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Our Ref: JBH:MC:21433

9 May 2022

Daniel James  
Team Leader  
Alpine Resorts Team | Regional Assessments  
Regions, Industry and Key Sites | Department of Planning, Industry and Environment



Department of Planning  
and Environment

*Issued under the Environmental Planning and Assessment Act 1979*

Approved Application No DA 22/4825

Granted on the 1 August 2022

Signed M Brown

Sheet No 17 of 18

Email: [daniel.james@planning.nsw.gov.au](mailto:daniel.james@planning.nsw.gov.au)

Dear Mr James,

**Lot 794, 30 Diggings Terrace - Black Bear, Thredbo  
Development Application ('DA') No. 22/4825 (DA) (PAN-204581)**

**Re: Request for additional information (Your Reference EF22/4825)**

We act for Hidali Pty Ltd (**Applicant**).

We refer to DA No. 22/4825 (DA) (PAN-204581) and your request for additional information letter dated 22 April 2022 that is attached for ease of reference.

We also refer to an additional email from Mr. Brown dated 4 May 2022 on the same matter.

Please find below and enclosed the additional information you have requested.

We have formatted your request and the Applicant's reply into a table for ease of reference as follows.

**Table 1: Request for additional information response table**

Ref	Column 1 Department of Planning and Environment Request for additional information	Column 2 Additional Information provided by the Applicant (Hidali Pty Ltd)
<b><u>1</u></b> A	<b><u>Statement of Environmental Effects (SEE)</u></b> The SEE does not provide an accurate description of the site. The Department understands that works have already been undertaken and further works are	The SEE has been updated to include further description of the site and the neighbouring properties and the road (Refer to <b>Attachment 1 SEE – Mod Urban</b> ).

Hones Lawyers Pty Ltd | ABN 56 605 835 041

Level 4, 66 Berry Street, North Sydney NSW 2060 | PO Box 1989, North Sydney NSW 2059

T +61 2 9929 3031 | F +61 2 9929 7071 | E [reception@honeslawyers.com.au](mailto:reception@honeslawyers.com.au)

W [www.honeslawyers.com.au](http://www.honeslawyers.com.au)

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	proposed, outside the Black Bear allotment (Lot 794) and onto adjoining allotments, including the road. The application should be made over all of the correct allotments in the Planning Portal and the description in the addendum.	The Applicant has amended the allotments in the Planning Portal.
B	The SEE does not provide an accurate description of the proposed works. The addendum should provide a clear description of any temporary rock anchors already installed and any temporary rock anchors that are proposed to be installed.	The SEE has been updated to include a further description of the proposed works, including the differentiation between temporary rock anchors already installed and any temporary rock anchors that are proposed to be installed (Refer to <b>Attachment 1 SEE – Mod Urban</b> ).
C	With respect to any temporary rock anchors already installed, the addendum should make it clear if retrospective consent is being sought for these works. If yes, the addendum should outline the planning and/or legislative pathways for seeking retrospective consent. This should also include consideration of the Design and Building Practitioners Act and Reg and any obligations in relation to rock anchors.	<p>We note that it is not legally possible to apply for, or to obtain, retrospective development consent. However, the Applicant has expressed its willingness to obtain a Building Information Certificate as required.</p> <p>In the original non-compliance notice dated 19 January 2022, that was issued to your offices the same day, AED Group (the Principal Certifier) suggested the use of a Building Information Certificate to remedy those Temporary Rock Anchor works already carried out. To the best of the applicants knowledge this request has not been responded.</p> <p>Following this, the DPE issued Development Control Orders (<b>DCO</b>) to the Applicant, reasoning that there were unapproved works occurring, and unapproved works occurring outside the site of Development Application DA 10064. The DCO purported there was no planning approval for the Temporary Rock Anchors.</p> <p>Since the issuance of the DCO and on behalf of the Applicant, Hones Lawyers have continually sought a 'Pre-DA meeting' or planning meeting with the DPE to discuss the matter and resolve a path forward that is acceptable to the DPE. To the best of our knowledge this request has been ignored.</p> <p>In respect of the <i>Design and Building Practitioners Act and Reg 2000 (DBPA)</i> we note the Gazette made 2 March 2022 under that legislation which removed the requirement to obtain a registered easement for temporary rock anchors. We are not aware of any part of the DBPA that prevents the granting of Development consent, or approval or issuance of a</p>

