



Planning,
Industry &
Environment

23 AUG 2023

RECEIVED - JINDABYNE

MOD 23/10039 DA 10064

I strongly oppose this proposal, especially in regard to the restaurant area and the access by the public across our land. We went to court over this and was granted - that the access to the public would not be through our land but from the Diggings Terrace entrance as this access across our land would have incurred a huge level of noise, privacy and a great loss to our quiet enjoyment.

I have not made any reportable political donations in the last two years.

Yours sincerely,

17/8/23

[REDACTED]
[REDACTED]
Department of Planning and Environment

Alpine Resorts Team

Shop 5A, Snowy River Ave

Jindabyne NSW 2625

MOD 23/10039 (DA 10064 MOD3) - Proposed Redevelopment of Black Bear Inn

My wife and I are the owners of the sublease to [REDACTED] of Squatters Run. [REDACTED] is situated directly above the Bakery on the Village Square. The apartment is in the northeastern corner of the Squatters Run Complex and is directly adjacent to any proposed access from the lower level of the Black Bear Building to the Village Square.

We repeat the submissions we put to Planning NSW in our objection of September 2019 (copy attached) and in particular, we repeat our concerns regarding the impact that access from the lower level of the Black Bear complex will have on the privacy and amenity of [REDACTED]. Further, we submit that there are insurmountable safety issues, particularly in winter and in bad weather which mean that public access from the Village Square should not be contemplated. Our submission of September 2019 provides details of those issues.

Nothing in the Developer's proposals provide any rebuttal of the concerns set out in our submissions of September 2019, and February 2021. (Copy Attached).

We submit that in the event that the DA is modified to permit access to the Village Square from the lower level of the Black Bear complex. The following Conditions be specified:

- (a) Restaurant refuse disposal facilities are to be located at the Diggings Terrace level of the building and are to be retained and maintained at all times in that location by the sub-lessee of the premises;
- (b) The ground level exit from the building is for emergency use or usage by owners and other residents, and shall not be used for access to or egress from the restaurant by the general public;
- (c) Prominent signage is to be erected outside of that doorway, prohibiting public access to the building by that doorway;
- (d) The Developer be required to erect solid screening adjacent to between the northeastern corner of Apartment 17 and the existing stairway from the Mowamba Apartments to the Village Square of sufficient height which would

prevent users of the stairway being able to see into the bedroom of Apartment 17; and

- (e) The Developer and any subsequent operator of the Black Bear complex be required to address the safety issues in relation to any stairs by providing and operating effective heating of the stairs from the June Long Weekend to the October Long Weekend to prevent snow and ice accumulation on the stairs.

(f)

Further, we support and adopt in their entirety, the submissions with Additional Argument made by Ray Temperley and Lynne McDonald, owners of Apartment 27, Squatters Run dated 10 August 2023.

We have read the document "Disclosure of Reportable Donations and Gifts". We have not made any reportable donations or gifts.

We have read the Department's Privacy Statement agree to the Department using our submission in the ways it describes. We understand that this includes the full publication on the Department's website of our submission, any attachments and any of our personal information in those documents and possible supply to third parties such as state agencies, local government and the proponent.

[REDACTED]

15 August 2023.

OBJECTION SUBMISSION IN RELATION TO DA10064 Black Bear Inn and the impact of DA078-12-2010

We are the owners of the sublease to [REDACTED] of Squatters Run. [REDACTED] is situated directly above the Bakery on the Village Square. The apartment is in the north eastern corner of Squatters Run and is directly adjacent to the proposed stairway from the Black Bear proposal to the Village Square.

Despite owning Apartment 17 since 2003 we have never been consulted in relation to the location or potential impact of the proposed stairway.

This submission covers two main aspects.

First – the impact of the proposed development and its heavy reliance on the proposed stairway on the privacy and amenity of [REDACTED].

Secondly, we will provide submissions in relation to the Black Bear proposal itself.

1. DA078-12-2010 Sashas Apartments & Black Bear lodge Thredbo – New Path

We recognise that this DA has been approved and is not subject to review. However, we believe that the proposed stairway is fundamentally flawed and represents such a significant safety hazard and creates sufficient detriment to several apartments in Squatters Run that the Black Bear proposal should not be permitted to rely on the benefit of the previous approval of this DA. .

