



# Black Bear Inn, Thredbo Village Modification

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Modification Application Assessment (MOD 22/5350 (DA 10064 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 2000</i>
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
EPI	Environmental Planning Instrument
ESD	Ecologically Sustainable Development
KNP	Kosciuszko National Park
Minister	Minister for Planning
NPWS	National Parks and Wildlife Service
Planning Secretary	Secretary of the Department of Planning and Environment
RFS	NSW Rural Fire Service
SEPP	State Environmental Planning Policy

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# 1 Introduction

## 1.1 Preamble

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

The application has been lodged by Hidali Pty Ltd (the Applicant) pursuant to section 4.56 of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The modification application seeks approval for the following changes:

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



**Figure 1** | Black Bear Inn site in context of Thredbo Village (Source: SIX Maps 2022)

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

## 1.2 Background

The subject site is known as '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 approval of the redevelopment of the former Black Bear Inn (NSW LEC No. 2020/68009). The former building has been demolished and excavation of the site to basement level is nearly complete (**Figure 2**).

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



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



### 1.3 Approval History

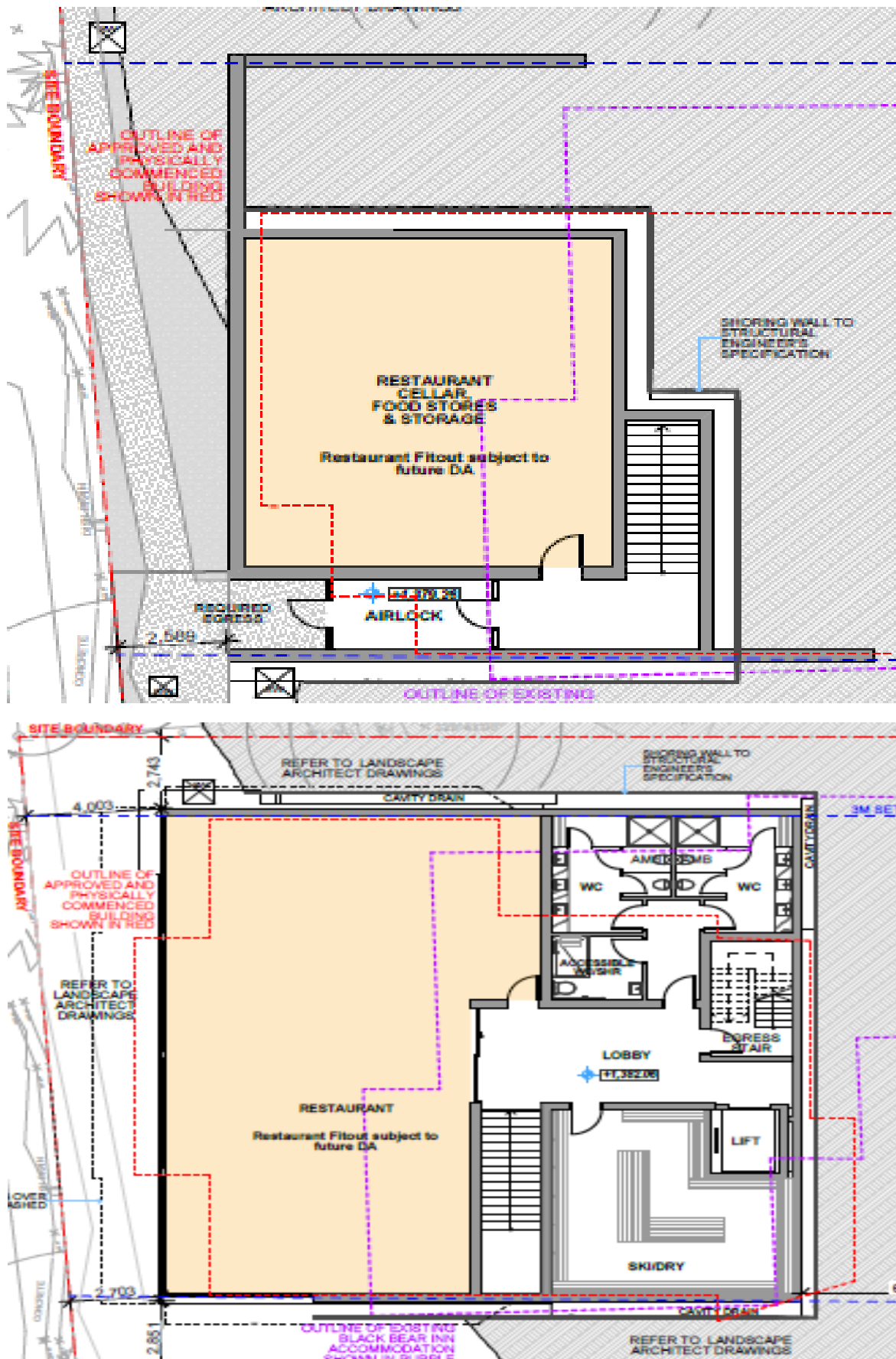
On 17 May 2021, the NSW LEC approved DA 10064 (NSW LEC No. 2020/68009) (**Figure 3**) for:

