



External Alterations, Aspen Creek Apartment 2, 8B Chimneys Way, Thredbo Village

Development Application Assessment
DA 22/4975

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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
CPP	Community Participation Plan
Department	Department of Planning and Environment
DPE Water	Department of Planning and Environment - Water
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

Executive Summary

This report outlines the assessment of Development Application (DA 22/4975) lodged by Mr Wayne Lazarus (the Applicant) seeking approval for the construction of a deck and new door to the rear of Apartment 2 within Aspen Creek Apartments, 8B Chimneys Way, Thredbo Village, Thredbo Alpine Resort within Kosciuszko National Park (KNP).

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 *State Environmental Planning Policy (Precincts - Regional) 2021* (Precincts – Regional SEPP).

The Department exhibited the application, being nominated integrated development, for 28 days between 31 March 2022 and 27 April 2022 in accordance with the Department's Community Participation Plan, and made the application publicly available on the Department's Planning Portal website. The Department also notified tourist accommodation owners within fifty (50) metres of the development site and referred the application to relevant government agencies.

Due to the proximity of the development site to a water course, the application was referred to DPE Water for review in accordance with section 91 of the *Water Management Act 2000*. Referral to the Rural Fire Service (RFS) was undertaken as the development relates to tourist accommodation on bush fire prone land (BFPL) in accordance with section 100B of the *Rural Fires Act 1997*. The Department also referred the application to the National Parks and Wildlife Service (NPWS) pursuant to section 4.15 of the Precincts - Regional SEPP.

The Department received comments from the DPE Water, the RFS and the NPWS. No submissions from the public were received during the exhibition period.

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

The Department considers the proposal is acceptable as:

- there will not be a significant impact on any threatened species, populations or ecological communities;
- the works improve the amenity of the accommodation for the benefit of tourists and the apartment owners without resulting in adverse environmental, social or economic impacts on the locality, and
- construction impacts on the surrounding environment will be minimised given the nature of the proposal and recommended conditions of consent requiring construction impacts to be minimised during construction as well as any disturbed areas to be rehabilitated following construction.

Assessment of the application concludes the works are consistent with the aim and objectives of Chapter 4 of the Precincts - Regional SEPP and align with the South and East Tableland Regional Plan. Support for the application is considered to be consistent with the public interest. The Department recommends the application be approved subject to conditions.

Contents

1	Introduction	1
1.1	The Department's Assessment	1
1.2	Site location and context	2
2	Project	5
3	Strategic context	6
4	Statutory Context	7
4.1	Consent Authority.....	7
4.2	Permissibility	7
4.3	Other approvals.....	7
4.4	Mandatory Matters for Consideration.....	8
5	Engagement	11
5.1	Department's Engagement	11
5.2	Summary of submissions	11
6	Assessment	13
6.1	Built form and impacts of the works	13
6.2	Design details and standards.....	13
7	Evaluation	14
8	Recommendation	15
9	Determination	16
	Appendices	17
	Appendix A – List of referenced documents	17
	Appendix B – Statutory Considerations	18
	Appendix C – Recommended Instrument of Consent	23

1 Introduction

1.1 The Department's Assessment

This report contains the Department's assessment of Development Application DA 22/4975 lodged by Mr Wayne Lazarus (the Applicant) seeking approval for works to Apartment 2 within the Aspen Creek Apartment building (known as Aspen Creek 2), located at No 8B Chimneys Way, Thredbo Village, Thredbo Alpine Resort within Kosciuszko National Park (KNP) (Lot 555 DP 1118421) (**Figure 1**).

The Applicant is seeking approval to construct an open deck from the first floor on the northern side (rear) of the apartment. A new door will be installed from the living area to gain access to the new outdoor deck.

The Department's assessment has considered all documentation submitted by the Applicant, including the Statement of Environmental Effects (SEE) and accompanying information, the Applicant's response to requests for 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 items raised in submissions. The report evaluates the issues and impacts associated with the development and concludes that the development is in the public interest and should be approved, subject to conditions.

