

Scott McClymont
Property Manager
Kosciuszko Thredbo Pty Ltd
PO Box 92
Thredbo NSW 2625



PJD003483

Dear Scott,

Re: S.96 (1A) Modification to modify the car parking allocation for Units 1 & 6 with an additional parking space at The Peak Apartments, Thredbo

The New Kirk Joint Venture, sublessees of The Peak Apartments in Thredbo have engaged the services of Dabyne Planning Pty Ltd to lodge a S.96 (1A) Modification to Kosciuszko Thredbo Pty Ltd and prepare the associated correspondence on their behalf.

The attached S.96 (1A) Modification relates to the re-allocation of car parking spaces for Units 1 & 6 with an additional parking space at The Peak Apartments.

A S.96 Modification Planning Report has been prepared and provided as Attachment A. Correspondence prepared by James Alexander & Associates is provided in Attachment B along with a Vehicle Parking Management Plan provided in Attachment C with the revised parking layout also attached.

If you have any questions in relation to the above correspondence, please do not hesitate to contact me on the details provided.

Regards

A handwritten signature in black ink, appearing to read "I. Pasalich".

Ivan Pasalich
Principal

1 June 2012



PJD003484

ATTACHMENT A – S.96 MODIFICATION PLANNING REPORT

1. Introduction

Dabyne Planning Pty Ltd has been engaged by New Kirk Joint Venture, sublessees of The Peak Apartments to prepare a S.96 Modification report in relation to modifying the car parking allocation for Units 1 & 6 with an additional parking space at The Peak Apartments, Thredbo.

2. Background

Development Application 16-3-2007 was granted consent by the Department of Planning on the 9 November 2007. This DA was subsequently modified on the 4 March 2009 (72-12-2008).

The development was for the redevelopment of New Kirk Lodge into nine (9) self-contained apartments, which is now referred to as 'The Peak' Apartments.

The development included eight (8) vehicle parking spaces.

As part of the approval, one of the apartments, Unit 6, was designed to be accessible for disabled persons. A vehicle parking space (identified as number 4) was designed and constructed accordingly and allocated to the unit.

The pending sale of Unit 1 (the largest unit within the building) is dependent on the unit having two (2) parking spaces allocated. Given the size of Unit 6, being the smallest unit within the building, the sublessees propose to re-allocate the single parking space from Unit 6 to Unit 1, so as to provide Unit 1 with two (2) parking spaces.

Advice was sought from James Alexander & Associates, Building Consultants (refer to Attachment B) regarding the implications of re-allocating the parking space.

James, in summary advised that as the building is a Class 2 structure, there are no provisions for compliance with D3 of the BCA with regard to access and facilities with people with disabilities and therefore Condition B9 of the consent is not relevant except with respect to the Disability Discrimination Act (DDA).

With regard to the DDA, James advised that 'given the potential exists for a complaint to be made by a person in wheelchair who rents Unit 6 if an accessible car space is not made available, the sub-lease can be varied to allow the parking space re-allocation, conditional to the accessible car space being available for use by a person in a wheelchair who rents Unit 6 on a short term basis, and appropriate signage is installed to suit'.

This proposal was discussed with Daniel James, Team Leader with the Department of Planning and Infrastructure who suggested that rather than make one of the Unit 1 parking spaces available for persons with a disability who rents Unit 6, which would require a vehicle to be removed (if parked in that space) and therefore would unlikely to be supported, it would be preferable to provide an additional parking space in a stacked arrangement for persons with a disability who rent Unit 6, with a Management Plan to be prepared and implemented to manage the stacked parking arrangement.

Although this was not the preferred outcome on behalf of the sublessees, the proposed Modification has nonetheless been prepared on this basis.

3. Justification for Modification

The proposed Modification seeks to add an additional parking space to the existing eight (8) parking spaces for the development.

The additional parking space is only to be utilised by persons with a disability who rent Unit 6, otherwise the space is to be left vacant.

By adding an additional parking space, this still allows for the sublessees to sell Unit 1 with two (2) parking spaces and also have an allocated parking space for people with a disability who rent Unit 6.

Given that a vehicle parked in the proposed additional parking space will obstruct parked vehicles associated with Units 1,4 & 5 a Vehicle Parking Management Plan has been prepared to address this situation. The Management Plan, provided in Attachment C sets out the protocols for when a vehicle is to be parked in the subject space.

On this basis, this still provides reasonable and equitable provision of a parking space for persons with a disability who occupy Unit 6, without impeding the parking of vehicles associated with the other apartments, particularly as the use of the apartments is for tourist accommodation where most guests walk or use the village shuttle service for transportation while staying within the Village.

4. Assessment under S.96 (1A) of the EP&A Act, 1979

Section 96(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 addition of a further parking space to be used by persons with a disability in accordance with the Vehicle Parking Management Plan provided will result in no physical works (excepts for signage and line marking) and therefore is considered 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 addition of a further parking space to be used by persons with a disability in accordance with the Vehicle Parking Management Plan will not radically transform the development and will result in substantially the same development, being the redevelopment of a lodge to nine (9) self contained apartments.

