



Land and Environment Court New South Wales

Medium Neutral Citation:

**Redwin Investments Pty Ltd v Minister for Planning
[2022] NSWLEC 1444**

Hearing dates:

Conciliation conference on 12 August 2022

Date of orders:

25 August 2022

Decision date:

25 August 2022

Jurisdiction:

Class 1

Before:

Horton C

Decision:

See orders at [23].

Catchwords:

DEVELOPMENT APPLICATION – tourist accommodation
in Thredbo Alpine Resort – conciliation conference –
agreement between parties —orders

Legislation Cited:

Environmental Planning and Assessment Act 1979, ss
4.16, 8.7, 8.15
Environmental Planning and Assessment Regulation 2000,
cl 55
Land and Environment Court Act 1979, s 34
Rural Fires Act 1997, s 100B
Snowy River Local Environmental Plan 2013
State Environmental Planning Policy (Precincts – Regional)
2021, ss 4.1, 4.9, 4.12, 4.13
Water Management Act 2000

Texts Cited:

NSW Department of Infrastructure, Planning and Natural
Resources, Geotechnical Policy Kosciuszko Alpine Resorts
(2003)

Category:

Principal judgment

Parties:

Redwin Investments Pty Ltd (Applicant)
Minister for Planning (Respondent)

Representation:

Counsel:
F Burgland (Respondent)

Solicitors:
B Ellis, Mills Oakley (Applicant)

Department of Planning, Industry and Environment
(Respondent)

File Number(s): 2022/83258

Publication restriction: Nil

JUDGMENT

- 1 **COMMISSIONER:** This Class 1 appeal is brought under s 8.7 of the *Environmental Planning and Assessment Act 1979* (EPA Act), following the deemed refusal of Development Application DA2021/10688 seeking consent for redevelopment of existing tourist accommodation building and associated landscape works at Lot 619 in DP 1118588 also known as 9 Valley Close (Woodridge Lodge), Thredbo in New South Wales (the site).
- 2 The Court arranged a conciliation conference under s 34(1) of the *Land and Environment Court Act 1979* (LEC Act) between the parties on 12 August 2022, at which I presided.
- 3 Prior to the conciliation conference, the parties reached an in-principle agreement as to the scope of amendments required for the parties to reach terms of a decision in the proceedings that would be acceptable to the parties. This decision involved the Court upholding the appeal and granting development consent to the development application, subject to conditions.
- 4 A signed agreement prepared in accordance with s 34(10) of the LEC Act was filed with the Court on 10 August 2022.
- 5 The parties ask me to approve their decision as set out in the s 34 agreement before the Court. In general terms, the agreement approves the development subject to amended plans that were prepared by the Applicant and noting that the final detail of the works and plans are specified in the agreed conditions of development consent annexed to the s 34 agreement.
- 6 Under s 34(3) of the LEC Act, I must dispose of the proceedings in accordance with the parties' decision if the parties' decision is a decision that the Court could have made in the proper exercise of its functions. The parties' decision involves the Court exercising power under s 4.16 of the EPA Act. In this case, there are jurisdictional prerequisites that must be satisfied before this function can be exercised. The parties explained to me during the conference as to how the jurisdictional prerequisites have been satisfied in order to allow the Court to make the agreed orders at [23].
- 7 The site is located in C1 – National Parks and Nature Reserves zone, according to the Snowy River Local Environmental Plan 2013. Tourist accommodation is permitted with consent, pursuant to the Land Use Table at s 4.9 of the State Environmental Planning Policy (Precincts – Regional) 2021 (Regional SEPP).