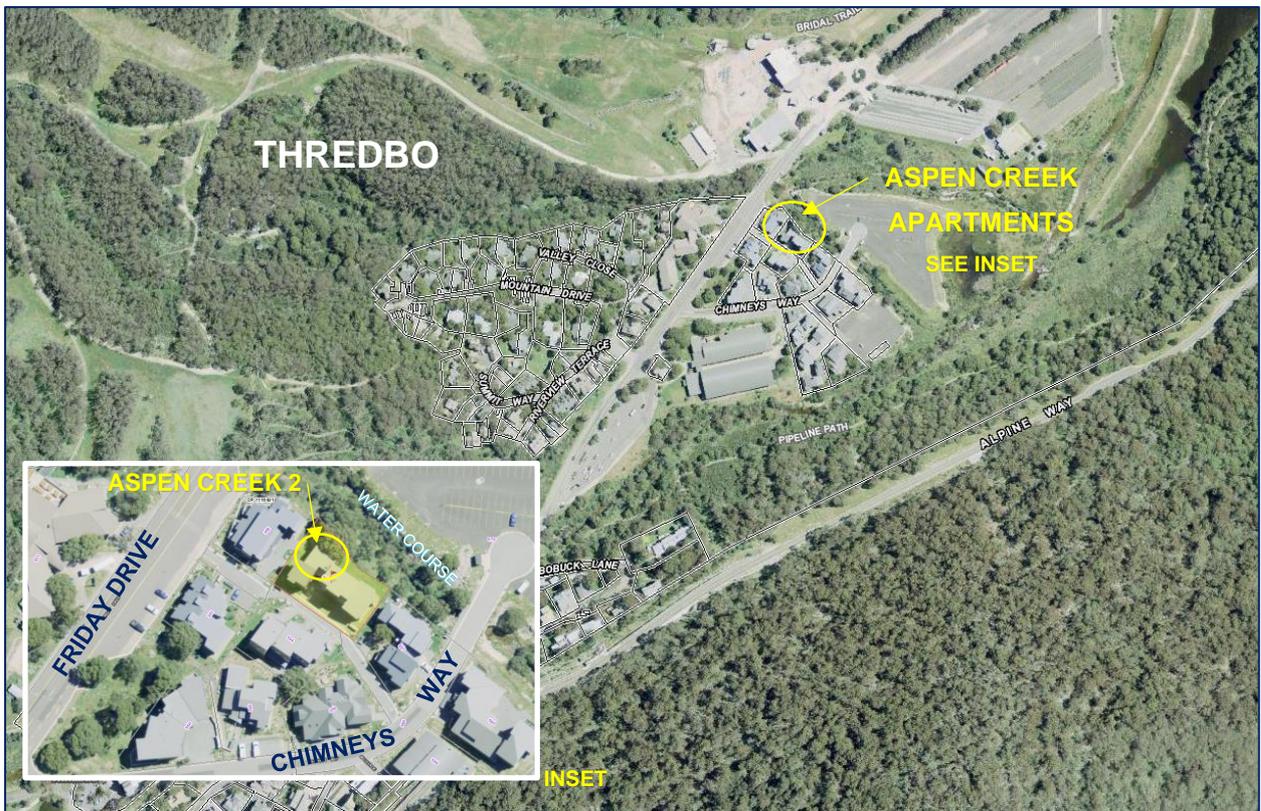


Figure 1 | Location of Aspen Creek 2 within Thredbo Village (Source: SIX Maps 2022)

1.2 Site location and context

Thredbo Alpine Village is located within KNP and provides tourist accommodation and facilities year-round for outdoor pursuits such as snow-based activities in winter and activities including hiking, fishing and mountain bike riding during the summer months.

The Aspen Creek apartment building is situated on an irregular shaped allotment of approximately 724 square metres located on the north-eastern periphery of the tourist accommodation precinct within Thredbo Alpine Village. The site is surrounded by tourist accommodation buildings on all but the north-eastern boundary, where there is an unnamed water course flowing between the parcel and a large carparking area (**Figure 1**).

The Aspen Creek apartment complex contains five (5) self-contained accommodation units (**Figure 2**) that are accessed via an easement between Chimneys Way to the south-east and Friday Drive to the north-west.

