



Windarra Lodge, Smiggin Holes Modification

Modification Application Assessment (MOD 24/6319 (DA 10352 MOD 1))

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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 10352 for external alterations to Windarra Ski Lodge. The site is located at 16 Plum Pine Road, Smiggin Holes, Perisher Range Alpine Resort within Kosciuszko National Park (KNP) (**Figure 1**).

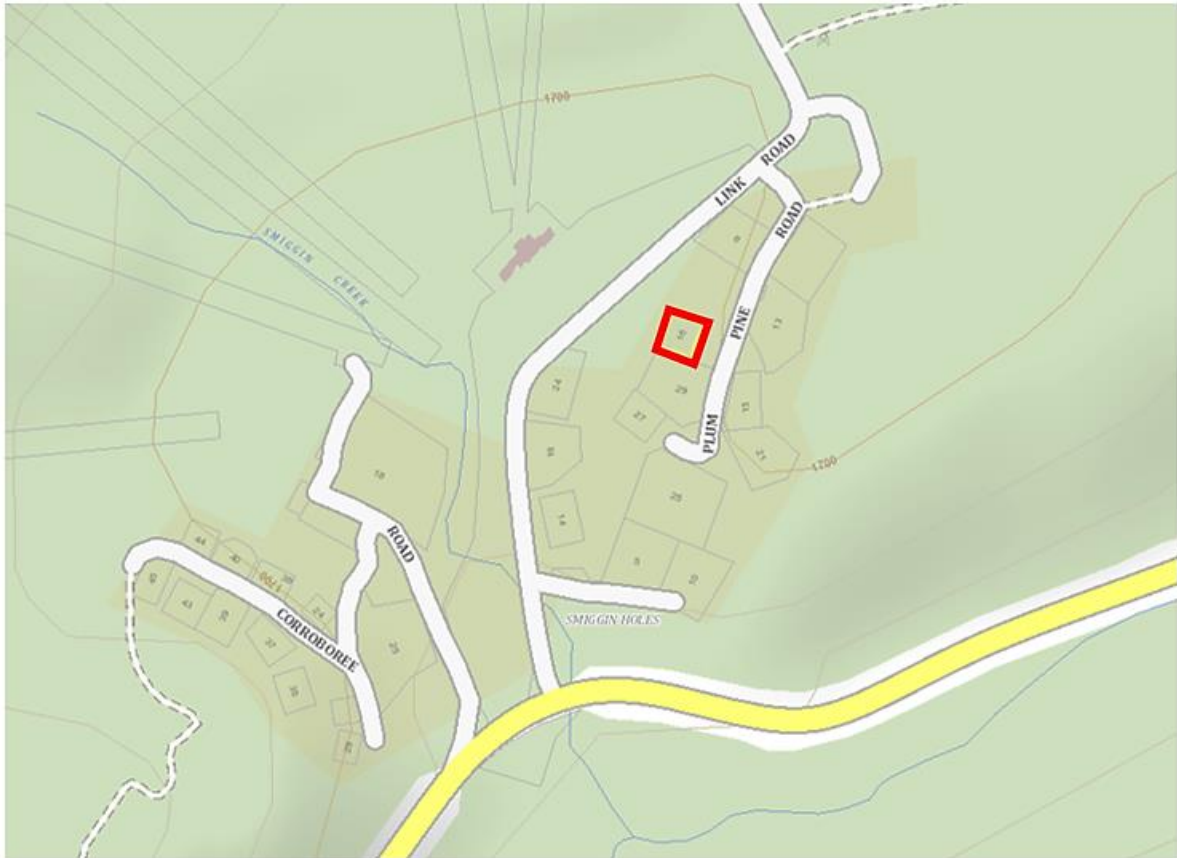


Figure 1 | Windarra Ski Lodge (outlined in red) in the context of Smiggin Holes (Source: NSW Planning Portal Spatial Viewer (with annotations), 2020)

On 16 June 2021, the Team Leader of the Alpine Resorts Team, as delegate of the Minister for Planning, granted consent to Development Application DA 10352 for the following:

- the replacement of the existing timber decking and supporting posts with bushfire resistant hardwood timber decking and posts painted Colorbond 'Basalt' while retaining the existing concrete footings
- the replacement of the existing exterior cladding with bushfire resistant hardwood timber cladding painted Colorbond 'Shale Grey' and 'Cove'.

