



Black Bear Inn, Thredbo Village

Development Application Assessment
DA 22/4825

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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
CPP	Community Participation Plan
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 & Wildlife Service
Planning Secretary	Secretary of the Department of Planning and Environment
RFS	NSW Rural Fire Service
SEPP	State Environmental Planning Policy

Executive Summary

This report outlines the assessment of Development Application (DA 22/4825) lodged by Hidali Pty Ltd (the Applicant) seeking approval for the installation of temporary ground anchors as part of the engineering design of the new development under construction at Black Bear Inn, Diggings Terrace, Thredbo Village, Thredbo Alpine Resort within Kosciuszko National Park (KNP).

The application seeks approval to install additional temporary ground anchors to those already installed without consent which are subject to a separate compliance investigation. The ground anchors are required as part of the site retention scheme and include anchors that occur across boundaries of the Black Bear site into the adjoining allotments (beneath Sasha's Apartments, Candlelight Lodge and Diggings Terrace).

The Minister for Planning is the consent authority for development within a ski resort in KNP, administered by the Department of Planning and Environment (the Department). The proposal is permissible with consent under the provisions of the Precincts – Regional SEPP.

Consistent with the Department's Community Participation Plan, the application was exhibited between 31 March 2022 until 13 April 2022 as the works occur within 50 metres of other tourist accommodation buildings. One public submission was received.

The Department consulted and received comments from the National Parks and Wildlife Service (NPWS) pursuant to section 4.15 of Chapter 4 of the Precincts – Regional SEPP.

The Department has assessed the proposal in accordance with relevant matters under section 4.15(1) and the objects of the *Environmental Planning and Assessment Act, 1979* (EP&A Act), the principles of Ecologically Sustainable Development (ESD), and items raised in all submissions.

The Department considers the proposal is acceptable as:

- the installation of the temporary anchors supports the construction of the approved development
- there will not be a significant impact on any threatened species, populations or ecological communities
- construction impacts on the surrounding environment are accepted with support provided by the affected properties to the application

The Department's assessment concludes the application is in the public interest as it supports the ongoing construction of the development occurring on the site that is to be utilised for tourist accommodation, which in turn supports the regional plan for the locality and Chapter 4 of the Precincts - Regional SEPP.

The Department therefore recommends the application be approved, subject to conditions.

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1 Introduction

1.1 The Department's assessment

This report contains the Department's assessment of Development Application DA 22/4825 lodged by Hidali Pty Ltd (the Applicant) for works to the Black Bear Inn site, Diggings Terrace (Lot 794 DP 1119757), Thredbo Village, Thredbo Alpine Resort within KNP (**Figure 1**).

The Applicant is seeking development consent to install temporary ground anchors to support the construction of DA 10064 (approved by the NSW Land and Environment Court - LEC No. 2020/68009 – on 17 May 2021) as part of the site retention scheme for the proposal. Temporary ground anchors have already been installed without consent as part of the excavation of the site, which is being dealt with separately by the Department's Compliance Team.



Figure 1 | Location of site (highlighted) in context of other lodges in context of Thredbo Village (Source: SIX Maps 2022) Note: building shown has since been demolished.

The Department's assessment considers all documentation submitted by the Applicant, including the Statement of Environmental Effects (SEE) and accompanying information, the Applicant's response to request for further information, and submissions from government authorities. The Department's assessment also considers the legislation and planning instruments relevant to the site and the development, including broader planning principles relating to ecologically sustainable development.

This report describes the development, surrounding environment, relevant strategic and statutory planning provisions and the issues raised in submissions. The report evaluates the issues associated with the development and concludes that the development is in the public interest and should be approved, subject to conditions.

1.2 Site location and context

The subject site is known as 'Black Bear Inn' (Lot 794 DP 1119757), Diggings Terrace, within Thredbo Village (**Figure 1**). The site has an area of approximately 687sqm with a frontage to Diggings Terrace of approximately 24 metres 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 (NSW LEC) 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.

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 opposite the site across Diggings Terrace.

1.3 Development history of site

On 17 May 2021, the NSW LEC approved DA 10064 (NSW LEC No. 2020/68009) (**Figure 2**) 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'.

Condition A.9 of the consent states that:

A.9 Underpinning of adjoining properties

No approval is granted for underpinning on a neighbouring lot (being outside of Lot 794 DP 1119757). A separate development application would be required for underpinning outside of the subject site.



Figure 2 | Approved development, frontage to Diggings Terrace (Source: NSW LEC approval)

On 13 October 2021, a construction certificate (CC No. 1620-01-2021-CC) was issued by AED Group for 'Early works – demolition of existing building, excavation and site retention works'. Works were intended to commence on 16 October 2021.

Following demolition and during the initial excavation / site retention works, the Principal Certifier was advised by the Applicant that installation of temporary ground anchors have occurred at the site outside of those works approved by the NSW LEC and the construction certificate that was issued.

Discussions were held with the Department's Compliance Team and a 'Stop Work Order' was issued on the Application on 3 February 2022 to cease further works at the site. A separate 'Repair Order' to make the site safe was issued on 16 February 2022. **Figure 3** illustrates current site excavation and works.



Figure 3 | Existing site excavation and installation of retention structures, including unauthorised temporary ground anchors (Source: Department inspection)

Following the issuing of these two Orders, the Department sought independent geotechnical advice to determine the suitability of the anchors installed and whether the anchors should remain / need additional or should be removed. After careful consideration, it was concluded that the anchors could remain in place subject to further ongoing monitoring of the site.

