



Black Bear Inn, Thredbo Village Modification

Modification Application Assessment (MOD 22/8121 (DA 10064 MOD 2))

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Cover image: *Main Range, Kosciuszko National Park (Source: Alpine Resorts Team)*

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Glossary

Abbreviation	Definition
BCA	Building Code of Australia
BC Act	<i>Biodiversity Conservation Act 2016</i>
BC Regulation	<i>Biodiversity Conservation Regulation 2017</i>
BVM	Biodiversity Values Map
Consent	Development Consent
Department	Department of Planning and Environment
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	<i>Environmental Planning and Assessment Regulation 2021</i>
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
EPI	Environmental Planning Instrument
ESD	Ecologically Sustainable Development
KNP	Kosciuszko National Park
Minister	Minister for Planning
NPWS	National Parks and Wildlife Service
Planning Secretary	Secretary of the Department of Planning and Environment
RFS	NSW Rural Fire Service
SEPP	State Environmental Planning Policy

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1 Introduction

1.1 Preamble

This report contains the Department of Planning and Environment's (the Department's) assessment of an application to modify the development consent (DA 10064) issued by the NSW Land and Environment Court (NSW LEC), as modified by DA 10064 MOD 1, for the construction of Black Bear Inn at 30 Diggings Terrace (Lot 794 DP 1119757), Thredbo Village, Thredbo Alpine Resort within Kosciuszko National Park (KNP) (**Figure 1**).

The application has been lodged by Hidali Pty Ltd (the Applicant) pursuant to section 4.56 of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The modification application seeks approval for internal and external alterations to the previously modified development consent, including:

- Internal - Reconfiguration of apartment layouts, including alteration to accessible apartment (Apartment 401B). Lowering of Level 2 floor level by 75mm. Increasing the size of Apartment 401A on Level 4 partly over the car park entrance. Inclusion of an additional door to the residential lift, fire exit to Level 3 and 4 and reduction to the lobby area. Repurpose of approved media rooms to a bedroom (increasing the overall occupancy of the site from 36 to 43 beds).
- External – Reduction to the number of chimneys and reconfiguration of roof structure. Alterations to the car park level to incorporate openable aluminium louvers instead of fixed glazing (north, western and eastern façade). Amended front Level 4 entry area (**Figure 4**), including alteration to proposed landscaping on front façade (**Figure 5**). Change to materials utilised within the front façade.



Figure 1 | Black Bear Inn site in context of Thredbo Village and adjoining buildings, prior to demolition of the previous building (Source: SIX Maps 2022)

The Minister for Planning is the consent authority for development within a ski resort in KNP and the proposal is permissible with consent under the provisions of *State Environmental Planning Policy (Precincts – Regional) 2021* (the Precincts – Regional SEPP).

1.2 Background

The subject site is known as the 'Black Bear Inn' site, (Lot 794 DP 1119757), Diggings Terrace, within Thredbo Village (**Figure 1**). The site has an area of approximately 687.5 sqm with a frontage to Diggings Terrace of approximately 24 metres (including the part of the site along the access point to the adjacent Candlelight Lodge) and a depth of approximately 28 metres.

The site slopes steeply from Diggings Terrace to the rear, with a north-westerly aspect and views of the Ramshead Range and the Thredbo ski slopes.

Works have commenced on the site following the NSW Land and Environment Court approval of the redevelopment of the former Black Bear Inn (NSW LEC No. 2020/68009). The former building has been demolished and excavation of the site to basement level is nearly complete (**Figure 2**).

The buildings immediately adjacent the site include Candlelight Lodge to the east, Sasha's Apartments to the west and Mowamba Apartments to the north. Hi Noon Ski Club is located across Diggings Terrace to the south.



Figure 2 | Existing site excavation and installation of retention structures (Source: Department inspection)

1.3 Approval History

On 17 May 2021, the NSW LEC approved DA 10064 (NSW LEC No. 2020/68009) (**Figure 3**) for:

‘Demolition of existing building and erection of a 7-storey building comprising four dual key apartments (or eight self-contained apartments); four traditional two-bedroom apartments; car parking; all to be used as tourist accommodation at 30 Diggings Terrace, Thredbo Village’.

The approval included a basement storage area and a future restaurant on Level 1.



Figure 3 | Approved development, southern frontage to Diggings Terrace (Source: NSW LEC approval)

On 14 July 2022, the Team Leader of the Alpine Resorts Team, as delegate of the Minister for Planning, granted consent to a Modification Application (DA 10064 MOD 1) for the following:

- Level 0 - Deletion of the basement storage area and raising of the floor level RL by 830mm.
- Level 1 - Reposition of the stair access from Level 1 and all related re-arrangements of entry space, rearrangement of shared bathrooms, reduction in restaurant footprint/floor area, new mechanical plant and equipment hold and lowering of the floor level reduced level (RL) by 300mm (increasing floor to ceiling height within the proposed future restaurant).
- North Elevation - Thickened slab.

The Department concluded that the design changes with the deletion of the basement level and reconfiguration to Level 1 do not result in impacts to adjoining properties. The reduction to the overall excavation required to facilitate the construction of the new tourist accommodation development is also acknowledged.