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

The approval included a basement storage area and a future restaurant on Level 1. Approved configuration is depicted in **Figure 4**, as this is the subject of this modification.



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



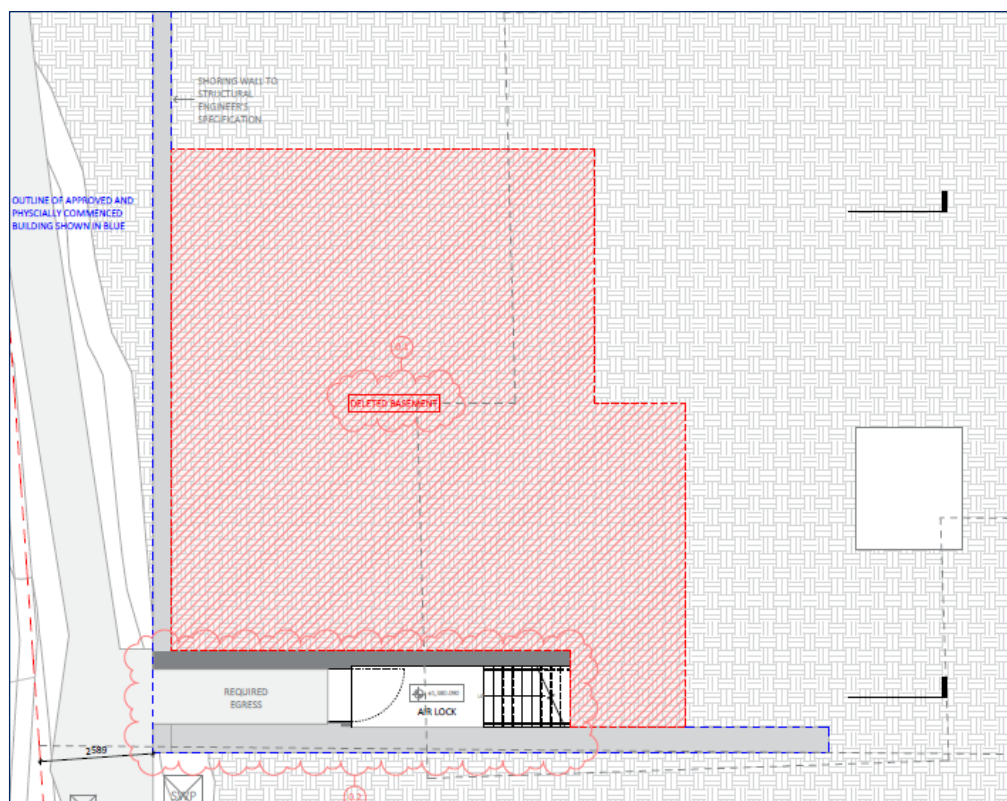
**Figure 4 |** Approved basement and Level 1 plan (Source: NSW LEC approval)



## 2 Proposed Modification

On 8 April 2022, the Applicant lodged a modification application (MOD 22/5350 (DA 10064 MOD 1)) seeking approval, under section 4.56 of the EP&A Act, to modify the development consent incorporating the following alterations to the approved NSW LEC development:

