

S.4.55 MODIFICATION REPORT

S.4.55 MODIFICATION TO DA 9757
MERRITTS RESTAURANT
THREDBO ALPINE RESORT
KOSCIUSZKO NATIONAL PARK

NOVEMBER 2024

Project: 34-24

Dabyne Planning Pty Ltd

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1. Introduction

Dabyne Planning Pty Ltd has been engaged by Event Hospitality & Entertainment Ltd (Event) to prepare a S.4.55 Modification report in relation to modifying the development consent for DA 9757 for the redevelopment of the Merritts Restaurant building at the base of the Merritts ski area, Thredbo Alpine Resort.

The modifications relate to the installation of the water tanks, pump room and the building pad including earthworks and rock retaining walls undertaken to support the tanks and pump room.

The building pad including earthworks and retaining walls have already been undertaken and subject to engineering certification and will form part of a Building Information Certificate Application. The tanks will be increased in size from the DA approval and a pump room will be added.

The S.4.55 Modification Application has been lodged in response to the Written Direction Notice issued by the Principal Certifier.

2. Background

DA 9757 was granted approval on the 4 June 2019.

A Stage 1 Construction Certificate was issued for the installation of three new water tanks, pump house, building pad and associated earthworks.

The works were undertaken consistent with the Stage 1 Construction Certificate issued in March 2024.

A Written Direction Notice was issued by the Principal Certifier on the 11 April 2024 and this notice outlined that construction works are proceeding not in accordance with the Development Consent or Construction Certificate details.

The Notice outlined that the location of the development is not strictly in accordance with the approved location. It is however noted that the approved DA plans identified the tank locations as 'INDICATIVE TANK LOCATIONS' and the legislation does not require a development to be strictly in accordance with a consent, but only to be 'not inconsistent', as the DA was lodged prior to 1 December 2019.

Furthermore, the DA consent required more details of the tanks to be provided prior to CC, which covered matters such as the tank size, height and its foundation.

It is also noted that the works were not inconsistent with the plans and specifications approved under the Stage 1 Construction Certificate, issued by MBC Group.

The Notice outlines steps to be taken to remedy the alleged non-compliance including a Modification of Development Consent is to be applied for, with a Building Information Certificate for the development as constructed.

As the works were constructed not inconsistently with the CC plans, a Building Information Certificate is not even warranted, as that only states that an order will not be issued for 7 years. A BIC does nothing other than this.

Separate to DA 9757, is DA 22/5788 for the upgrade of services including water, sewer and electricity for the approved Merritts restaurant redevelopment.

These works have been completed and now provide the Merritts restaurant and its future redevelopment with a 100mm diameter water supply pipe, a 75mm diameter sewer pipeline as well as an upgraded UV treatment building and upgraded electricity supply.

3. The Site

The Merritts restaurant and Ski Patrol building is located at the base of the Merritts ski area at the northern end of the resort.

The location of the site in context with the resort is provided in figure 1 below.



The restaurant and ski patrol building are located at the base of the Merritts ski slopes, adjacent to the Merritts Gondola and Cruiser chairlift.

The subject building pad, tanks and pump room are located on the southern side of the Ski Patrol building, as shown in the aerial plan provided below.



Figure 2: Location of the subject site in relation to the base area of the Merritts ski area

A more detailed aerial map is provided below of the Ski Patrol building and area to the south where the subject modifications are contemplated.



Figure 3: Location of the subject site in relation to the base area of the Merritts ski area

The area subject to the modifications is illustrated by way of the photos taken as part of the Geotechnical testing and report, showing the site prior to the works being undertaken.



Figure 4: Photo of the site prior to works commencing



Figure 5: Photo of the site prior to works commencing

As depicted above, the site was highly modified and disturbed and did not comprise of any significant native vegetation.

4. Proposed Modifications

The S.4.55 Modification is in response to the earthworks, fill and retaining walls undertaken in associated with providing a building pad for the water tanks and pump room.

The Modifications are summarised as follows:

- Construction of a 1:2 rock stabilisation wall including rock rubble drain.
- Placement of compacted fill to form a building pad.
- Installation of three water tanks, each 22,500 litres in size, upsized from the DA which were 10,000 litres. Each tank is about 3.45m in diameter.
- Installation of a pump house.