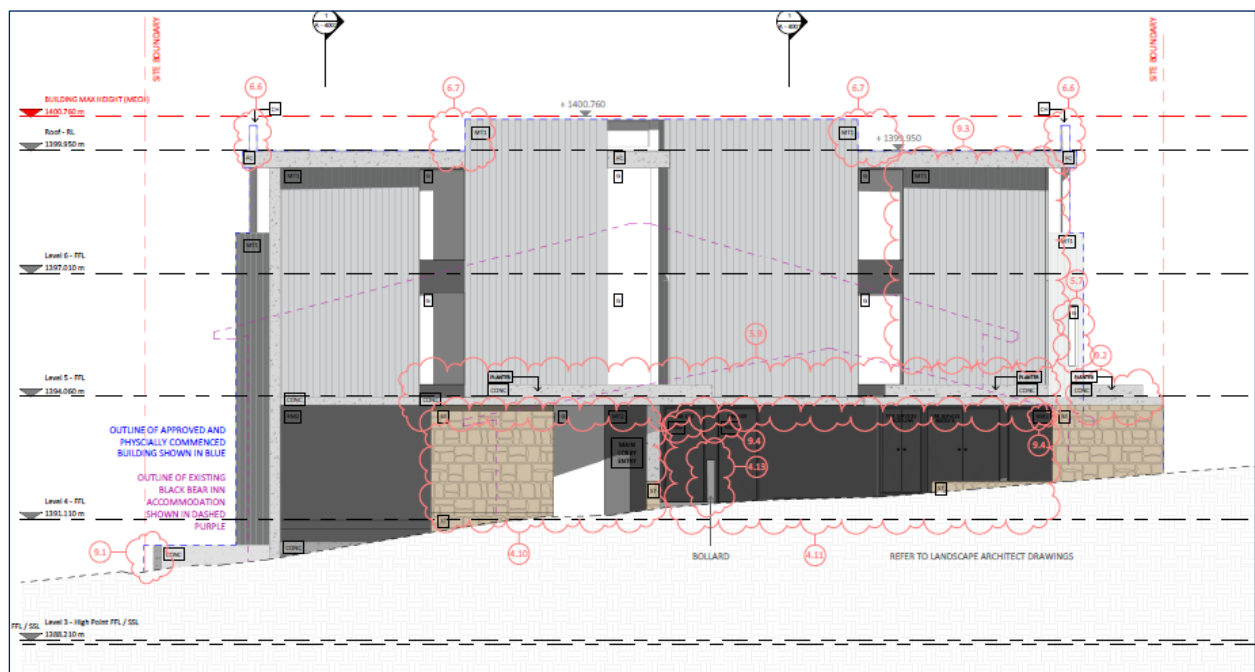
2 Proposed Modification

On 23 June 2022 (as amended 17 August 2022 and 24 November 2022), the Applicant lodged a modification application (MOD 22/5350 (DA 10064 MOD 2)) seeking approval, under section 4.56 of the EP&A Act, to modify the development consent incorporating the following key changes (amongst others):

- Internal - Reconfiguration of apartment layouts, including alteration to accessible apartment (Apartment 401B). Lowering of Level 2 floor level by 75mm. Increasing the size of Apartment 401A on Level 4 partly over the car park entrance. Inclusion of an additional door to the residential lift, fire exit to Level 3 and 4 and reduction to the lobby area. Repurpose of approved media rooms to a bedroom (increasing the overall occupancy of the site from 36 to 43 beds).

The apartment reconfigurations originally included the removal of the approved accessible apartment within the building. However, following additional discussions with the Department, the Applicant has reinstated an accessible apartment within the building.

- External – Reduction to the number of chimneys and reconfiguration of roof structure. Alterations to the car park level to incorporate openable aluminium louvers instead of fixed glazing (north, western and eastern façade). Amended front Level 4 entry area (**Figure 4**), including alteration to proposed landscaping on front façade (**Figure 5**). Change to materials utilised within the front façade including use of stone building materials and a dark shade of masonry.



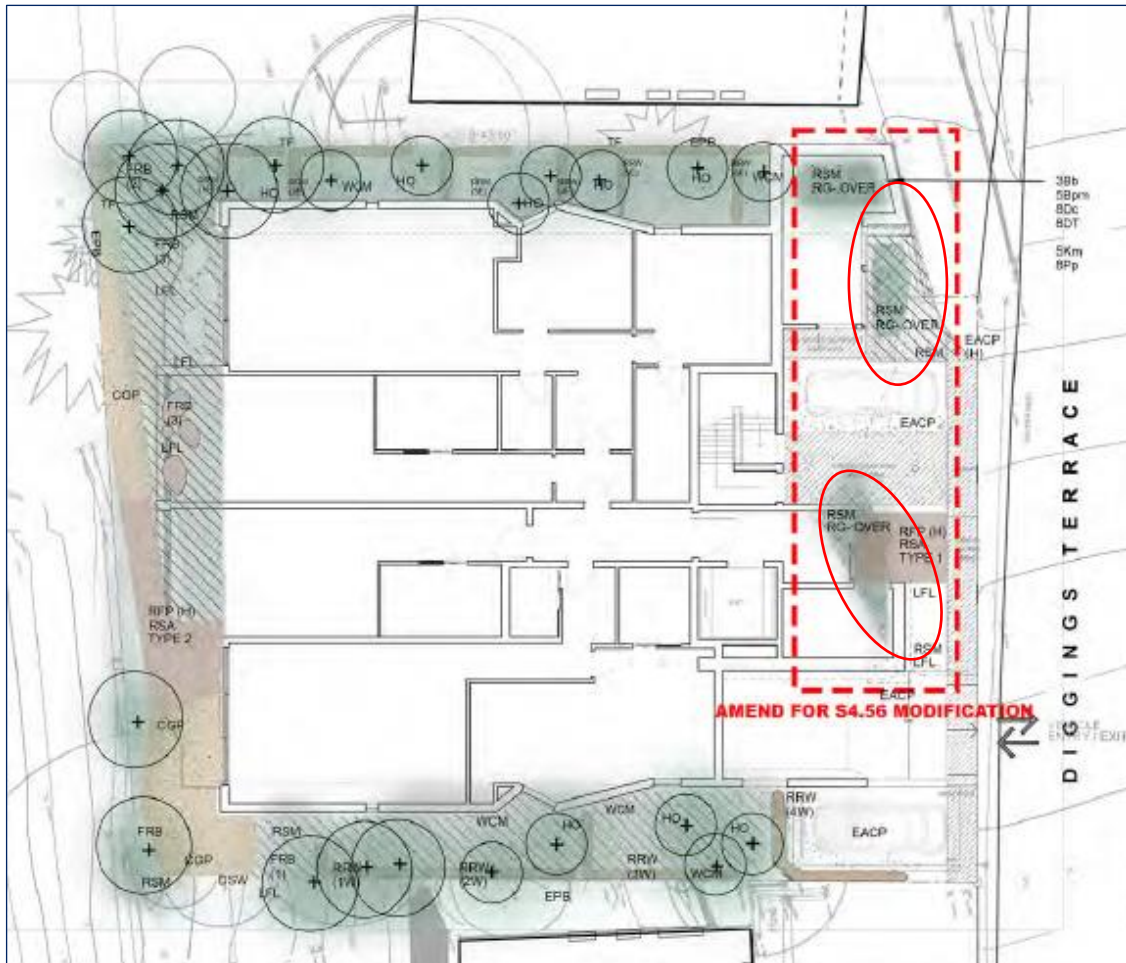


Figure 5 | Proposed landscaping amendments including incorporation of garden beds on canopy area, red circles within dashed modification area (Source: Applicant's documentation)

