



Melaleuca 1, Thredbo Village Modification

Modification Application Assessment (MOD 10108 (DA 9373 MOD 1))

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Cover image: Main Range, Kosciuszko National Park (Source: Alpine Resorts Team)

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Glossary

Abbreviation	Definition
BCA	Building Code of Australia
BC Act	<i>Biodiversity Conservation Act 2016</i>
BC Regulation	<i>Biodiversity Conservation Regulation 2017</i>
BVM	Biodiversity Values Map
Consent	Development Consent
Department	Department of Planning, Industry and Environment
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	<i>Environmental Planning and Assessment Regulation 2000</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 & Wildlife Service
Planning Secretary	Secretary of the Department of Planning, Industry and Environment
SEPP	State Environmental Planning Policy

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1 Introduction

1.1 Preamble

This report provides the NSW Department of Planning, Industry and Environment's (the Department's) assessment of an application to modify the development consent (DA 9373) for additions and alterations to Melaleuca 1, Diggings Terrace, Thredbo Village, Thredbo Alpine Resort within KNP (**Figure 1**).

The application has been lodged by John Moran (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:

- extension of an existing deck and privacy screen on Level 2
- installation of external stairs to access the basement level
- installation of a roof structure to cover proposed external stairs
- retention of stone cladding and relocation of entry door to basement level
- installation of metal cladding to screen basement undercroft area



Figure 1 | Melaleuca 1 in context of Thredbo Village (Source: SIX Maps 2020)

1.2 Background

The subject site is Lot 774 DP 1119757 on Diggings Terrace in the Thredbo Village. The site is occupied by an existing three to four storey tourist accommodation building known as Melaleuca 1. Melaleuca 1 is attached to another building of same dimensions to the north-east known as Melaleuca 2. Melaleuca 3 is located further to the north-east.

The site is licensed for four beds and is located on the northern side of Diggings Terrace. The site has an area of approximately 173 m² and adjoins other tourist accommodation premises, including the Omaru Apartments to the north and below the site; the Dulmison Ski Club and Aspect Alpine Chalets to the south-west; and vacant land to the south of the site across Diggings Terrace.

The site is mostly disturbed with exotic grasses, native heath and Eucalypts. Two parking spaces for guests are provided off Diggings Terrace. The site slopes down from Diggings Terrace to the Omaru Apartments to the north.

1.3 Approval History

On 23 August 2018, the Acting Team Leader, Alpine Resorts Team, as delegate of the then Minister for Planning, granted consent to a Development Application (DA 9373) for alterations and additions to the existing tourist accommodation building. The consent approved the following works (**Figure 2**):

