



NSW GOVERNMENT
Department of Planning

PLANNING ASSESSMENT REPORT
MOD 72-12-2008
Section 96(1A) Application to Modify Development
Consent No. DA 16-3-2007 at New Kirk Lodge,
Thredbo.
Proposed by Kosciuszko Thredbo Pty Ltd.

Planning Assessment Report
Part 4 of the
Environmental Planning and Assessment Act 1979

March 2009

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1. EXECUTIVE SUMMARY

This report is an assessment of Section 96(1A) Modification Application No. MOD 72-12-2008 under *State Environmental Planning Policy (Kosciuszko National Park – Alpine Resorts) 2007* submitted by Kosciuszko Thredbo Pty Ltd. The application seeks to modify DA 16-3-2007 that approved the redevelopment of an existing building (partially demolished) to form 9 apartments at New Kirk Lodge, Thredbo. The modifications comprise minor internal and external changes.

The building is currently under construction and nearing completion. The proposed changes improve buildability, improve amenity and make efficient use of spaces within the apartments. Furthermore, some of the proposed changes are necessary to ensure compliance with the Building Code of Australia.

From a visual perspective it is only the external changes that are noticeable. The external changes do not increase the bulk or scale of the building. The external changes assist the building in blending with the natural environment.

On 15 December 2008, the MOD was lodged with the Department in accordance with the *Environmental Planning and Assessment Act 1979*. Under the provisions of the *State Environmental Planning Policy (Kosciuszko National Park – Alpine Resorts) 2007*, the Minister for Planning is the Consent Authority.

The modification application was notified to surrounding sub lessees and no submissions were received

The application has been assessed in accordance with the provisions of the *Alpine SEPP* and the matters for consideration under section 79C(1) and section 96(1A) of the *Environmental Planning and Assessment Act, 1979*. Assessment of the application indicates that the proposed development accords with the relevant planning instruments and would not result in any significant environmental impact. The proposed modifications are substantially the same development and are of minimal environmental impact. Accordingly, the application is recommended for approval subject to conditions (**Refer to Schedule 2 – Conditions of Consent**).

2. BACKGROUND

2.1. Site Context

The subject site, Lot 801 (previously Lot 53) known as 'New Kirk Lodge' is located on Bobuck Lane within Thredbo Alpine Village. The site is adjoined by 'Christiania Lodge' to the west and 'Sonnblick Lodge' to the east. The site has an area of approximately 735 sqm with a frontage to Bobuck Lane of approximately 25 metres wide and a depth of approximately 29 metres. The site falls steeply from road to back with levels varying from 1393 metres to 1376 metres. A new building is currently under construction at the site and is nearing completion. The site has a north-westerly aspect with excellent views of the Ramshead Range and the Thredbo ski runs. Vegetation at the site is predominantly disturbed.

3. THE PROPOSED MODIFICATIONS

This section 96 (1A) application proposes to amend the original application in the following manner:

3.1 Original Application

The original application granted consent for the redevelopment of an existing building (that had been partially demolished) to form 9 apartments. The new 6 level ski lodge provides self-contained accommodation with a total of 33 beds split over the 9 apartments.

3.2 Modification Application

The proposed modifications comprise minor internal and external change to the building that is currently under construction and nearing completion. The modifications to the original consent are described as follows:

- *Floor plan changes (internal)*

Plan No	Floor Level	Proposed Changes
A03	1	Sliding door to patio not inward opening exit door
		Sliding door to terrace
		Addition of a bar between living and dining
		Changed bathroom opposite bed 3
		Need to detail the extent of the mezzanine area above bed 3 and bath etc
		Additional steps and level changes above foyer at entry to home theatre/mezzanine
		Storage cupboard in home theatre
		Changed Ens off bed 1
		No inward opening exit door off bed 2
		U2 bed 1 – Sliding door to balc not inward opening exit door
A03	2	U3 kitchen changed
		U3 bed 1 – Sliding door not inward opening exit door
		General – line of south-east wall
A04	3	U4 – steps adjacent to kitchen
		U4 bed 1 – Sliding door to balc not inward opening exit door
		U5 – steps adjacent to kitchen
		U5 bed 1 – Sliding door not inward opening exit door
		U5 kitchen changed
A04	4	General – line of south-east wall
		U6 changed kitchen and Ldy
		U7 changed Ens
		Car park – storage cupboard introduced on south-east wall?
A05	5	Car park – exit door shown on different side of roller door when compared to elevations
		U8 entry, drying and kitchen changed
A05	6	U9 entry, drying and kitchen changed
		U8 Ens changed and linen off loft
		U9 Ens changed and linen off loft