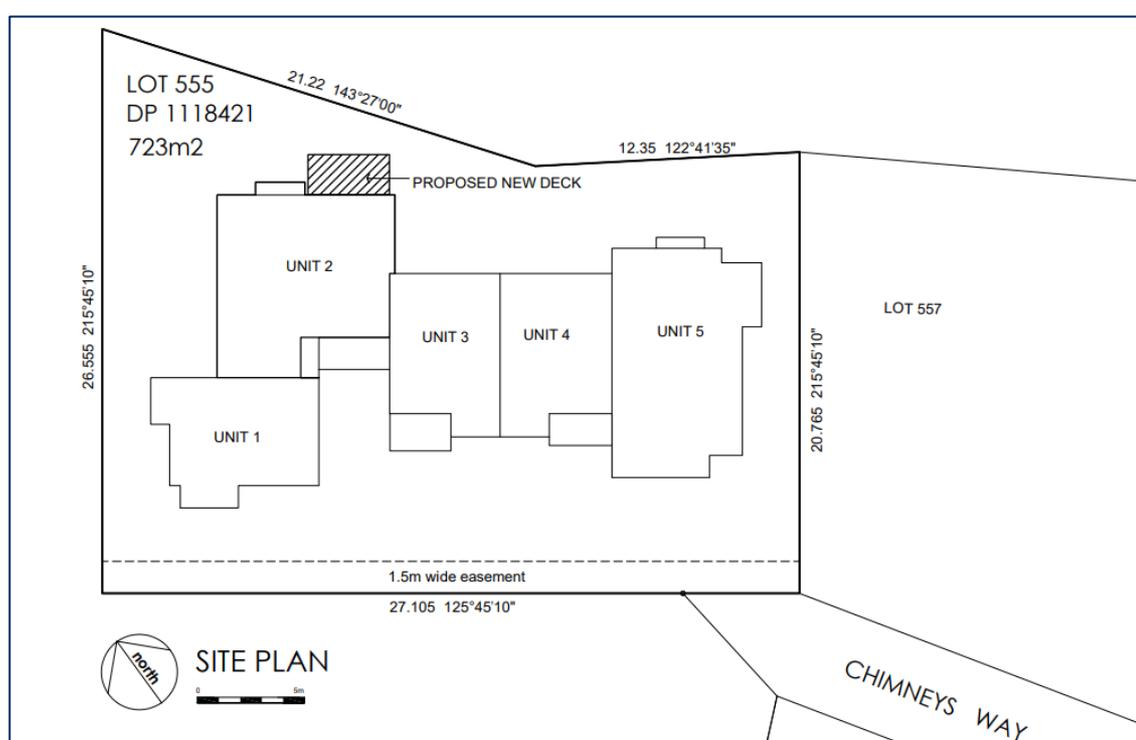


Figure 2 | Site Plan of Aspen Creek Apartment complex (Source: Applicant's documentation)

Aspen Creek 2, which is the northern-most unit within the Aspen Creek complex, is a two-storey, one bedroom apartment. The bedroom and amenities are located on the ground floor of the apartment together with a single-car garage and a foyer from where a staircase leads to an open plan kitchen/dining/living room on the first floor and an existing deck on the southern side of the apartment (**Figure 3**).

At the rear of Aspen Creek 2, the apartment currently has two (2) multi-pane windows (**Figure 4**) overlooking a grassed area that leads down to the water course approximately fifteen (15) metres away.

