

**STATEMENT OF REASONS FOR DECISION UNDER SECTION 324J OF THE
ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999**

Alpine National Park

I, Ian Gordon Campbell, Minister for the Environment and Heritage, provide the following statement of reasons for my decision under section 324J of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), to remove from the National Heritage List (NHL) the Alpine National Park, Victoria, and its National Heritage values.

Legislation

1. Section 324F of the EPBC Act provides:

- (1) This section applies (despite subsection 324C(2)) if the Minister believes that:
 - (a) a place wholly in the Australian jurisdiction has or may have one or more National Heritage values; and
 - (b) any of those values is under threat.
- (2) The Minister may, by instrument published in the Gazette, include in the National Heritage List the place and the National Heritage values the Minister believes the place has or may have, whether or not the Minister has, under this Subdivision, given the Chair of the Australian Heritage Council a written request for the Council to assess under section 324G whether the place meets any of the National Heritage criteria.
- (3) Within 10 business days after including the place in the National Heritage List under this section, the Minister must give the Chair of the Australian Heritage Council a written request for the Council to assess under section 324G whether the place meets any of the National Heritage criteria.
- (4) However, subsection (3) does not apply if the Minister has already received from the Australian Heritage Council an assessment under section 324G whether the place meets any of the National Heritage criteria.

[Subsections 324F(5) – (6) omitted]

2. Section 324D provides:

- (1) A place has a *National Heritage value* if and only if the place meets one of the criteria (the *National Heritage criteria*) prescribed by the regulations for the purposes of this section. The *National Heritage value* of the place is the place's heritage value that causes the place to meet the criterion.
- (2) The *National Heritage values* of a National Heritage place are the National Heritage values of the place included in the National Heritage List for the place.
- (3) The regulations must prescribe criteria for the following:
 - (a) natural heritage values of places;
 - (b) indigenous heritage values of places;
 - (c) historic heritage values of places.The regulations may prescribe criteria for other heritage values of places.

- (4) To avoid doubt, a criterion prescribed by the regulations may relate to one or more of the following:
- (a) natural heritage values of places;
 - (b) indigenous heritage values of places;
 - (c) historic heritage values of places;
 - (d) other heritage values of places.

3. The regulations state as follows:

- (1) For section 324D of the Act, sub regulation (2) prescribes the National Heritage criteria for the following:
- (a) natural heritage values of places;
 - (b) indigenous heritage values of places;
 - (c) historic heritage values of places.
- (2) The National Heritage criteria for a place are any or all of the following:
- (a) the place has outstanding heritage value to the nation because of the place's importance in the course, or pattern, of Australia's natural or cultural history;
 - (b) the place has outstanding heritage value to the nation because of the place's possession of uncommon, rare or endangered aspects of Australia's natural or cultural history;
 - (c) the place has outstanding heritage value to the nation because of the place's potential to yield information that will contribute to an understanding of Australia's natural or cultural history;
 - (d) the place has outstanding heritage value to the nation because of the place's importance in demonstrating the principal characteristics of:
 - (i) a class of Australia's natural or cultural places; or
 - (ii) a class of Australia's natural or cultural environments;
 - (e) the place has outstanding heritage value to the nation because of the place's importance in exhibiting particular aesthetic characteristics valued by a community or cultural group;
 - (f) the place has outstanding heritage value to the nation because of the place's importance in demonstrating a high degree of creative or technical achievement at a particular period;
 - (g) the place has outstanding heritage value to the nation because of the place's strong or special association with a particular community or cultural group for social, cultural or spiritual reasons;
 - (h) the place has outstanding heritage value to the nation because of the place's special association with the life or works of a person, or group of persons, of importance in Australia's natural or cultural history;
 - (i) the place has outstanding heritage value to the nation because of the place's importance as part of indigenous tradition.

For sub regulation (2), the *cultural* aspect of a criterion means the indigenous cultural aspect, the non-indigenous cultural aspect, or both.

4. Subsection 324G of the EPBC Act relevantly provides that:

- (1) The Minister may give the Chair of the Australian Heritage Council a written request for the Council to assess whether a place meets any of the National Heritage criteria, whether or not the place is the subject of a nomination.
- (2) The Australian Heritage Council must give the Minister a written assessment whether a place meets any of the National Heritage criteria:

- (a) within 12 months after the Minister gives the Chair of the Council (under this section or section 324E) the request for the assessment; or
 - (b) if the place is included in the National Heritage List under section 324F (emergency listing)—within 40 business days after the Minister gives the Chair of the Council (under that section) the request for the assessment.
- (3A) Before giving the Minister an assessment under this section whether a place meets any of the National Heritage criteria, the Australian Heritage Council:
- (a) must publish, in accordance with the regulations (if any), a notice:
 - (i) stating that the Council is assessing whether the place meets any of the National Heritage criteria; and
 - (ii) inviting comments in writing, within a specified period that is reasonable having regard to the time by which the Council must give the assessment to the Minister, on whether the place meets any of the National Heritage criteria and whether the place should be included in the National Heritage List; and
 - (b) must consider, subject to subsection (5), the comments (if any) the Council receives within the period.