One of the outcomes from the ongoing discussions with the Department was the submission of this Development Application for the installation of the remaining temporary ground anchors needed for the development.

As a result of the compliance investigation and the Department seeking to understand how the Applicant would regularise the unauthorised works, the Applicant chose to submit a Building Information Certificate (BIC) for the ground anchors installed without development consent and a Development Application for the remaining ground anchors that are required to be installed before works on the main building can continue.

2 Project

The application seeks approval to install a further 12 temporary ground anchors to support the site retention scheme being carried out with the excavation of the site prior to construction of the approved NSW LEC development. This is in addition to the 43 already installed without consent, which are to be addressed as part of a Building Information Certificate (**Figure 4** and **5**).

The Department also notes that additional shotcreting is required to be provided, with these shown in hatched blue on the submitted plans.

New anchors are required to be installed on the Diggings Terrace and Sasha's Apartment boundaries (**Figure 6**). The Applicant's structural drawings note that the anchors are made from black steel ranging from 26.5mm to 32mm in diameter and range in lengths from 8800mm to 12600mm (others already installed included lengths of 13000mm), with the anchors drilled and placed through the concrete piles that are already installed on site.

The Applicant comments that the anchors are temporary and necessary to facilitate construction of the approved NSW LEC development. Once the shoring system is complete, the internal substructure and the superstructure can then be constructed and completed. On completion, the temporary ground anchors are de-stress by loosening off of the head bolts and removing the face plates. The remaining length of steel inert bars stay in the ground.

Approval of the temporary ground anchors will ensure the proposed development design can provide an improved tourist experience and architectural built form outcome for Thredbo Alpine Resort.

The proposal has a cost of works of approximately \$95,800.

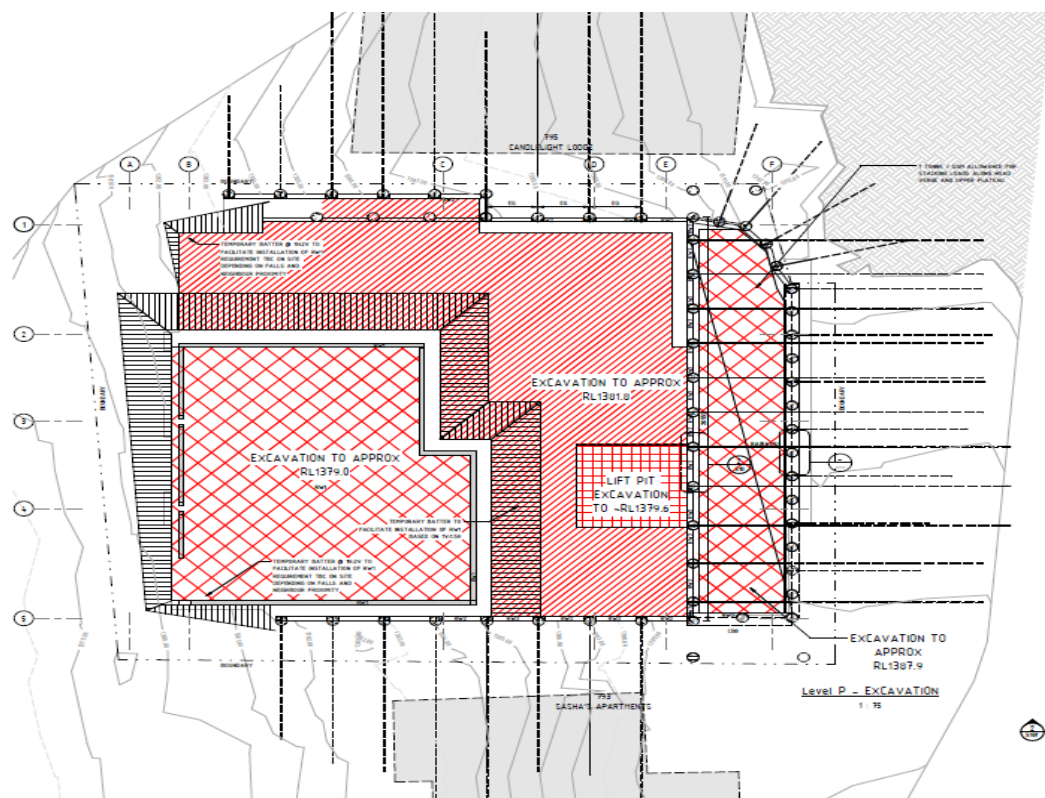


Figure 4 | Extent of temporary ground anchors, proposed and installed (Source: Applicant's documentation)