- *Elevation changes (external)*

Plan No	Elevation Plan	Proposed Changes
A06	North-east elevation	No door on level 1
		Sliding doors on level 3 & 4
		Increase in stonework finish on the upper levels
		Balustrade on level 1
		Balustrade on level 1
	South-west elevation	New external door added to level 2
		Increase in the amount of 'Alucobond' on the upper levels
		Balustrade material changes
	South-east elevation	Car park – exit door shown on different side of roller door when compared to floor plan
		A light-well had been added
Variation in type of stonework finish on RHS		
North-west elevation	Skylights/glazing have changed on the top level	
	No balustrades shown on the bottom level	

4. STATUTORY FRAMEWORK

4.1. Statement of Permissibility

The subject site is within Thredbo Alpine Resort in the Kosciuszko National Park. The proposal is permissible with consent under the provisions of the Alpine SEPP.

4.2. Instrument of Consent

The Alpine SEPP is the relevant instrument of consent. The proposal complies with the Alpine SEPP.

4.3. Other statutory provisions

Other Plans and Policies apply as follows:

- Department of Planning Geotechnical Policy – Kosciuszko Alpine Resorts.

An assessment of the proposal against the provisions of the Environmental Planning Instruments is outlined in section 6 of this report.

5. CONSULTATION

5.1 Public consultation

The modification application was notified to surrounding sub lessees and no submissions were received

5.2 Referrals

5.2.1 Integrated Approval Bodies

The original application was integrated under Section 91 of the Environmental Planning and Assessment Act 1979 with the NSW Rural Fire Service given that tourist accommodation is a special fire protection purpose. The proposed modifications are consistent with the Bushfire Safety Authority issued by the NSW Rural Fire Service on 13 August 2007.

5.2.2 National Parks & Wildlife Service (per cl.17 of the Alpine SEPP).

The modification application was not referred to NPWS as the modifications are considered to result in substantially the same development and are considered to have no detrimental impact on the locality or on any issues pertaining to, Leasing, Aboriginal or Cultural Heritage, Fauna & Flora, or Public Health. These matters were considered in the referral of the original application.

6. CONSIDERATION

6.1 Section 79C 'Matters for Consideration' of the Environmental Planning & Assessment Act, 1979

In determining a modification application, a consent authority must take into consideration such of the matters referred to in section 79C(1) of the *EP&A Act 1979* as are of relevance to the development. In accordance with this provision, the following matters are required to be assessed:

- (a) **Section 79C (1) (a) – Environmental Planning Instruments, Development Control Plans etc**

The environmental planning instruments, draft environmental planning instruments, development control plans and the *Regulations* applicable to the land to which the modification

application relates, as outlined in Section 4 of this Report, are assessed in relation to this proposal in sections 6.4, 6.5, 6.6 & 6.7 of this report. It is considered that the proposed modifications are consistent with the provisions of these instruments.

(b) **Section 79C (1) (b) – the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality**

The matters generally considered within the provisions of section 79C(1)(b) concerning the 'likely impacts of that development' are considered in section 6.8. The proposed modification is considered to be substantially the same development and of minimal environmental impact. In summary, the **Environmental impacts on natural & built environments** are considered acceptable with appropriate conditions to mitigate the potential adverse impacts and the **Social and Economic impacts in the locality** are also considered acceptable.

(c) **Section 79C (1) (c) – Suitability of the Site**

The proposed modifications are considered suitable for the subject site and are consistent with the objectives of the Alpine SEPP. The proposed modification is considered to be substantially the same development and of minimal environmental impact. The proposed changes improve buildability, improve amenity and make efficient use of spaces within the apartments. Furthermore, some of the proposed changes are necessary to ensure compliance with the Building Code of Australia. The modifications would not involve the removal of any additional intact native vegetation. The scenic quality of the locality would not be compromised as a result of the modifications. There are no off site impact or impacts to adjoining properties.

(d) **Section 79C (1) (d) – Submissions**

The modification application was notified to surrounding sub lessees and no submissions were received

(e) **Section 79C (1) (e) – Public Interest**

The proposed modifications are considered to be consistent with the aims and objectives of the Alpine SEPP and the public interest is not compromised by the proposal subject to the conditions of consent.

6.2 **Section 96(1A) 'Modifications involving minimal environmental impact' of the Environmental Planning & Assessment Act, 1979**

Section 96 (1A) of the *Environmental Planning and Assessment Act 1979* allows the consent authority to modify an approval subject to the following matters being taken into consideration:

(a) **Section 96(1A) (a) – it is satisfied that the proposed modification is of minimal environmental impact;**

The proposed modifications are considered to be of minimal environmental impact. A detailed assessment is contained in sections 6.3 of this report.

(b) **Section 96 (1A) (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;**

The proposed modifications are deemed minor and will result in substantially the same development as originally approved. A detailed assessment is contained in sections 6.3 of this report.