Privacy

The stairway is proposed to be sited less than 2 meters from the bedroom window of Apartment 17. People on the stairway will have an unfettered view into the bedroom of Apartment 17. This constitutes an unreasonable imposition on the use of Apartment 17. If the use of this stairway is approved as part of the current Black Bear proposal, the developer should be required to place suitable screening on the lower level of the stairway to preserve the privacy of Apartment 17.



Photo. Looking into [REDACTED] bedroom window.

Noise

The current proposed design of the Black Bear Application clearly envisages that the bike room, ski room and restaurant would be located on the lower levels of the development. The Application clearly shows an intention that access to these parts of the development would be encouraged from the Village Square via the proposed stairway. Unfortunately, it has become common for alcohol fuelled enthusiasm to result in excessively loud voices which will be less than 2 metres from the bedroom of Apartment 17 and very close to other apartments in Stage 2 of Squatters Run.

It is recommended that a condition of approval of the Black Bear proposal should be that access to the stair way be closed from the building to the stairway after 10 pm at night. Further, the design of the proposed building should be such as to encourage access to and from the ski room, bike room and restaurant should be through the building itself to Diggings Terrace.

There is currently no information about the method of construction of the stairway. If for example, the stairway is constructed of steel mesh, the noise will be excessive. A condition of approval of the Black Bear proposal should be to prevent use of materials which will generate noise.

Lighting

The DA is silent on the method of lighting the stairway. Current lighting of the stairway to Mowamba Apartments (apart from one problem spotlight which has since been re-angled) is all set at knee height with shrouds to prevent light impacting outside of the stairs. This standard of lighting should be used where lighting could otherwise impact on the Apartments of Squatters Run. Safety issues require that the stairs be lit and appropriate conditions should be incorporated into any approval of the Black Bear proposal.

Safety issues

There is currently no detail available as to the method of construction of the stairs. The lower part of the slope is approximately 45 degrees and shaded particularly in winter months. There is a high risk of slipping on snow and more particularly, on ice, if the stairs are not heated. Given the location of the ski room in the proposed development, guests may be encouraged to use the lower stairs despite any inherent risk of injury. It is recommended that a condition of approval of the Black Bear proposal should be that the design of the proposed building should be such as to encourage access to and from the ski room, bike room and restaurant should be through the building itself to Diggings Terrace.

Given the angle of the lower slope it is difficult envisage how the stairs can be constructed in a manner that will comply with the BCA.

Photo showing the slope of the stairs.

Given the complete lack of information regarding the design and method of construction of the stairway it is recommended that a separate DA be required for the design and construction of the stairway.

Submission dated 9 February 2021

Department of Planning, Industry and Environment Alpine Resorts Team
Shop 5A, Snowy River Ave
Jindabyne NSW 2627

Attention: Flynn Rush

Hidali Pty Ltd v Minister for Planning and Public Spaces
Proposed Redevelopment of Black Bear Inn, Thredbo Village

I refer to our previously filed submissions in relation to the above proposal.

We wish to add the following to our previous submissions.

1. We note the statement in the letter from DPIE dated 28 January 2021 stating that “public access will be from Diggings Terrace”.
2. Notwithstanding that statement in DPIE’s letter, we are concerned that nothing in the Applicant’s materials appear to indicate that access to and from Mowamba Place will be restricted. In fact, the Applicant’s submission insists that the Easement remains in place.
3. There are no details as to how the easement will, or will not be used. For example, will there be a pathway and stairs? The materials to be used on the construction will have a significant impact on safety and noise in use. If the access is to be constructed, when will the details of that construction be made available?
4. We submit that if the use of the Easement is to be permitted, its use should be restricted to residents and guests departing Black Bear in the event of an emergency such as when the building is being evacuated. Accordingly any access doors from the lower levels of Black Bear should be secured by alarmed automatic locks which can only be accessed from the inside of the building. Signs consistent with the terms of Part 2, Clause (1)(d) of the Easement for Right of Footway on Lot 793 in DP 1119757 (“the Easement”) should be located both at the exit point in Black Bear and at Mowamba Place. We also maintain that if clients of the restaurant are able to access the restaurant via the Easement, a significant safety hazard will be created particularly in winter when the Easement could be affected by rain, snow or ice coupled with users who may well be affected by alcohol.