- Level 0 - Deletion of basement storage and raised the RL by 830mm (**Figure 5**)
- Level 1 - Reposition of stair access from Level 1 and all related re-arrangements of entry space, rearrangement of shared bathrooms, reduction in restaurant footprint/floor area, new mechanical plant and equipment hold and lower the RL of 300mm (**Figure 6** in **Section 6**)
- North Elevation - Thickened slab



**Figure 5 |** Amended basement level plan, with deletion of cellar / restaurant storage and altered entry door  
(Source: Applicant's documentation)

The Applicant's architect comments that the amendment would reduce the excavation in the site and therefore reduce the impact of the development on the existing topography. As this level was mostly below ground, the proposed modifications represent minimal changes to the external fabric of the building. The deletion of the ancillary rooms will not impact on the function of the building for residents or the amenity on neighbouring properties.

The Applicant further comments that the proposed development has been designed to respond to the site (and its constraints), the streetscape and surrounding built environment. The development will not alter the character of the resort or the Village core area. The proposed modifications are largely internal, with the exception of very minor changes to the north, east and west elevation which will not have any significant impact on the buildings appearance or character of the surrounding area.

### 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 the proposal maintains the existing use of the site for tourist accommodation and a restaurant, with the modifications reducing the need for further excavation for the construction of the approved building, which supports visitation to 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 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 continues to be consistent with Chapter 4 of the Precincts – Regional SEPP as the modification reduces building works to the approved building while satisfying the principles of ecologically sustainable development and having no adverse impacts on the environment.

## 4 Statutory context

### 4.1 Scope of modifications

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

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

Section 4.56(1)	Comment
(a) <i>The development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all)</i>	<p>The proposed changes to the built form are minor in nature and are not considered to negatively impact the original consent. The deletion of the bottom floor reduces the extent of excavation on the site and is supported.</p> <p>The Department is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted.</p>
<p>(b) <i>The application has been notified in accordance with:</i></p> <p>(i) <i>the regulations, if the regulations so require, and</i></p> <p>(ii) <i>a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and</i></p>	<p>In accordance with the Department's Community Participation Plan (CPP), November 2019, the Department publicly exhibited the modification application for a minimum of 14 days to nearby lodges and it was made publicly available on the NSW Planning Portal website (refer to <b>Section 5</b> of this report).</p> <p>No DCP applies to the site.</p>
(c) <i>Whether the consent authority has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and</i>	<p>The Department notified each person who previously made a submission to the approved development. No submissions to the modification were received.</p>



(d) <i>Consideration of any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be</i>	The Department has considered the agency submissions received during the exhibition period (refer to <b>Section 5</b> and <b>6</b> of this report). No public submissions were received.
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Section 4.56(1A) of the EP&A Act provides that in determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the granting of the consent that is sought to be modified.

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

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

## 4.2 Consent authority

The original application was determined by the NSW LEC with the Applicant taking the Minister for Planning and Public Spaces to Court. Therefore, the Minister remains as the consent authority for any subsequent applications to modify the consent under section 4.56 of the EP&A Act.

Under section 4.6 of the Precincts – Regional SEPP, the Minister for Planning is the consent authority for the application as the development takes place within a ski resort area as referred to in 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 Team Leader, Alpine Resorts Team may determine the application as:

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

## 4.3 Mandatory matters for consideration

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

the mandatory matters for consideration under section 4.15 of the EP&A Act and conclusions made as part of the original assessment.

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

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

### **Biodiversity Conservation Act 2016**

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

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

The Applicant commented that.

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

The NPWS commented that the proposed modification would have no impact on biodiversity or the environment. NPWS referred back to their previous comments during the original assessment of DA 10064.

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

### **Environmental Planning Instruments**

The Precincts – Regional SEPP is the only relevant EPI that applies to this application.

An assessment of compliance with the then *State Environmental Planning Policy (Kosciuszko National Park-Alpine Resorts) 2007* (the Alpine SEPP) was undertaken in the determination of the original application (DA 10064) by the NSW LEC.