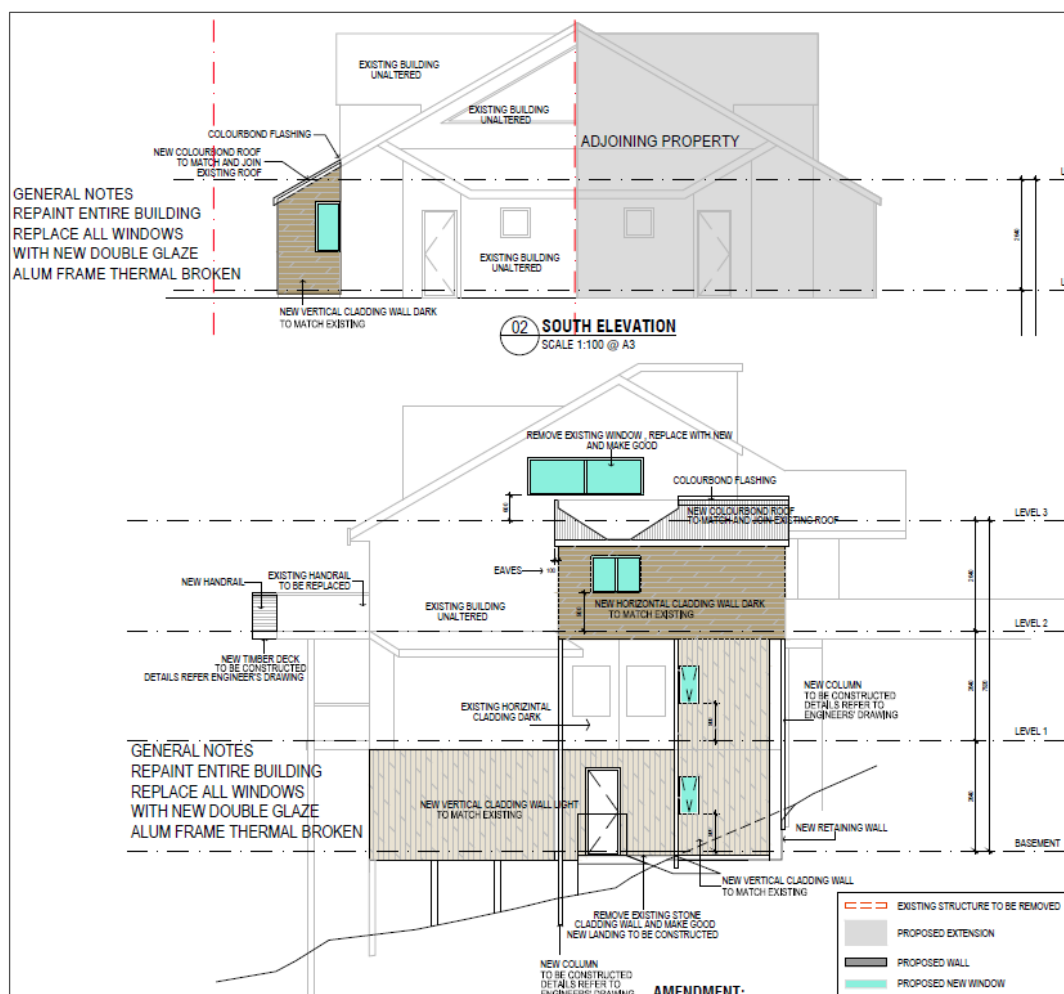


Figure 2 | Approved development (Source: Applicant's approved documentation)

- construction of a new basement level (suspended timber floor) with rumpus room, multipurpose service room, steam / sauna room and adjoining bathroom. An existing stone cladding wall would be removed to make way for a new external door / landing and a new internal stair to connect to Level 1
- extension of the Level 1 floor area (towards Diggings Terrace) within the sub-floor to include a ski tune area, storage and workshop, laundry and WC; reconstruction of the existing internal stairs to provide sufficient headroom; and refurbishment of the existing balcony
- extension of the Level 2 floor area towards the west to enlarge the kitchen and provide additional drying space; replacement of the existing windows / sliding door off the lounge area; refurbishment of the existing balcony with new handrails and extension by 600 mm; and replacement of the existing fireplace
- extension of the Level 3 floor area to incorporate an enlarged wardrobe and bedroom area;
- repainting of the entire building and replacement of all windows with double glazed aluminium frame (thermal broken)
- removal of one small Eucalypt tree and trimming of another (due to overhanging) on the southern elevation to enable the proposed works

Construction of the approved works commenced in November 2019.

In early February 2020, Department officers became aware that works were occurring at the site in the basement location that were not in accordance with the development consent and were inconsistent with the construction certificate issued by James Alexander and Associates (**Figure 3**).



Figure 3 | Construction works during February 2020 (Source: Department inspection)

On 14 February 2020, the Department’s Director Compliance issued a stop work order to ensure that works in the basement cease until the matter could be properly investigated.

Given that the works in the basement area related to excavation, filling, supporting foundations and retaining structures the Department deemed it necessary to engage GHD to undertake a geotechnical review. On 20 February 2020, the Department received a report from GHD outlining a range of matters that required further investigation and engineers design of remedial measures.

The Department’s Compliance Team and Alpine Resorts Team worked closely with the lessee to ensure that the site was made safe while the further investigation and design was occurring. The remedial works were unable to occur during the Winter 2020 ski season, therefore additional site monitoring measures were implemented including inspections after snow and rain events.

On 29 September 2020, the Department’s Director Compliance issued a structural alterations and repair order to facilitate the works in the basement. Once the order works are completed the rest of the works associated with DA 9373 and this MOD will be able to be undertaken.

Figure 4 below illustrates the extent of the current building works that have occurred to the remainder of the building, above the basement level, as a comparison to **Figure 3** above.