The proposed modifications are largely internal, with the exception of very minor changes to each elevation (the north, south, east and west) which will not have any significant impact on the appearance of the building or detract from the character of the surrounding area.

The Applicant's Architect comments that the proposed modifications do not seek to change the approved building envelope, except for the design of the entry lobby to accommodate statutory fire services for building safety. The visual aspects, sightlines, and visual corridors are maintained as the development application approved building scheme in every aspect. No changes to the form or scale or mass of the building, and the changes sought will not impact on the use of the building or its overall visual presentation.

The Applicant's Horticultural Consultant also comments that *'there will not be any adverse impacts to any existing flora and fauna on and around this site. The proposed landscape changes to the Diggings Terrace streetscape and landscape, including removal of three Banksia marginata ('Silver Banksia') and addition of roof gardens to the modified canopy of building, are considered as improvements to the site safety and flora and fauna conditions. In DA.10064 (granted:17 May 2021), three Banksia marginata ('Silver Banksia') were proposed to be planted in front of the bin store. However, after further assessments and considerations of bush fire protection and property fire protection measures, I believe the removal of mentioned Banksia marginata ('Silver Banksia') is necessary and crucial to the development of Black Bear, in particular, to the site safety. Further, the addition of roof gardens softens the project build structure and expands the diversity of natural habitats'*.

3 Strategic Context

The Snowy Mountains region offers a diverse and unique mix of visitor destinations including the KNP, the alpine resorts, the iconic Snowy River and the highest mountains on the Australian continent. A strong tourism economy is driven mainly by skiing and related winter sport experiences during the peak winter season. The region, including the alpine resorts, also provides opportunities for a range of other recreational activities during the warmer months such as hiking, fishing, kayaking and mountain-biking. The resorts are important to NSW due to their economic and social contribution as well as their location within a unique alpine environment. The three main documents that support the strategic context of the alpine resorts are the *South East and Tableland Regional Plan 2036*, the *Snowy Mountains Special Activation Precinct Master Plan* and the *Precincts - Regional SEPP*.

South East and Tableland Regional Plan 2036

The South East and Tableland Regional Plan 2036 describes the vision, goals and actions that will deliver greater prosperity for those who live, work and visit the region. The Plan provides an overarching framework to guide more detailed land use plans, development proposals and infrastructure funding decisions. In relation to the alpine resorts, the Regional Plan seeks to promote more diverse tourism opportunities in the Snowy Mountains that will strengthen long-term resilience while acknowledging the environmental and cultural significance of the locality.

The Department considers the proposal continues to be consistent with the Regional Plan as the proposal maintains the approved use of the site for tourist accommodation and a restaurant, such that the proposed development continues to support visitation to the NSW ski resorts.

Snowy Mountains Special Activation Precinct Master Plan

The Snowy Mountains Special Activation Precinct Master Plan outlines the 40-year vision for the Snowy Mountains as a year-round tourist destination with new business opportunities, services and community infrastructure for the people that live, work and visit the region.

Section 9.1.1 of the Master Plan relates to Thredbo. The Department considers the proposal to be consistent with the Master Plan as the proposal, once constructed, provides a new visitor accommodation premises while maintaining the environmental, cultural and streetscape attributes of Thredbo.

Precincts – Regional SEPP

The Precincts – Regional SEPP governs development on land within the ski resort areas of KNP. Chapter 4 of the SEPP aims to protect and enhance the natural environment, to protect cultural heritage within the resorts and to ensure that development in the resorts is managed in a way that is compatible with the principles of ecologically sustainable development. Under the provisions of section 4.15 of the Precincts – Regional SEPP, the NPWS has a commenting role as the land manager, which includes administering the Plan of Management framework for KNP that incorporates objectives, principles and policies to guide the long-term management of the KNP.

The Department considers the proposal continues to be consistent with Chapter 4 of the Precincts – Regional SEPP as the modification does not increase the adverse impacts of the development on the environment or detract from the character of the approved development. The proposal would also continue to contribute to the ongoing range of accommodation options available for visitors to the KNP.

4 Statutory context

4.1 Scope of modifications

Section 4.56 of the EP&A Act provides that a consent authority may, on an application being made by the applicant or any other person entitled to act on a consent granted by the Court, and subject to and in accordance with the *Environmental Planning and Assessment Regulations 2021* (EP&A Regulations), modify a consent if the following requirements in **Table 1** are met:

Table 1: Consideration under Section 4.56(1) of the EP&A Act

Section 4.56(1)	Comment
(a) <i>The development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all)</i>	<p>The proposed external changes to the built form are minor in nature and are not considered to vary significantly from the original consent with regard to either site impacts or the presentation of the development when viewed from the public domain. The internal changes proposed improve the functionality and amenity for the occupants of the apartments and are supported.</p> <p>The Department is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified.</p>
<p>(b) <i>The application has been notified in accordance with:</i></p> <p>(i) <i>the regulations, if the regulations so require, and</i></p> <p>(ii) <i>a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and</i></p>	<p>Consistent with Part 5 the EPA Regulation 2021 and in accordance with the Department's Community Participation Plan (CPP) of November 2019, the Department publicly exhibited the modification application for a minimum of fourteen (14) days to nearby lodges and it was made publicly available on the NSW Planning Portal website (refer to Section 5 of this report).</p> <p>No DCP applies to the site.</p>
(c) <i>Whether the consent authority has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known</i>	<p>The Department notified each person who previously made a submission to the approved development. One submission to the modification was received, which is considered in Section 5 and 6 of this report.</p>

<i>to the consent authority of the objector or other person, and</i>	
<i>(d) Consideration of any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be</i>	The Department has considered the agency submissions and the one public submission received during the exhibition period (refer to Section 5 and 6 of this report).

