

Statement of Environmental Effects



S4.55 (1A) Application
Alterations & Additions to
Boali Lodge
Mowamba Place, Thredbo

Prepared For Boali Holding Pty Ltd



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**Department of Planning
and Environment**

Issued under the Environmental Planning and Assessment Act 1979
Approved Section 4.55 (1A) Modification Application
No MOD 23/3688 (DA 9602 MOD 1) granted on the 10 July 2023
In respect to DA 9602
Signed M Brown
Sheet No 12 of 13

project no 1824
date March 2023
issue B

Introduction

This Statement of Environmental Effects is a report that forms part of a s4.55 application submitted to the NSW Department of Planning & Environment to the existing development consent DA9602 dated 3/12/2018. The s4.55 seeks to apply for the following amendments to the approval:

- Modify consent, Internal renovation of a Spa & Sauna Room to a Staff Bedroom in lieu of
- Consent to modify the Spa room to a Bathroom.
- Modify Laundry to include guest WC & Shower

The proposed modifications take place in the same location within the building and do not increase the floor area nor change the uses of the building.

The decision was made to alter both the spa AND sauna facility as neither are being utilised and the lodge would be better served with a more flexible arrangement for staff accommodation. At present the lodge operates from October through to May with 2 staff, and in the Winter season from June to September with 4 staff. The manager and chef form the core staff of 2, with casual staff required in Winter. On occasion the winter staff have been couples, but where this has not occurred, the sharing of a small room for two unrelated people has caused conflicts and difficulties retaining staff for the winter. Therefore, the decision was made by the Lodge to increase the flexibility in providing staff accommodation by adding a staff room.

The proposal does not seek to increase the maximum bed licence that the property currently holds for 38 beds, only to allow flexibility in the way the beds are allocated within the lodge.

The proposal has the endorsement of the head lessee Kosciuszko Thredbo Pty Ltd (Owners consent) to propose these amendments. The letter of owners consent that forms part of this application acknowledges the proposed operations and methods of compliance with the bed licence.

The previously approved guest bathroom in the Spa area is simply relocated in this s4.55 application. This bathroom is provided independent of a guest room is relocated to the laundry area to a redundant store. The bathroom provides a need for facilities for arriving and departing guests prior to their rooms being available, and to the lower levels of the lodge where living and TV areas otherwise have no facilities and are separate by 2-3 storeys from similar facilities.

Image of Boali Lodge



Justification of s4.55 application in lieu of a new Development Application.

Section 4.55 of the Environmental Planning and Assessment Act 1979 provides generally for a range of modification types to a consent, varying upon the nature and content of the modification sought and the manner in which the consent was given.

The appropriate pathway for this application is a s4.55(1A) as the application relates to these parameters. The act provides that:

(1A) Modifications involving minimal [environmental](#) impact A [consent authority](#) may, on 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 [regulations](#), modify the consent if--

(a) it is satisfied that the proposed modification is of minimal [environmental](#) impact, and

(b) it is satisfied that 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), and

In response to part (a), we provide the following information to justify the 1A classification:

- The proposal seeks ONLY internal modifications to an existing building and the proposal does not seek any works that increase the footprint, envelope or floor area of the lodge.
- The proposal has no impact upon any adjoining development in terms of privacy or amenity.
- The proposal seeks modifications for an intended use that currently exists within the lodge.
- The proposal does not seek to increase the capacity of the licence for the amount of beds or accommodation to the lodge
- The proposal does not seek to increase the number of staff or people that use the lodge.
- The proposal does not seek to alter the operating hours or operating structure of the lodge.
- The proposal will not cause any increase or change to the number of car spaces associated with the lodge.

We therefore submit that the proposal is of minimal environmental impact.

In answering the threshold question as to whether the proposal represents "substantially the same" development the proposal must be compared to the development for which consent was originally granted, and the applicable planning controls. In order for consent authority to be satisfied that the proposal is "substantially the same" there must be a finding that the modified development is "essentially" or "materially" the same as the (currently) approved development - *Moto Projects (no. 2) Pty Ltd v North Sydney Council* [1999] 106 LGERA 298 per Bignold J.