Figure 4 | Construction works September 2020, which illustrates external and basement level works carried out, with basement area uncompleted due to compliance action (Source: Department inspection)

2 Proposed Modification

On 4 December 2019, the Applicant lodged a modification application (MOD 10108 (DA 9373 MOD 1)) seeking approval, under section 4.55(1A) of the EP&A Act, to modify the development consent incorporating external alterations to the above development.

Additional amendments were also incorporated into the application when noting the compliance matters referred to in **Section 1.3** and addition of an extension to the privacy screen on Level 2.

The final amendments proposed by the Application are as follows (**Figure 5** and **6**):

- extension of an existing deck and privacy screen on Level 2
- installation of external stairs to access the basement level
- retention of stone cladding and relocation of entry door to basement level
- installation of a roof structure to cover proposed external stairs
- installation of metal cladding to screen basement undercroft area

There would be no increase in the bed capacity of the building due to the proposed modifications.



Figure 5 | Proposed external works (Source: Applicant's documentation)

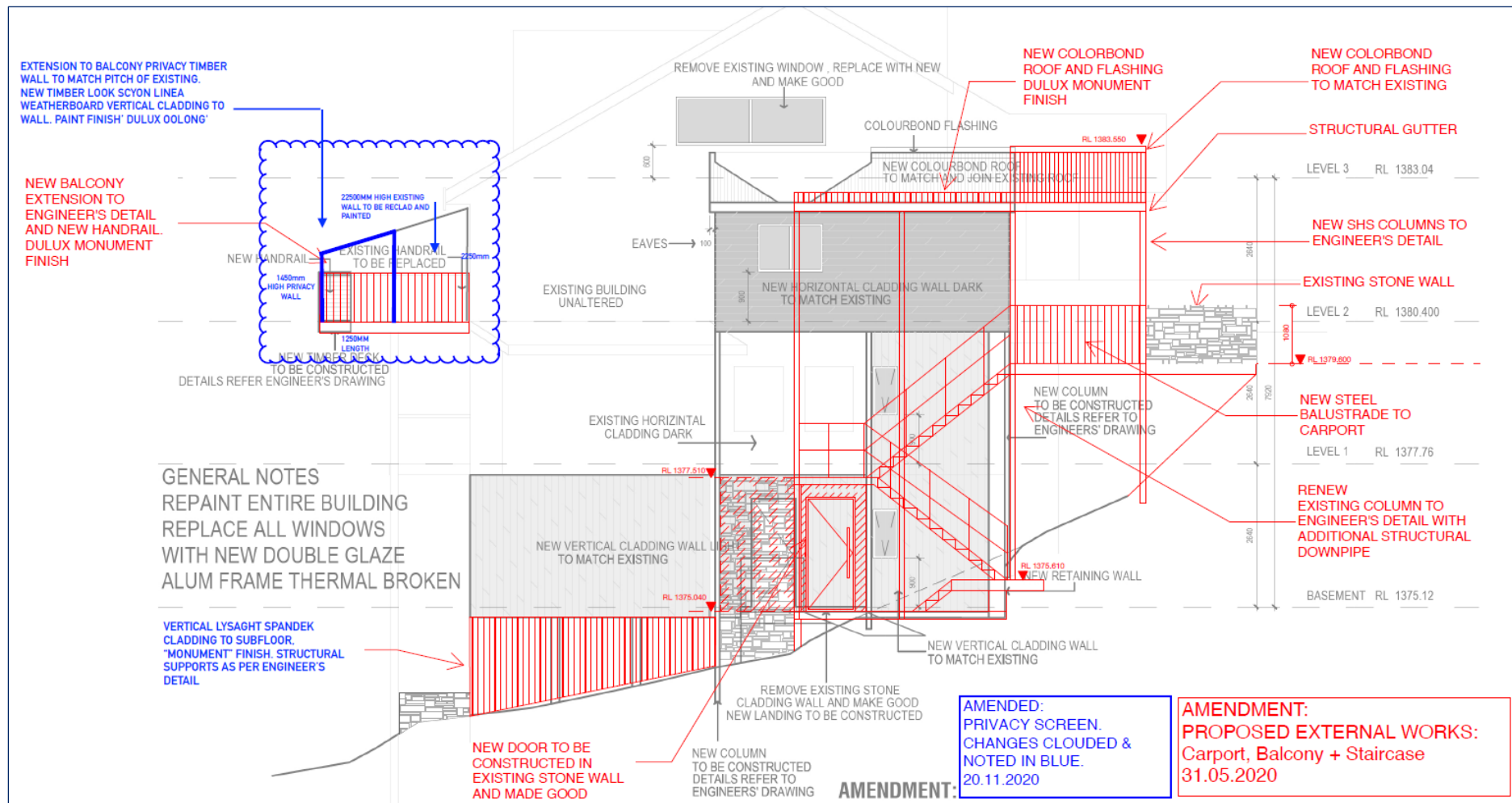


Figure 6 | Proposed external works (Source: Applicant's documentation)

3 Strategic Context

The Snowy Mountains region offers a diverse and unique mix of visitor destinations including the KNP, the alpine resorts, the iconic Snowy River and the highest mountains on the Australian continent. A strong tourism economy is driven mainly by skiing and related winter sport experiences during the peak winter season. The region, including the alpine resorts, also provides opportunities for a range of other recreational activities during the warmer months such as hiking, fishing, kayaking and mountain-biking. The resorts are important to NSW due to their economic and social contribution as well as their location within a unique alpine environment. The two main documents that support the strategic context of the alpine resorts are the South East and Tableland Regional Plan 2036 and the Alpine SEPP.

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 proposal maintains the existing use of the site for tourist accommodation, with the modifications not impacting the functionality of the approved the building, which supports visitation to the NSW ski resorts.

Alpine SEPP

The Alpine SEPP governs development on land within the ski resort areas of KNP. The SEPP aims to protect the natural and cultural heritage of land within the resorts and to encourage environmentally sustainable development. Under the provisions of the Alpine SEPP, the 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 broad range of values found in the park.

The Department considers the proposal continues to be consistent with the Alpine SEPP as the proposal incorporates works to an existing building while satisfying the principles of ecologically sustainable development and having no adverse impacts on the environment, other than what was originally supported.

4 Statutory context

4.1 Scope of modifications