Section 4.56(1A) of the EP&A Act provides that in determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the granting of the consent that is sought to be modified.

The relevant consideration under section 4.15(1) of the EP&A Act in relation to the proposed modifications is whether the impacts of the amendments upon the existing environment and built form are acceptable. The Department's assessment in **Section 6** concludes that the impacts are acceptable and do not deviate significantly (if at all) from the likely impacts of the development as considered in the NSW LEC approval of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality.

Therefore, the Department is satisfied the proposed modification is within the scope of section 4.56 of the EP&A Act and does not constitute a new development application. Accordingly, the Department considers that the application should be assessed and determined under section 4.56 of the EP&A Act rather than requiring a new development application to be lodged.

4.2 Consent authority

The original application was determined by the NSW LEC with the Applicant taking the Minister for Planning and Public Spaces (now Minister for Planning) to NSW LEC to seek resolution of Development Application DA 10064. While the original development application was determined by the Court, the Minister remains the consent authority for any subsequent applications to modify the consent under section 4.56 of the EP&A Act.

Under section 4.6 of the Precincts – Regional SEPP, the Minister for Planning is the consent authority for the application as the development takes place within a ski resort area as referred to in section 32C (2)(a) of Schedule 1 to the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017*.

In accordance with the Minister's delegation dated 9 March 2022, the Team Leader, Alpine Resorts Team may determine the application as:

- no reportable political donation has been disclosed,
- there are less than 15 public submissions in the nature of objections, and
- the application is in relation to land to which Chapter 4 of the Precincts – Regional SEPP applies.

4.3 Mandatory matters for consideration

The Department conducted a comprehensive assessment of the project against the mandatory matters for consideration as part of the original assessment of DA 10064 and the NSW LEC conciliation process. The Department considers this modification application does not result in significant changes that would alter the mandatory matters for consideration under section 4.15 of the EP&A Act and conclusions made as part of the original assessment.

Objects of the EP&A Act

The Minister or delegate must consider the objects of the EP&A Act when making decisions under the Act. The Department is satisfied the proposed modification is consistent with the objects of the EP&A Act.

Biodiversity Conservation Act 2016

Section 1.7 of the EP&A Act requires the application of the *Biodiversity Conservation Act 2016* (BC Act) in connection with the terrestrial environment. The BC Act introduced a Biodiversity Offsets Scheme (BOS) that applies when:

- the amount of native vegetation being cleared exceeds a certain threshold area; or
- the impacts occur within an area mapped on the Biodiversity Values Map (BVM) published by the Minister for Environment; or
- the 'test of significance', in section 7.3 of the BC Act, identifies that the development or activity is likely to significantly affect threatened species or ecological communities, or their habitats; or
- the works are carried out in a declared area of outstanding biodiversity value.

The Applicant commented that all vegetation on site that has previously been cleared, was cleared under previous consents when enacted. The proposed modifications do not result in any additional clearing of vegetation. A review of the subject site in relation to the BVM shows that the site is not mapped as comprising high biodiversity value.

Having regard to the proposed modifications and the previous approval for the removal of vegetation from the site (issued by the NSW LEC), the Department is satisfied that the proposal does not trigger the BOS.

The Department also notes that there is currently no declared area of outstanding biodiversity value within Kosciuszko National Park.

Environmental Planning Instruments

An assessment of compliance with the then *State Environmental Planning Policy (Kosciuszko National Park-Alpine Resorts) 2007* (the Alpine SEPP) was undertaken in the determination of the original development application (DA 10064) by the NSW LEC. The former Alpine SEPP was superseded by the Precincts – Regional SEPP in March 2022, and now the Precincts Regional SEPP is the EPI that applies to this application.

The Department has considered the current modification application against the provisions of the Precincts – Regional SEPP and is satisfied the modification proposal continues to be consistent with this EPI.

5 Engagement

5.1 Department's engagement

The Department's Community Participation Plan (CPP), November 2019, prepared in accordance with Schedule 1 of the EP&A Act requires an application for modification of development consent not required to be exhibited by the EP&A Regulations to be exhibited for a timeframe dependent on the urgency, scale and nature of the proposal.

However, as discussed in **Section 4.1** above, the EP&A Act requires the consent authority to notify, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person.

On this basis, the Department made the application publicly available, notified nearby lodges and previous submitters to the original development application between 29 June 2022 and 13 July 2022 on the NSW Planning Portal website.

The application was referred to the NSW Rural Fire Service (RFS) pursuant to section 4.46 of the EP&A Act (integrated development) as a Bushfire Safety Authority (BFSA) under the *Rural Fires Act 1997* is required for the development to be carried out. The application was also referred to the National Parks and Wildlife Service (NPWS) pursuant to section 4.15 of the Precincts – Regional SEPP.

Following the exhibition of the application, the Department placed copies of all submissions received on its website and forwarded these to the Applicant.

5.2 Summary of submissions

During the exhibition period, the Department received submissions from the RFS, the NPWS and one public submission from Hi Noon Ski Club (located opposite the site on the southern side of Diggings Terrace) providing comments on the proposed modifications.

RFS

The RFS did not object to the proposal and advised that no additional comments were required to those already provided in relation to the original application and the Bushfire Safety Authority (BFSA) issued.

NPWS

The NPWS did not object to the modification and commented that the previous comments to the proposal remain relevant. In discussions with the NPWS on the proposed increase to bed numbers at the site from 36 to 43 the Department notes that Kosciuszko Thredbo (as Head Lessee) will need to notify NPWS in their annual report to NPWS of the change in bed numbers.