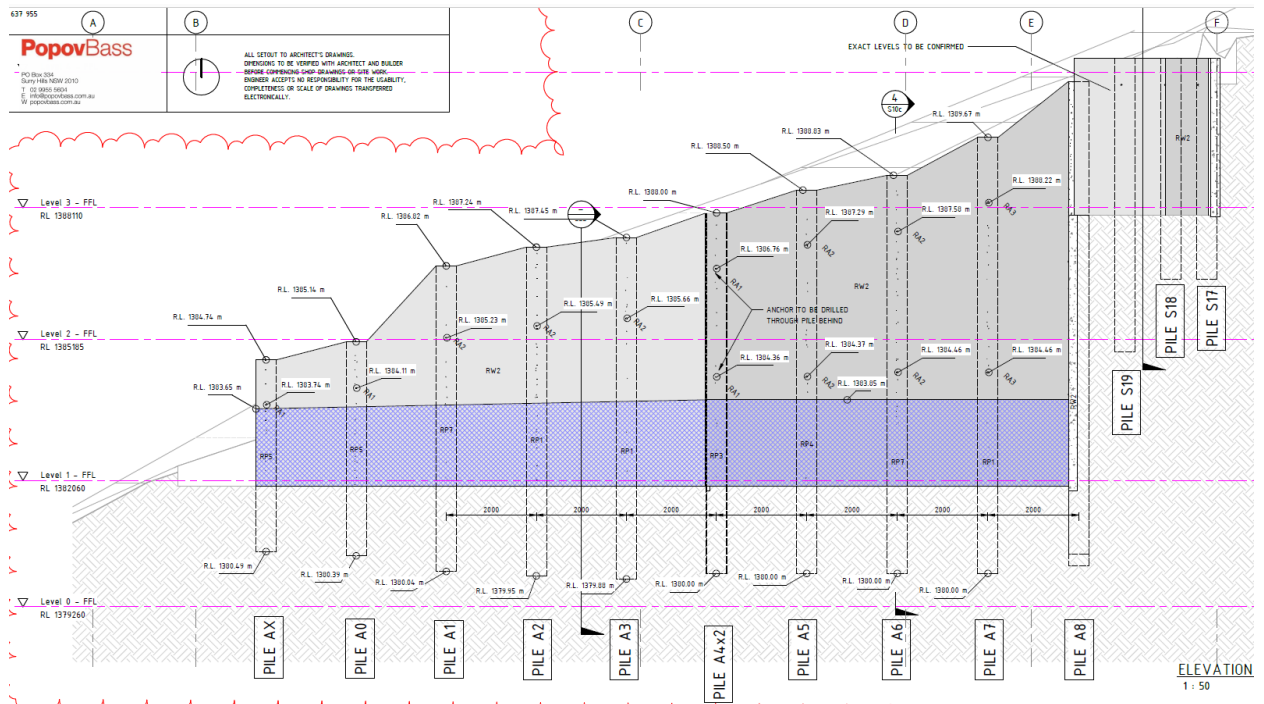


Figure 5 | Extent of temporary ground anchors, installed along boundary adjacent to Candlelight Lodge (Source: Applicant's documentation)

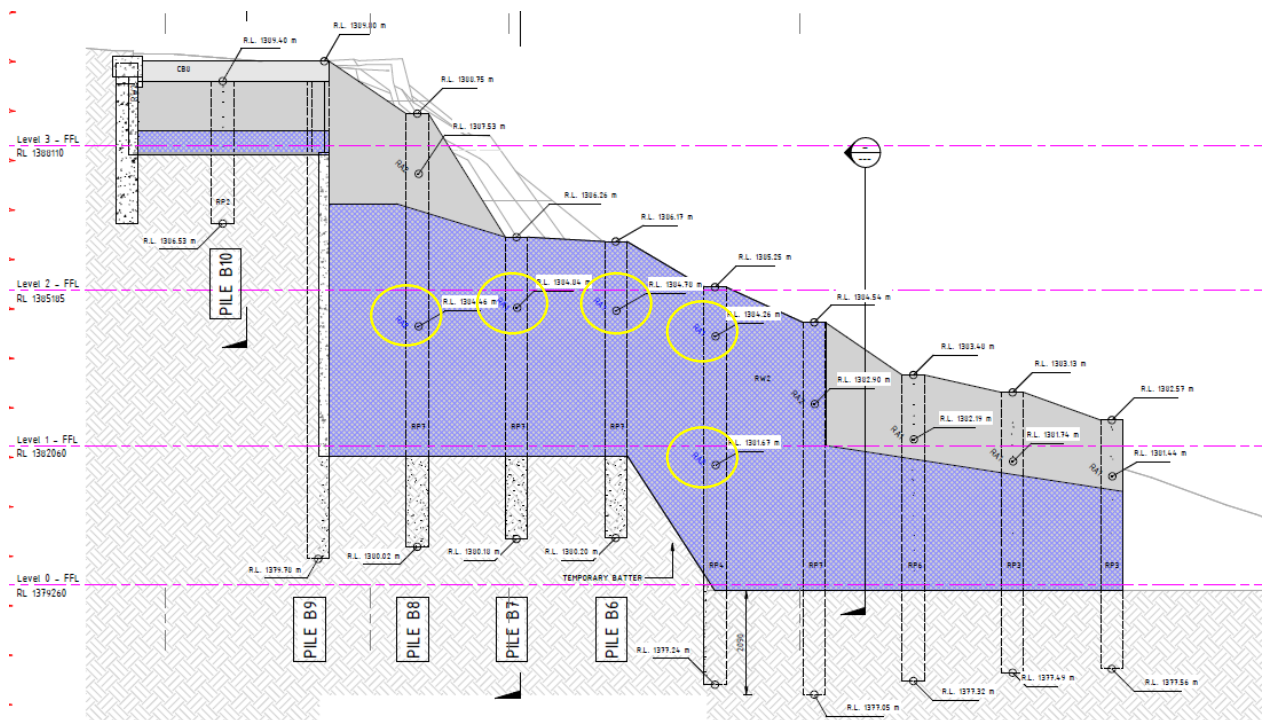


Figure 6 | Extent of temporary ground anchors, proposed (circled) and installed along boundary adjacent to Sasha's Apartments (Source: Applicant's documentation)

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 two main documents that support the strategic context of the alpine resorts are the *South East and Tableland Regional Plan 2036* 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 remains consistent with the Regional Plan as the installation of the temporary ground anchors is required to enable construction of the development (NSW LEC No. 2020/68009) to continue on site, which once completed will provide a new tourist accommodation building to Thredbo Village.