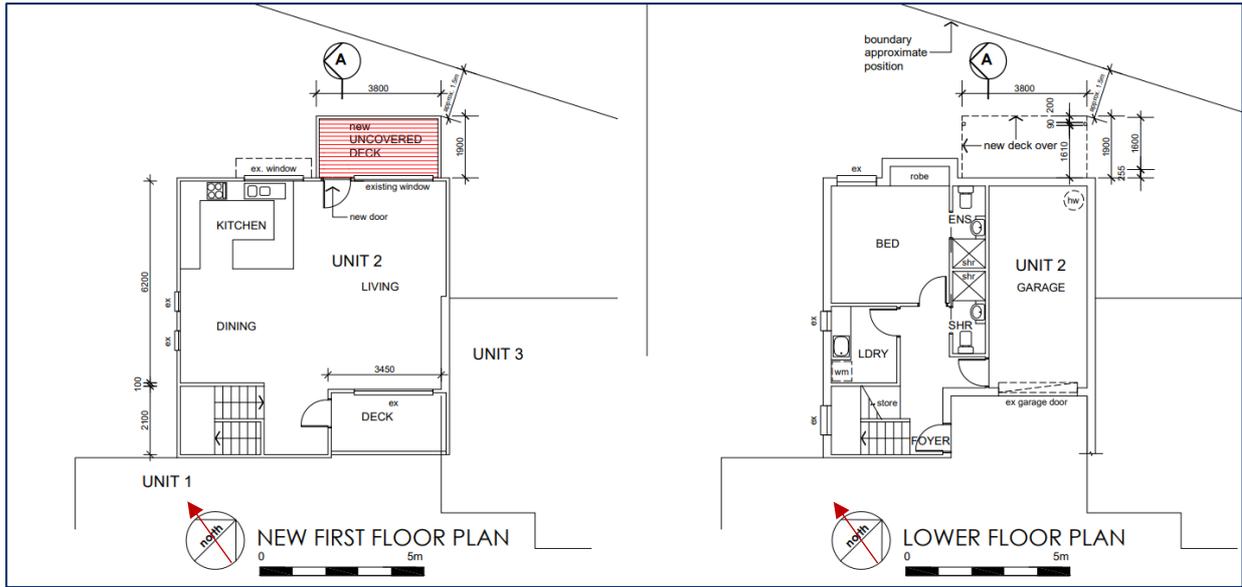


Figure 3 | Aspen Creek 2 Floor Plan (Source: Applicant's documentation, with red arrow annotation to correct north point)



Figure 4 | Rear view of Aspen Creek 2 (Source: Applicant's documentation)

The Aspen Creek apartments were constructed as tourist accommodation in approximately 2003 with an allocation of two (2) visitor beds in each of the five (5) units, thereby accommodating up to ten people within the complex at any time (via DA 321-9-2002-i). The building was constructed of predominantly structural 'Woodlogic' plywood with the appearance of vertical timber cladding, with added stone-facing at the base of the ground level. The corrugated metal roof is of dark grey sheeting. There is a steel deck to the rear

of Aspen Creek 5 (Unit 5) on the southern end of the building overlooking the adjacent water course, similar to the deck proposed for Aspen Creek 2. A neighbouring unit within the Onyx Chalets to south-east of Aspen Creek also has a deck to the rear (**Figure 5**).



Figure 5 | Deck to the rear of Aspen Creek 5 (foreground) and unit within the Onyx Chalet building (background) (Source: Department's inspection April 2022)

2 Project

The application seeks approval for works to Aspen Creek 2 comprising:

- Construction of a new 3.8 metre by 1.9 metre steel deck to the rear of Aspen Creek 2, supported by two (2) galvanized steel columns. Galvanized steel deck frame and galvanized steel grid decking is proposed, and the balustrade to be either a powder coated aluminum or painted galvanized steel (**Figure 6**).
- Installation of a new door from the first floor living room area to the deck, with a new fire shutter overhead rated to Bushfire Attack Level – Flame Zone (BAL-FZ).
- The paint finish to the external works is proposed to be in a 'Basalt' (grey-brown) colour to complement the existing colour scheme of the apartment and those within the complex (**Figure 7**).

