



Boali Lodge, Thredbo Modification

Modification Application Assessment (MOD 24/1299 (DA 9602 MOD 2))

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

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Glossary

Abbreviation	Definition
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, Housing and Infrastructure
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation 2021	<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 and Public Spaces
NPWS	National Parks and Wildlife Service
Planning Secretary	Secretary of the Department of Planning Housing and Infrastructure
RFS	NSW Rural Fire Service
SEE	Statement of Environmental Effects
SEPP	State Environmental Planning Policy

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1 Introduction

The modification application seeks approval to modify development consent DA 9602 for the internal and external renovations to Boali Lodge (as modified by DA 9602 MOD 1) located at 16A Diggings Terrace, Thredbo Village, Thredbo Alpine Resort within Kosciuszko National Park (KNP) (**Figure 1**).

The application has been lodged by Sean Gartner (the Applicant) pursuant to section 4.55 (1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The modification application seeks to switch the use of a bedroom for staff accommodation on Level 2 with the food storage room on Level 1, which includes minor internal and external alterations.



Figure 1 | Boali Lodge in context of Thredbo Village (Source: Six Maps with annotations)

1.1 Site Description

The subject site is Lot 867 DP 1192567 on Mowamba Place in the Thredbo Village (**Figure 1**). The site is occupied by a part four / part five level building, known as Boali Lodge, (Figure 2), that was built in 1986. The lodge contains an occupancy of 38 beds throughout the lodge and a separate manager's flat, a lounge and kitchen / dining facilities and drying and plant rooms. The lodge is constructed of stone and timber cladding with a metal roof.

1.2 Approval History

On 3 December 2018, the Team Leader of the Alpine Resorts Team, as delegate of the Minister for Planning, granted consent to Development Application DA 9602 for the following:

- Internal alterations – the removal of an existing spa adjoining a sauna room on Level 2 and the construction of an additional guest toilet and shower in place of the spa, and

- External alterations – the replacement of the existing solid balustrade to the lounge room balcony with an open balustrade.

On 10 July 2023, the Acting Team Leader of the Alpine Resorts Team, as delegate of the Minister for Planning, granted consent to Modification Application (DA 9602 MOD 1) for the following:

On Level 1

- enlargement of a laundry storeroom and conversion to a guest bathroom: proposed works comprise removing a wall in the storeroom area and extending the dividing wall between the laundry and storeroom area. A new door installed to the hallway to enclose the space as a guest bathroom fitted with a toilet, basin and shower, including lifting of the ceiling to 2200mm and installation of an external exhaust vent.
- removal of a section of wall between the hallway and laundry to enlarge the laundry door entry area.
- conversion of a general store room to a food storage room with a refrigeration area (freestanding fridges) and shelving for dry food storage.

On Level 2

- conversion of the existing approved spa and sauna room (per DA 9602) into a bedroom to provide staff accommodation for two people with a refurbished ensuite. The works included removal of internal walls and removal of the existing ceiling to be rebuilt to 2400mm. Two (2) external windows to the proposed bedroom on the western elevation of the building will also be enlarged to approximately twice their existing height (to height of 1000mm).

1.3 Proposed Modifications

This modification application seeks to amend the previously modified development consent for internal and external alterations to the building including:

On Level 1

- The approved food storage room (DA 9602 MOD 1) is proposed to be used as a bedroom to provide staff accommodation for two people. The window (eastern facing façade) is proposed to be enlarged so that the window will meet the requirements for ventilation and natural light of the Building Code of Australia / National Construction Code (BCA / NCC) – see **Figure 2** and **Figure 3**.