Section 4.55(1A) of the EP&A Act provides that 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 Environmental Planning and Assessment Regulations 2000 (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 impact</i>	<p>Section 6 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.</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 proposed external works compliment the original consent and 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>The Department publicly exhibited the modification application for a minimum of 14 days to nearby lodges (refer to Section 5 of this report) in accordance with the Department's Community Participation Plan, November 2019.</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 5 and 6 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 grant 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 are acceptable. The Department's assessment in **Section 6** concludes that the impacts are acceptable and do not negatively impact 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.

4.2 Consent authority

The original application was determined under the delegation of then Minister for Planning, therefore the Minister (now known as the Minister for Planning and Public Spaces) remains as the consent authority for any subsequent applications to modify the consent.

In accordance with the Minister's delegation of 9 March 2020, the Team Leader, Alpine Resorts Team, may determine the application as:

- no reportable political donation has been disclosed
- there are less than 25 public submissions in the nature of objections
- the application is in relation to land which the Alpine SEPP applies

4.3 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 9373. 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

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 the amended proposal does not increase the amount of vegetation to be cleared to facilitate the construction of the works, the site is not mapped on the BVM, the proposal would not significantly effect threatened species or ecological communities, or their habitats and there is currently no declared area of outstanding biodiversity value within Kosciuszko National Park.

The proposed modifications are therefore not considered to trigger any of the BOS requirements.

Environmental Planning Instruments

The Alpine SEPP is the only relevant EPI that applies to this application.

An assessment of compliance with the Alpine SEPP was undertaken in the determination of the original application (DA 9373). The Department has considered the modification application against the provisions of the Alpine SEPP and is satisfied the modification proposal continues to be consistent with this EPI.

5 Engagement

5.1 Department's engagement

The Department's Community Participation Plan, November 2019, prepared in accordance with schedule 1 of the EP&A Act requires applications of development consent to be exhibited for a period of 14 days. However, applications under the Alpine 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 50 metres away from a tourist accommodation building.

Due to modification works including external alterations to an existing tourist accommodation building within 50 metres of other tourist accommodation buildings, the Department exhibited the original modification application from 16 December 2019 until 31 January 2020 on the Department's website.