Public submissions

The Hi Noon Ski Club submission provided feedback and suggestions on possible alterations to the proposed modifications submitted by the Applicant. The Applicant was provided with a copy of the submission and an opportunity to respond to the points raised therein. The Applicant both provided a response to the submission and also included amended plans to address the matters raised. The Department has considered the items raised in the submission below in **Table 2** and further in **Section 6**.

Table 2: Submission from Hi Noon Ski Club, response from Applicant and Department comment

HI Noon submission	Applicant response	Department comment
Applicant states no changes to building envelope. However items are identified, including building envelope changes to roof line (viewshed from South Elevation) and changes to the garbage roof envelope.	<p>The amendments outlined in the attached modified plans rectify mistakes in relation to the parapet walls (noting, no change to bin roof).</p> <p>We consider these amendments now address the matters raised in the submission.</p>	<p>Amended plans address the issues raised with the building envelope change to the roofline.</p> <p>No concerns are raised with the proposed amendments to the garbage shelter roof envelope.</p>
Building design and impact upon the character of the locality. Proposed planter beds not consistent with the Thredbo context.	Not addressed - building is very similar to approved, and the opinion provided by Hi Noon Ski Club is subjective opinion to which Hi Noon Ski Club is entitled to do, however the proponent does not consider a response or further justification is necessary on design grounds.	<p>The Department raises no concerns with the proposed amendments to the design or the planter beds identified. Nor has the RFS indicated any issue in relation to requiring any variation to the proposal having regard to bushfire safety. The proposal considered to be acceptable.</p> <p>See discussion in Section 6.</p>
Landscaping, appropriateness of proposed planter beds and concerns with reduction of pre-existing soft landscaping.	See discussion in Section 6 .	As above, see discussion in Section 6 .
The changes to the Diggings Terrace façade undercroft result in a closing off of the building and changes the street appearance. Proposal should provide an active frontage given the high pedestrian nature of the area.	<p>The expanded undercroft is to ensure greater protection of doorways and improved fire egress.</p> <p>The covered depth created by the undercroft at it deepest point is less than 4m, and not deep by comparison to the approved 6m of 'Bellevard' development.</p>	The Department notes the concerns with the frontage, however, concludes that the proposed modifications do not significantly impact the presentation to Diggings Terrace (noting an undercroft was previously approved by the NSW LEC). The increase in size to the undercroft enables additional planting to the provided while also providing protection for the occupants to gain undercover access to the bin storage area and fire service equipment, if needed.

Change in materials provided to the ground level (the Diggings Terrace street frontage) appearance and there are inconsistencies with materials utilised.	<p>The additional planter on the South-East will now be stacked stone. A stacked stone blade wall to define the pedestrian entry has been added, and the landscaping between pedestrian and vehicular entry has been made as a stacked stone planter.</p> <p>By way of comparison, the Applicant also comments that the originally approved DA gave provision of 23 lm of stacked stone wall and the proposed S4.56 modification gives provision of 28.6 lm of stacked stone wall.</p>	<p>The proposed changes to the ground level building materials are considered appropriate and align with further consideration of materials for the fire / egress service doors (being a rendered masonry paint) rather than the previous glass doors.</p> <p>With the undercroft area predominantly providing parking facilities for the site, the proposed changes to the materials / finishes are supported.</p>
Removal of proposed trees adjacent to bin storage area, replacement with garden. Impact compared to previous landscaping provided on streetscape.	Not addressed – Fire protection measures are explained by the Horticulturist statement.	<p>The Department notes the submission from the Applicant's Horticulturalist.</p> <p>It is also noted that the bin storage area is proposed to be altered with the inclusion of fire services equipment. The proposed changes to improve user amenity and safety have impacted the inclusion of replacement species of similar height to now include the proposed planters as an alternative.</p>

The Department has considered the comments received from the NSW RFS, the NPWS and the submission from Hi Noon Ski Club in **Section 6**.

6 Assessment

In assessing the merits of the proposed modification, the Department has considered the:

- previous Environmental Assessment Reports for the proposal and the NSW LEC approval,
- the modification application and existing conditions of consent,
- submissions from government agencies, and
- matters for consideration under section 4.15(1) of the EP&A Act.

The Department considers the key assessment issues associated with the modification application are:

6.1 Internal design changes

The internal design changes relate to modifications to the lobby area, ensuites, bedroom dimensions/fitouts and repurposing of approved media rooms into bedrooms (which increases the number of beds on the site). Previously approved dual key apartments (an apartment divided into two apartments with a common entry area) have predominantly been amalgamated to create larger singular apartments or separated to create two separate apartments (4 dual key apartments previously, now reduced to one).

While the majority of changes do not impact the approved building envelope, a change to the Apartment 401 main bedroom on Level 4 has increased the floor area of the building with an extension of the building over the approved vehicle access ramp (**Figure 6**). The proposed amendments raise no concerns.