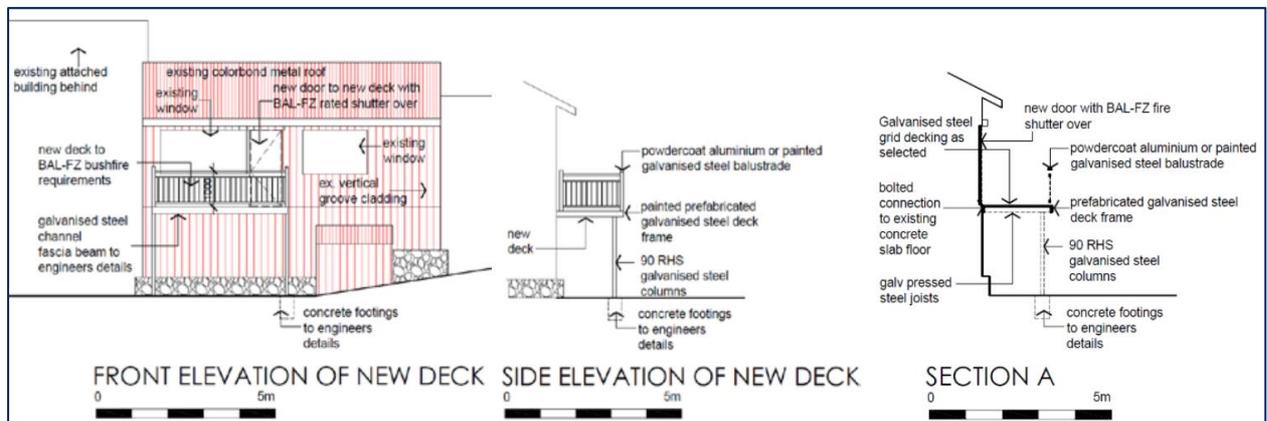


Figure 6 | Elevations of proposed Aspen Creek 2 deck (Source: Applicant's documentation)

The works are proposed to provide for the increased amenity of the occupants. The Statement of Environmental Effects that accompanies the application states that the deck will be positive upgrade to the apartment and provide a higher quality of accommodation within Thredbo.

Construction materials proposed will be required to meet required bushfire risk attenuation outcomes. Compliance with the recommendations of the Bushfire Hazard Assessment Report and the Bush Fire Safety Authority will be necessary, and are deemed to satisfy the relevant bushfire safety requirements for the safety of occupants.

The only ground works to undertake the project will be for the footings for the two vertical deck support columns, with the depth to be to the engineer's specifications. The minor footprint of ground disturbance can be contained and managed so as not to cause adverse impacts to the surrounding environment. No vegetation is proposed to be removed as part of this proposal, and, subject to compliance with conditions of consent, the impact on the surrounding environment will be minor in extent and of limited duration.

The cost of works for the proposal is stated as \$33,550.

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 to be consistent with the Regional Plan as it improves the amenity of the subject apartment for tourist accommodation, which enhances its utilisation, viability and maintenance as tourist accommodation, supporting ongoing use of the accommodation and associated visitation of the NSW ski resorts.

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 Park.

The Department considers the proposal is consistent with Chapter 4 of the Precincts - Regional SEPP as the proposal would not have an adverse impact on the environment or detract from the character of the building, and it will improve the accommodation for the benefit of users. It appropriately minimises the potential impacts on the environment by restricting works to a small area of disturbance. The proposal comprises the enhancement of existing tourist accommodation in the Thredbo Alpine Resort, which contributes to the ongoing range of accommodation options available for visitors to KNP without resulting in adverse environmental, social or economic impacts on the natural or cultural environment.

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 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 of 9 March 2022, the Acting Team Leader, Alpine Resorts Team may determine the application as:

- no reportable political donation has been disclosed
- there are less than fifteen (15) public submissions that raise objections to the proposal, and
- the application is in relation to land to which the Precincts - Regional SEPP applies.

4.2 Permissibility

The proposal includes external alterations to a 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 the Thredbo Alpine Resort.

4.3 Other approvals

Water Management Act 2000

The development site is within forty (40) metres of two water courses identified on the Thredbo Alpine Resort Map (ref: section 4.7 of the Precincts – Regional SEPP). The proposal therefore relates to works within Riparian Corridor Land, requiring referral of the application as nominated integrated development to DPE Water for review in accordance with section 91 of the *Water Management Act 2000*. The works are just within the forty (40) metre riparian corridor of Merritts Creek to the north, and approximately fifteen (15) metres from a tributary of Merritts Creek running parallel to the north-eastern boundary of the apartment site. Both water courses flow into the Thredbo River, approximately 150 metres south east of the parcel at its closest point. The application was referred to DPE Water to prescribe any general terms of approval. DPE Water advised that the proposed works do not require further assessment and that a controlled activity approval is not required.

Rural Fires Act 1997

As the works include external alterations to a tourist accommodation building located on bushfire prone land, an approval is required from the NSW Rural Fire Service (RFS) under Section 100B of the *Rural Fires Act 1997* in the form of a Bushfire Safety Authority (BFSA).

Refer to **Section 5** for further discussion on the DPE Water and RFS integrated development response and requirements.