The application was forwarded to the NSW Rural Fire Service (RFS) pursuant to Section 4.46 of the EP&A Act (integrated development) as a Bushfire Safety Authority under the Rural Fires Act 1997 is required for the development to be carried out and the National Parks and Wildlife Service (NPWS) pursuant to clause 17 of the Alpine SEPP.

Following the exhibition of the application, the Department placed copies of all submissions received on its website and forwarded these to the Applicant.

5.2 Summary of submissions

The Department received submissions from the RFS and the NPWS. No public submissions were received.

5.3 Summary of submissions

The RFS did not object to the proposal, subject to compliance with the previous Bush Fire Safety Authority (BFSA) under clause 100B of the *Rural Fires Act 1997* issued on 17 June 2018 for the original application (DA 9373).

The NPWS did not object to the proposal and commented that the development does not trigger the BOS and is not likely to significantly affect threatened species, the Aboriginal Cultural Heritage Assessment has followed a suitable process and due diligence. No additional concerns were raised with heritage, municipal services and stormwater.

5.4 Amended plans

The Applicant amended the plans during the assessment of the modification - altered roof structure over the stairs, cladding to the basement level undercroft area and an extension of the privacy screen on Level 2 between Melaleuca 1 and 2 (noting this has been approved at Melaleuca 2).

Noting the extent of the amendments, the Department did not re-exhibit the modification application however placed the amended plans on the Department's website. The amended plans were referred to the RFS who did not object to the proposal, subject to compliance with the original BFSA.

The Department has considered the comments received from the RFS and the NPWS in **Section 6**.

6 Assessment

In assessing the merits of the proposed modification, the Department has considered the:

- previous Environmental Assessment Report for the proposal
- the modification application and existing conditions of consent
- submissions from government agencies
- matters for consideration under Section 4.15(1) of the EP&A Act

The Department considers the key assessment issues associated with the modification application are:

6.1 Design changes

The key external changes include works to the southern elevation and comprise the installation of an external staircase from the existing street level to the new basement level. Associated within the external staircase is an extension of the roofline to provide a covered walking area (**Figure 7**).

The new roof line extension considers the existing roof pitch before levelling off to supports on the existing cantilevered platform provided off Diggings Terrace and the new stair structure.



Figure 7 | Proposed external works along Diggings Terrace (Source: Applicant's documentation)

The existing platform is currently utilised by the occupant as a second car parking space, however the parking space was not endorsed by NPWS during the original assessment of the application and is not capable of meeting car parking requirements (widths and lengths) due to the existing rock balustrade and walls of the existing building. The provision of a roof over part of this platform is supported to provide additional shelter for the occupants only.

The other external changes are considered to be minor in nature, in terms of their impact upon the external appearance of the building from other adjoining properties, when compared to the other modifications. These include:

- The extension of the existing deck and privacy screen off Level 2 (**Figure 8**) and the alteration to the entry area to the basement level utilise existing structures without significantly altering the appearance of the building.