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 the natural and cultural heritage of land within the resorts and to encourage environmentally sustainable development. Under the provisions of section 4.15 of the Precincts - Regional SEPP, the National Parks and Wildlife Service (NPWS) have 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 broad range of values found in the park.

The Department considers the proposal is consistent with Chapter 4 of the Precincts - Regional SEPP as the proposal has considered the constraints of the site and arranged support from adjoining affected properties.

4 Statutory Context

4.1 Consent Authority

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 Clause 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 of 9 March 2022, the Director, Regional Assessments may determine the application as:

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

4.2 Permissibility

The proposal includes works ancillary to the construction of the new tourist accommodation building, while maintaining the use of the site consistent with the definition of 'tourist accommodation' as defined in Chapter 4 of the Precincts - Regional SEPP. Pursuant to section 4.9 of the Precincts - Regional SEPP, 'tourist accommodation' is permissible with consent within land use table of Thredbo Alpine Resort.

4.3 Mandatory Matters for Consideration

Objects of the EP&A Act

The Department has considered the proposal against the relevant objects of the EP&A Act in **Appendix B**. The Department is satisfied the proposal is consistent with the objects as:

- the works are aimed at facilitating the construction of an approved tourist accommodation building and are required as part of the shoring technique of the excavation works to facilitate the construction of the future building
- there would not be an unacceptable impact on the environment, with works limited to installation of steel rods into the ground to secure the site during the retention phase of the excavation that are then de-stressed but left in the ground
- the proposal does not impact upon cultural heritage, including Aboriginal cultural heritage
- the Department provided opportunities for community participation in the assessment process, which included exhibiting the application, notifying adjoining landowners, and displaying the proposal on the NSW Planning Portal website during the exhibition period. The Department has considered the issues raised in submissions in **Section 6**

Ecologically Sustainable Development (ESD)

The EP&A Act adopts the definition of ESD found in the *Protection of the Environment Administration Act 1991*. ESD initiatives and sustainability have been adequately considered by the Applicant and mitigation measures are proposed to be incorporated into the design.

The proposal is consistent with ESD principles and the Department is satisfied the proposed works have been developed having regard to ESD principles, in accordance with the objects of the EP&A Act as follows:

- the proposal does not pose a threat of serious or irreversible environmental damage and relates to works to enable construction of the approved tourist accommodation building
- the proposal is not expected to adversely impact upon the health, diversity or productivity of the environment for future generations

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 effect threatened species or ecological communities, or their habitats; or
- the works are carried out in a declared area of outstanding biodiversity value.

The Department notes that with the previous approval for construction of the new tourist accommodation building, all vegetation on the site was to be removed and then landscaping areas provided following construction. No additional vegetation removal is required to install the ground anchors.

The site is also not mapped on the BVM, and construction of the ground anchors would not a significant effect on threatened species or ecological communities, or their habitats.

The Department notes that there is currently no declared area of outstanding biodiversity value within KNP.

Considerations under section 4.15 of the EP&A Act

In determining a development application under section 4.15 of the EP&A Act, a Consent Authority is required to take a number of matters into consideration in relation to the proposed development. The Department has given due consideration to the matters prescribed under section 4.15.

Table 1 below presents a summary of the matters for which consideration outlined further in **Section 6** (Assessment) of this report and references other relevant appendices and sections outlined in this report.

Table 1 | Section 4.15(1) Matters for Consideration

Section 4.15(1) Evaluation	Consideration
(a)(i) any environmental planning instrument (EPI)	<p>The Precincts - Regional SEPP is the only EPI which applies to the site for this type of development. An assessment against the requirements of Chapter 4 of the Precincts - Regional SEPP is provided in Appendix B.</p> <p>The Department is satisfied that the Application is consistent with the requirements of Chapter 4 of the Precincts - Regional SEPP.</p>
(a)(ii) any proposed instrument	Not applicable to the proposal.
(a)(iii) any development control plan	Not applicable to the proposal.
(a)(iiia) any planning agreement	Not applicable to the proposal.
(a)(iv) the regulations	<p>The application satisfactorily meets the relevant requirements of the EP&A Regulation, particularly the procedures relating to development applications (Part 3 and Part 4) and fees (Part 13 and Schedule 4).</p> <p>The Department has undertaken its assessment in accordance with all relevant matters as prescribed by the regulations, the findings of which are contained within this report.</p>
(a)(v) any coastal zone management plan	Not applicable to the proposal.
(b) the likely impacts of that development	<p>The Department has considered the likely impacts of the development. All environmental impacts can be appropriately managed and mitigated through conditions of consent.</p> <p>The proposal would ensure the continuation of works relating to the approved tourist accommodation building on the site, which would support visitation to Thredbo Alpine Resort.</p>
(c) the suitability of the site for the development,	The site is suitable for the development.
(d) any submissions made in accordance with this Act or the regulations,	Consideration has been given to agency and public submissions received during the exhibition period. See Section 5 of this report.
(e) the public interest.	The works are consistent with the aim and objectives of Chapter 4 of the Precincts - Regional SEPP, would be compatible to the

uses of the locality and would not have an adverse impact on the environment. The proposal is consistent with the principles of ESD.

As such, the proposal is believed to be in the public interest.

5 Engagement

5.1 Department's engagement

The Department's Community Participation Plan, November 2019, prepared in accordance with schedule 1 of the EP&A Act requires applications of development consent to be exhibited for a period of fourteen (14) days. However, applications under Chapter 4 of the Precincts - Regional SEPP are not required to be public exhibited if the proposal relates to works which are wholly internal to a building or where the site is located more than 50 metres away from a tourist accommodation building.