A consideration of whether the development is substantially the same development has been the subject of numerous decisions by the Land & Environment Court and by the NSW Court of Appeal in matters involving applications made pursuant to the previous S.96 of the Act. *Sydney City Council v Ilenace Pty Ltd* (1984) 3 NSWLR 414 drew a distinction between matters of substance compared to matters of detail. In *Moto Projects (No.2) Pty Ltd v North Sydney Council* (1999) 106 LGERA 298 Bignold J referred to a requirement for the modified development to be substantially the same as the originally approved development and that the requisite finding of fact to require a comparison of the developments. However, Bignold noted the result of the comparison must be a finding that the modified development is 'essentially or materially' the same as the (currently) approved development. Bignold noted;

The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the

development being compared in their proper contexts (including the circumstances in which the development consent was granted).

In *Basemount Pty Ltd & Or v Baulkam Hills Shire Council* NSWLEC 95 Cowdroy J referred to the finding of Talbot J in *Andari - Diakanastasi v Rockdale City Council* and to a requirement that in totality the two sets of plans should include common elements and not be in contrast to each other. In *North Sydney Council v Michael Standley & Associates Pty Ltd* (1998) 43 NSWLR 468; 97 LGRERA 443 Mason P noted:

Parliament has therefore made it plain that consent is not set in concrete. It has chosen to facilitate the modification of consents, conscious that such modifications may involve beneficial cost savings and/or improvements to amenity. The consent authority can withhold its approval for unsuitable applications even if the threshold of subs (1) is passed.

We agree with Bignold J in Houlton v Woollahra Municipal Council (1997) 95 LGRERA 201 who (at 203) described the power conferred by s.102 as beneficial and facilitative.

The risk of abuse is circumscribed by a number of factors. Paragraphs (a), (b) and (c) of subs (1) provide narrow gateways through which those who invoke the power must first proceed. Subsection (1A) and subs (2) ensure that proper notice is given to persons having a proper interest in the modified development. And there is nothing to stop public consultation by a Council if it thinks that this would aid it in its decision making referable to modification.

Finally, subs (3A), coupled with the consent authorities discretion to withhold consent, tend to ensure that modifications will not be enterprised, nor taken in hand, unadvisedly, lightly or wantonly. Naturally some modifications will be controversial, but decision making under this Act is no stranger to controversy.

Senior Commission Moore in *Jacques Ave Bondi Pty Ltd v Waverly Council* (No.2) (2004) NSWLEC 101 relied upon *Moto Projects* in the determination, involving an application to increase the number of units in this development by 5 to a total of 79. Moore concluded the degree of change did not result in a development which was not substantially the same, despite the fact that in that case the changes included an overall increase in height of the building. Moore relied upon a quantitative and qualitative assessment of the changes as determined by the *Moto* test.

We note that the current application is similar to *Jacque Ave Bondi* in that it seeks to increase the number of staff rooms by 1. Qualitatively, this is substantially the same development because the current development contains staff rooms. The proposal does not introduce a new use that may be seen to be inconsistent with the current use. The proposal seeks a consistent use as approved.

The proposal to increase the staff accommodation does not increase the number of beds or people using the lodge, and therefore whilst the quantitative number of rooms may change within the existing building without addition to the building, the number of people accommodated by the lodge remains quantitatively the same.

In our opinion a quantitative and qualitative assessment of the application is that it remains substantially the same. Quantitatively, the nature of the approved land use is not altered as a consequence of the changes as proposed. The approved use allows 4 staff in 3 spaces and the plans seek to retain the staff numbers at a maximum of 4 staff albeit over 4 spaces/rooms.

Qualitatively, the physical appearance of the development remains consistent with the consent as issued. The modifications are extremely minor in nature increasing the size of only 2 windows to the west elevation and maintaining appropriate visual privacy between properties. In such circumstances the changes may be considered minor.

On the basis of the above analysis, we regard the proposed application as being of minimal environmental impact and “essentially or materially” the same as the approved development such that the application is appropriately categorised as being “substantially the same” and appropriately dealt with by way of Section 4.55(1A) of the Act.

Boali Lodge – Bushfire Assessment Photos



Figure 1 – Aerial Photo, Location of Boali Lodge in context of Thredbo Village

Figure 2 – Aerial Photo, Distances to vegetation that may be considered a bushfire hazard