(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.

ATTACHMENT B - Correspondence from James Alexander & Associates



PJD003485

Scott McClymont
Koscuiszko Thredbo P/L
PO Box 92
THREDBO NSW 2625

Dear Scott

PEAK APARTMENTS, THREDBO – APARTMENT ONE & SIX - CARPARKING ALLOCATION

The owners of the above apartments have asked me to investigate the option of re-allocating the accessible car parking space dedicated to Peak Apartment Six to Peak Apartment 1, as part of the sale of Apartment 1. In doing this I have considered the original conditions of development consent, the Building Code of Australia and any other relevant legislation.

Development Consent 16-3-2007 issued by Dept of Planning on 9 November 2007.

Condition B9

Access and facilities for people with disabilities shall be provided in accordance with Part D3 of the BCA's Access Policy and the Disability Discrimination Act. Prior to the issue of the Construction Certificate, a certificate certifying compliance with this condition from an appropriately qualified person shall be provided to the certifying authority.

The building was classified at the issue of the Construction certificate by Nathan Halstead Certifier as a class 2 residential flat building. Under the Building Code of Australia 2007, Part D3 did not apply to class 2 residential flat buildings therefore Condition D9 has no relevance except with respect to the Disability Discrimination Act.

The reason one of the units was required to be accessible and an accessible car space provided was due to a request from the Dept of Planning at the time of pre DA discussions. It is my understanding that the developer complied with this request, not as a result of a legislative requirement, rather as a means to satisfy the Dept and have the Development Application approved as quickly as possible. The development has been completed and a Final Occupation certificate issued. The only conditions of consent which now have any bearing on the development are those listed under Part F Post Occupation. None of which have any relevance to disable access.

Requirement for a new Development Application

The re-allocation of the car parking space requires a variation of the sub-lease. Varying sub-leases is between Kosciuszko Thredbo P/L (head lessee) and the sub-lessee and unless it involves development works which are not exempt under SEPP Kosciuszko National Park - Alpine Resorts 2007, sub-lease variations do not require development consent.

Disability Discrimination Act

The Dept of Planning requested that one unit be constructed as an accessible unit. People in wheelchairs visit Thredbo every year and given the units were ultimately for tourist accommodation it was believed by the Dept of Planning, to be in the public interest to make one unit accessible and provide one accessible car space for that unit. Whilst not causing a contravention of the Building Code of Australia or a condition of Development consent the re-allocation of the car space to unit 1 which is not accessible may give rise to a complaint made to the Human Rights and Equal opportunity Commission under the Disability and Discrimination Act. For this reason, it is considered that in the event that Unit 6 is rented by a person in a wheelchair that the accessible car space originally allocated to this unit is to be made available. It is understood the prospective purchaser of unit 1 is accepting of this situation as a condition of the variation of the sub-lease.

James Alexander & Associates Pty Ltd ACN 112 996 942

BCA CONSULTING | FIRE SAFETY ENGINEERING | CERTIFICATION

PO Box 169, Jindabyne NSW 2627, Phone: 02 6457 1420, Fax: 02 6457 2104, Mobile: 0427 571 420

info@jamesalexander.com.au www.jamesalexander.com.au

In order to ensure that in such a circumstance that the person in the wheelchair staying in unit 6 is given access to the accessible car space a sign is to be erected on the wall in front of the car space stating.

Please contact Management on 1300 799 130 for use of this car space for wheelchair accessible purposes.

Conclusion

There is no legislative requirement to allocate Apartment Six an accessible car parking space or apply for development consent to vary the sub-lease arrangement pertaining to car parking space allocations. Minor potential, however exists for a complaint to be made by a person in a wheelchair who rents Apartment Six if an accessible car space is not made available. On this basis it is my opinion that the sub-lease can be varied to allow the parking space re-allocation, conditional to the accessible car-space being available for use by a person in a wheelchair who rents unit 6 on a short term basis, and appropriate signage is installed to suit.

Your Faithfully



James Alexander
MAIBS, B.App.Sci.(Build), Grad. Dip. DR,
Grad Dip BS, Grad Dip Fire Engineering
Nationally Accredited Certifier & Building
Surveyor & Fire Engineer

ATTACHMENT C – Vehicle Parking Management Plan & Amended Parking Plan



PJD003486

Vehicle Parking Management Plan for People with Disabilities

The Peak Apartments, Thredbo

May 2012

Preamble

An additional parking space is proposed in the secure car park at The Peak Thredbo.