This modification application has been lodged by DM Planning (the Applicant) pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The modification application seeks approval for external alterations to the existing consent, including:

- Walls - Change in materials (hardwood to colorbond metal) and colours for the cladding (**Figure 2** and **Figure 3**)
- Roof - Replacement of the existing colorbond roof with a new colorbond roof (colour 'Basalt') (**Figure 4**)

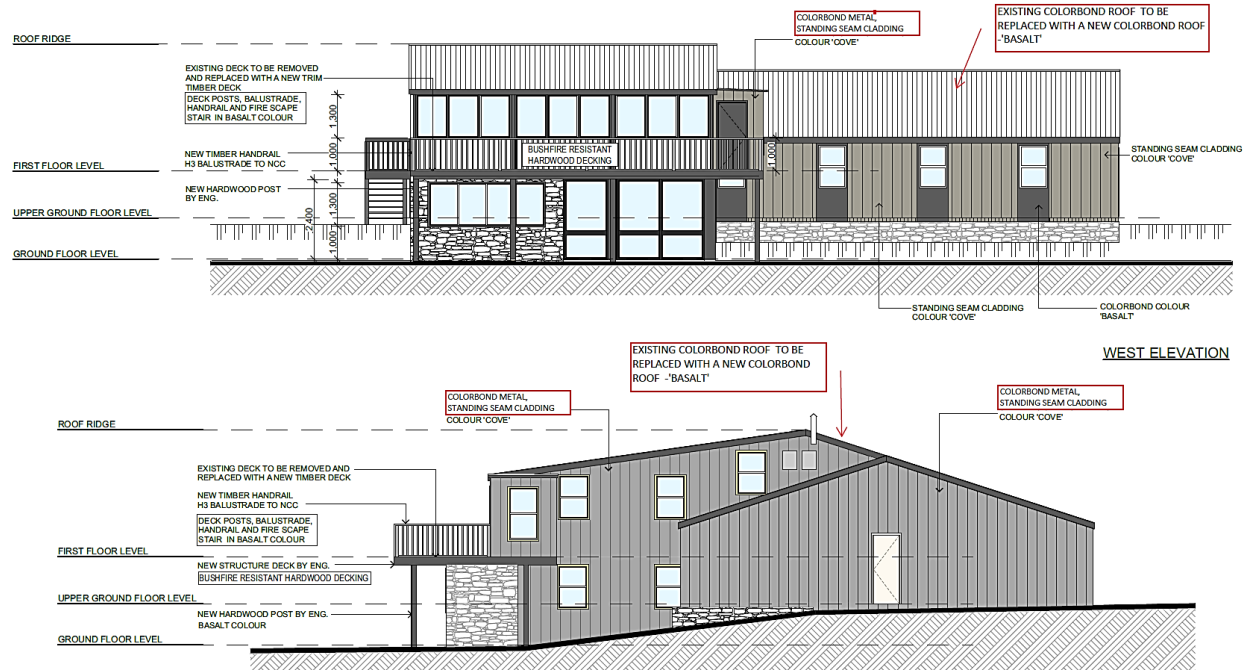


Figure 2 | The proposed colorbond metal walls illustrated from the West and South elevation (Source: Applicant's documentation)