The modified works have been undertaken over a previously disturbed area as part of previous construction projects including the Ski Patrol building, installation of a HV electricity line, water main and snowmaking projects, as well as the Merritts Gondola.

The as built constructed rock retaining walls and building pad are shown in the photos provided below.



Figure 6: Location of the subject works – view to west from Merritts Gondola top station



Figure 7: Location of building pad for tanks



Figure 8: Location of building pad for tanks and pump house

5. Proposed Amendment to Conditions

The following conditions are sought to be revised as follows:

A.2 Development in accordance with approved documentation and plans:

Request: Amend Condition.

Comment: Condition A.2 is to be amended by way of amending and replacing the following plan:

Ref 8: Cover Sheet/Site Plan
Prepared by DJRD Architects
12 December 2018
A0.001 Rev. K

Condition A.2 is to be amended by way of including the additional plans uploaded into the Planning Portal as the modified supplementary plans, noting that the Rehabilitation and Landscape Concept Plan (Ref: 10) does not need to be amended, as it notes 'Indicative Tank Location' with no size reference.

These additional modified supplementary plans provide the detail that was sought as part of Condition B.10.

B.7 Extension of existing services

Request: Delete Condition.

Comment: The extension of services for the future restaurant redevelopment such as electricity, water and sewer have already been undertaken and completed as part of DA 22/5788 and therefore further details are no longer required for the subject DA.

B.10 Water tank and UV treatment

Request: Delete Condition.

Comment: The additional detail provided in the modified supplementary plans uploaded into the Planning Portal for the subject application provide the necessary details of the water tanks and UV treatment, therefore making this condition redundant.

6. Assessment under S.4.15 of the EP&A Act, 1979

In accordance with Section 4.55(3) of the Environmental Planning & Assessment Act, 1979 [EP&A Act, 1979], the consent authority (not the Applicant or this report) it to take into consideration such matters referred to in section 4.15(1), as are of relevance to the development the subject of the modification application.

Accordingly, only the modified components of the development, when compared to the original development as granted consent are subject to further consideration under S.4.15(1) EP&A Act, 1979, as follows:

Section 4.15 EP&A Act, 1979 – Matters for Consideration:

SECTION 4.15(1)(a)(i) – ENVIRONMENTAL PLANNING INSTRUMENTS

The only applicable Environmental Planning Instrument (EPI) to the relevant modifications and site is State Environmental Planning Policy (Precincts – Regional) 2021 (Regional Precincts SEPP, 2021).

Chapter 4 of the Regional Precincts SEPP, 2021 relates to the Kosciuszko Alpine Resorts.

As this Chapter was not placed on public exhibition prior to its adoption, it is considered to have little to no determinative weight.

Being substantially the same development as that approved, the proposed modifications generally remain consistent with the key environmental planning controls applicable to the site and development as discussed below.

Section 4.19 Public utility infrastructure

As the proposed modifications in part relates to the provision, augmentation, maintenance and/or repairing of public utility infrastructure, including the supply of water, this section does not apply under S.4.19(2) of the SEPP.

Section 4.25 Earthworks

Matter for Consideration	Response
(3) In deciding whether to grant development consent for earthworks, or for development involving ancillary earthworks, the consent authority must consider the following matters—	
(a) the likely disruption of, or adverse impact on, drainage patterns and soil stability in the locality of the development,	<i>Development consent has been granted. The modified works including the building pad and associated retaining walls would have been necessary as part of the original DA to support the approved tanks.</i>
(b) the effect of the development on the likely future use or redevelopment of the land,	
(c) the quality of the fill or the soil to be excavated, or both,	<i>The building pad earthworks nonetheless have been designed and constructed for stability and to manage stormwater.</i>
(d) the effect of the development on the existing and likely amenity of adjoining properties,	
(e) the source of any fill material and the destination of any excavated material,	<i>The change in tank size and inclusion of the pump house have no material change regarding earthworks.</i>
(f) the likelihood of disturbing relics,	
(g) the proximity to, and potential for adverse impacts on, a waterway, drinking water catchment or environmentally sensitive area,	
(h) appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.	

Section 4.26 Master plans

The Minister must prepare and approve a master that applies to the Alpine Region under Section 4.26 of the Chapter 4 of the SEPP Regional Precincts. On the 1 July 2022, the Snowy Mountains Special Activation Precinct Master Plan (SM SAP MP) was adopted. The SM SAP MP was adopted well in advance of the new Chapter 4 of the SEPP Regional Precincts and therefore prior to Section 4.46 being implemented.