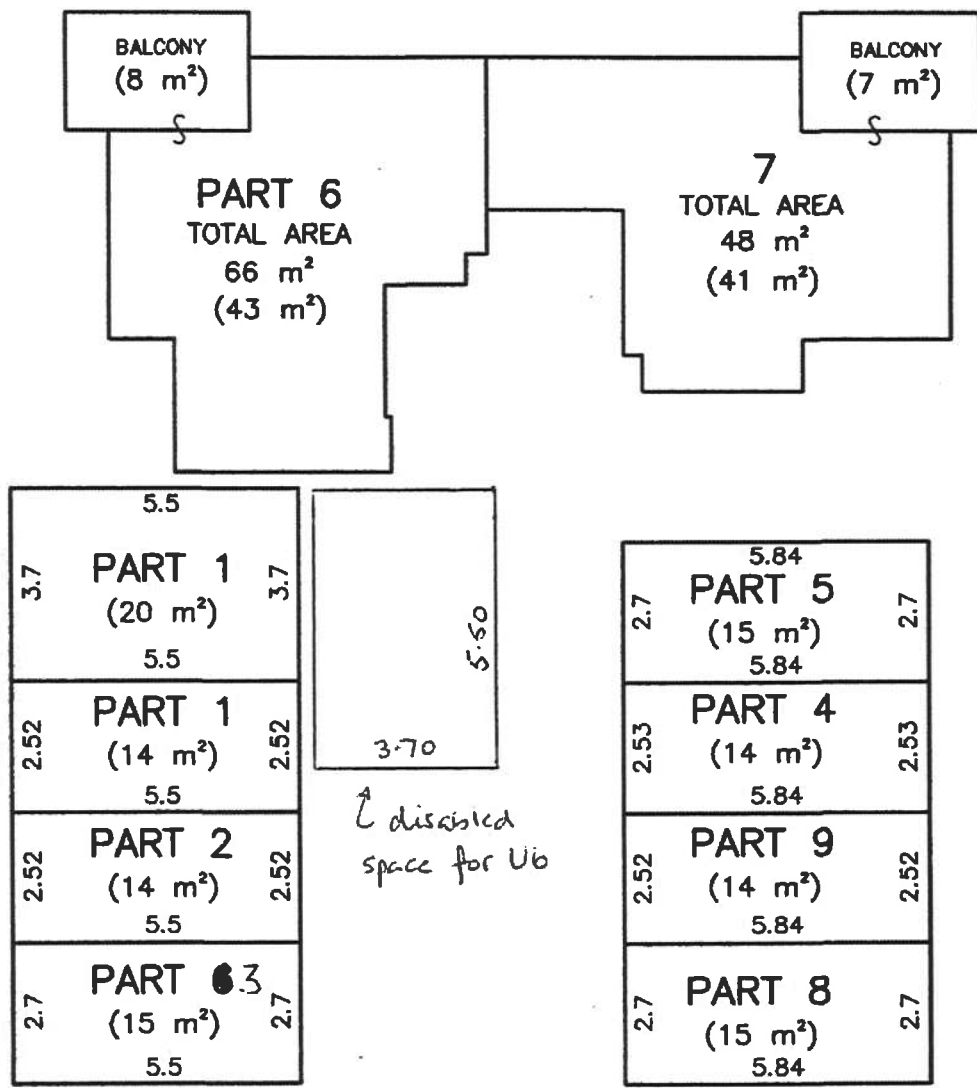
The sole purpose of the additional parking space is to accommodate a vehicle associated with a person/s with a disability occupying unit 6 which has facilities for persons with a disability. Otherwise the space is to be left empty.

The proposed position of the space is marked on the attached plan and would be demarcated with yellow dotted line on the floor of the car park and marked as disabled.

On the occasions it is used, the vehicle will block the entry and exit of cars into spaces 4, 5 and the two spaces allocated to unit 1, hence the need for a management plan.

Plan

- 1) Mountain High Real Estate (MHRE) currently manages units in the building under the name of Visit Snowy Mountains (VSM) and will manage the Vehicle Parking Management Plan.
- 2) In the event that a parking space is required by a person/s with a disability whilst staying in unit 6, the letting agent, being either VSM or The Peak Thredbo Pty Ltd will notify MHRE.
- 3) On arrival, and after parking in the noted space, the keys to the vehicle will be lodged with MHRE. Contact numbers of all parties will be recorded.
- 4) If the owner of any of the other vehicles is obstructed by the subject parked vehicle associated with Unit 6, the owners will contact MHRE via the office or an after-hours number, for a representative of MHRE in Thredbo to come move the vehicle directly and replace when the obstructed vehicle has been moved.
- 5) Clear instructions of this Vehicle Management Plan will be displayed in the car park and all apartments and communicated to guests at the time of bookings.



BALCONIES ARE LIMITED IN HEIGHT TO 3 ABOVE THE UPPER SURFACE OF THE METAL OR PAVED FLOOR EXCEPT WHERE COVERED.

LEVEL 4

FLOOR PLAN

Surveyor: PETER W. BURNS	Registered	
Surveyor's Ref: 4139/2		
Subdivision No:		
Lengths are in metres. Reduction Ratio 1:150		

NOTE: AREAS ARE APPROXIMATE