(c) **Section 96(1A) (c) – it has notified the application in accordance with:**

(i) **the regulation, if the regulations so require;**

The modification application was notified to surrounding sub lessees and no submissions were received.

(d) **Section 96(1A) (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.**

The modification application was notified to surrounding sub lessees and no submissions were received.

6.3 Assessment of Proposed Modifications

In considering whether the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted, the Department has compared the key features and environmental impacts of the original development with those of the development as proposed.

Case law has identified that 'substantially' when used in Section 96 means essentially or materially or having the same essences. Furthermore, it has been identified that the comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified but rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted).

The building is currently under construction and nearing completion. The proposed changes improve buildability, improve amenity and make efficient use of spaces within the apartments. Furthermore, some of the proposed changes are necessary to ensure compliance with the Building Code of Australia.

From a visual perspective it is only the external changes that are noticeable. The external changes do not increase the bulk or scale of the building. The external changes assist the building in blending with the natural environment. The increase in stonework and 'alucobond' on the upper level of the building is compatible with the external materials of other building in the locality. These external material changes are a result of an architectural review by Kosciuszko Thredbo Pty Ltd architect.

Other minor external changes include different balustrade materials and additional privacy screens. These changes improve the amenity of the apartment and increase privacy between the apartments.

From the comparison, it can be seen that the end result of the development does not change and it is only a minor internal and external changes to the building that are considered cosmetic or have come about due to being more efficient and cost effective during construction. The Department believes that the changes do not radically transform the development and the important features of the development as proposed remain essentially the same.

Having regard to the matters set out above, 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 and furthermore, is of minimal environmental impact. In this regard, the Minister may determine the application under section 96(1A) of the EP&A Act.

6.4 Assessment of specific Alpine SEPP clauses:

The application has been assessed in accordance with the relevant provisions of the Alpine SEPP and is considered to be consistent with this environmental planning instrument.

The proposed modification, like the original application, is consistent with the aims and objectives stated in clause 2 and the use of land as a 'tourist accommodation' building is permissible with consent under the provisions of clause 11.

The original application was assessed in accordance with the matters for consideration stated in clause 14. The proposed modifications are considered to be substantially the same development and of minimal environmental impact. No new clause 14 considerations arise from the proposed modifications.

In terms of clause 15, the proposed modifications do not seek to change the height or setbacks of the original consent and do not seek to reduce any landscaping that was approved in the original consent.

6.5 The provision of any draft environmental planning instruments

There are no draft environmental planning instruments that apply to the land.

6.6 The provision of any development control plans

No development control plans apply to the Thredbo Alpine Resort and therefore the subject site.

6.7 The provision of any matters prescribed in the regulations

The modification application has not been assessed in accordance with clause 94 of the *Environmental Planning & Assessment Regulations 2000*. The modification application is considered to be substantially the same development as the original application which was assessed under this clause and hence no new assessment is required.

6.8 Other matters to be considered

The other matters were considered at the time of the assessment of the original application. The proposed modification is considered to be substantially the same development and of minimal environmental impact. In this regard no further assessment is required.

7. CONCLUSION

This application has been assessed pursuant to Section 96(1A) of the *Environmental Planning and Assessment Act, 1979* and *State Environmental Planning Policy (Kosciuszko National Park – Alpine Resorts) 2007*. The proposal is substantially the same development as originally approved by the Department and the modifications will not result in any unreasonable impacts on the amenity of the locality or any increase in environmental impact. The modification application was notified to surrounding sub lessees and no submissions were received. On balance, it is considered that the proposed modifications are acceptable, subject to the conditions of consent and is recommended for approval.

8. DELEGATIONS


It is considered that Michael Woodland, Director, Urban Assessments has the delegation to exercise the function as a consent authority as provided by the Minister for Planning, pursuant to section 23 of the *Environmental Planning and Assessment Act*. This exercise of delegations is considered to be appropriate in accordance with the adopted delegation guidelines, dated 9 July, 2008.

9. RECOMMENDATION


It is recommended that Michael Woodland, Director, Urban Assessments as delegate for the Minister for Planning under Instrument of Delegation dated 9 July 2008, determine the Section 96(1A) Application pursuant to the *Environmental Planning and Assessment Act 1979*, by:

- (i) Granting the modification application No. MOD 72-12-2008 subject to the conditions of consent (**refer to Schedule 2**);
- (ii) Sign and date the Notice of Determination for MOD 72-12-2008 (**refer to Notice of Determination**);

Prepared by:


27/2/2009.
Daniel James
Acting Team leader
Urban Assessments
(Alpine Resorts Team)

Approved by:


4/3/2009
Michael Woodland
Director
Urban Assessments

Determined as Delegate of the Minister for Planning