



# Guthega Ski Centre, Guthega Modification

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Modification Application Assessment (MOD 22/4922 (DA 10174 MOD 1))

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

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# Glossary

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

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# 1 Introduction

## 1.1 Preamble

This report provides the NSW Department of Planning and Environment's (the Department) assessment of an application to modify the development consent (DA 10174) for internal building works to facilitate the operation of the Base Camp Café at Guthega Ski Centre, Guthega within Kosciuszko National Park (KNP) (Figure 1).

The application has been lodged by Snowy Mountains Back Country Pty Ltd (the Applicant) pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The modification application seeks approval for:

- use of the balcony as part of the café food and beverage consumption area
- increase in seating to allow a total of 110 patrons
- changes to the trading period and trading hours



**Figure 1 |** Guthega Ski Centre, Guthega (Source: SIX Maps 2020)

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

## 1.2 Background

The site is located within the Guthega Ski Centre in Guthega. The building is located at the base of the 'car park double chair' and is the first building as you drive into Guthega. The building is three levels at the road frontage with a fourth level at the rear that contains public toilets. It was constructed in the mid 1980s using timber, alpine style stonework and masonry construction (**Figure 2**).



**Figure 2 |** Guthega Ski Centre (Source: Department photograph)

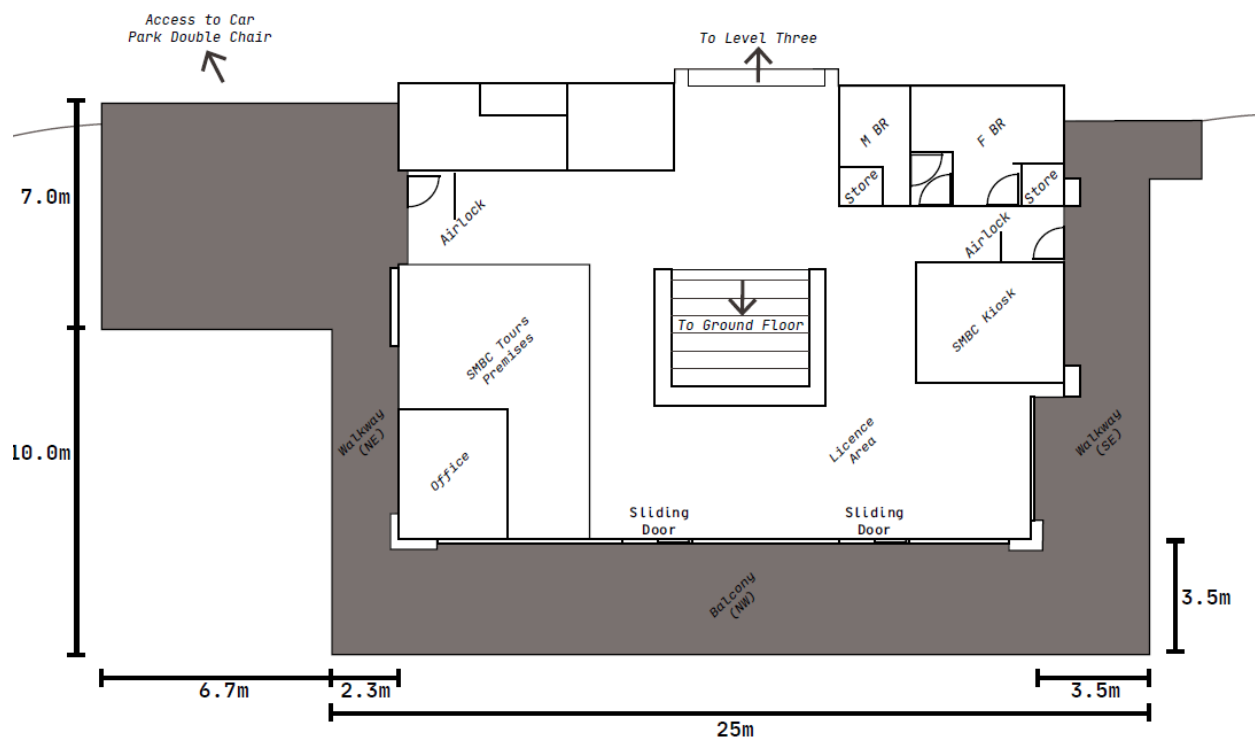
## 1.3 Approval History

On 21 June 2021, the Director Regional Assessments, as delegate of the Minister for Planning, granted consent to a Development Application (DA 10174) for internal building works to facilitate the operation of the Base Camp Café which required renovating the disused commercial kitchen, fit out of a dry store room and installation of a cool room. The consent allows the café to have a liquor license and to supply food and drinks for up to 90 patrons within the building. The conditions of consent prevent the use of the balcony under the original DA. The approved café trading hours are from 7.30am – 5:00pm seven days a week during the winter season (June- October) only.