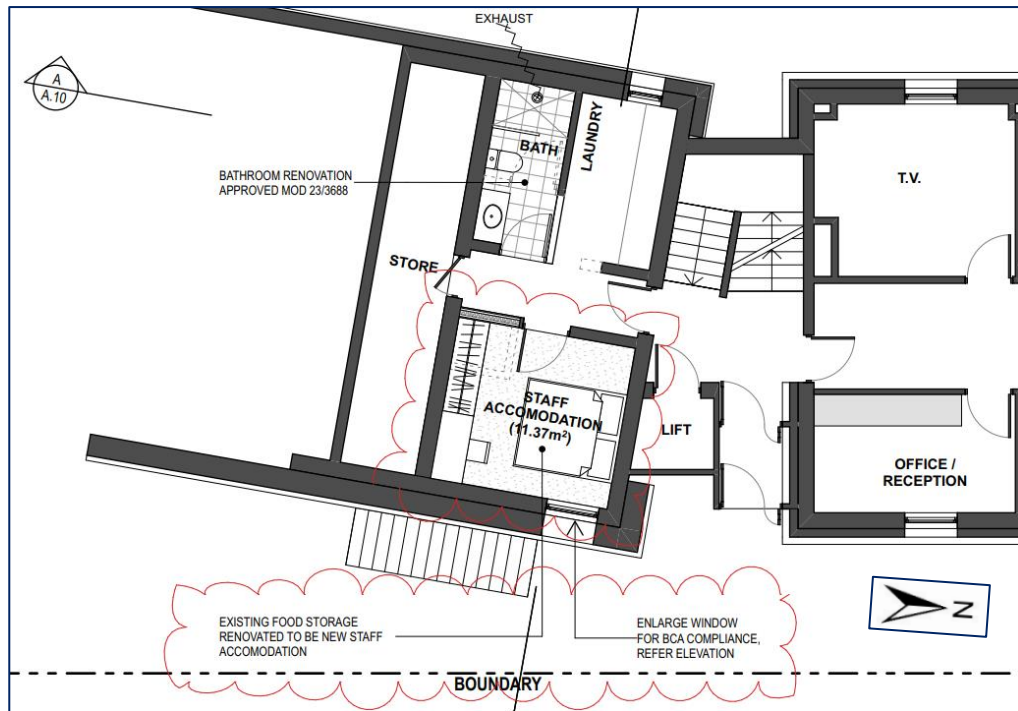


Figure 2| Level 1 bedroom for staff accommodation and window modifications (Source: Applicant's documentation)

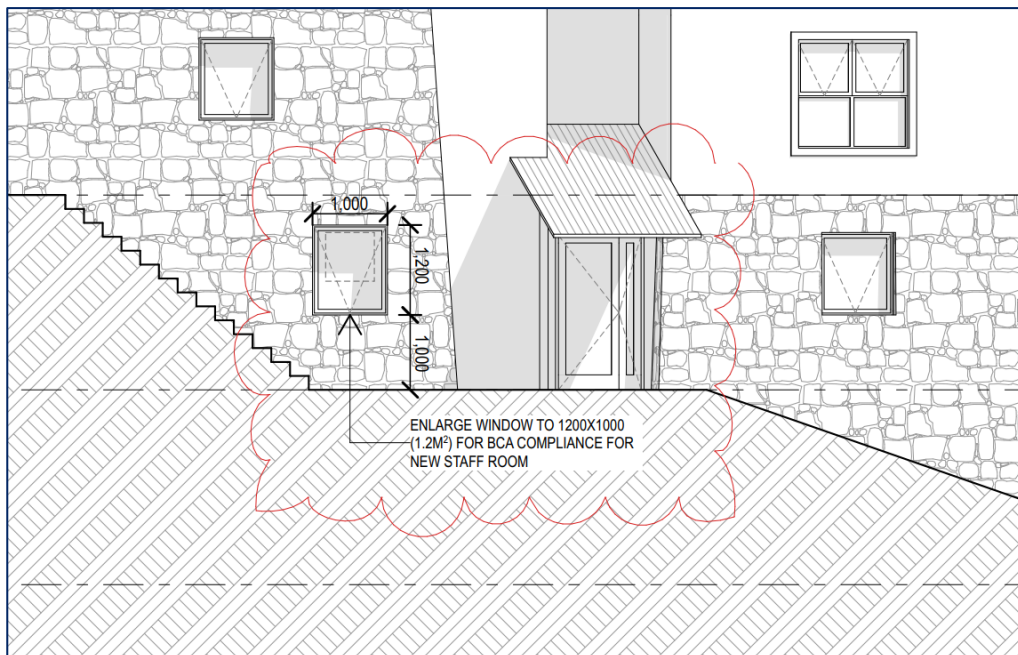


Figure 3| Level 1 window enlargement on east facing façade for new location of bedroom for staff accommodation, within the building (Source: Applicant's documentation)

On Level 2

- The approved bedroom for staff accommodation (DA 9602 MOD 1) is proposed to be used as a food storage room – see **Figure 4**. The windows on the western facing façade that were to be enlarged under the previous modification application will now remain unchanged, and as existing.