As the works are within 50 metres of other tourist accommodation buildings, the Department exhibited the application between 31 March 2022 until 13 April 2022 on the NSW Planning Portal website.

The application was referred to the NPWS pursuant to section 4.15 of Chapter 4 of the Precincts - Regional SEPP and to Transport for NSW (TfNSW) as the Applicant originally indicated that the proposal was integrated development under Section 138 of the *Roads Act 1993*.

5.2 Summary of submissions

The Department received comments from the NPWS and TfNSW. One public submission was received.

NPWS

The NPWS raised no concerns with the application, as the proposal does not alter the intended use or capacity of the development proposed in the original DA 10064 proposal. NPWS did comment that accommodating elements of the proposal on neighbouring subleased lots or common areas of the Thredbo Alpine Resort would ordinarily be a matter to be considered and negotiated by Kosciuszko Thredbo Pty Limited (which appears to have occurred).

On 16 June 2022, the Department was informed by the NPWS that an easement is required for both the existing and proposed rock anchors. The NPWS also provided this advice to Hones Lawyers (Applicant's solicitors) on 12 May 2022.

However, on 29 June 2022, NPWS provided further advice dispensing with its requirement for an easement. On further consideration NPWS concluded that the land is under long term lease and that the installation of the rock anchors is a matter for the lessee.

The Department supports the position of NPWS and is proceeding on the basis that Hidali Pty Ltd will not need to establish the relevant easement(s).

TfNSW

The application was forwarded to the TfNSW for consideration as the Applicant referenced that the proposal was integrated development under Section 138 of the *Roads Act 1993*. TfNSW raised no objection to the Development Application based on the documentation provided and noted that TfNSW only require an integrated referral where the works are on a classified road. The Department notes that Diggings Terrace is not a classified road, with the only classified road nearby being the Alpine Way.

The Department requested the Applicant review the integrated reference in the application. The Applicant provided further correspondence to advise that the Development Application should not be treated as integrated development as Diggings Terrace is not considered to be a public road, which would then obviate the need to obtain integrated development comments from TfNSW.

Public Submission

One public submission was received, which included the following questions (**Table 2**). The Applicant has provided a response to the submission.

Table 2 | Submission and responses

Submission	Applicant comments
Why the subject of temporary anchor points was not addressed earlier and when the DA application was made?	The Applicant responded and commented that the temporary grounds anchors are now required due to prevailing site conditions and responding to geotechnical and structural design. In addition, this provides 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.
The necessity to now include these anchor points?	The Applicant responded to the two questions and referred to the additional commentary in the geotechnical response statement.
What affect this additional requirement will have on neighbouring buildings, temporarily and permanently?	This included comments that the temporary ground anchor requirement is in response to prevailing site conditions, risk reduction in design and site operations, and best outcomes for site safety. The Department notes that these site conditions were not discovered by the Applicants Geotechnical Engineering during the original assessment of the proposal.

6 Assessment

The Department has considered the relevant matters for consideration under section 4.15 of the EP&A Act, the SEE and supporting information in its assessment of the proposal. The key issues in the Department's assessment are:

- engineering considerations
- impacts upon adjoining properties
- managing construction impacts

Each of these issues is discussed in the following sections of this report.

6.1 Engineering considerations (geotechnical and structural)

The Applicant proposes to install 12 new ground anchors (5 along the southern boundary to Sasha's Apartments and 7 along the eastern boundary towards Diggings Terrace). This is in addition to the other 43 anchors installed prior to works ceasing on site (**Figure 7** illustrates part of the anchors already installed along the Diggings Terrace frontage).

The Applicant's comments that ground anchors are utilised to temporarily assist in site retention while the ground level and above levels of the building work is completed. That once the Level 3 slab has reached design strength, the ground anchors are to be de-stressed by loosening the steel head bolts and removing the face plates. The remaining length of steel inert bars stay in the ground.



Figure 7 | Extent of works and temporary ground anchors (circled), installed along boundary adjacent to Diggings Terrace (Source: Department inspection)

The Applicant's Geotechnical consultant's (Alliance Geotechnical Pty Ltd) comment that:

- Temporary ground anchors are recommended to control wall deflections. Retaining Wall RW2, being in less weathered granodiorite can be permitted to have wider spaced piles. To avoid later complications in removing walings, it is suggested a "one temporary anchor per pile" approach to avoid a need for walings is considered. Use of a capping beam may still be prudent.
- Temporary ground anchors distribute the loading of the shoring wall to (more) various locations. Counter wise, internal propping predominantly relies on single span beams and fixing points. Temporary ground anchors reduce the operational risk of a catastrophic machine strike and shoring wall failure.
- The necessity of the Temporary Ground Anchor requirement is in response to prevailing site conditions, risk reduction in design and site operations, and best outcomes for site safety.

