



Oldina Ski Club, Perisher Valley Modification

Modification Application Assessment (MOD 22/13511 (DA 9791 MOD 1))

December 2022

Published by the NSW Department of Planning and Environment

dpie.nsw.gov.au

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Subtitle: Modification Application Assessment (MOD 22/13511 (DA 9791 MOD 1))

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

Contents

1	Introduction	1
2	Matters for Consideration	3
2.1	Strategic Context.....	3
2.2	Mandatory matters for consideration.....	3
2.3	Scope of modifications	4
2.4	Other approvals.....	5
3	Submissions	6
3.1	Department's engagement.....	6
3.2	Summary of submissions	6
4	Assessment	7
5	Recommendation.....	8
	Appendices	9
	Appendix A – Notice of Modification	9

1 Introduction

The modification application seeks approval to modify development consent (DA 9791) for alterations and additions to the existing Oldina Ski Club at 5 Billy Button Place, Perisher Valley, Perisher Range Alpine Resort within Kosciuszko National Park (KNP) (**Figure 1**). The application has been lodged by Oldina Ski Club Co-operative Limited (the Applicant) pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

On 13 August 2020, the Team Leader of the Alpine Resorts Team, as delegate of the then Minister for Planning and Public Spaces, granted consent to a Development Application (DA 9791) for alterations and additions to the Oldina Ski Club. The works comprised internal alterations to existing rooms and external additions to the building to improve wood storage, storage on the ground floor and increase the size of the living / kitchen area (with the installation of a new commercial kitchen).

The proposal seeks to amend the approved materials and finishes schedule that includes alteration to the approved window frames from natural anodised aluminium in 'Shale Grey' colour to a powder coat colorbond in 'Monument' colour to match the proposal metal wall cladding colour.



Figure 1 | Site in context of other adjoining lodges (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).

The subject site is known as Oldina Ski Club (Lot 60 DP 756697), 5 Billy Button Place, Perisher Valley. The existing building (**Figure 2**) is licensed for 15 beds and is used for tourist accommodation with a commercial kitchen. The existing building is constructed of a mixture of materials, ranging from rock walls, timber cladding and a metal colorbond roof.

The surrounding development is characterised by other tourist related accommodation premises (Boonoona Lodge, Maranatha Lodge / Thirroul Ski Club and Warrugang Ski Club) and native vegetation to the rear (south). The ski slopes of Perisher Valley are located to the west across Wheatley Road / Kosciuszko Road.

The site consists of an area of approximately 550m² and contains native vegetation, disturbed areas on the western frontage and an area that previously contained two oil tanks (decommissioned in 2013).

Access to the site is off Wheatley Road, via an access driveway (Billy Button Place) utilised by Boonoona Lodge and Oldina Ski Club.



Figure 2 | Oldina Ski Club viewed from ski slopes (Source: Department inspection)

Supporting documents and supporting information to this assessment report can be found on the NSW Planning Portal website at:

<https://www.planningportal.nsw.gov.au/development-assessment/state-significant-applications/projects/state-development-applications>

2 Matters for Consideration

2.1 Strategic Context

South East and Tableland Regional Plan 2036

The Department considers the proposal continues to be consistent with the Regional Plan as the proposal maintains the use of the site for tourist accommodation, while improving the external appearance of the building, which supports the ongoing visitation to the NSW ski resorts.

Snowy Mountains Special Activation Precinct Master Plan

The Department considers that the proposal supports the vision of the Master Plan, while also ensuring impacts upon the environment are consistent with the previously approved development. With only materials and finishes impacted by the application, the proposal raises no additional matters that would impact the Master Plan.

Precincts – Regional SEPP

The Department considers the proposal continues to be consistent with Chapter 4 of the Precincts – Regional SEPP as the proposal continues to minimise the potential impacts on the environment by utilising existing disturbed areas, and rehabilitating areas of disturbance at the completion of the works.

2.2 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 9791. 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 Department notes that the site is outside of the BVM and given the scope of the modification proposal, would not impact on any BC Act consideration with no additional vegetation management required to facilitate the modification.

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 principal EPI that applies to this application.

An assessment of compliance with the then *State Environmental Planning Policy (Kosciuszko National Park – Alpine Resorts) 2007* (Alpine SEPP) was undertaken in the determination of the original application (DA 9791). The Precincts – Regional SEPP (Chapter 4) has since replaced the Alpine SEPP.

The Department has considered the current modification application against the provisions of the Precincts – Regional SEPP (since adopted on 1 March 2022) and is satisfied the modification proposal continues to be consistent with this EPI.

2.3 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>Section 6 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 no environmental impact, being only a material's and finishes alteration.</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 proposal does not affect the built form of the building, only the materials to be utilised.</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>	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 and it was made publicly available on the NSW Planning Portal website (refer to Section 5 of this report).
(d) <i>Consideration of any submissions made concerning the proposed modification within the period prescribed by the regulations</i>	The Department has considered the submissions received during the exhibition period (refer to Section 5 and 6 of this report).

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 amendments are appropriate in terms of construction. The Department's assessment in **Section 4** concludes that there would be no negative impact to 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.

2.4 Other approvals

Rural Fires Act 1997

As the original works included 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 Bush Fire Safety Authority (BFSA).

Refer to **Section 3** for further discussion on this component in relation to the modification application.

3 Submissions

3.1 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 that are not required to be exhibited by the EP&A Regulations to otherwise be exhibited for a timeframe dependent on the urgency, scale and nature of the proposal.

In this regard, the Department also notes that the CPP advises that applications for development consent 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. The Department formed the view to make the application publicly available (due to its proximity to adjoining lodges) between 24 October 2022 and 7 November 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 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 clause 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.

3.2 Summary of submissions

During the exhibition, the Department received comments from the RFS and NPWS. No public submissions were received.

Key issues – Government Agency

The RFS re-issued General Terms of Approval (GTA), under Division 4.8 of the *Environmental Planning and Assessment Act 1979*, and a BFSA was issued under section 100B of the *Rural Fires Act 1997*. The RFS correspondence raised no objections subject to compliance with the previously issued GTAs details in the BFSA dated 18 January 2019.

The NPWS raised no concerns with the proposed modification.

4 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 Departments assessment considers the modification would not result in impacts upon the approved built and natural environment, with the modification application relating to only the change in materials and finishes of the new works. The change to a colorbond 'Monument' colour rather than 'Shale Grey' ensure consistency with the approved wall cladding materials.

The works do not impact adjoining properties or the area to be managed as part of the approved Asset Protection Zone Plan. The Departments considers that the proposed works are capable of being utilised and would need to ensure compliance with the Building Code of Australia (BCA) and relevant Australian Standards during consideration of any construction certificate.

The proposed modification to the consent is supported.

5 Recommendation

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 RFS and 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 and 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; and the proposal does not result in any additional matters that required consideration under Section 4.15(1) of the EP&A Act.

Overall, the Department is satisfied that the proposal is suitable and in the public interest.

As the original application was determined under the delegation of the Minister for Planning and Public Spaces, the Minister therefore remains as the consent authority for any subsequent applications to modify the consent. In accordance with the Minister's delegation of 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

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
- **determines** that the modification application MOD 22/13511 (DA 9791 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 9791
- **signs** the attached approval of the modification (**Appendix A**).

Recommended by:



Mark Brown
Senior Planner
Alpine Resorts Team

Adopted by:



5 December 2022

Daniel James
Team Leader
Alpine Resorts Team
as delegate of the Minister for Planning

Appendices

Appendix A – Notice of Modification