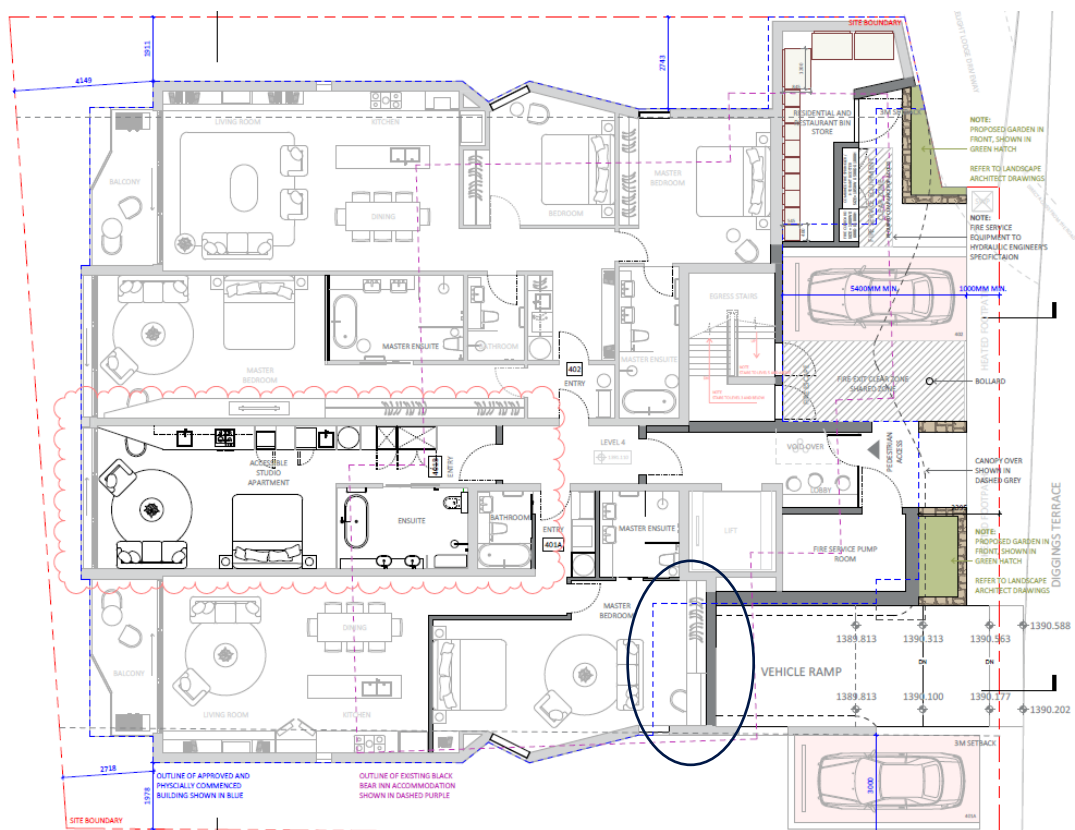


Figure 6 | Amended Level 4, with Apartment 401 bedroom area circled (Source: Applicant's documentation)

NPWS have not raised concerns with the proposed bed number increase.

The proposed refinement of the internal apartment configurations, with retention of an accessible apartment (in a modified location) and addition of seven (7) additional beds is not believed to negatively impact upon the adjoining properties and is supported by the Department.

6.2 External design changes

The external design changes relate to alteration to the materials and finishes to be utilised on the building (particularly changing the materials of the undercroft car parking area), reduction of the number of chimneys visible on the roofline, inclusion of garden beds above the undercroft entry area and changes to the car parking level extent of glazing (Figure 7).

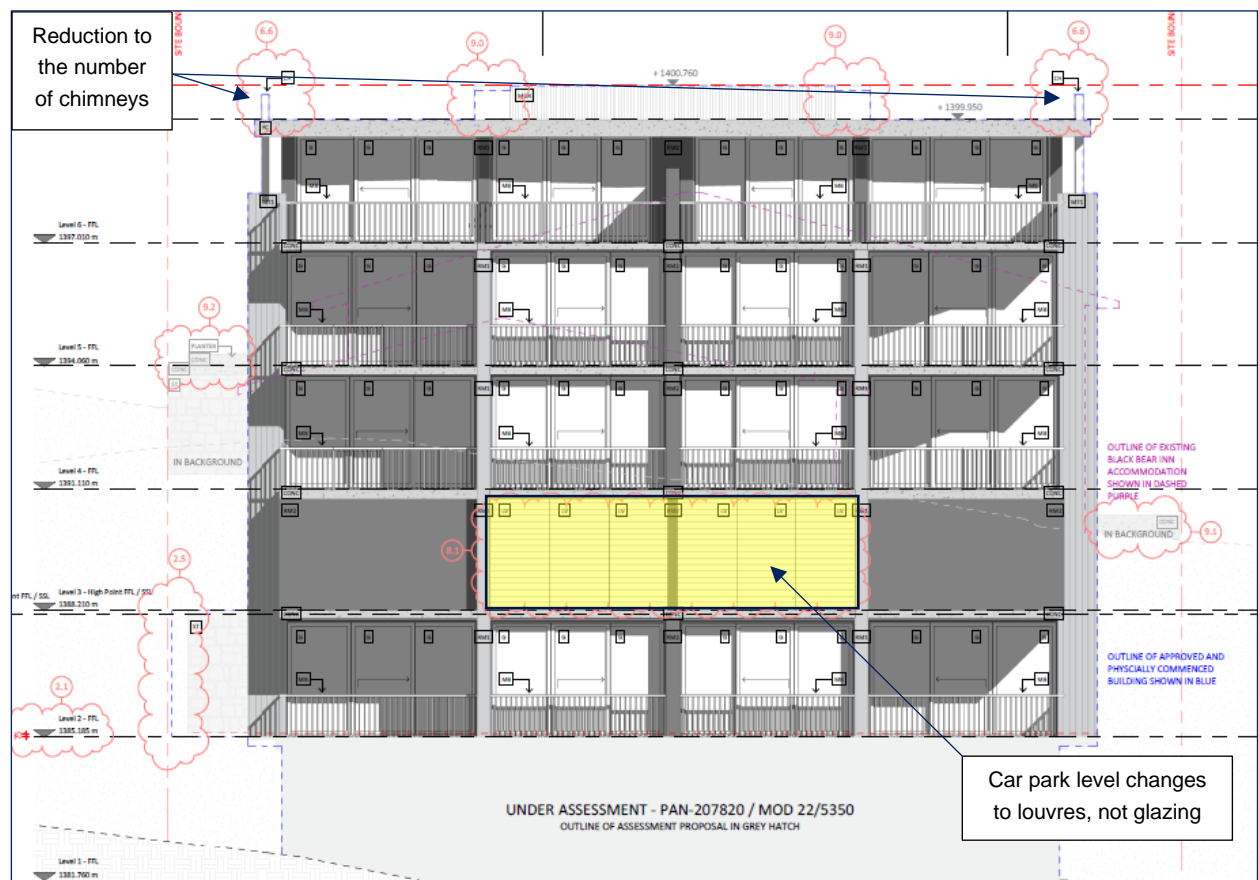


Figure 7 | Amended northern elevation (Source: Applicant's documentation)

As discussed, a key concern with the modification identified in the Hi Noon Ski Club submission is the change in materials and finishes from that previously approved, particularly along the Diggings Terrace façade where concern with the proposed modification is raised as they appear to 'enclose' the area and not entice people to 'linger'. The submission also comments that this space should provide an active frontage given the high pedestrian nature of the area.