5. We support the submission made by Mr Temperley on behalf of Squatters Run owners and the Squatters Run Association, that any consent for the walkway and stair access from Mowamba Place is no longer valid. More particularly, even if there is a limited level of consent remaining in place, that consent is not sufficiently broad to permit the general public to access the restaurant, which is proposed for a lower level of the building. The original consent was confined to Black Bear residents.
6. We that the Applicant has not complied with the terms and conditions of the use of the Easement and accordingly, it is open to the owners of Sasha's and Squatters apartments to seek to constrain the use of the Easement.
7. There is nothing in the Applicant's materials to indicate how the privacy issues, particularly for the owners of Apartment 17 of Squatters Run, will be resolved. In particular, there is no mention of anything to prevent noise disturbance. The Applicant suggests that landscaping through the planting of shrubs and trees will mitigate the impact on privacy for neighbours. However, we submit that the landscaping will do little or nothing to reduce the impact of noise from boisterous clients using the Easement. We also note that the Thredbo climate means that any plantings will take a very long time to grow sufficiently to have any screening effect.
8. We submit that works done by the Appellant with a supposed view to keeping the original Development Application on foot are not sufficient. In any event they were not works undertaken pursuant to that Development Application. In particular, the removal of an oil tank was a requirement imposed by NPWS on various buildings in the National Park as part of its environmental risk management.
9. A developer's profit should not be generated at the expense of compromise to the views enjoyed by neighbours, the imposition of unacceptable noise impacts on neighbours, the diminution of quiet enjoyment by others, and the destruction of property values of neighbours.

[REDACTED]

[REDACTED]

Thredbo Village.

[REDACTED]

10 August 2023

Department of Planning and Environment
Alpine Resorts Team
Shop 5A, Snowy River Ave
Jindabyne NSW 2627

Dear Sirs

MOD 23/10039 (DA 10064 MOD3) Proposed Redevelopment of Black Bear Inn

My wife and I are the owners of [REDACTED] Squatters Run, 24 Diggings Terrace, Thredbo and OPPOSE the modifications to the Development Application referenced above, for the reasons summarised below. In particular, we are concerned about “the new external entry location” referred to in the applicant’s Design Statement.

The major grounds for opposing this modification is that it will tend to facilitate easy access to the restaurant and ski storage area, etc from the Village Square, contrary to the intent that the primary access to the premises be by way of entry and egress from Diggings Terrace.

We do not accept the applicant’s contention in its Design Statement that “The changes sought will not impact on the use of the building...”

Background to our concerns about the level 0 (now level 1) entry is appended.

We submit that the conditions imposed by the Department previously should be extended to preclude public entry/egress at this level other than in an emergency.

In relation to the material provided by the applicant, we therefore contend as follows:

1. The current problems faced by the applicant stem from the decision to incorporate a restaurant. While we recognise that this is a commercial decision within the discretion of the developer, we are as concerned now as we were previously about the potential consequences of this decision. In the absence of a detailed exposition of how the proposed restaurant will be configured and operated, however, we can only suggest that the inherent problems be addressed, so far as possible, in the conditions imposed on the developer as part of this approval process.
2. **Post-occupation conditions.** To address some of our concerns relation to the operation of the proposed restaurant and to confirm Departmental advice that the issue of access to the building from the rear of the building has been addressed, we suggest the following conditions be incorporated by the consent authority in any eventual approval:

(a) Restaurant refuse disposal facilities are to be located at the Diggings Terrace level of the building and are to be retained and maintained at all times in that location by the sub-lessee of the premises;

(b) The ground level exit from the building is for emergency use or usage by owners and other residents, and shall not be used for access to or egress from the restaurant by the general public; and

(c) Prominent signage is to be erected outside of that doorway, prohibiting public access to the building by that doorway.

We also note that the Department has recently sought comments on its 'Draft Planning Circular - Building Classification in the Alpine Resorts (Not Government Policy)'. While it appears that the Department has sought to enforce this proposed policy in relation to various Development Applications elsewhere in Thredbo, the extent to which it has been applied to the Black Bear redevelopment is unclear (particularly in relation to issues such as disabled access, etc). We would contend that it would be anomalous to purport to apply the policy in some instances but not in others. We will be interested in seeing how the Department resolves this situation.

SUMMARY

The fundamental problem with the current Development Application is that it incorporates provision for a restaurant at Level 1. While it might be perceived as being beneficial to the village to have a new restaurant to replace that previously being run in the Black Bear, access to the restaurant continues to be an issue.

Yours sincerely


Diggings Terrace,
Thredbo NSW 2625

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SUMMARY OF ADDITIONAL ARGUMENT IN RELATION TO PROPOSED BLACK BEAR RE-DEVELOPMENT

Residents of Squatters Run Apartments are concerned about the impacts of public usage of the proposed restaurant.