4.4 Mandatory Matters for Consideration

Objects of the EP&A Act

In determining the application, the consent authority is to consider whether the proposal is consistent with the relevant 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:

- there would not be an unacceptable impact on the environment,
- works are aimed at improving the existing apartment, thereby supporting the orderly and economic use of the site without impacting on neighbouring properties
- the works are capable of achieving compliance with relevant construction standards
- 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 in the application, and mitigation measures are proposed to be incorporated into the design.

The proposal is consistent with the ESD principles and the Department is satisfied the proposed works have been developed having regard to the 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 potential impacts have been identified, with mitigation measures and environmental safeguards recommended,
- the proposal is not expected to adversely impact upon the health, diversity, or productivity of the environment for future generations,
- the Department's assessment has noted that the proposal is contained to existing disturbed areas. No further vegetation management is required to meet the NSW RFS requirements,
- the proposal does not impact upon cultural heritage, including any known Aboriginal cultural heritage.

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 information supporting the Application indicates that the proposal does not require the removal of any additional native vegetation. The Applicant concludes that the proposal would not have a significant effect on threatened species, populations, ecological communities, or their habitats.

The development site is not within an area mapped on the BVM. Comments received from the NPWS during the assessment of the application concur that the development, as proposed, is not likely to affect threatened species and does not trigger the BOS. NPWS confirmed their understanding that no vegetation clearance and no asset protection zone is required to meet NSW RFS requirements for the works. This is understood to refer to the requirement for any further APZ or clearing, where maintenance of the inner protection area within the leasehold site is required to satisfy the Rural Fire Service (RFS) requirements.

Noting the minor nature of earthworks and that no disturbance to native vegetation is proposed, the works are not considered likely to impact on the natural systems or diminish the biodiversity values of the locality. Accordingly, the proposal is unlikely to have an adverse effect on threatened species or ecological communities, or their habitats. The Department also 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 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 development. An assessment against the requirements of the SEPP is provided in Appendix B.</p> <p>The Department is satisfied that the Application is consistent with the requirements of Chapter 4 the Precincts - Regional SEPP.</p>
(a)(ii) any proposed instrument	Not applicable to proposal.
(a)(iii) any development control plan	Not applicable to proposal.

(a)(iii) any planning agreement	Not applicable to proposal.
(a)(iv) the regulations	<p>The application satisfactorily meets the relevant requirements of the EP&A Regulation, including 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 proposal.
(b) the likely impacts of that development	<p>The Department has considered the likely impacts of the development. Adverse environmental impacts can be appropriately managed and mitigated through conditions of consent. The proposal is considered to have positive economic and social impacts by enhancing resort accommodation facilities which will help support ongoing visitation of the Thredbo Alpine Resort.</p>
(c) the suitability of the site for the development,	<p>The site is both suitable and desirable for continued use of Aspen Creek 2 for tourist accommodation as discussed in Section 6 of this report.</p>
(d) any submissions made in accordance with this Act or the regulations,	<p>Consideration has been given to agency submissions received during the exhibition period. Refer to Section 5 of this report.</p>
(e) the public interest.	<p>The works are consistent with the aim and objectives of section 4.1 of the Precincts - Regional SEPP. The development is compatible with adjoining land uses in the locality while maintaining the health and diversity of the natural environment, consistent with the principles of ESD.</p> <p>As such, the proposal is believed to be consistent with the public interest.</p>

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 nominal integrated development applications to be exhibited for a period of twenty-eight (28) days. The Department exhibited the application from 31 March 2022 and 27 April 2022 on the NSW Planning Portal website and notified lodges within fifty (50) metres of the development site of the proposal.

Pursuant to section 4.46 of the EP&A Act (integrated development) the application was referred to the following agencies:

- NSW Rural Fire Service (RFS) as the site is identified as bushfire prone and a Bushfire Safety Authority (BFSA) under the *Rural Fires Act 1997* is required,
- DPE Water as development on waterfront land (within 40 metres of a water course) in accordance with the *Water Management Act 2000*.

Pursuant to section 4.5 of the Precincts - Regional SEPP the application was also referred to the NPWS for land within an alpine resort within KNP.

5.2 Summary of submissions

The Department received comments from the DPE Water, the RFS and the NPWS. No public submissions were received.

DPE Water advised in their response letter dated 16 May 2022 that for the purposes of the *Water Management Act 2000*, a controlled activity approval would not be required for the proposed works and no further assessment by DPE Water would be necessary.