During the compliance investigation into the ground anchors installed without consent, the Department separately engaged its own geotechnical consultants to review the submitted information (i.e. in part to check whether additional ground anchors would be required or whether in fact ground anchors were needed). Their assessment of the proposal included the following commentary:

- *There are no significant engineering implications for adjacent landowners in accepting temporary anchors remaining within their land, once construction is complete and the installed anchors made redundant.*
- *The anchors would remain in place in the ground within adjacent property, but would no longer serve any structural support purpose.*
- *Once the anchors are made redundant by cutting the tendon, this also removes any restriction on the adjacent land development as no support to the structure is provided by anchors within the adjacent land once the 'de-stressing' is completed.*
- *Given the difficult construction process of removal from the anchor head down, it would be considered a safer option to leave them in place. Furthermore, if the adjacent landowner wishes to excavate below the anchor depths in future, the redundant anchors would not prevent this, and can be removed as part of general excavation, i.e. there is not real difference between excavating rock down from surface compared to excavating rock with redundant de-bonded anchors within.*
- *While appreciating that the anchors were installed without the appropriate permissions in place, as temporary anchors the engineering consequences of leaving the redundant anchors in place once they are de-bonded is minimal to nil for the adjacent landowners involved. Therefore, the most practical engineering way forward is to allow the installed anchors to remain operational until their function is complete and allow the installation of additional anchors on the same basis if needs be.*

The Department notes that temporary ground anchors assist in the construction of buildings and retaining structures where excavations are required due to sloping land. Anchors become redundant once the building is at required heights and then destressed.

While not proposed during the assessment of the original application, the Applicants construction techniques require the installation of the remaining anchors. Were they proposed initially, conditions of

consent could have been discussed and the adjoining properties involved in discussions, with agreements / easements in place.

Impacts upon adjoining properties are however considered to be acceptable in the short term (from drilling), subject to preparation of building dilapidation reports on adjoining properties (where the anchors are to be constructed) and construction management plans.

The Department is satisfied that the works can proceed with the installation of the remaining 12 anchors.

6.2 Impact on adjoining properties

Adjoining building and Diggings Terrace impacts

During the demolition / excavation phase of the construction of the approved NSW LEC development, the Applicant and its consultant geotechnical and structural engineers considered that ground anchors would be required from the site and across the boundaries to adjoining Sasha's Apartments to the south (**Figure 8** provides an example of anchors under the building), Diggings Terrace to the east and Candlelight Lodge to the north.

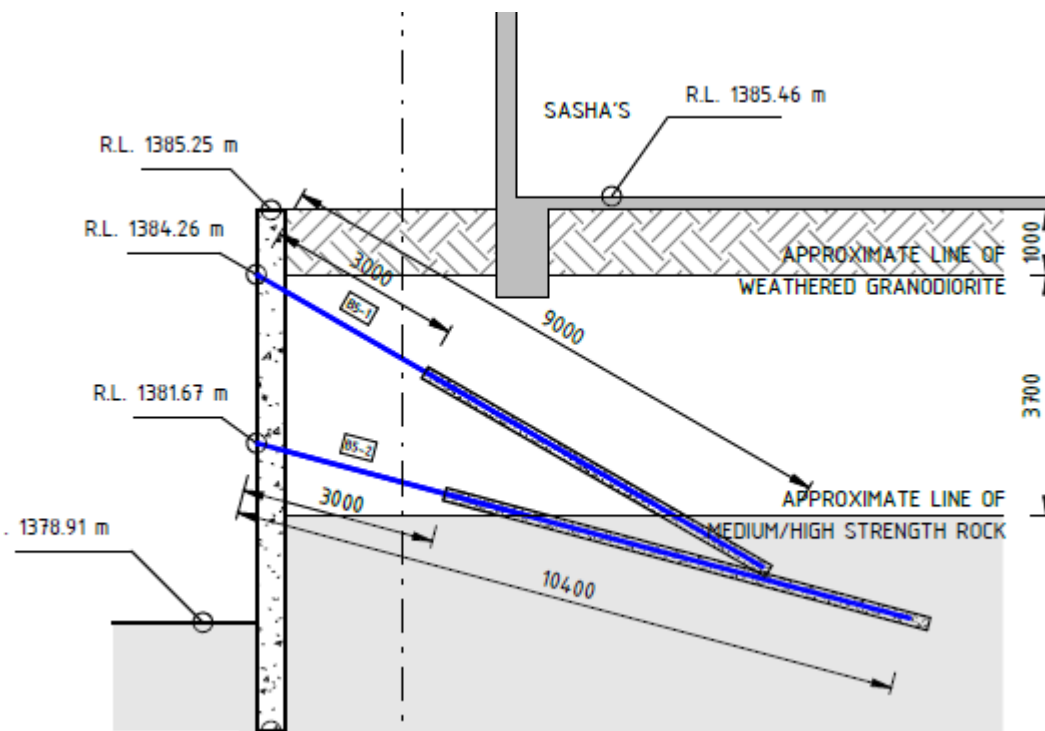


Figure 8 | Example of temporary ground anchor installed / to be installed from the site and under Sasha's Apartment (Source: Applicant documentation)

Head lessee consent (Kosciuszko Thredbo Pty Ltd) has been obtained by the Applicant for the works into adjoining properties and underneath Diggings Terrace.

The Applicant comments that the proposal will not have any adverse economic or environmental impacts. The proposed development of the site will inject a large capital investment to the Thredbo Alpine Resort. The quality development will offer significant economic benefits, both short term and long term with employment opportunities in construction and hospitality.

It is noted that as a consequence of installing the anchors, this creates an initial burden on any development of the adjoining properties. However, the Department's geotechnical consultants advise that once the anchors are made redundant, this removes any restriction on the adjacent land development as no support to the structure is provided by anchors within the adjacent land once the 'de-stressing' is completed. It is also difficult to remove the anchors once installed, and is a safer option to leave them in place.

Compensation has been provided by the Applicant to the adjoining sub-lessees either through a monetary agreement or on the basis that costs of removing the anchors should the land be developed are covered.

The Department does note that prior to commencement of the demolition works, the Applicant was required to prepare a dilapidation report on the surrounding buildings to detect any impacts of the building works upon the buildings. If any impacts from the drilling works to install the anchors are found, compensation / rectification of those impacts would be required.