The Department notes that the street level (Diggings Terrace) on the southern frontage will be the access point for the future restaurant located on the lower level, with no restaurant access permitted from below the site via the Village Square. While the space would therefore be active in this regard, the provision of additional lighter stone elements along the subject façade has been clarified by the Applicant.

The external modifications to the design do not impact upon the overall approved height of the development, nor does it impact adjoining properties view lines when compared to the NSW LEC heights or require additional vegetation loss (landscaping changes are discussed below in **Section 6.3**).

The NPWS raised no concerns with the proposed modification to the built form.

The Departments assessment concludes that, subject to proposed conditions, the proposed design changes to the building and alterations to the materials and finishes utilised on the site do not significantly alter the development or diminish from the acceptability of the building when considering the NSW LEC decision.

The undercroft entry area materials and finishes on the Diggings Terrace frontage have been clarified by the Applicant. The proposed external modifications are supported.

6.3 Landscaping

Amendments are proposed to the landscaping provided to the site, including a change to the extent of landscaping adjacent the approved bin storage area and inclusion of planter beds on the undercroft roof areas.

Concerns were raised in a public submission with the exhibited plans, as previously discussed, particularly relating to the reduction of vegetation and proposed planting in front of the bin storage area and also the suitability of the planter beds in the undercroft areas.

The Applicant comments that following a redesign of the garbage bin storage area and the fire services cupboard, reinstatement of some landscaping at ground level on the South-Eastern corner of the block is able to be achieved (when compared to the exhibited modification), however not to the extent previously approved (**Figure 8**). The Department notes that the amount of landscaped area now being proposed on the southern side of the building is more than the original DA. By way of comparison, the originally approved DA provided a landscaped area of 14.3m² and the proposed s.4.56 modification provides for a landscaped area of 19.2m².

The inclusion of additional roof gardens complements the other approved gardens above the bin storage area as well as the garden areas located on the ground level to Diggings Terrace. Ongoing maintenance of the gardens is the responsibility of the Applicant and replacement of any landscaping that doesn't survive would need to be rectified.

With the approval of the development by the NSW LEC, the removal of existing vegetation previously provided along the Diggings Terrace frontage was required.

The Applicant's attempt to soften the built form is supported.

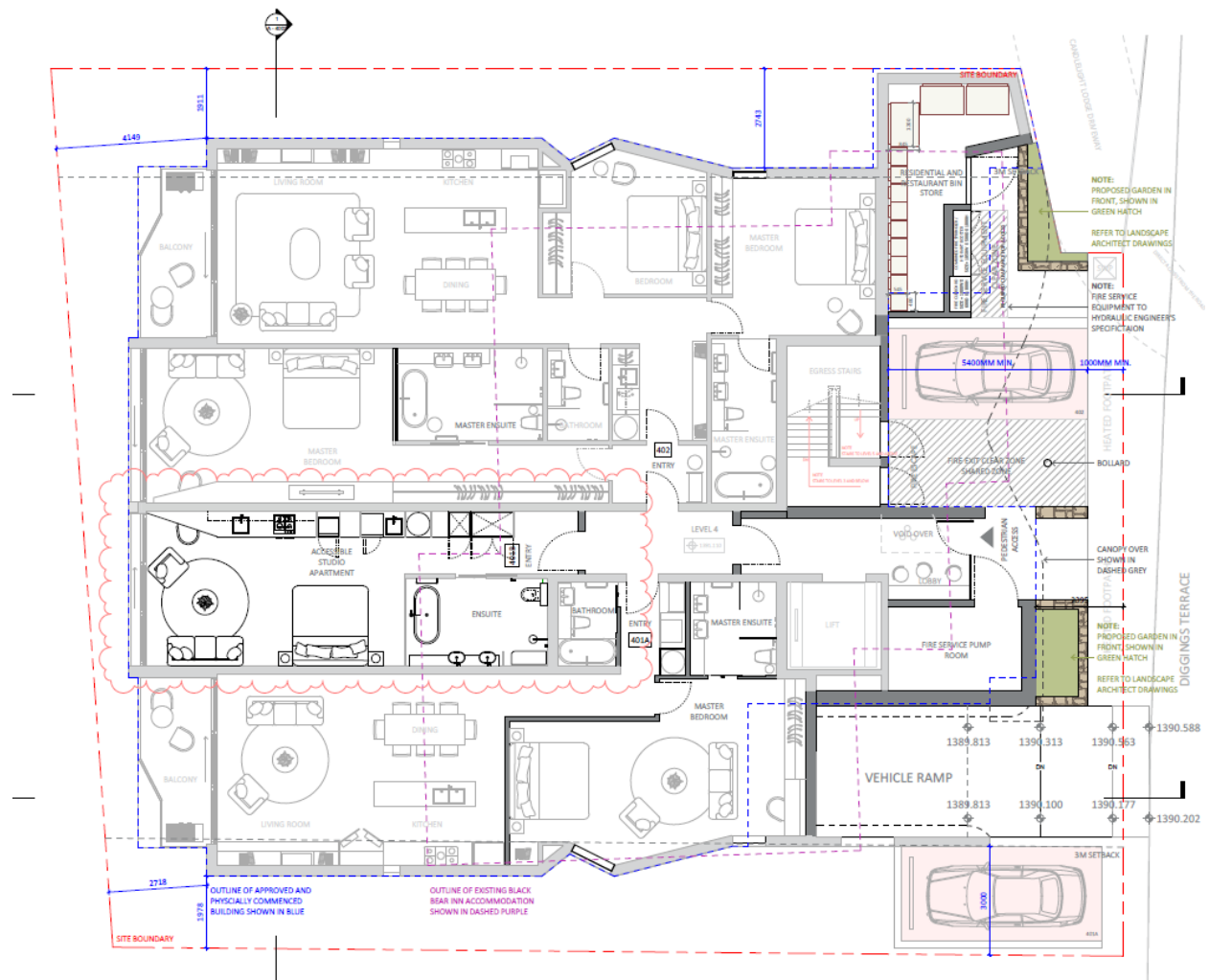


Figure 8 | Proposed landscaping shown in green (Source: Applicant's documentation)

6.4 Design details and standards

The proposed works, when constructed, are to comply with the Building Code of Australia (BCA) and relevant Australian Standards. The Department notes that compliance with relevant requirements is to be determined at the construction certificate stage by the Certifier and in accordance with conditions of consent.