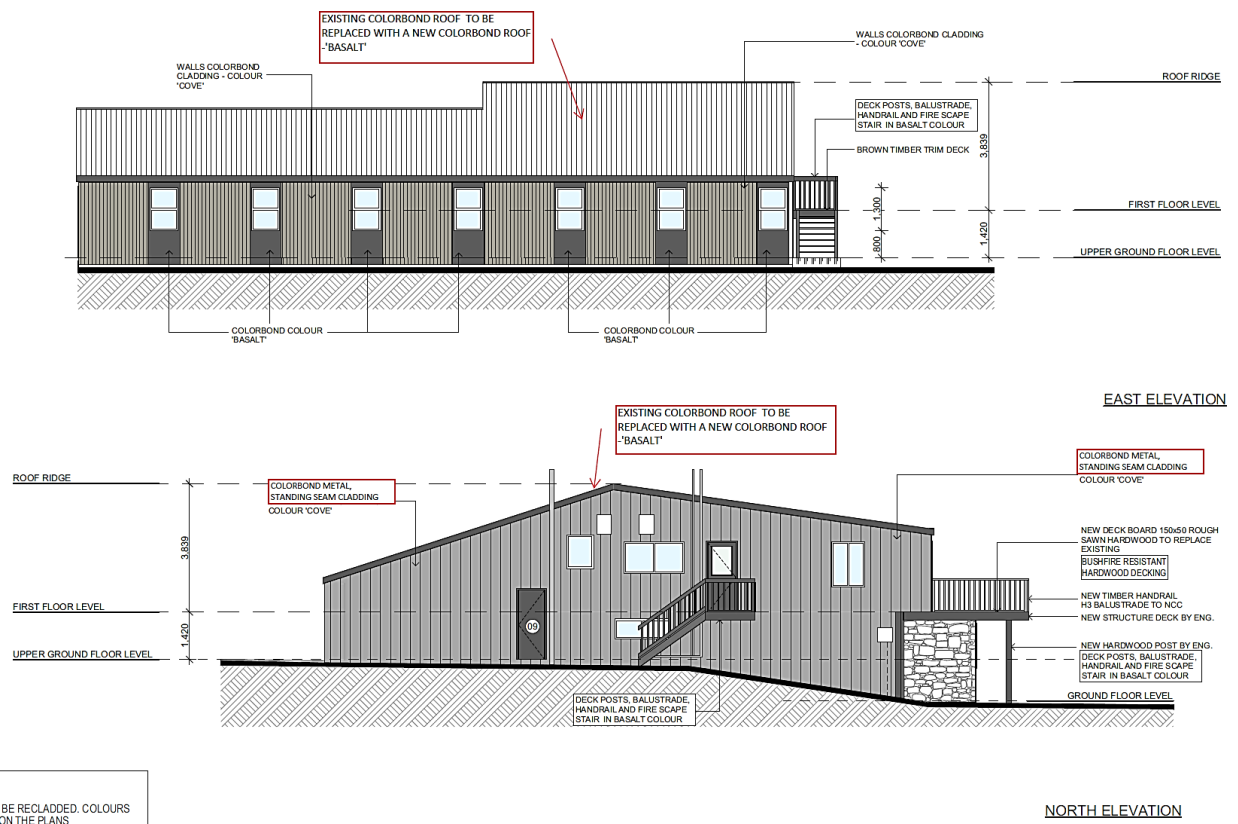


Figure 3 | The proposed colorbond metal walls illustrated from the East and North elevation (Source: Applicant's documentation)

