

# Statement of Environmental Effects



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



Department of Planning  
Housing and Infrastructure

*Issued under the Environmental Planning and Assessment Act 1979*

Approved Section 4.55 (1A) Modification Application

No MOD 24/1299 MOD 2 granted on the

In respect to DA 9602 and MOD 23/3688 MOD 1

Signed V Di Bono

Sheet No 14 of 16

Prepared For Boali Holding Pty Ltd

project no 1824

date January 2024

issue D

## 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 and the subsequent modification (s4.55-1A) dated MOD 23/3688 dated 10 July 2023. This s4.55 seeks to apply for the following amendments to the approvals:

- Relocation of the previously approved Staff Room (MOD 23/3688) on Level 2 to Level 1 in current location of the Food Store
- Relocate the existing Food Store on Level 1 to the approved Staff Room on Level 2
- Retain all other parts of the previous approvals.

The proposed modifications are a straight swap between the two rooms within the building and do not increase the floor area nor change the uses of the building.

The decision was made to swap these two room locations to provide better functionality of the food operations within the lodge, where the Food Store and the Kitchen would now be located on the same floor. The relocation of the staff room to a lower level has no detrimental effect on the amenity for the staff, in fact the location would provide a more private area for the staff away from the kitchen and dining areas.

The proposal would require the increase in size of a single window, to the staff room, to comply with the NCC/BCA. 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 and does not look over the adjoining Sydney Ski Club building.

The proposal has the endorsement of the head lessee Kosciuszko Thredbo Pty Ltd (Owners consent) to propose these amendments. The detailed changes on the plans for this second s4.55 are as follows:

- A 01, A 02 – no change
- A 03 – Existing food store room change of use to staff accommodation, enlarge window depth
- A 04 – Approved staff accommodation (MOD23/3688) change of use to food store, retain windows
- A 05, A 06, A07 – No change
- A 08 – Enlarge window in existing store for change of use to staff accommodation
- A 09 – Food store windows to retain existing windows, delete enlargement (MOD 23/3688)
- A 10, A 11 – relocation of Food Store and Staff accommodation shown

### Aerial View of 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 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 plans seek to relocate existing approved uses within the building.

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 1 window to the east 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