The Department did receive one submission during exhibition of the application from an adjoining tourist accommodation building questioning the need for the anchors when they were not considered during the assessment of the original development. The applicant responded by advising that the grounds anchors are now required due to prevailing site conditions and responding to geotechnical and structural design.

Issues such as noise / vibration impacts upon adjoining properties and the immediate area are restricted to typical hours of construction, however it is noted that there is also a condition in the NSW LEC consent requiring the Applicant to cease works between June long weekend and October long weekend (i.e. winter snow season). No discussion on commencing works has been held with the Applicant at the time of writing.

The Department concludes that the installation of an additional 12 temporary ground anchors is supported and would complement the other 43 already installed anchors.

Potential for an easement or 'ground anchor installation right document'

Prior to March 2022, to install ground anchors across into adjoining properties, an easement was needed to be created between the owner of the site and the affected property under the *Design and Building Practitioners — Particulars for Regulated Designs Order 2021*. After March 2022, the *Design and Building Practitioners — Particulars for Regulated Designs Order 2022* and Part 3, Division 3A of the *Design and Building Practitioners Regulation 2022* have been in effect and now a 'ground anchor installation right document' is required.

Clause 28A of the DBPR 2021 defines a 'ground anchor installation right document' as:

ground anchor installation right document means—

- (a) *for neighbouring land that is a public road—a consent under the [Roads Act 1993](#), section 139 from the appropriate roads authority that permits the installation of a ground anchor on neighbouring land, or*
- (b) *otherwise—a document that permits the installation of a ground anchor on neighbouring land and shows the proposed location of the anchor, including—*
 - (i) *a registered easement, or*
 - (ii) *a licence agreement, or*
 - (iii) *a deed.*

While the Applicant discussed the proposal with the adjoining properties and agreed to terms with the properties, no easement or 'ground anchor installation right document' was formalised.

Following the DCO issued by the Department's Compliance Team, additional discussions were held with the NPWS (as overall landholder of the site) on the endorsement of an easement over the affected properties and Diggings Terrace. Initially, NPWS have advised that they will not be in a position to engage in discussion about appropriate easement terms unless and until development consent is granted. Subsequent advice has been received from NPWS that as the land is under long term lease, NPWS considers that the installation of the rock anchors is a matter for the lessee (being between the Applicant and Kosciuszko Thredbo Pty Ltd).

In order to therefore facilitate this discussion post development consent, the Department has recommended a Deferred Commencement Condition be applied requiring finalisation of the 'ground anchor installation right document' be completed prior to the consent being validated (i.e. before any works on the new ground anchors being undertaken).

6.3 Managing construction impacts

Given the scope of the works, it is unlikely that the construction of the proposal will cause any adverse impact upon the natural environment. The proposal is in keeping with the already installed temporary ground anchors being used to assist in site retention of the development under construction.

Existing construction parking arrangements are in place. Construction impacts (such as noise and vibration) for the installation of the remaining temporary ground anchors will be short term and managed in accordance with standard environmental conditions. It is noted that the Applicant is required to monitor the site and adjoining buildings for any damage caused during construction activities.

Existing site environmental management measures are in place and incorporate waste management, dust and noise minimisation strategies as well as material storage, is implemented during the works. It is also noted that construction is to occur outside the ski season.

The Department has recommended standard construction conditions applied in the Alpine area. Subject to compliance with these conditions, the Department is of the view that the proposed works would not impact upon nearby buildings or the environment.

7 Evaluation

The Department has assessed the merits of the proposal in accordance with the relevant requirements of the EP&A Act and considered the submissions from the public, NPWS and TfNSW. The Department's assessment concludes the proposal is acceptable as:

- the installation of the temporary anchors supports the construction of the approved development
- there will not be a significant impact on any threatened species, populations or ecological communities
- construction impacts on the surrounding environment are accepted with support provided by the affected properties to the application

Overall, the Department is satisfied that the proposal is suitable for the site and in the public interest. The Department therefore recommends that the application be approved, subject to recommended conditions.

8 Recommendation

It is recommended that the Director, Regional Assessments, as delegate of the Minister for Planning:

- **considers** the findings and recommendations of this report
- **accepts** and adopts all of the findings and recommendations in this report as the reasons for making the decision to grant consent to the application
- **agrees** with the key reasons for approval listed in the notice of decision
- **grants** consent for the application in respect of DA 22/4825, subject to the recommended conditions
- **signs** the attached Development Consent (**Appendix C**)

Recommended by:



1 August 2022

Mark Brown

Senior Planner

Alpine Resorts Team

9 Determination

The recommendation is **Adopted / Not adopted** by:

A handwritten signature in blue ink, appearing to be 'K T' followed by a long horizontal stroke.

1 August 2022

Keiran Thomas

Director

Regional Assessments

as delegate of the Minister for Planning

Appendices

Appendix A – List of referenced documents

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

1. Statement of Environmental Effects
2. Submissions
3. Additional information

Appendix B – Statutory Considerations

OBJECTS OF THE EP&A ACT

The objects of the EP&A Act are the underpinning principles upon which the assessment is conducted. The statutory powers in the EP&A Act (such as the power to grant consent/ approval) are to be understood as powers to advance the objects of the legislation, and limits on those powers are set by reference to those objects.

Therefore, in making an assessment, the objects set out in section 1.3 of the EP&A Act should be considered to the extent they are relevant. A response to the objects is provided in the table below.