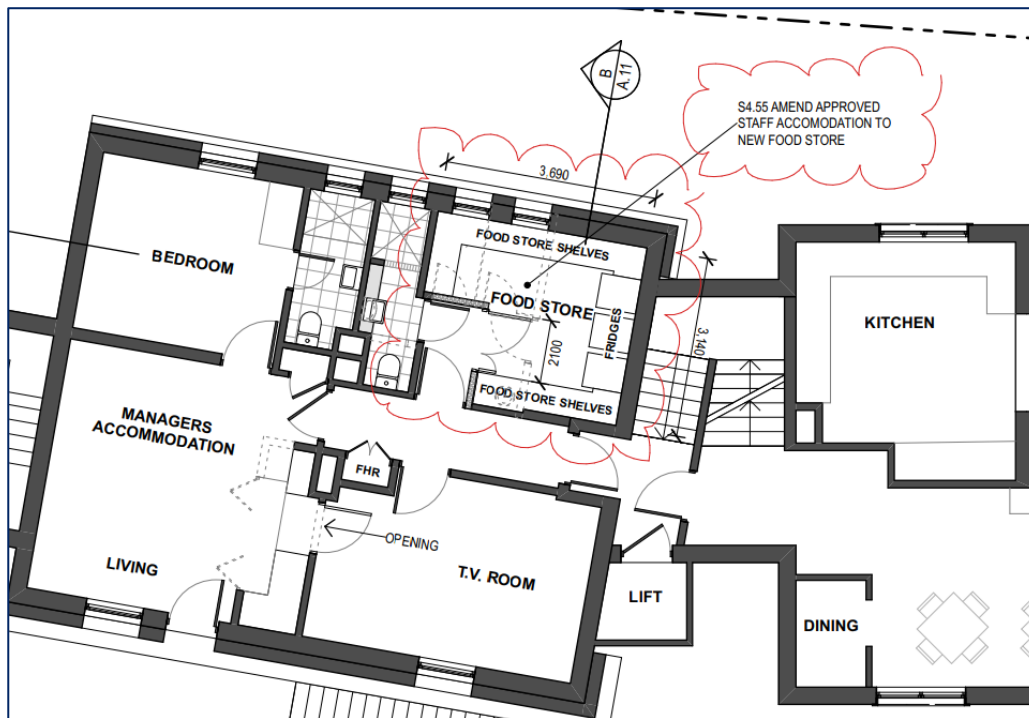


Figure 4 | Level 2 food storage room modification (Source: Applicant's documentation)

The Applicant notes that the decision was made to swap the locations of the rooms within the building to provide better functionality of the food operations within the lodge, where the food storage room and the kitchen would now be located on the same floor (i.e., Level 2). The relocation of the staff room to a lower level has no detrimental effect on the amenity for the staff, and in fact, the location would provide a more private area for the staff away from the kitchen and dining areas.

The Minister for Planning is the consent authority for development within Thredbo Alpine 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 supporting documents 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 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 supports the improvement of a tourist accommodation building through providing improved staff accommodation provisions and functionality of the building, for both staff and visitors within Thredbo Alpine Resort, which supports the ongoing visitation to the NSW ski resorts.

Snowy Mountains Special Activation Precinct Master Plan

Section 9.1 relates to the Thredbo alpine resort. The Department considers that the proposal supports the vision of the Master Plan, while also ensuring impacts upon the environment have been considered against those previously approved. The proposed change in use of areas within the Lodge and minor external works raise no additional matters that would be inconsistent with 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 contribute to tourist accommodation and to better support staff accommodation availability within KNP, which supports sustainable tourism in the Alpine Region. The potential impacts on the environment continue to be considered acceptable when noting the contained nature of the location of the modification works and their minimal impact on the environment.

Draft South East and Tableland Regional Plan 2041

The draft plan was publicly exhibited from 8 August 2022 until 23 September 2022. The draft plan underwent extensive consultation with the community and stakeholders with feedback incorporated into an updated version of the draft plan that was re-exhibited from 9 December 2022 to 31 January 2023. The draft plan identifies the alpine areas as providing important biodiversity to the region and acknowledges the alpine area's contribution to the region's tourism economy.

The proposal is consistent with the draft Regional Plan as it will not result in adverse biodiversity impacts and supports the maintenance of visitation to the resort, along with the local and regional economy.

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 9602. 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

The Minister or delegate must consider the objects of the EP&A Act when making decisions under the Act

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 no additional vegetation management is required to facilitate the modification, with the works primarily being internal to the building and the window works being contained to an existing external wall. No additional site disturbance is likely in relation to the proposed modification works, with the site already required to be provided as an Inner Protection Area under the existing approval.

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 former Alpine SEPP was undertaken in the determination of the original application DA 9602.

The Department has considered the current 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.

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</i>	<p>Section 4 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 with no additional vegetation removal required to facilitate the development and minimal impact on adjoining land users.</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 changes the approved development in terms of changing the location of additional staff bedroom (although not increasing the number of staff who may stay at the property) and the food storage room within the Lodge.</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 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 3 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 has considered the submissions received during the exhibition period (refer to Section 3 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 or amenity of the building occupants are appropriate. The Department's assessment in **Section 4** concludes that the impacts of the works as modified will be minimal in extent and appropriately managed, and the impacts are considered acceptable. No variation is required 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 required a Bush Fire Safety Authority (BFSA) from the RFS under section 100B of the *Rural Fires Act 1997* as integrated development pursuant to section 4.46 of the EP&A Act. On 5 October 2018 the RFS issued the BFSA together with general terms of approval relating to matters including the establishment of an asset protection zone, design and construction standards, and preparation of an emergency evacuation plan.