The Master Plan must contain certain information.

The SM SAP MAP does not:

- Include a map showing existing and proposed types of development for the Thredbo Alpine Resort: No map of the entire resort, including the subject site is provided, therefore the Master Plan does not apply to the subject site. Furthermore, the map provided does not show 'existing and proposed types of development'. The map only shows 'development areas'.
- Include performance criteria for the proposed development.
- Include information about heritage items or places of heritage significance: The Master Plan does not provide information or a map of any heritage items.
- Outline limitations on development on certain land: The Master Plan does not show any limitation on development with regard to the subject site, being located at the base of a ski area.

The Master Plan was drafted and finalised well before the new Chapter 4 of the SEPP Regional Precincts was gazetted.

The Master Plan was also finalised well after the development consent was granted.

Section 4.28 – Consideration of master plans and other documents

Matter for Consideration	Response
(1) In deciding whether to grant development consent to development in the Alpine Region, the consent authority must consider the following—	
(a) the aim and objectives of this Chapter set out in section 4.1,	<i>Development consent has been granted.</i> <i>The modified works are not inconsistent with the aim and relevant objectives.</i>
(b) [Repealed]	
(c) a conservation agreement under the Environment Protection and Biodiversity Conservation Act 1999 of the Commonwealth that applies to the land,	<i>Not applicable.</i>
(d) the <i>Geotechnical Policy –Kosciuszko Alpine Resorts</i> published by the Department in November 2003,	<i>Development consent has been granted.</i> <i>The modified works have been addressed in the Aitkin Rowe Geotechnical Investigation Report.</i>
(e) for development in the Perisher Range Alpine Resort— (i) the Perisher Range Resorts Master Plan, published by the National Parks and Wildlife Service in November 2001, and (ii) the Perisher Blue Ski Resort Ski Slope Master Plan adopted by the National Parks and Wildlife Service in May 2002.	<i>Not applicable.</i>
(2) In deciding whether to grant development consent to development in the Alpine Region, the consent authority must consider—	
(a) a master plan approved by the Minister under section 4.26 that applies to the land, or	<i>The SM SAP MP was adopted prior to the new Chapter 4 of the SEPP being adopted, therefore prior to section 4.26.</i> <i>The SM SAP MP does not specifically relate to the site or the development as modified.</i>
(b) if a master plan has not been approved—a draft master plan prepared under section 4.26 that is intended to apply to the land and has been published on the NSW planning portal.	<i>Not applicable.</i>

Section 4.29 - Consideration of environmental, geotechnical and other matters

Matter for Consideration	Response
S.4.29 (1) In deciding whether to grant development consent to development in the Alpine Region, the consent authority must consider the following—	

(a) measures proposed to address geotechnical issues relating to the development,	<i>Development consent has been granted.</i> <i>The modified works have been addressed in the Aitkin Rowe Geotechnical Investigation Report.</i>
(b) the extent to which the development will achieve an appropriate balance between— (i) the conservation of the natural environment, and (ii) taking measures to mitigate environmental hazards, including geotechnical hazards, bush fires and flooding,	<i>Development consent has been granted and this includes trenching through the area and installation of water tanks.</i> <i>The modifications do not require any additional measures to mitigate environmental hazards that would impact on the conservation of the natural environment.</i>
(c) the visual impact of the proposed development, particularly when viewed from the land identified as the Main Range Management Unit in the Kosciuszko National Park Plan of Management	<i>Development consent has been granted and this included installing three water tanks.</i> <i>The modified works are not visible from the main range and the location of the tanks and pump house is largely screened by the existing Ski Patrol building, when viewed from the ski slopes.</i>
(d) the cumulative impacts of development and resource use on the environment of the Alpine Subregion in which the development is carried out,	<i>Development consent has been granted and this included installing three water tanks. Therefore, the modified development including the building pad to accommodate the tanks and pump house generate minimal environmental impacts.</i> <i>Furthermore, there is no framework provided to assess cumulative impacts, particularly for an approved development, as modified.</i>
(e) the capacity of existing infrastructure and services for transport to and within the Alpine Region to deal with additional usage generated by the development, including in peak periods,	<i>Development consent has been granted.</i> <i>The modified development does not generate additional usage, given that it does not contemplate any additional capacity for the restaurant.</i>
(f) the capacity of existing waste or resource management facilities to deal with additional waste generated by the development, including in peak periods.	<i>Development consent has been granted.</i> <i>The modified development does not impact on existing waste or resource management facilities.</i>
(2) For development involving earthworks or stormwater draining works, the consent authority must also consider measures to mitigate adverse impacts associated with the works.	<i>Development consent has been granted.</i> <i>The modified development included ancillary earthworks to provide a building pad to accommodate the approved water tanks and new pump house.</i> <i>These modified works include stormwater drainage.</i>