State Environmental Planning Policy (Precincts – Regional) 2021

- 8 Section 4.12 of the Regional SEPP sets out certain matters for consideration as a precondition to the grant of consent.
- 9 In respect of s 4.12(1)(a), I accept the aims and objectives of the Regional SEPP set out at cl 4.1 are achieved because the proposed development replaces existing tourist accommodation in the same location, and with landscape integrated with the development to avoid adverse environmental impacts.
- 10 In respect of s 4.12(1)(b), I accept that the proposal represents an appropriate balance between conserving the natural environment and measures to mitigate environmental hazards in the following ways:
- (1) a Geotechnical Investigation prepared by AssetGeoEnviro dated 18 July 2022 concludes that the site is geotechnically suitable for the development; and
 - (2) a Bushfire Assessment Report, prepared by Ember Bushfire Consulting dated 10 June 2021 concludes that the proposed development is capable of complying with the objectives of Planning for Bushfire Protection, and the NSW Rural Fire Service has issued a Bush Fire Safety Authority, under s 100B of the *Rural Fires Act 1997*, and cited in Condition A.2 of the agreed conditions of consent.
- 11 In respect of s 4.12(1)(c), I accept that the nature and scale of the development does not impose unreasonable impacts of a kind set out at (i)-(iv) as the proposal seeks to effectively replace the nature, scale and intensity of the existing development.
- 12 In respect of s 4.12(1)(d), I have considered the Statement of Environmental Effects prepared by Collins Pennington architects dated June 2021.
- 13 In respect of s 4.12(1)(e), on the basis of the character analysis annexed to the letter prepared by the Respondent dated 24 July 2020, I accept the opinion of the Respondent that the proposal will not significantly alter the character of the alpine resort.
- 14 On the basis of the geotechnical investigation cited at [10], I accept that the Geotechnical Policy Kosciuszko Alpine Resorts (2003, NSW Department of Infrastructure, Planning and Natural Resources) has been addressed, in accordance with s 4.12(1)(f).
- 15 On the basis of the Concept Sediment and Erosion Control Plan prepared by INDESCO dated 3 November 2021, and the Stormwater Management Plan of the same author, I accept that measures are proposed to mitigate adverse impacts associated with those works the object of s 4.12(1)(g) and (h).
- 16 On the basis of the statement contained in s 5.4 of the Statement of Environmental Effects in respect of visual impact, I accept the proposal is consistent with s 4.12(1)(i).
- 17 Likewise, on the basis of the information contained in s 5.4 of the Statement of Environmental Effects, I accept that there are no grounds to consider the proposal to be connected with a significant increase in activities, outside of the ski season, in the

Thredbo alpine resort, in accordance with s 4.12(1)(j).

- 18 The site is located within a riparian corridor and is within 40m of Merits Creek. The Natural Resources Access Regulator has provided general terms of agreement dated 4 August 2021, under the *Water Management Act 2000*, and cited in Condition A.2 of the agreed conditions of consent, and Sediment and Erosion measures are proposed that are consistent with the long-term management goals for riparian lands, at subs 4.12(2), while not inhibiting the existing overland flow path, in conformity with s 4.12(1)(m).
- 19 Section 4.13 of the Regional SEPP sets out additional matters to be considered for buildings. I have considered the building height, setback, and landscaped area of the proposed development, and I do not find any adverse impact, inadequacy or deficiency in the proposal when the terms of subs (1), (2) or (3) are understood.

Conclusion

- 20 As the parties' decision is a decision that the Court could have made in the proper exercise of its functions, I am required under s 34(3) of the LEC Act to dispose of the proceedings in accordance with the parties' decision.
- 21 In making the orders to give effect to the agreement between the parties, I was not required to make, and have not made, any merit assessment of the issues that were originally in dispute between the parties.
- 22 I note the Respondent, as the relevant consent authority has agreed, in accordance with cl 55 of the Environmental Planning and Assessment Regulation 2000, to the Applicant amending the development application by lodgment on the NSW Planning Portal. Evidence of lodgment was provided to the Court on 15 August 2022.

Orders

- 23 The Court orders that:

- (1) The Applicant is granted leave to rely upon the amended plans and documents as follows:

No.	Original	Amended
1	DA02 – Site Analysis Site Plan – issue DA02 dated 9 November 2021	DA02 – Site Analysis Site Plan – issue DA3 dated 7 June 2022
2	DA11 – Lower Floor Plan – issue DA2 dated 9 November 2021	DA11 – Lower Floor Plan – issue DA4 dated 21 June 2022
3	N/A	Da14 – Basement Plan – issue P1 dated 25 May 2022

4	DA30 – Sections – issue DA2 dated 9 November 2021	DA30 – Sections – issue DA4 dated 20 June 2022
5	C10 – Turning Template Plan – dated 3 November 2021	C10 – Turning Template Plan – issue C dated 11 July 2022
6	Geotechnical Investigation Report(s) prepared by AssetGeoEnviro dated 14 April 2021 and 3 November 2021`	Geotechnical Investigation Report – Revision 4291-1-G1 Rev 2, prepared by AssetGEOEnviro dated 18 July 2022.

- (2) Pursuant to s 8.15(3) of the *Environmental Planning and Assessment Act 1979*, the Applicant is to pay the Respondent's costs thrown away as a result of amending the development application, in the amount of \$2,500, to be paid within 28 days of the date orders made.
- (3) The appeal is upheld.
- (4) Development Application 2021/10688 for the demolition of an existing building and construction of a new 2-storey ski lodge with onsite car parking, landscaping and associated services at Lots 619 & 665 in DP 1118588, also known as 9 Valley Close, Thredbo is determined by the grant of consent, subject to the conditions set out in Annexure A.

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T Horton

Commissioner of the Court

Annexure A (353261,.pdf)

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Decision last updated: 25 August 2022