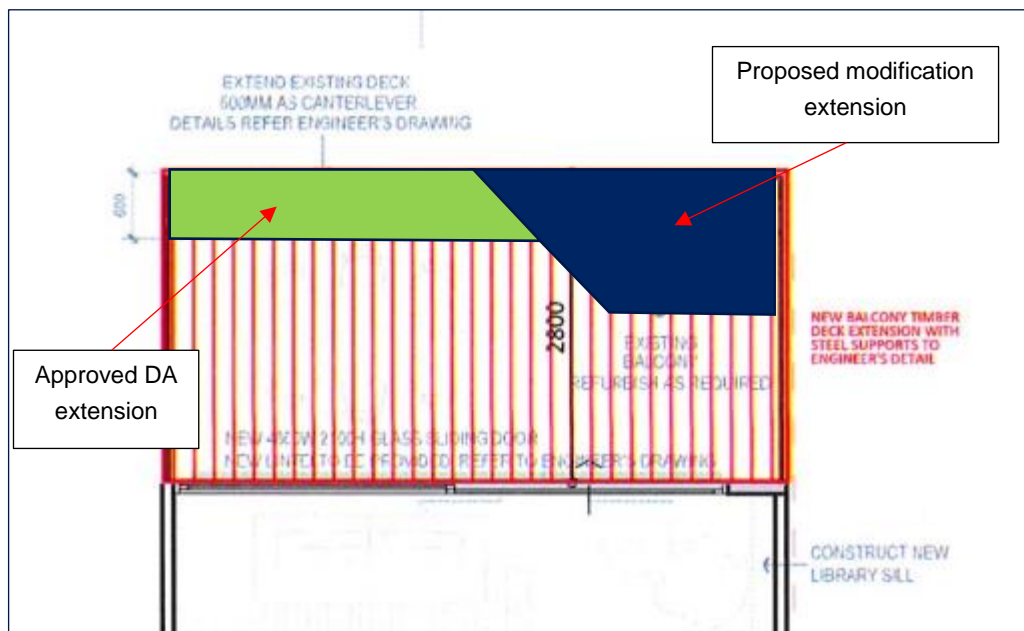


Figure 8 | Proposed deck alterations (Source: Applicant’s documentation)

The deck works maintain the setback to the rear boundary (towards Omaru Apartments below the site), being a minimum of 2.4 metres. The filling of the area provides greater functionality for the occupants of the building. The Department has also recently approved the same square off the balcony for the adjoining property at Melaleuca 2. Once constructed, this would enable consistency of design across the rear of the site.

- The cladding of the area below the basement works that has been built, as shown in **Figure 9** below, is also supported and ensures that no void areas are left following the completion of the building works associated with the basement area.



Figure 9 | Basement floor level works (Source: Department inspection)

Departments assessment considered that the proposed design changes are unlikely to result in additional impacts to adjoining properties (noting that Aspect Alpine Chalets is partly separated from the site with existing vegetation).

The NPWS raised no concerns with the proposed modifications and the RFS confirmed that the works are to comply with the original BFSA construction requirements.

These aspects of the proposed modification are supported.

6.2 Design details and standards

The proposed works, when constructed, are to comply with the Building Code of Australia (BCA) and relevant Australian Standards. The Department has also considered whether any upgrades to the building are required as part of its assessment in accordance with Clause 94 of the EP&A Regs. The Department notes that compliance with relevant requirements is to be determined at the construction certificate stage by the certifier and in accordance with conditions of consent.

- Clause 94 of the EP&A Regulation requires a consent authority to review a building and consider whether upgrades are warranted to bring the existing building into total or partial compliance with the BCA.

During the assessment of the original application, which shares a separating wall to Melaleuca 2, the Department conditioned partial upgrades to the building to ensure the separating wall between the lodges meets the BCA performance requirements for the protection of the spread of fire. The Department notes that works were being carried out within Melaleuca 1 prior to the winter 2020 season, however, is unsure whether the separating wall was upgraded.

Noting the scope of the original and modified proposal (which now proposes a modification to the balcony and privacy screen on Level 2 (to be consistent with that assessed at Melaleuca 2)), the Department has recommended that the existing fire separation between Melaleuca 1 and Melaleuca 2 northwest facing balconies, as shown in **Figure 10**, be investigated to determine compliance with BCA Volume Two performance requirement P2.3.1 (Protection from the spread of fire). If any deficiencies are identified the method of rectification must be documented as part of the construction certificate.



Figure 10 | Photograph of site illustrating external components (Source: Department file)

With the inclusion of an extension to the balcony privacy screen within the modification works, this assessment would ensure compliance with the BCA.

A condition recommending this upgrade is included in **Appendix C**.

- The site is located within the G zone identified on the Department's Geotechnical Policy – Kosciuszko Alpine Resorts Thredbo Map. The Applicant provided an amended Form 4 and Geotech Report to address the proposed modification works and a separate Form 4 and recommendations was received for the works to be carried out under the Order (these will be carried separately to the modification works).

The Department has recommended the adoption of the amended Form 4 and associated Geotechnical Report recommendations, which will need to be adopted during the construction of the modification works.

- Ensuring the proposal meets snow and wind loading requirements is a key consideration of the Department's assessment in the NSW Alpine environment. With adverse weather conditions at times,

the fixing of the new structures to the existing building needs to be constructed appropriately. The Department has recommended that structural certification of the works be provided prior to occupation certificate.