The RFS did not object to the proposal in their comments dated 25 May 2022, and issued a BFSA under section 100B of the *Rural Fires Act 1997*, subject to conditions that included:

- At the commencement of building works, and for the life of the development, all land within the subject leasehold site must be managed as an inner protection area (IPA) in accordance with Appendix 4 of *Planning for Bush Fire Protection 2019*.
- New construction must comply with Section 3 (excluding section 3.5) and Section 9 (BAL FZ) of *Australian Standard AS3959-2018 Construction of buildings in bushfire-prone areas* or the relevant requirements of the *NASH Standard - Steel Framed Construction in Bushfire Areas* (incorporating amendment A - 2015). New construction must also comply with the construction requirements in Section 7.5 of *Planning for Bush Fire Protection 2019*.
- A Bush Fire Emergency Management and Evacuation Plan must be prepared and be consistent with the NSW RFS document '*A Guide to Developing a Bush Fire Emergency Management and Evacuation Plan*'. The Plan should include planning for the early relocation of occupants. Detailed plans of all Emergency Assembly Areas including on-site and off-site arrangements as stated in Australian

Standard AS 3745:2010 '*Planning for Emergencies in Facilities*' must be displayed, and an annual (as a minimum) trial emergency evacuation is conducted.

The NPWS did not object to the proposal in their response dated 3 May 2022. Comments and recommended conditions were provided relating to protection of native vegetation, vehicle hygiene, site management during works and preservation of aboriginal cultural heritage. NPWS also concurred that the proposed works are not likely to affect threatened species and do not trigger the Biodiversity Offsets Scheme under the BC Act.

The Department has considered the comments received from the RFS and NPWS in **Section 6** or through recommended conditions in the instrument of consent at **Appendix C**.

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 considerations relating to the built form and impacts of the works, and compliance with design details and standards. These issues are discussed in the following sections of this report.

6.1 Built form and impacts of the works

The Applicant's intention is to upgrade the tourist accommodation apartment to improve the amenity of the occupants. The size and form of the proposed deck is comparable to others in the locality, and the proposed 'Basalt' colour scheme of the structure is sympathetic to the existing colour scheme of the apartment and broader complex. The deck will not unduly enable the overlooking and loss of privacy of any adjoining tourist accommodation unit or private space. The external works are relatively small in scale and will not have an adverse impact on the built form and appearance of the apartment or Aspen Creek complex when viewed from surrounding vantage points in the locality.

In terms of the proposal's impact on the environment, it was noted that at the time of inspection the leasehold area was being maintained as a fuel-managed area consistent with the requirements for an inner protection area (IPA) in accordance with Appendix 4.1.1 of *Planning for Bush Fire Protection 2019*. Ongoing vegetation management in retaining the area in accordance with the IPA requirements will form part of the ongoing requirements for the site in accordance with the BFSA.

The Department's assessment concludes that the proposed external works to the building are acceptable and ensures reasonable enhancement of Aspen Creek 2 for the benefit of users. Subject to compliance with the recommended conditions, the Department is of the view that the proposed works would not adversely impact the environment or diminish from the amenity of occupants in nearby buildings or within the public domain.

6.2 Design details and standards

The proposed new works, when constructed, are to comply with the Building Code of Australia (BCA) and relevant Australian Standards. Section 64 of the EP&A Regulation also requires a consent authority to review a building and consider whether upgrades are warranted to bring the existing building into total or partial compliance with the BCA. The Department has considered the proposal and determined that BCA upgrade works will not be required.

In relation to bushfire considerations relating to the property, the BCA requires construction to comply with the BFSA issued by the RFS (see **Section 5**). The BFSA is incorporated into the conditions of the consent and compliance must be verified at the construction and occupation certificate stages.

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 ensure the amenity and safety of the building occupants.

7 Evaluation

The Department has assessed the merits of the proposal in accordance with the relevant requirements of the EP&A Act. The Department's assessment concludes the proposal is acceptable as:

The Department considers the proposal is acceptable as:

- there will not be a significant impact on any threatened species, populations or ecological communities,
- the works improve the amenity of the accommodation for the benefit of tourists and the apartment owners without resulting in adverse environmental, social or economic impacts on the locality, and
- construction impacts on the surrounding environment will be minimised given the nature of the proposal and recommended conditions of consent requiring construction impacts to be minimised during construction as well as any disturbed areas to be rehabilitated following construction.