Objects of the EP&A Act	Consideration
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,	The proposal supports the construction of the approved development through providing geotechnical and structural stability of the immediate area. When distressed and should the adjoining properties seek to redevelop their sites, removal or cutting of the steel rods would be required.
(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,	The proposal would not have an unacceptable impact on the environment thus being ecologically sustainable development. Mitigation measures during construction and rehabilitation of impacted areas are supported.
(c) to promote the orderly and economic use and development of land,	The development seeks approval for works that are aimed at supporting the construction of the approved 'tourist accommodation' building.
(d) to promote the delivery and maintenance of affordable housing,	Not applicable to this proposal.
(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,	The impacts upon the environment have been limited where possible. All proposed works will be located within the site and immediate adjoining properties (all of which have provided supports for the works).
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),	The proposed development is not anticipated to result in any impacts upon built or cultural heritage, including Aboriginal cultural heritage.

(g) to promote good design and amenity of the built environment,	The Department considers that the proposal responds to its existing setting and ensure the ongoing construction of the approved development.
(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,	The Department has recommended conditions of consent to ensure the construction of the proposal is undertaken in accordance with legislation, guidelines, policies and procedures (refer to Appendix C).
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,	The Department publicly exhibited the proposal (Section 5), which included consultation with government agencies and consideration of their responses.
(j) to provide increased opportunity for community participation in environmental planning and assessment.	The Department publicly exhibited the proposal (Section 5), which included notifying the neighbouring lodges, previous submitters to the original exhibition application (being DA 10064 before the Applicant sent the application to the NSW LEC), and displaying the application on the NSW Planning Portal website.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)

To satisfy the requirements of section 4.15(a)(i) of the EP&A Act, this report includes references to the provisions of the EPIs that govern the carrying out of the project and have been taken into consideration in the Department's environmental assessment.

State Environmental Planning Policy (Precincts - Regional) 2021 (Precincts - Regional SEPP) is the only EPI applicable to the development. Consideration of Chapter 4 of the Precincts - Regional SEPP is provided below:

Section 4.12(1) - Matters to be considered by consent authority

(a) the aim and objectives of this policy, as set out in section 4.1	The proposal is consistent with the aim and objectives of Chapter 4 of the Precincts - Regional SEPP in that it is consistent with the principles of ESD and supports the construction of the approved 'tourist accommodation' and 'restaurant' building.
(b) the conservation of the natural environment and any measures to mitigate environmental hazards (including geotechnical hazards, bush fires and flooding),	The proposal is appropriate as it allows for the installation of additional ground anchors, while having an acceptable impact on the environment. Natural hazards have been adequately addressed.

(c) the cumulative impacts of development on existing transport, effluent management systems, waste disposal facilities or transfer facilities, and existing water supply,	<p>No adverse cumulative impacts are anticipated as the proposal will not result in any changes to existing transport, effluent management systems, waste disposal facilities, transfer facilities or water supply.</p> <p>When distressed and should the adjoining properties seek to redevelop their sites, removal or cutting of the steel rods would be required.</p>
(d) any statement of environmental effects,	The SEE and additional information supplied are considered adequate to enable a proper assessment of the works.
(e) the character of the alpine resort,	The proposal would not adversely alter the character of the resort.
(f) the Geotechnical Policy – Kosciuszko Alpine Resorts,	<p>The site is located outside of the G zone identified on the Department's Geotechnical Policy – Kosciuszko Alpine Resorts Thredbo Map.</p> <p>The Application is supported by a Geotechnical Investigation Report and Form 1 from Alliance Geotechnical Pty Ltd.</p> <p>The Department acknowledges the geotechnical assessment and is satisfied that impacts have been addressed appropriately and no concerns are raised in relation to Geotech matters.</p>
(g) any sedimentation and erosion control measures,	Sedimentation and erosion control conditions are recommended, including the preparation of the Construction Environmental Management Plan (CEMP) prior to the commencement of works.
(h) any stormwater drainage works proposed,	Given the scope of the proposal, the proposal is not considered to impact upon stormwater drainage from the proposal.
(i) any visual impact of the proposed development, particularly when viewed from the Main Range,	The works supporting the construction of an approved tourist accommodation building, with an assessment of the visual impacts of that proposal already considered.
(j) any significant increase in activities, outside of the ski season,	The proposal does not result in an increase in activities outside the ski season.

(k) if the development involves the installation of ski lifting facilities,	The proposal does not involve the installation of any new ski lifting facilities.
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(l) if the development is proposed to be carried out in Perisher Range Alpine Resort: the document entitled Perisher Range Resorts Master Plan (PRRMP) and the document entitled Perisher Blue Ski Slope Master Plan,	Not applicable to this proposal.
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(m) if the development is proposed to be carried out on land in a riparian corridor.	Not applicable to this proposal.
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Section 4.13 – Additional matters to be considered for buildings

Building Height	The proposed works do not increase the height of the approved building.
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Building Setback	The works do not reduce the existing setbacks.
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Landscaped Area	The proposal does not negatively impact existing native vegetation and therefore is appropriate.
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Section 4.15 – applications referred to the National Parks and Wildlife Service

The proposal was referred to the NPWS pursuant to section 4.15 of the Precincts - Regional SEPP. Refer to comments received at **Section 5** and as required, discussions on the proposal at **Section 6**.

Section 4.24 – Heritage conservation

European heritage	The proposal would not impact on any European heritage items.
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Aboriginal heritage	The NPWS raised no concerns, however recommended that should any Aboriginal objects be uncovered during construction, any works impacting the objects must cease immediately and the NPWS contacted for assessment of the site.
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Appendix C – Recommended Instrument of Consent