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

## 5 Engagement

### 5.1 Department's engagement

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

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

On this basis, the Department made the application publicly available, notified nearby lodges and previous submitters to the original development application between 13 April 2022 and 26 April 2022 on the NSW Planning Portal website.

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

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

### 5.2 Summary of submissions

The Department received submissions from the RFS and the NPWS. No public submissions were received.

### 5.3 Key issues – Government Agencies

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

The NPWS did not object to the modification and commented that there would be no impacts upon the biodiversity or the environment.

The Department has considered the comments received from the RFS and the NPWS in **Section 6**.



## 6 Assessment

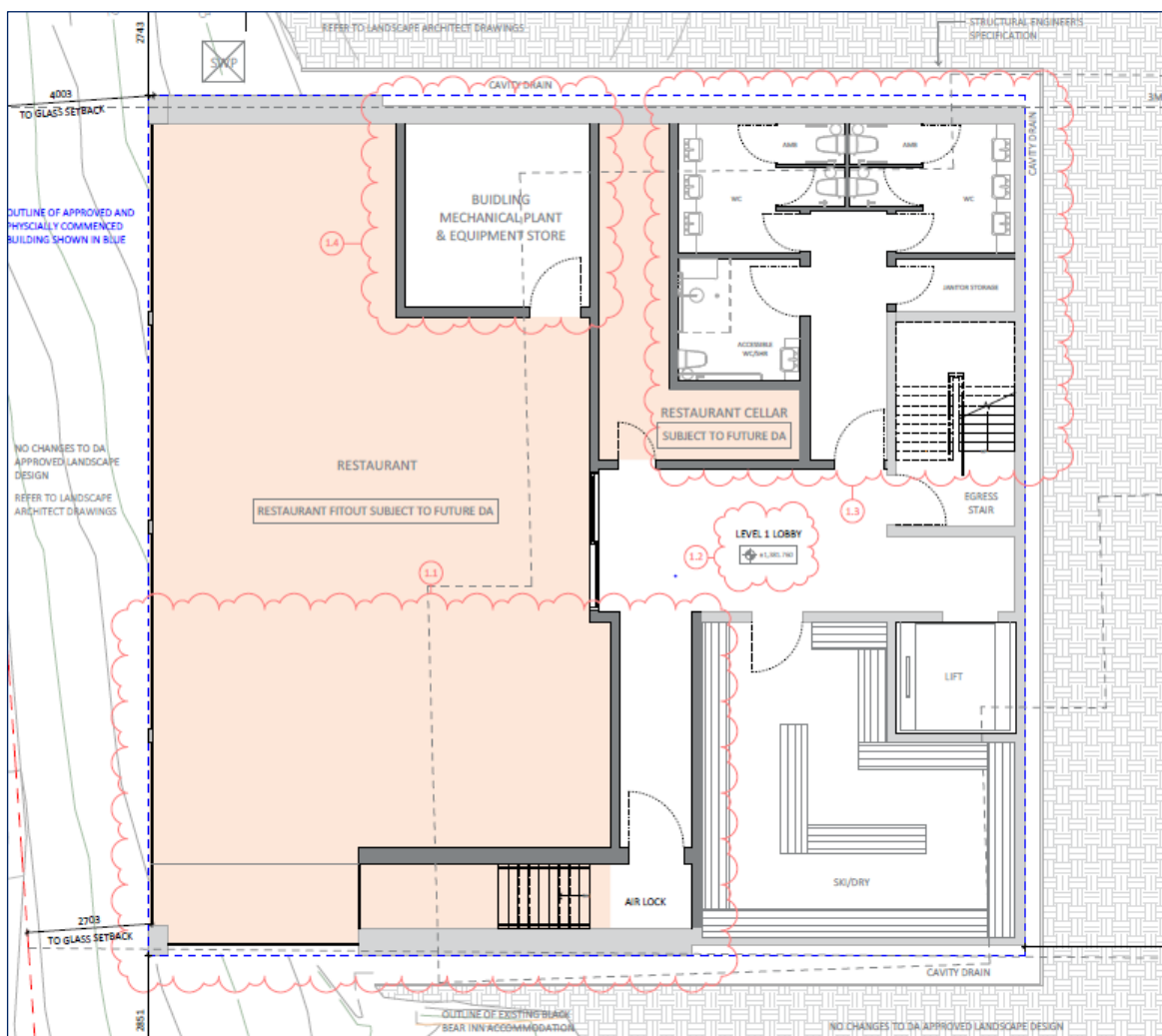
In assessing the merits of the proposed modification, the Department has considered the:

- previous Environmental Assessment Reports for the proposal
- 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 Design changes

The key change to the approved development is the deletion of the restaurant cellar / food storage area. With the deletion, alterations are proposed on Level 1 (**Figure 6**) including the introduction of a plant room, rearrangement of the shared bathrooms, and a reduction in restaurant footprint/floor area.



**Figure 6 |** Amended Level 1 plan (Source: Applicant's documentation)

The modifications to the design do not impact upon the approved height of the new development, nor does it impact adjoining properties (access from the rear is still only for occupants of the building and in case of an emergency consistent with the conditions of consent) or require additional vegetation loss. The external appearance of the building for levels above Level 0 and 1 is the same as that approved by the NSW LEC.

The modifications do not impact the overall suitability of the development and maintains its approved development types being for a restaurant at this level and tourist accommodation / car parking above.

The introduction of a mechanical plant and equipment store room in part of the restaurant area reduces the overall floor area of the future restaurant, with the Applicant advising that it is likely the room will house refrigeration equipment to support the operation of the restaurant (however this is unknown). Future compliance with any Food Act or Food Safety standards would be considered in the future Application.

The NPWS raised no concerns with the proposed built form modifications.

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

This aspect of the proposed modification is supported.

## **6.2 Design details and standards**

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

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

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

- Compliance with the *Disability Discrimination Act 1992 (DDA)*, and therefore the Access to Premises Standards prepared under the DDA, is triggered at Construction Certificate stage. Ensuring compliance with the DDA is the responsibility of the building owner, manager and Certifier. Conditions are included within the approved NSW LEC approval already which ensures the building owner, manager and Certifier are aware of these obligations.
- Ensuring the proposal meets snow and wind loading requirements is a key consideration of the Departments assessment in the NSW Alpine environment. With adverse weather conditions at times, the external alterations to the building needs to be constructed appropriately. The Department has recommended that structural certification be provided prior to the issue of an occupation certificate for the works.

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

## 7 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 submissions provided by the public and RFS and the NPWS.

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

- it is substantially the same development as originally approved
- the proposed modifications to conditions are acceptable
- the proposal continues to comply with the Precincts – Regional SEPP provisions
- all submissions received during the assessment of the application have been considered
- 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 Team Leader, Alpine Resorts Team, as delegate of the Minister:

- **considers** the findings and recommendations of this report
- **determines** that the modification application MOD 22/5350 (DA 10064 MOD 1) falls within the scope of section 4.56(1) of the EP&A Act
- **accepts and adopts** all of the findings and recommendations in this report as the reasons for making the decision to approve the modification
- **modify** the consent DA 10064
- **signs** the attached approval of the modification (**Appendix C**).

**Recommended by:**

A handwritten signature in black ink that reads "Mark Brown." with a horizontal line underneath the name.

**Mark Brown**  
Senior Planner  
Alpine Resorts Team

## 9 Determination

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

A handwritten signature in black ink, appearing to read 'Dan', with a stylized, wavy line extending from the end.

**Daniel James**

Team Leader

Alpine Resorts Team

as delegate of the Minister for Planning

14 July 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/daexhibitions>

## Appendix B – Submissions

The Department made the application publicly available and notified adjoining lodges and previous submitters to the NSW LEC application within Thredbo Alpine Resort of the application between 13 April 2022 and 26 April 2022.

The application was referred to the RFS (as the original and modification is integrated development) and NPWS pursuant to section 4.15 of Chapter 4 of the Precincts-Regional SEPP, with comments received. No submissions from the public were received.

## Appendix C – Notice of Modification