The proposed restaurant on Level 1 of the premises is stated to be subject to a separate Development Application. In the absence of this proposed DA, it is difficult to even assess whether the proposed changes the existing approved DA have merit. The devil is in the detail.

It is the developer's decision to incorporate a restaurant at level 2 of the building rather than at street level, as is the case of the restaurant in the now demolished Black Bear. However, this decision will have significant implications in terms of access (and disabled access), kitchen exhaust fumes and where they might be directed, delivery of kitchen

supplies and removal of garbage, etc, and these all need to be considered and addressed before it can be determined whether a restaurant in the bowels of the building will ultimately be commercially viable.

Direct impacts on Squatters Run

Access to the restaurant at Level 1 of the proposed development appears to continue to rely on a yet to be constructed pathway from the lower level of the new building to the Village Square. The pathway will presumably follow a right of way along the northern boundary of Lot 793 (Sasha's apartments) to where it joins a pre-existing right of way (currently non-trafficable) on Lot 792 descending along the eastern boundary of Squatters Run. This has significant consequences for Squatters Run Apartments in terms of reduction of the privacy they currently enjoy and in potential noise caused by users of the pathway, particularly during night hours. Users of the stairs descending from the restaurant and lower levels of the building who are proceeding along the proposed pathway will see directly into Squatters Run Apt 27 and pass by the bedroom windows of Apts. 17 and 22, requiring windows to be closed and blinds drawn if privacy is to be maintained.

History of previous events.

By email dated 6/12/2010, Sashas Apartments agreed to the proposed new pathway on its property, subject to a number of conditions reflecting the intent that usage of the right of way be only for those residing in Sashas Apartments and Black Bear Apartments. Access by the general public was not envisaged. Some of the pre-conditions for consenting to the creation of the right of way on the northern boundary of Sasha's apartments have not been complied with, thereby constituting a partial failure of consideration for the creation of the right of way.

On 20/11/2011, the Dept of Planning approved a Development Application (DA) by Kosciuszko Thredbo (KT) for the proposed pathway, subject to conditions.

In May 2012 or thereabouts, the s. 88B instrument creating the right of way on the northern boundary of lot 793, was registered. It required, as terms of the easement (and reflecting certain of the preconditions in the email from Sasha's apartments), signage be erected with the wording: SASHA'S AND BLACK BEAR RESIDENTS ONLY - NO PEDESTRIAN ACCESS AVAILABLE TO DIGGINGS TERRACE", and control of access to the proposed Black Bear Apartments by use of a "self closing (locking) door mechanism"

At all relevant times, the Black Bear re-development proposal was for a number of residential apartments, and none of the interested parties (including the developer, the owners of Sasha's apartments, and the owners of Squatters Run) envisaged that the right of way would have substantial usage, as is now seemingly proposed in the requested amendment to the Black Bear DA in consequence of the decision to include a restaurant at a bottom level of the development.

The increased usage of the proposed pathway is opposed by the current owners of Sashas Apartments, and by the Squatters Run Association, Inc, representing the interests of a number of apartment owners in the complex who will be directly impacted.

While parties concede that the signage required by the 88B instrument may dissuade some potential users from seeking to access the restaurant by way of the proposed pathway, they nonetheless consider that the anticipated increased usage of the proposed pathway by members of the public to access the restaurant will impact upon their quiet enjoyment of their respective properties.

The current owners of Sasha's apartments and owners of apartments in Squatters Run do not yet regard issues relating to usage of the rights of way and construction of the proposed pathway as settled, on grounds including -

1. The preconditions for creation of the right of way on the northern boundary of Sasha's apartments have not yet been met, and could potentially result in protracted litigation by affected parties.
2. Usage of the existing right of way on Lot 792 is problematic in the absence of a constructed pathway, due to the nature of the ground which does not currently permit pedestrian access. Squatters Run Association Inc is the holder of a sublease of all of Lot 792, with the exception of those areas listed in Annexure A to its sublease. Its consent has at no time been sought or granted for construction works on the right of way on its eastern boundary, and in the event that such consent were sought, it would anticipate lengthy negotiations would be required to address its concerns about the impacts of pathway usage on its owners and their guests (including measures to address noise attenuation, night-time lighting, etc), and the provision of necessary indemnification to protect the Association in the event that invitees or other users suffer injury in consequence of their usage of the pathway.

For the above reasons, and in the absence of a Development Application for the proposed restaurant in Black Bear, we oppose approval of MOD 3 of DA10064.