance Review - Perisher Range Resorts & Charlotte Pass Village

OEH NPWS Property Mailbox <npws.property@environment.nsw.gov.au>

15 December 2015 at 11:04

To: "frank.zipfinger@gmail.com" <frank.zipfinger@gmail.com>, "slopes.au@gmail.com" <slopes.au@gmail.com>

Cc: OEH NPWS Resort Consultation Mailbox <OEHNPSResortConsultationMailbox@planning.nsw.gov.au>



**Office of
Environment & Heritage**
NSW National Parks & Wildlife Service



15 December 2015

The President

Ski Lodges Organisation of Perisher Smiggins and Guthega

Email: frank.zipfinger@gmail.com / slopes.au@gmail.com

Dear Mr Zipfinger

Perisher Range Resorts and Charlotte Pass Village – Governance Review

I invite your participation in the upcoming review of governance arrangements for the Perisher Range Resorts. This review will also include a review into the future arrangements for Charlotte Pass beyond the expiry of the current lease in October 2017.

The purpose of the review is to determine a governance model that will best deliver a sustainable future for the Perisher Range and Charlotte Pass Resorts. Ideally, the new model will allow the NSW National Parks and Wildlife Service (NPWS) to withdraw from the delivery of municipal services and lease management, and encourage private sector investment and additional year-round activities and visitation.

Providing municipal services is not seen to be part of NPWS' core business in the future and disengaging from these services will allow NPWS to focus its resources on the best outcomes for the community.

It is expected that new governance arrangements will be implemented by the end of October 2017, following the review process. As the selection of a preferred governance model will be informed by both stakeholder and market engagement, the first stage of the review will be to consult with leaseholders and other stakeholders to understand their views, ideas and concerns in relation to governance of the resorts.

NPWS has engaged Straight Talk, an independent specialist consultation company, to design and manage the consultation process. Through discussions with several stakeholders, February 2016 has been identified as the most appropriate time to begin stakeholder consultation.

To help Straight Talk develop the most appropriate consultation process, I would appreciate it if you could take the time to respond to the following questions:

1. What consultation methods would work best for you and/or your constituents? For example, do you prefer face-to-face activities, such as meetings and workshops, or online feedback mechanisms?
2. Do you and your constituents have a preferred location for face-to-face activities? For example, do you and/or your constituents prefer events in Jindabyne, Canberra, Sydney or another location?
3. What day/s and time/s suit you the most?
4. We propose to communicate via representative groups, such as SLOPES, the Perisher Chamber of Commerce and the Charlotte Pass Ski Lodges Association. Is this the preferred method of communication to constituents?
5. What else do we need to consider when planning this consultation process?

Once feedback on these questions has been received, Straight Talk will design a consultation process. We expect to have the details of the consultation process made available to you by the start of February 2016.

In the meantime, NPWS will continue to liaise with representative groups and will be in touch with relevant stakeholders as it undertakes the preparation of background information to support the review.

Based on the feedback received from individual lessees and representative bodies, many parties are looking forward to an active and positive contribution to the review process. Please indicate your interest in being involved and provide feedback on the above questions by email to resort.consultation@environment.nsw.gov.au by Friday 22 January 2015.

Yours sincerely



MIKE PATRICK

A/ Director Park Assets

National Parks and Wildlife Service

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Attachment 2 - Walker Report Recommendations - Summary of Key Points

WALKER REPORT RECOMMENDATIONS – SUMMARY OF KEY POINTS

RECOMMENDATIONS

Principal Recommendation – the best available approach to leasing for the Perisher Range resorts is a head-lease arrangement which removes the State (thus (NPWS) from direct landlord engagement with all levels of tenure, occupation and business at those resorts.

Inseparable Subsidiary Recommendation – that no change from the status quo should be made unless the Government is satisfied that the particular head-lease arrangement adequately copes with the different kinds of strain which it would create, as between the different stakeholders, and addresses appropriately the justified concerns expressed by opponents or critics of any head-lease arrangement.