The Council must give the Minister a copy of the comments with the assessment.

- (4) If, in making an assessment, the Australian Heritage Council considers that a place within the Australian jurisdiction might have one or more National Heritage values, the Council must:
- (a) take all practicable steps:
 - (i) to identify each person who is an owner or occupier of all or part of the place; and
 - (ii) if the Council considers the place might have an indigenous heritage value—to identify each indigenous person who has rights or interests in all or part of the place; and
 - (b) take all practicable steps to advise each person identified that the Council is assessing whether the place meets any of the National Heritage criteria; and
 - (c) give persons advised a reasonable opportunity to comment in writing whether the place should be included in the National Heritage List.

The Council must give the Minister a copy of the comments with the assessment.

Note: For *indigenous heritage value*, see section 528.

- (5) In assessing whether a place meets any of the National Heritage criteria, the Australian Heritage Council must not consider any matter that does not relate to the question whether the place meets the National Heritage criteria.

[Subsection 324G(6) omitted]

5. Section 324J of the EPBC Act relevantly provides that:

Dealing with an emergency listing

- (5) After receiving from the Australian Heritage Council an assessment under section 324G whether a place that is or includes a place (the *listed place*) included in the National Heritage List under section 324F (whether before, on or after receipt of the assessment) meets any of the National Heritage criteria, the Minister must, by instrument published in the *Gazette*:
- (a) do one of the following:

- (i) state that the listed place remains in the National Heritage List with its boundary unaltered;
 - (ii) alter the boundary of the listed place described in the National Heritage List (whether or not the alteration results in an overall increase or decrease in the extent of the place included in the List);
 - (iii) remove from the National Heritage List the listed place and its National Heritage values; and
- (b) if the listed place is not removed from the National Heritage List under subparagraph (a)(iii)—do all or any of the following:
- (i) state that specified National Heritage values included in the List under section 324F for the place remain in the List for the place;
 - (ii) include in the List for the place specified National Heritage values of the place that were not included in the List under section 324F for the place;
 - (iii) remove from the List for the place specified National Heritage values that were included in the List under section 324F for the place.

(5A) The Minister must comply with subsection (5):

- (a) within 20 business days after the day on which the Minister receives the assessment; or
- (b) if section 324H applies in relation to the place covered by the assessment—within 15 business days after the end of the period mentioned in subsection 324H(3) for the place.

However, this subsection does not apply if the place covered by the assessment is partly outside the Australian jurisdiction.

Note: Subsection (5) cannot apply to a place wholly outside the Australian jurisdiction, because a place wholly outside the Australian jurisdiction must not be included in the National Heritage List under section 324F.

(6) Section 324L does not apply to:

- (a) an alteration (under subparagraph (5)(a)(ii) of this section) of the boundary of a place included in the National Heritage List so as to exclude part of the place (as previously included) from the description of the place in the List (whether or not the alteration results in an overall increase or decrease in the extent of the place included in the List); or
- (b) the removal of a place and its National Heritage values under subparagraph (5)(a)(iii) of this section; or
- (c) the removal of a National Heritage value of a place under subparagraph (5)(b)(iii) of this section.

(7) If, under subsection (5), the Minister removes from the National Heritage List a place or a National Heritage value of a place, or alters the boundary of a place included in the List, the Minister must:

- (a) within 10 business days, publish on the Internet:
 - (i) a copy of the instrument published in the *Gazette*; and
 - (ii) the reasons for the removal or alteration; and
- (b) within 10 business days, give written reasons for the removal or alteration to each person identified by the Minister as an owner or occupier of all or part of the place; and
- (c) give written reasons for the removal or alteration to anyone else who asks the Minister for them; and

- (d) if the place was included on the List following a nomination of it by a person—within 10 business days of the removal or alteration, advise the person of the removal or alteration and give the person written reasons for it.

General requirements

- (8) Before acting under subsection (1) or (5), the Minister must consider:
 - (a) the Australian Heritage Council's assessment whether the place meets any of the National Heritage criteria; and
 - (b) the comments (if any), a copy of which was given to the Minister by the Council under section 324G with the assessment; and
 - (c) the comments (if any) received in accordance with the notice (if any) published under section 324H in relation to the place; and
 - (d) the assessment (if any) requested under subsection 324H(4) of the merits of the comments received in accordance with the notice published under section 324H in relation to the place.
- (9) The Minister must publish in accordance with the regulations (if any) a copy or summary of an instrument published in the *Gazette* under this section.