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

8 Recommendation

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
- **accepts** and adopts all 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 22/4975, subject to the recommended conditions
- **signs** the attached Development Consent (**Appendix C**).

Recommended by:

A handwritten signature in blue ink, appearing to read 'Sandria Butler', is written over a faint, light blue circular stamp or watermark.

Sandria Butler

Planning Officer

Alpine Resorts Team

9 Determination

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

A handwritten signature in black ink, appearing to read 'D James', written in a cursive style.

Daniel James
Acting Team Leader
Alpine Resorts Team

as delegate of the Minister for Planning

03 June 2022

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 follow.

1. Statement of Environmental Effects
2. Submissions

<https://pp.planningportal.nsw.gov.au/exhibitions-publications/exhibitions>

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 ongoing use of Aspen Creek 2 as tourist accommodation through improving occupant amenity and ongoing viability of the apartment for its intended use, without negative impacts on the amenity of adjoining users or the environment.
(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 and is consistent with ecologically sustainable development principles. Mitigation measures during construction have been considered and rehabilitation of impacted areas is 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 ongoing use of the site for 'tourist accommodation'.
(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, with works confined to the existing building envelope. Conditions of consent ensure the impact of the develop with be minor and contained, with no anticipated impact on threatened species.
(f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),	The proposed development is not likely to result in adverse impacts upon built and cultural heritage, including Aboriginal cultural heritage. An AHIMS

search indicated no known Aboriginal sites or places near the site. A condition of consent requires due process be followed in accordance with the legislation if any items are discovered.

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| (g) to promote good design and amenity of the built environment, | The Department considers that the proposal responds to its existing setting, built form and minimises impacts upon natural environment. |
| (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, and displaying the application on the NSW Planning Portal. |

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

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| (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 ongoing use of the site for 'tourist accommodation'. |
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(b) the conservation of the natural environment and any measures to mitigate environmental hazards (including geotechnical hazards, bush fires and flooding),	A geotechnical risk assessment has been undertaken in relation to the application and the work has been certified as having minimal impact. The site is identified as bushfire prone land and a BFSAs has been issued for the works, subject to conditions. The land is not identified as being subject to flooding. Natural hazards have been considered and adequately addressed. The proposal is appropriate as it allows for improvements to the existing building while having an acceptable impact on the environment.
(c) the cumulative impacts of development on existing transport, effluent management systems, waste disposal facilities or transfer facilities, and existing water supply,	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.
(d) any statement of environmental effects,	The SEE and 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,	As mentioned above, a geotechnical risk assessment has been undertaken in relation to the application and the work has been certified as having minimal impact. No further assessment on geotechnical matters is considered necessary for the project.
(g) any sedimentation and erosion control measures,	The Site Environmental Management Plan (SEMP) provided within the Statement of Environmental Effects is to be updated and implemented during the works. Conditions will require the adoption of the SEMP and for sedimentation and erosion control measures to be in place for the duration of works.
(h) any stormwater drainage works proposed,	The existing stormwater drainage system is adequate for the proposed works.

(i) any visual impact of the proposed development, particularly when viewed from the Main Range,	The proposal will not result in an unacceptable visual impact. The proposal is consistent with other decks to the rear of adjoining properties.
(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.
(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 proposal.
(m) if the development is proposed to be carried out on land in a riparian corridor.	The application was referred to DPE Water as nominated integrated development and exhibition carried out in accordance with the legislation. DPE Water determined that a CAA would not be necessary.

Section 4.13 – Additional matters to be considered for buildings

Building Height	The proposed works do not increase the height of the existing building.
Building Setback	The works would not alter setback distances.
Landscaped Area	The proposal does not negatively impact existing native vegetation and therefore is appropriate.

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 discussion of the proposal at **Section 6**.

Section 4.24 – Heritage conservation

European heritage

The proposal would not impact on any European heritage items.

Aboriginal heritage

An AHIMS search indicated no Aboriginal sites recorded or places declared in or near the subject site. 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.

Appendix C – Recommended Instrument of Consent