The following is noted:

- All new work (or work as part of the DA) must comply with the BCA. The Department considers that compliance with the BCA is achievable, with documentation confirming compliance required to be provided at the Construction Certificate stage.

It is noted that a Construction Certificate has not been issued for the construction of the building, only for excavation of the site.

- The NSW LEC approval included one accessible apartment located on the same level as the entry foyer and provided as part of a dual key apartment. As part of the original modification application, this apartment is now altered and is now the master bedroom provided within Apartment 402.

Following concerns raised by the Department, the Applicant has amended the Level 4 plans, with the provisions of labelling Apartment 401B as being the accessible apartment within the building (as shown in **Figure 8**).

Compliance with the *Disability Discrimination Act 1992 (DDA)*, and therefore the Access to Premises Standards prepared under the DDA, is triggered at Construction Certificate stage. Ensuring compliance with the DDA is the responsibility of the building owner, manager and Certifier.

- Ensuring the proposal meets snow and wind loading requirements is a key consideration of the Department's assessment in the NSW Alpine environment. With adverse weather conditions in KNP, the external alterations to the building need to be constructed appropriately. The Department has recommended that structural certification be provided prior to the issue of an Occupation Certificate for the works.
- While this modification proposes an increase in occupancy at the site by seven (7) beds, no additional car parking is proposed within the development. In response to the Department seeking additional commentary on parking, the Applicant provided the following:
 - As per the SEE the only statutory controls relating to the site is the SEPP (Regional) 2021, which doesn't include controls for parking.
 - As a reference, Kosciusko Thredbo has an internal (non-statutory) development guideline for the management of Thredbo. These guidelines aim for one (1) car park per apartment, and would therefore require nine (9) spaces. Thirteen (13) spaces are proposed. Apartment users are provided with twelve (12) spaces, including two (2) accessible spaces and a space provided for the Restaurant will also be accessible.
 - Furthermore, no change to the number of car spaces is proposed from the approved, but with a reduced number of apartments proposed.
 - Less dual-keys apartments would mean that people booking the apartments would be familiar and more likely to travel together in a car, unlike dual keys where they could likely be strangers and travel in two cars. Larger apartments simply mean more conducive to families, again, sharing a single car.

The Department notes that the plans provided with the application indicate that a total of thirteen (13) parking spaces are proposed to be available within the development, with eleven (11) within the basement garage (two being accessible spaces) and the other two (2) spaces provided within the Diggings Terrace frontage.

The Department acknowledges the submission by the Applicant and is satisfied that considering no defined parking controls are currently in place, no additional parking is required for the site.

The Department concludes that subject to compliance with the conditions of consent, including references to the BCA which are to be addressed by the Certifier at the Construction Certificate stage, the proposal is satisfactory and would improve the amenity of the building for its occupants.

7 Recommendation

The Department has assessed the modification application and supporting information in accordance with the relevant requirements of the EP&A Act and considered the submissions provided by the public and the NPWS and RFS.

The Department's assessment concludes that the proposed modification is appropriate as it is substantially the same development as originally approved; the proposed modifications to conditions are acceptable; the proposal continues to comply with the Precincts – Regional SEPP provisions; all submissions received during the assessment of the application have been considered; and the proposal does not result in any additional matters that required consideration under Section 4.15(1) of the EP&A Act.

Overall, the Department concludes that the modifications to the approved NSW LEC application are acceptable and does not negatively impact the suitability of the proposal as approved by the NSW LEC.

The Department therefore recommends that the application be approved, subject to changes to the existing conditions of consent (**Appendix C**). In accordance with the Minister's delegation dated 9 March 2022, the Team Leader, Alpine Resorts Team may determine the application as:

- no reportable political donation has been disclosed,
- there are less than 15 public submissions in the nature of objections, and
- the application is in relation to land to which Chapter 4 of the Precincts – Regional SEPP applies.

It is recommended that the Team Leader, Alpine Resorts Team, as delegate of the Minister for Planning:

- **considers** the findings and recommendations of this report
- **determines** that the modification application MOD 22/8121 (DA 10064 MOD 2) falls within the scope of section 4.56(1) of the EP&A Act
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to approve the modification
- **modifies** the consent DA 10064
- **signs** the attached approval of the modification (**Appendix C**).

Recommended by:



Mark Brown
Senior Planner
Alpine Resorts Team

Adopted by:



Daniel James
Team Leader
Alpine Resorts Team
as delegate of the Minister for Planning

Appendices

Appendix A – Modification Report

The following supporting documents and supporting information to this assessment report can be found on the NSW Planning Portal website as follows:

<https://pp.planningportal.nsw.gov.au/development-assessment/state-significant-applications/projects/state-development-applications>

Appendix B – Submissions

The Department made the application publicly available and notified adjoining lodges and previous submitters to the NSW LEC application within Thredbo Alpine Resort of the application between 29 June 2022 and 13 July 2022.

The application was referred to the RFS (as the original and modification is integrated development) and NPWS pursuant to section 4.15 of Chapter 4 of the Precincts-Regional SEPP, with comments received. One submission from the public was received (from the adjoining Hi Noon Ski Club).

Appendix C – Notice of Modification