		Building Information Certificate (or similar approval document).
D	The addendum should provide a greater level of assessment of any potential impacts of the rock anchors to the adjoining properties and the road.	The Applicant provides an additional Geotechnical response statement that addresses the potential impacts of the rock anchors to the adjoining properties and the road. ( <b>Attachment 2 – Geotechnical response statement – Alliance Geotechnical</b> ).
E	<p>The addendum should propose and describe the creation of the easement or licence deed including:</p> <ul style="list-style-type: none"> <li>• Whether subdivision consent is required</li> <li>• Any implications or requirements of the Design and Building Practitioners Act and Reg</li> <li>• Any implications or requirements of the National Parks and Wildlife Act and Reg</li> </ul>	<p>The DA does not seek consent for subdivision.</p> <p>Pursuant to the Gazette orders dated 2 March 2022 made under the DBPA only a licence agreement or deed is required for securing neighbouring approvals (a ground anchor installation right document).</p> <p>In respect of the subject site being in the Kosciuszko National Park, and subject to the <i>National Parks and Wildlife Act 1974 (NPWA)</i> and Regulation, we understand that the Minister for the National Parks and Wildlife Act would execute such a licence agreement pursuant to section 151 of the NPWA. We are not aware of any part of the National Parks and Wildlife Act or Reg that would prevent either the assessment of the DA or the granting of consent.</p> <p>Since early March 2022 the Applicant has sought an in principal agreement from the DPE as to which form of licence agreement is acceptable. See attached correspondence (<b>Attachment 3 – correspondence with DPE regarding licence</b>). To date:</p> <p>(a) The DPE position is that a Development Consent must be granted for the subject Temporary Ground Anchors before it will enter into such a Deed or Licence (or other agreement).</p> <p>(B) the DPE has not yet confirmed its preferred form of agreement.</p> <p>The Applicant suggests that a licence is the appropriate instrument.</p>
<u>2</u>	<p><b>Plans</b></p> <p>All of the plans should provide a clear description of any works already undertaken</p>	The Applicant provides updated plans that differentiate between works already undertaken and any works that are still proposed (i.e. still need to be undertaken).

	and any works that are still proposed (i.e. still need to be undertaken). This should include excavation, piles/piers, temporary rock anchors and the like	<b>(Attachment 4 – Structural Engineering – PMI Engineering).</b>
<b>3</b>	<b><u>Geotechnical Report</u></b> The Geotechnical Report by Alliance dated 7 March 2022 must address the Section 4.1 of the Departments Geotechnical Policy and in this case, be accompanied by a Form 1. The Report should be updated with a current risk assessment, a table clearly outlining where each matter in Section 4.1 is addressed and a current Form 1.	The Applicant provides an updated Geotechnical Report address the Section 4.1 of the Departments Geotechnical Policy, addition of Form 1 certificate and updated with a current risk assessment.  <b>(Attachment 5 – Updated Geotechnical report– Alliance Geotechnical).</b>
<b>4</b>	<b><u>Head lessee and sub lessee consent for lodgement of DA</u></b> The letters provided from the head lessee and the adjoining sub lessees do not reflect consent for the lodgement of a DA over their properties. These should be reviewed and updated.	The Applicant provides updated letters from the head lessee and the adjoining sub lessees confirming consent for the lodgement of a DA over their properties.  <b>(Attachment 6a – Kosciuszko Thredbo (KT))</b> <b>(Attachment 6b – Sasha’s Apartments)</b> <b>(Attachment 6c - Candlelight Lodge)</b>
<b>5</b> <b>A</b>	<b><u>Public enquiry</u></b> During the exhibition period the Department received a submission requesting more information on the following: • Why the subject of temporary anchor points was not addressed earlier and when the DA application was made?	Prevailing site conditions and responding Geotechnical and Structural design.  Improved safety risk for foundation settlement in the surrounding properties, thus reducing property damage risk to surrounding properties and roadways.  Improved safety risk for workers and the surrounding properties.
<b>B</b>	The necessity to now include these anchor points?	The Applicant provides an additional Geotechnical response statement <b>(Attachment 2 – Geotechnical response statement – Alliance Geotechnical).</b>
<b>C</b>	What affect this additional requirement will have on neighbouring buildings, temporarily and permanently?	The Applicant provides an additional Geotechnical response statement <b>(Attachment 2 – Geotechnical response statement).</b>
	On 4 May Mr Mark Brown requested the Applicant provide information as to who the roads authority for the s.138 approval is, and whether the road is a public road.	The Applicant is unable to confirm whether the road is a public road.  Whether a road is public road can be determined by whether a plan of subdivision has been registered with the relevant notation (s.9(1) Roads Act 1993).  However, we note that the owner of the land as indicated on the attached Title Search is the Minister Administering the National Parks and Wildlife Act <b>(Attachment 7 – Title Search).</b>

		<p>In addition, we note that section 188B of the <i>National Parks and Wildlife Act 1974</i> (<b>NPWA</b>) provides that section 138 of the Roads Act does not apply to anything done under a provision of the NPWA.</p> <p>Pursuant to clause 4(3) of the <i>National Parks and Wildlife Regulation 2019</i> a licence authorising a person to carry out an activity is taken to constitute consent for the carrying out of that activity. Accordingly, once DPE issue the licence for the temporary ground anchors pursuant to section 151 of the NPWA as noted above, the development is being carried out pursuant to a provision of the NPWA and a s.138 Roads Act Approval is not required.</p>
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The Applicant welcomes the opportunity to discuss any part of this application, or other path forward, to remedy the retrospective works and approval for future works.