## 2 Proposed Modification

On 28 March 2022 the Applicant lodged a modification application (MOD 22/4922 (DA 10174 MOD 1)) seeking approval under section 4.55(1A) of the EP&A Act to modify the development consent as follows:

- Use of the balcony as part of the café food and beverage consumption area (**Figure 3**).
- Increase in seating by 20 to allow 110 patrons
- Changes to the trading period and trading hours to allow
  - Trading period of 7.30am – 5:00pm seven-days a week (year round).
  - Extended late trading hours until 11:00pm three-days a week (Thursday to Saturday).
- Updates to the snow management plan for the building.



**Figure 3 |** Balcony and external access plan (Source: Applicant plans)

### 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 continues to be consistent with the Regional Plan as it would improve food and beverage services for the benefit of visitors to the Guthega area.

#### **Precincts – Regional SEPP**

Chapter 4 of the Precincts – Regional SEPP governs development on land within the ski resort areas of KNP. 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 the Precincts – Regional SEPP, the 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 continues to be consistent with the Precincts – Regional SEPP as the proposal would not have an adverse impact on the natural environment, would not alter the character of the building and would improve the building for the benefit of users.



## 4 Statutory context

### 4.1 Scope of modifications

Section 4.55(1A) of the EP&A Act provides that a consent authority may, on an application being made by the Applicant or any other person entitled to act on a consent granted by the consent authority, and subject to and in accordance with the *Environmental Planning and Assessment Regulations 2021* (EP&A Regulations), modify a consent if the following requirements in Table 1 are met:

**Table 1:** Consideration under Section 4.55(1A) of the EP&A Act

Section 4.55(1A) - Evaluation	Comment
(a) <i>That the proposed modification is of minimal environmental impact</i>	<p><b>Section 6</b> of this report provides an assessment of the impacts associated with the proposal.</p> <p>The Department is satisfied that the proposed modifications will have minimal environmental impact.</p>
(b) <i>The development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all)</i>	<p>The proposed changes are minor in nature, predominantly relating to the area of use and the operations of the café that are essentially and materially the same as the original consent.</p> <p>The Department is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted.</p>
(c) <i>The application has been notified in accordance with the regulations</i>	<p>In accordance with the Department's Community Participation Plan (CPP), November 2019, the Department did not need to publicly exhibit the modification application because there are no lodges within 50 metres of the site. However, it was made publicly available on the NSW Planning Portal website (refer to <b>Section 5</b> of this report).</p>
(d) <i>Consideration of any submissions made concerning the proposed modification within the period prescribed by the regulations</i>	<p>The Department did not receive any submissions (refer to <b>Section 5</b> and <b>6</b> of this report).</p>

Section 4.55(3) of the EP&A Act provides that in determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the granting of the consent that is sought to be modified.

The relevant consideration under section 4.15(1) of the EP&A Act in relation to the proposed modifications is whether the impacts of the amendments upon the existing environment are acceptable. The Department's assessment in **Section 6** concludes that the impacts are acceptable and do not negatively impact the Department's previous assessment.

Therefore, the Department is satisfied the proposed modification is within the scope of section 4.55(1A) of the EP&A Act and does not constitute a new development application. Accordingly, the Department considers that the application should be assessed and determined under section 4.55(1A) of the EP&A Act rather than requiring a new development application to be lodged.

## **4.2 Consent authority**

The original application was determined under the delegation of the Minister for Planning, therefore the Minister remains as the consent authority for any subsequent applications to modify the consent.

Under clause 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 dated 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 to which the Precincts – Regional SEPP applies

## **4.3 Mandatory matters for consideration**

The Department conducted a comprehensive assessment of the project against the mandatory matters for consideration as part of the original assessment of DA 10174. The Department considers this modification application does not result in significant changes that would alter the mandatory matters for consideration under section 4.15 of the EP&A Act and conclusions made as part of the original assessment.

## **Objects of the EP&A Act**

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

## **Ecologically Sustainable Development (ESD)**

The EP&A Act adopts the definition of ESD found in the *Protection of the Environment Administration Act 1991*. 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.

### **Biodiversity Conservation Act 2016**

Section 1.7 of the EP&A Act requires the application of the *Biodiversity Conservation Act 2016* (BC Act) in relation to the terrestrial environment. No native vegetation impacts are proposed. The Applicant has indicated that the proposal is not likely to have a significant effect on threatened species or ecological communities, or their habitats. The Department is satisfied that the proposal would not trigger the need for any further biodiversity assessment.

### **Environmental Planning Instruments**

The Precincts – Regional SEPP is the only relevant EPI that applies to this application. An assessment of compliance with the Alpine SEPP (now Chapter 4 of the Precincts – Regional SEPP) was undertaken in the determination of the original application (DA 10174). The Department has considered the modification application against the provisions of Chapter 4 of the Precincts – Regional SEPP and is satisfied the modification proposal continues to be consistent with this EPI.