- In relation to bushfire, the BCA requires construction to comply with the BFSAs issued by the RFS. The existing approval includes the BFSAs issued for the original development, which the RFS has recommended to be complied with for the modification components. The Applicant is to demonstrate compliance with this at the construction and occupation certificate stages.

The Department concludes that subject to compliance with the conditions of consent, including references to the BCA which is to be addressed by the certifier at the Construction Certificate stage, the proposal is satisfactory and would improve the amenity of the building for its occupants.

6.3 Basement level works

During the assessment of the modification and initial construction of the development, the Applicant altered the construction of the basement floor level through the filling in of the area under the basement floor with rock / rubble from the excavation. A concrete floor level is now proposed rather than a timber floor level built above the existing ground level.

This construction also required an increased excavation area (**Figure 11**), the installation of a rock retaining wall and colorbond support walls.



Figure 11 | Basement floor level works and excavation area (Source: Department inspection)

The Department raised concerns with the Applicant and issued a Stop Work Order as the Department was of the opinion that the works which occurred at the basement of Melaleuca are inconsistent with approval

and have been carried out in contravention of the EP&A Act. This was based on a review of the works carried out against the approved DA 9373, the construction certificate and the following works:

- filling
- timber and colorbond retaining walls
- excavation up to 2.9 metres in height
- a concrete slab on fill
- any works on Melaleuca 2 (Lot 775)

On consideration of those inconsistencies with the approval, the Department formed the view that the works that are inconsistent are likely to become a danger to the public if those contraventions are not addressed.

The Department's Compliance Team and Alpine Resorts Team worked closely with the lessee to ensure that the site was made safe while the further investigation and design was occurring. The remedial works were unable to occur during the winter 2020 ski season so additional site monitoring measures were implemented including inspections after snow and rain events.

On 29 September 2020, the Department's Director Compliance issued a structural alterations and repair order to facilitate the works in the basement. Once the order works are completed the rest of the works associated with DA 9373 and this MOD will be able to be undertaken.

The works under the Order requires the Applicant to:

- install a suspended concrete floor slab
- install block work retaining wall (southern and eastern side)
- under pin the western side
- install additional supporting columns and foundations
- partial removal of formwork and temporary retaining removal
- partial removal of fill
- repairs to the stone wall

Once the above works are completed and certification received of the works being carried in accordance with the requirements of the Order, the Department is satisfied that the works as proposed under the modification can continue.

7 Evaluation

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 public and RFS and the NPWS.

The Department's assessment concludes that the proposed modification is appropriate as:

- the modification is of minimal environmental impact and does not have any additional environmental impacts beyond the approved development
- it is substantially the same development as originally approved
- the proposal continues to comply with the Alpine SEPP provisions
- all submissions received during the assessment of the application have been considered
- the proposal does not result in any additional matters that required consideration under Section 4.15(1) of the EP&A Act

The Department concludes the impacts of the development are acceptable and the proposal is in the public interest. The Department recommends that the application be approved, subject to changes to the existing conditions of consent (**Appendix C**).

8 Recommendation

It is recommended that the Team Leader, Alpine Resorts Team, as delegate of the Minister:

- **considers** the findings and recommendations of this report
- **determines** that the modification application MOD 10108 (DA 9373 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
- **modify** the consent DA 9373
- **signs** the attached approval of the modification (**Appendix C**).

Recommended by:



15 January 2021

Mark Brown
Senior Planner
Alpine Resorts Team

9 Determination

The recommendation is **Adopted / Not adopted** by:



15 January 2021

Daniel James

Team Leader

Alpine Resorts Team

as delegate of the Minister for Planning and Public Spaces

Appendices

Appendix A – Modification Report

The following supporting documents and supporting information to this assessment report can be found on the Department's website as follows:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=10108

Appendix B – Submissions

The Department made the application publicly available and notified adjoining lodges of the application between 16 December 2019 and 31 January 2020.

The application was referred to the RFS (as the original and modification is integrated development) and NPWS pursuant to clause 17 of the Alpine SEPP, with comments received. No submissions from the public were received.

A copy of the submissions is available on the Department's website as follows:

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=10108

Appendix C – Notice of Modification