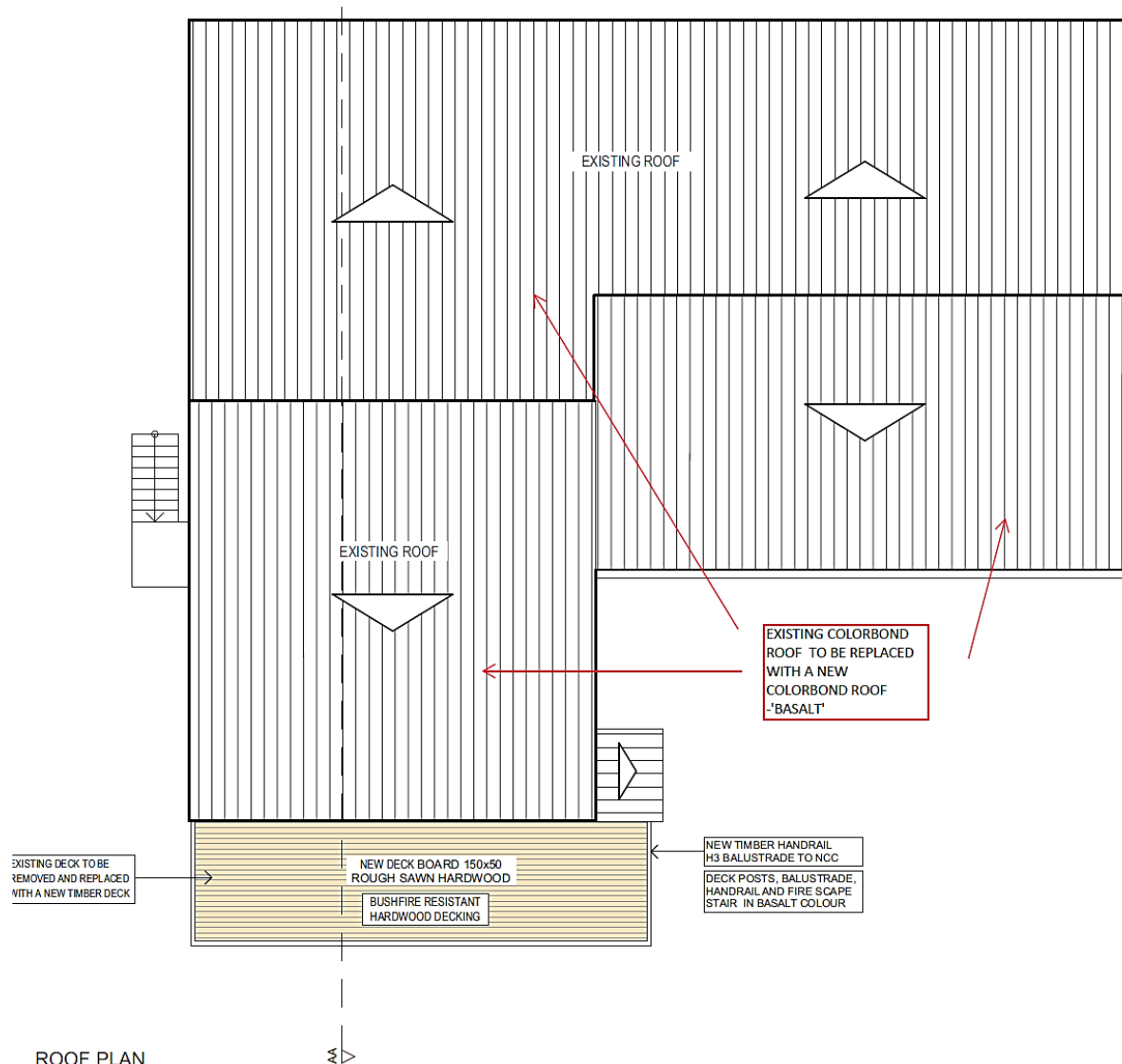


Figure 4 | The proposed colorbond metal roof (Source: Applicant's documentation)

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 it improves the external appearance and longevity of the building for tourist accommodation, which supports visitation to the NSW ski resorts.

Snowy Mountains Special Activation Precinct Master Plan

Section 9.1 relates to the Perisher 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 minor external works raise no additional matters that would be inconsistent with the Master Plan.

Precincts - Regional SEPP

The proposal is consistent with Chapter 4 of the Precincts - Regional SEPP as the development will be undertaken in an ecologically sustainable way to prevent adverse environmental, social or economic impacts on the natural or cultural environment, ensuring that KNP values are being protected and upheld.

Under the provisions of section 4.27 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 KNP. NPWS did not have further comments on the application and reiterated the comments provided in the assessment of DA 10352.

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 10352. 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 applying to the existing external walls and roof. No additional site disturbance is likely to occur in relation to the proposed modification works.

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 10352.

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 wall and roof cladding for the subject building.</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 18 June 2020, 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 17 May 2024 and 31 May 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

The NSW RFS reviewed the modification application and raised no objections subject to compliance with the previous terms of approval dated 18 June 2020 (DA 10352). On 20 May 2024, the NSW RFS reissued the Bush Fire Safety Authority (BFSA) and confirmed that subject to the previously reissued General Terms of Approval 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 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 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 the materials proposed for the existing roof and external walls.

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 10352, the impacts of the proposal are considered acceptable.

The application for modification was referred to the Department's Principal Building Surveyor for consideration. The Building Surveyor reviewed the proposal and the original application and related consent (DA 10352). After the review, referral comments recommended that the conditions include the requirement to comply with BCA/NCC Section J for the wall and roof cladding and associated insulation where relevant.

The proposal would include the change in the external walls from hardwood to metal and replacement of the existing roof.

Necessary matters of compliance with the BCA / NCC such as the deck replacement, structural cladding, internal linings and proof of energy efficiency 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 the requirement to demonstrate energy efficiency with the proposed wall and roof cladding.

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, and
- 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 24/6319 (DA 10352 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
- **modifies** the consent DA 10352
- **signs** the attached approval of the modification (**Appendix A**).

Recommended by:



Meg D'souza
A/Senior Planning Officer
Alpine Resorts Team

Adopted by:



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

Appendices

Appendix A – Recommended Instrument of Consent