[Subsections 324J(1) – (4), 324J(5B) omitted]

BACKGROUND

- 6. I received a request dated 4 January 2005 from the Mountain Cattlemen's Association of Victoria Inc (MCAV) for alpine grazing licensed areas in Alpine National Park to be included in the National Heritage List under the provisions of section 324F (Emergency Listing) of the EPBC Act. Upon a request for boundary clarification, I received a revised request, dated 11 January, from MCAV for the entire Alpine National Park to be included in the NHL under the provisions of section 324F (Emergency Listing) of the EPBC Act.
- 7. On 27 January 2005 I decided I should not include Alpine National Park in the NHL pursuant to section 324F of the EPBC Act. In my Statement of Reasons for that decision, I stated my belief that Alpine National Park may have National Heritage (NH) values and that Alpine National Park's potential NH values could, at some stage, be threatened by either a cessation of grazing or a continuance of grazing in the form then existing. I was not, however, convinced that the Victorian review of alpine grazing and the future decision whether to renew the alpine grazing licences was a threat to the potential NH Values of Alpine National Park at the time of my decision.
- 8. In May 2005, the Victorian Government announced its decision not to renew grazing licences within the Park. Following a meeting with MCAV, I announced on 26 May 2005 that I would initiate an emergency listing assessment of the Park for inclusion in the NHL. Following an assessment by my Department of the heritage values of the Park and the threats to those values both from the removal of grazing and the continuation of grazing, I decided, on 9 June 2005, to include the Park in the NHL under the provisions of section 324F (Emergency Listing) of the EPBC Act. A *Gazette* published on 10 June 2005 gave effect to my decision.

9. On 10 June 2005 my delegate requested, under subsection 324F(3) of the EPBC Act, the Chair of the Australian Heritage Council to assess whether the place met any of the NH criteria. The Council completed its assessment according to statutory requirements and provided its assessment to me on 12 August 2005.

EVIDENCE AND MATERIAL BEFORE ME

10. The evidence and material on which I based my decision to remove from the NHL the Alpine National Park, Victoria, and its NH values are listed below:
 - The MCAV request of 11 January 2005 for the emergency listing of the Alpine National Park;
 - The evidence in my Statement of Reasons dated 27 January 2005 not to emergency list the Park at that time;
 - The brief (Sub05/1178) prepared by my Department following my announcement of 26 May 2005 to initiate an emergency listing assessment;
 - The assessment of the Australian Heritage Council, received on 12 August 2005;
 - Comments received under section 324G of the EPBC Act by the Council during its assessment;
 - A letter, dated 12 August 2005, from the Chair of the Australian Heritage Council;
 - The brief (Sub05/1854) prepared by my Department to assist me with the consideration of the Council's assessment.

FINDINGS ON MATERIAL QUESTIONS OF FACT

11. I began by considering the assessment of the National Heritage values of the Alpine National Park by the Australian Heritage Council, the public comments received under section 324G(3A) of the EPBC Act by the Council during its assessment, the comments received from owners, occupiers and indigenous persons with rights and interests received under section 324G(4) of the EPBC Act by the Council during its assessment and a letter from the Chair of the Council dated 12 August 2005.
12. I noted that the Council found that the Alpine National Park met National Heritage criteria (a), (b), (c), (d), (e) and (g), adding criterion (b) to those criteria that I had found the Park may have in including the Park in the National Heritage List under the emergency provisions of the EPBC Act. After considering the Council's report and the public comments received by the Council, I concluded that the Alpine National Park did meet the National Heritage criteria identified by the Council.
13. I noted that in his letter of 12 August 2005 to me, the Chair of the Council advised that 'Council also noted that the National Heritage significance of the Park derives from being part of the broader Australian Alps, a unique landscape on the Australian mainland. Council is of the view that a broad listing of the Australian Alps National Parks is a preferable approach to the listing of individual parks. Council considers that an assessment of the entire Alps for the National Heritage List is overdue and is necessary to facilitate the development of a unified management plan to ensure a consistent approach to the management of heritage values'.

14. I agreed with the Council's views that the National Heritage significance of the Park derives from being part of the broader Australian Alps. I therefore decided that it would be more appropriate to ask the Council to provide me with an assessment of the National Heritage values of the entire Australian Alps and not to have Alpine National Park listed separately.

REASONS FOR DECISION

15. In the light of my findings above, I decided that the Park should not continue to be listed separately in the National Heritage List and, pursuant to subsection 324J(5) of the EPBC Act, I decided to remove from the National Heritage List the Alpine National Park, Victoria, and its National Heritage values.



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MINISTER FOR THE ENVIRONMENT AND HERITAGE

23rd October 2005