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 fifty (50) metres from a tourist accommodation building. As the modification involves external works to the building and is within fifty metres of other tourist accommodation buildings, the Department notified nearby lodges and made the application publicly available on the NSW Planning Portal website between 14 February 2024 and 28 February 2024.

The application was referred to the RFS pursuant to section 4.47 of the EP&A Act (integrated development) as General Terms of Approval under the *Rural Fires Act 1997* are required for the development to be carried out. The application was also forwarded to the National Parks and Wildlife Service (NPWS) pursuant to section 4.27 of the Precincts – Regional SEPP.

3.2 Summary of submissions

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

Key issues – Government Agency

On 23 February 2024, the NSW RFS reissued the Bush Fire Safety Authority (BFSA) and confirmed that subject to the previously reissued General Terms of Approval, dated 17 April 2023, being met, the proposed development will meet the NSW Rural Fire Service requirements for Bush Fire Safety under s100b of the *Rural Fires Act 1997*.

The NPWS raised no concerns with the proposed modification. The NPWS recommended conditions to ensure the commercial food preparation areas of the food storage room, and all areas where food is prepared, comply with the provisions of *Food Act 2003* and Chapter 3.2.3 of the *Food Standards Code*. The NPWS also recommend a condition that the relevant food business must also be registered with NPWS. The NPWS had no further comments on impacts to the environmental or cultural values of KNP that might arise from the modified development and reiterated that the comments provided for the previous modification and original Application remained valid.

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, and
- matters for consideration under section 4.15(1) of the EP&A Act.

The Department's assessment considers the modification would result in minimal impacts upon the natural environment, with the modification application relating mainly to internal works apart from the installation of one (1) enlarged window on the east facing façade for the proposed location of the bedroom for staff accommodation.

The Applicant indicates the works are substantially the same as the development for which the consent was originally granted. With the implementation of appropriate environmental controls that were approved under DA 9602, the impacts of the proposal are considered acceptable.

An advisory note to the conditions has been retained to ensure that the additional staff bedroom created by the modification can only be utilised by staff when the total number of staff accommodated at the lodge does not exceed the number permitted in their sublease, under licence by the NPWS in accordance with the KNP Plan of Management.

The Department has adopted the conditions recommended by NPWS to ensure the commercial food preparation areas of the food storage room comply with the *Food Act 2003* and Chapter 3.2.3 of the *Food Standards Code*. Thereby, prior to an Occupation Certificate being issued, the Applicant is to arrange for an inspection of the completed works by the NPWS Environmental Health Officer to ensure the food storage area complies with the relevant standards.

The application for modification was referred to the Department's Principal Building Surveyor for consideration. The Building Surveyor reviewed the proposal; the original application and related consent; consent issued for the previous modification application (DA 9602 MOD 1); and undertook an inspection of the site. After the review, referral comment was received that no additional Building Code of Australia / National Construction Code (BCA / NCC) conditions are required.

The proposal would include the enlargement of the window of the new bedroom (i.e., for staff accommodation). The window is to be enlarged to 1000 millimetres x 1200 millimetres to comply with requirements of the NCC / BCA. The Applicant notes, the increase in size of the window has no adverse impacts to any adjoining property by way of privacy as the window is at ground level and does not overlook the adjoining Sydney Ski Club building (to the east of the Lodge). Necessary matters of compliance with the BCA / NCC such as the room heights, light and ventilation requirements for the new use of the rooms, as part of this modification application, are considered to remain the responsibility of the Certifier.

Noting the above, the proposed modification to the consent is supported, subject to updating the conditions of consent where relevant to the modification, including reference to the modified plans (updated Condition A.2.) and those relevant to the food storage area.

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 NSW RFS and NPWS.

The Department's assessment concludes that the proposed modification is appropriate as the modification is of minimal environmental impact, and the additional environmental impact is acceptable being 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; the modification was notified, and all submissions received during the assessment of the application have been considered; and the site remains suitable for the development, as modified.

Overall, the Department is satisfied that supporting the modified proposal is in the public interest.

As the original application was determined under the delegation of the then Minister for Planning, 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 24/1299 (DA 9602 MOD 2) 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
- **modifies** the consent DA 9602
- **signs** the attached approval of the modification (**Appendix A**).

Recommended by:



Vince Di Bono
Planning Officer
Alpine Resorts Team

Adopted by:



Erin Murphy
Team Leader
Alpine Resorts Team, Regional Assessments
as delegate of the Minister for Planning

24/6/2024

Appendices

Appendix A – Recommended Instrument of Consent