## 5 Engagement

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

Due to the proposed modifications being more than 50 metres away from a tourist accommodation building, the Department did not exhibit the application. However, the application was made publicly available on the NSW Planning Portal website from 31 March 2022 until 13 April 2022.

The application was referred to the NPWS pursuant to clause 4.15 of the Precincts-Regional SEPP. The NPWS advised that there were no comments to make on modification as there are no environmental or biodiversity impacts.

## 6 Assessment

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

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

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

### 6.1 Use of the balcony

The original application did not seek to use the external parts of the building, however upon further review by the Applicant it is considered that the use of the existing balcony area presents an opportunity to improve amenity and take advantage of views to the north and west for guests using the premises.

The Department's assessment of the proposed use of the balcony (**Figure 4**) has considered Building Code of Australia (BCA) compliance, structural integrity and snow management as follows:

- The height of the balustrade and maintaining emergency egress passages when the balcony is in use are important aspects of BCA compliance. The requirements for these matters also vary depending on whether furniture (such as tables and chairs) will be added to the balcony. The conditions of consent have been modified to include the requirement for certification of these matters from an appropriately qualified and practising BCA consultant prior to the balcony being used.
- The building, and the balcony, were erected in the mid 1980s and have both been disused for an extended period. To ensure the structural integrity of the balcony, the conditions of consent have been modified to include the requirement for certification of the balcony by an appropriately qualified and practising structural engineer prior to the balcony being used.
- During the winter ski season, the building is subjected to large amounts of accumulated snow, particularly on the north eastern side. It is important that emergency egress is maintained for patrons using the balcony both internally through the building and directly off the balcony to the road or open space. The Applicant is proposing to manage accumulated snow via hand rather than install built structures such as additional stairs or awnings. The Department supports a trial period whereby if accumulated snow is well-managed by hand then no built structures would be required for the ongoing use of the balcony. The conditions of consent have been modified to include the requirement for an updated snow management plan and details of a trial period during which snow removal will be managed by hand.

The NPWS raised no concerns with the proposed modifications that seek to utilise the balcony.

The Department's assessment concludes that the proposed use of the balcony for food and beverage services is appropriate subject to the modified conditions of consent.





**Figure 4 |** Photo of balcony area (Source: Applicant SEE – 2022)

## **6.2 Trading period and trading hours**

The Applicant seeks to amend the trading period to allow year-round trading rather than just winter trading to make more efficient use of the premises. In addition, extended trading hours are proposed for Thursday, Friday and Saturday nights to allow for flexibility of the operations in association with the range of commercial activities that Snowy Mountains Back Country Pty Ltd offers.

The Department supports this aspect of the proposed modification. No amenity or noise impacts are anticipated due to the nature of the premises (Café) and Liquor Licence limitations. Positive social and economic benefits are expected as the modifications improve food and beverage services for the benefit of visitors to the Guthega area.

## 7 Evaluation

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

The Department's assessment concludes that the proposed modification is appropriate as:

- the modification is of minimal environmental impact and does not have any additional environmental impacts beyond the approved development
- it is substantially the same development as originally approved
- the proposed modifications to conditions are acceptable
- the proposal continues to comply with chapter 4 of the Precincts – Regional SEPP
- all submissions received during the assessment of the application have been considered
- the proposal does not result in any additional matters that required consideration under section 4.15(1) of the EP&A Act

The Department concludes the impacts of the development are acceptable and the proposal is in the public interest. The Department recommends that the application be approved, subject to changes to the existing conditions of consent (**Appendix C**).

## 8 Recommendation

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

- **considers** the findings and recommendations of this report
- **determines** that the modification application MOD 22/4922 (DA 10174 MOD 1) falls within the scope of section 4.55(1A) of the EP&A Act
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to approve the modification
- **modify** the consent DA 10174
- **signs** the attached approval of the modification (**Appendix C**).

**Recommended by:**



**Daniel James**

Team Leader

Alpine Resorts Team

## 9 Determination

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

A handwritten signature in blue ink, appearing to read 'K T' followed by a horizontal line.

**Keiran Thomas**

Director

Regional Assessments

as delegate of the Minister for Planning

19 May 2022

# Appendices

## Appendix A – Modification Report

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

<https://www.planningportal.nsw.gov.au/publications/exhibitions-and-publications/development-applications-exhibition>

## Appendix B – Submissions

The application was made publicly available on the NSW Planning Portal website from 31 March 2022 until 13 April 2022 and referred to the NPWS pursuant to clause 4.15 of the Precincts-Regional SEPP. No public submissions were received and NPWS supports the proposal.

## Appendix C – Notice of Modification