<p>(3) For development the consent authority considers will significantly alter the character of an Alpine Subregion, the consent authority must also consider—</p> <p>(a) the existing character of the site and immediate surroundings, and</p> <p>(b) how the development will relate to the Alpine Subregion.</p>	<p><i>Development consent has been granted.</i></p> <p><i>The proposed modifications will not significantly alter the character of the subregion.</i></p>
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SECTION 4.15(1)(a)(ii) – DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS

There are no draft Environmental Planning Instruments that are applicable to the site or proposed modifications.

SECTION 4.15(1)(a)(iii) – DEVELOPMENT CONTROL PLANS

There are no Development Control Plans applicable to the Kosciuszko Alpine Resorts under Precincts Regional SEPP, 2021.

SECTION 4.15(1)(a)(iiia) – PLANNING AGREEMENTS

There are no Planning Agreements applicable to the Kosciuszko Alpine Resorts under the Precincts Regional SEPP, 2021.

SECTION 4.15(1)(a)(iv) – REGULATIONS

The information supplied in the conjunction with the plans and reports uploaded to the NSW Planning Portal, together with this report provides the necessary information relevant to the proposed modifications to the approved development as set out under Section 100 of the EP&A Regulations 2021.

SECTION 4.15(1)(a)(v) – COASTAL MANAGEMENT ZONE

Not applicable.

SECTION 4.15(1)(b) – LIKELY IMPACTS

Natural Environment:

The approved development included trenching through the site and installation of water tanks, with the approved DA plans noting that their location was indicative only.

As earthworks and associated retaining walls would have been required to accommodate the tanks and further information was required prior to Construction Certificate to this effect, these works must have been contemplated as part of the approved DA.

The modified development therefore generates minimal additional impacts on the natural environment and provide the approved redeveloped restaurant the necessary foundations to accommodate tanks to be upsized and also accommodate a pump house.

These works are located within a previously highly modified area. Accordingly, the proposed modifications will be of minimal environmental impact.

Built Environment:

The proposed modifications are expected to have a negligible impact on the built environment, when compared to the approved development.

Social and Economic impacts in the locality:

The social and economic impacts from the proposed modifications are generally expected to be positive by providing larger storage for water, a pump house and building pad with rock retaining walls.

SECTION 4.15(1)(c) – SUITABILITY OF THE SITE

The modified development is considered substantially the same development as it provides a building pad to accommodate larger tanks and a pump house, as part of the overall redevelopment of the restaurant.

The suitability of the site remains substantially the same development as the approved.

SECTION 4.15(1)(d) – SUBMISSIONS

Not Applicable.

SECTION 4.15(1)(e) – THE PUBLIC INTEREST

The above assessment has demonstrated that the proposed modifications satisfy the objectives and relevant clauses prescribed under Precincts Regional SEPP, 2021.

Consequently, the proposed modifications are considered to be within the public interest.

7. Assessment under S.4.55 (1A) of the EP&A Act, 1979

Section 4.55(1A) of the Environmental Planning & Assessment Act 1979 relates to modifications involving minimal environmental impact as addressed below.

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

The proposed modifications will result in minimal environmental impacts when compared to the original approval development which included trenching through the site and installation of water tanks. The ground accommodating the water tanks had been approved to accommodate the tanks and be disturbed and the site was already highly modified prior, due to the Ski Patrol development, high voltage electricity and previous rock retaining walls already constructed.

Accordingly, the proposed modifications will be of minimal environmental impact.

(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

The modified development will comprise of the same development type, location and function, with minor changes to the water tanks, addition of a pump house, components that supplement the approved redeveloped restaurant.

(c) it has notified the application in accordance with:

(i) the regulations, if the regulations so require, or

(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and

(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.

Not applicable.

Subsections (1), (2) and (5) do not apply to such a modification.

Noted.