HEAD-LEASE MATTERS TO BE DEALT WITH

Identity of the Head-Lessee. No special measures are necessary in relation to the identity of the head-lessee, be it Perisher Blue under present ownership and management, or otherwise.

Assignment of the Head-Lease. The State should stipulate in a head-lease that assignment or transfer of the lessee's estate should be subject to the State's consent which should not be withheld unless the State is satisfied that the assignee or transferee is not fit to discharge those duties, or terms generally to that effect, with their usual details. A similar safeguard might be considered with respect to a change in the controlling shareholding in eg Perisher Blue were it to be the head-lessee.

Tenure – Right of First Refusal. Present lessees who would become sub-lessees should have by covenant rights of first refusal of renewed terms, and the benefit of an obligation to offer them renewed terms on no more than then current market rentals.

Community Services Charges. Community services charges borne by sub-lessees should be based on cost-recovery (with reasonable vouched administration expenses but otherwise no mark-up), on vouched or audited financial records, on allocation according to land or business value primarily, and levied and spent only after reasonable regard to the informed views of a formal committee (a "Town Management Committee") comprising representatives of the sub-lessor and sub-lessees in various categories. The terms of the head-lease should actually prevent the head-lessee collecting community service charges in excess of the audited requirement for post recovery. The rationale is that the head-lessee should have no incentive whatever, and no lawful capacity, to turn the provision of municipal services into a profit-centre. Within specified limits there should be the capacity to lay up funds for the typically spasmodic but more or less predictable heavier expenditures, of a kind which reasonably justify a sinking fund approach.

Competitive Activity. Where any part of the sub-lessor's business operations materially competes with a sub-lessee's business, the rental formula and mechanism for fixing it must not provide any trading intelligence about the sub-lessee's business to any representatives of the sub-lessor.

Development by Sub-Lessees. The sub-lessor must not be allowed to regulate development by sub-lessees by reason of a lease term requiring its consent. Sub-leases should stipulate for the permitted general use of sub-leased premises, and otherwise the matter should be left to the new planning regime under NPWS or DUAP as the case may be. Applications for development consent under the new planning regime would be made by the sub-lessees direct to the consent authority, rather than via the head-lessee as is the case in Thredbo today. Development consent and dealings concerning it (applications, negotiations, conditions etc) should be between the proponent and the consent authority only. There is no reason in policy why development on National Parks land should be subject to shaping according to the predilections of a commercial operator. It would usurp their legitimate expectations were a head-lease structure to add a layer of private bureaucracy to the regulation of their maintenance and improvement projects on National Parks land.

Recreational Activities not obviously calculated to benefit the Head-Lessee. A head-lease should reflect an overall plan of management for KNP by prohibiting the head-lessee/sub-lessor from exercising any of its powers either under the head-lease or sub-leases, or otherwise, so as to impede the reasonable maintenance, enjoyment and enhancement of recreational activities which are not obviously calculated to benefit the head-lessee commercially, such as cross-country skiing and summer hiking. I think there would be real merit in specific reference to particular facilities or amenities, which may be identified in discussions with SLOPES and others, which should be stipulated in the head-lease as not susceptible of material alteration or diminution, again perhaps without the prior consultation with (or consent by) the Town Management Committee.

Force Majeure – climate change. I suppose a head-lease could address that species of force majeure constituted by the threatened snow reduction in the next few decades. On any view of fairness, but especially in order to avoid the kind of incompatibility of interest identified by SLOPES (between sub-lessor and sub-lessees, if the head-lease terms were materially different on such matters from the sub-leases), any concession extended in favour of the head-lessee in relation to snow reduction should also be reflected in the sub-leases.

Tax. I do not believe that any possible change in the incidence of tax eg land tax needs reflection in the terms of a head-lease.

Differential Pricing. The concern about differential pricing offered by Perisher Blue to tour package operators compared with lodge users has no place in the concerns of Government as to the terms of a head-lease. This is a matter of commerce, as the SLOPES submission recognizes.

Lease Tenure. Re-negotiation of a kind to increase sub-leases commensurately with the head-lease, over and above the present lodge leases, has much to commend it.