Yours faithfully



Matthew Cole  
Special Counsel  
[mcole@honeslawyers.com.au](mailto:mcole@honeslawyers.com.au)



## Department of Planning and Environment

Our Ref: EF22/4825

22 April 2022

Ms Elaine Yang  
Hidali Pty Ltd  
Unit 10, 570 Miller Street  
CAMMERAY NSW 2062

**Subject:** Request for additional information  
**Proposal:** Temporary anchor points  
**Premises:** Black Bear, Thredbo  
**DA No:** 22/4825 (PAN-204581)

Ms Yang

I refer to the above development application no. 22/4825 (DA) lodged with the Department of Planning and Environment (**the Department**) on 28 March 2022.

The Minister for Planning (**Minister**), as the consent authority, considers that additional information is necessary to properly consider the DA.

The Minister requests pursuant to section 36 of the *Environmental Planning and Assessment Regulation 2021* (**EPA Regulation**) that the Applicant provide the additional information identified in **Attachment A**.

The additional information in **Attachment A** must be given to the Department within 28 days from the date of this letter, being 20 May 2022.

Since lodgement of the DA, 24 days have elapsed in the assessment period under Part 4 Division 4 of the EPA Regulation.

In accordance with Part 4 Division 4 of the EPA Regulation, the assessment period ceases to run during the period between this request for additional information and the day on which you provide the additional information, or on which you notify (or are taken to have notified) the Department that the additional information will not be provided.

Should you have any further enquiries, please contact me or Mark Brown, Senior Planner on (02) 6448 8500 or at [mark.brown@planning.nsw.gov.au](mailto:mark.brown@planning.nsw.gov.au).

Yours sincerely



**Daniel James**  
**Team Leader**  
**Alpine Resorts Team**  
**As delegate for the Minister for Planning**

## **Attachment A**

### **1. Statement of Environmental Effects (SEE)**

An addendum to the Statement of Environmental Effects (SEE) should contain more information as follows:

- The SEE does not provide an accurate description of the site.

The Department understands that works have already been undertaken and further works are proposed, outside the Black Bear allotment (Lot 794) and onto adjoining allotments, including the road. The application should be made over all of the correct allotments in the Planning Portal and the description in the addendum.

- The SEE does not provide an accurate description of the proposed works.

The addendum should provide a clear description of any temporary rock anchors already installed and any temporary rock anchors that are proposed to be installed.

- With respect to any temporary rock anchors already installed, the addendum should make it clear if retrospective consent is being sought for these works. If yes, the addendum should outline the planning and/or legislative pathways for seeking retrospective consent. This should also include consideration of the Design and Building Practitioners Act and Reg and any obligations in relation to rock anchors.
- The addendum should provide a greater level of assessment of any potential impacts of the rock anchors to the adjoining properties and the road.
- The addendum should propose and describe the creation of the easement or licence deed including:
  - Whether subdivision consent is required
  - Any implications or requirements of the Design and Building Practitioners Act and Reg
  - Any implications or requirements of the National Parks and Wildlife Act and Reg

### **2. Plans**

All of the plans should provide a clear description of any works already undertaken and any works that are still proposed (i.e. still need to be undertaken). This should include excavation, piles/piers, temporary rock anchors and the like.

### **3. Geotechnical Report**

The Geotechnical Report by Alliance dated 7 March 2022 must address the Section 4.1 of the Departments Geotechnical Policy and in this case, be accompanied by a Form 1. The Report should be updated with a current risk assessment, a table clearly outlining where each matter in Section 4.1 is addressed and a current Form 1.

### **4. Head lessee and sub lessee consent for lodgement of DA**

The letters provided from the head lessee and the adjoining sub lessees do not reflect consent for the lodgement of a DA over their properties. These should be reviewed and updated.

### **5. Public enquiry**

During the exhibition period the Department received a submission requesting more information on the following:

- Why the subject of temporary anchor points was not addressed earlier and when the DA application was made?
- The necessity to now include these anchor points?
- What affect this additional requirement will have on neighbouring buildings, temporarily and permanently?