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Planning,
Industry &
Environment

Issued under the Environmental Planning and Assessment Act 1979

Approved Section 4.55 (1A) Modification Application

No MOD 10679 (DA 9258 MOD 1) granted on the 20/07/2021

In respect to DA 9258

Signed M Brown

Sheet No 13 of 18

Dear Mr Brown

**Modification to consent No DA 9258 – Kunapipi Ski Lodge, Wheatley Road, Perisher Valley
Statement of Effects**

Further to the above and our discussions, we wish to set out the proposed details of the proposed modification to the above consent. This modification is submitted under section 4.551(A) of the Environmental Planning and Assessment Act.

Plans are attached as well as the bushfire report for the modifications.

Proposed Modification

Consent no DA 9258 is for alterations and additions, and construction of a new deck, at the above lodge. It is proposed to make the following modifications to the consent:

- 1) Replace a section of the roof that has been damaged by snowfall as shown in the attached plans. This damage has led to water leaks and ingress to the structure. There would be some additional roof battens installed to strengthen the roof.
- 2) Amendment of the Rural Fire Service General Terms and Conditions (RFS GTA) Items 3 and 4 in the following terms;
 - a) All new construction to comply with BAL 40;
 - b) Deletion of the requirement for an annual (minimum) fire evacuation drill.

Approval considerations

In accordance with the requirements of the Act, the following are addressed to support the modification request:

(a) it is satisfied that the proposed modification is of minimal environmental impact, and

The proposed replacement of the damaged section of roof will have minimal environmental impact as it simply replaces old roof material with new. There are no other external changes to the building, and it would have no visual impact. All old materials would be removed from the site and disposed of appropriately/recycled as necessary.

Amendment of the RFS GTA would not have any environmental impact. The amendment would reflect the bushfire report which classifies the site as BAL 40. The annual drill requirement is not a reasonable condition as the lodge is typically not occupied in summer and, in winter, an evacuation drill for bushfire is not a likely scenario. It is thus difficult to comply with this requirement. In any event, a drill would only cover a small proportion of the membership. So, the condition serves little purpose.

- (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),

The consent is primarily for alterations and additions. The key tests for “substantially the same development” are set out in *Moto Projects (No 2) v North Sydney Council* (106 LGERA 298), *North Sydney Council v Michael Standley* (43 NSWLR 468) and *Tipalea Watson v Kuringai Council* (129 LGERA 351).

In *Moto*, Justice Stein found that “substantially the same” means the modification must be essentially or materially the same development. He did not find that it must be exactly the same development or involve exactly the same physical works (i.e. it can involve things other than what was originally approved). He also posited a 2 stage approach – qualitative and quantitative – whereby the consent authority examines the proposed modification considering the extent of the change (quantitative, i.e. how much does it involve) and the result of the change (qualitative, i.e. issues such as design, impact etc).

In *Tipalea*, Justice Bignold held that “substantially” meant the modification does not radically transform the originally approved development.

In *Michael Standley*, the Court of Appeal held that the process should be regarded as a beneficial and facultative power. In other words, modifications can be supported if they also are a means of improvement to amenity or improve the development or to achieve things like beneficial cost savings. The Court also found that these considerations can apply to works that were separate from that which was originally approved (viz new components not previously approved) and be approved as modifications.

Turning to the proposed modification, replacement of a small amount of the roof sheeting, on its own, would be alterations and additions if a separate consent were pursued. It is not new work merely alterations to the structure. It thus fulfils the “essentially or materially the same development” test as it would not radically transform the approved development. It merely adds another alteration to the approval and would have virtually no visible external changes. So, in that sense, it fulfils the qualitative *Moto* test.

In a quantitative sense, the works would involve a very small part of the approved works (internal works, external works, use of basement). It comprises perhaps 5% of the roof area and a similar quantum of the value of the approved works.

As the proposed works are required to seal the building from external weather and protect the structure and internal fabric, they are beneficial works in the *Michael Standley* sense.

Changes to the RFS GTA would not materially change the development as consented. It merely updates the BAL rating as per the bushfire report and deletes an unreasonable condition.

Section 4.15 Considerations

The following are relevant matters for consideration under 4.15 of the Environmental Planning and Assessment Act:

- **Provisions of any relevant EPI** – the proposal is permissible with consent under State Environmental Planning Policy (Kosciuszko National Park—Alpine Resorts) 2007. The proposal is consistent with the aims and objectives of this policy. Relevant matters pursuant to clause 14 of the policy are addressed below. Clause 15 of the policy is not relevant.

Clause 14 Matters to be considered by consent authority	
(1) In determining a development application that relates to land to which this Policy applies, the consent authority must take into consideration any of the following matters that are of relevance to the proposed development:	
(a) the aim and objectives of this Policy, as set out in clause 2,	The proposed works would have minimal environmental impacts and are therefore consistent with the aims and objectives of clause 2 of the SEPP.
(b) the extent to which the development will achieve an appropriate balance between the conservation of the natural environment and any measures to mitigate environmental hazards (including geotechnical hazards, bush fires and flooding),	Given the minimal nature of the works and their location, the development will not have adverse impacts on the natural environment
(c) having regard to the nature and scale of the development proposed, the impacts of the development (including the cumulative impacts of development) on the following:	
(i) the capacity of existing transport to cater for peak days and the suitability of access to the alpine resorts to accommodate the development,	Not applicable
(ii) the capacity of the reticulated effluent management system of the land to which this Policy applies to cater for peak loads generated by the development,	Not applicable
(iii) the capacity of existing waste disposal facilities or transfer facilities to cater for peak loads generated by the development,	Not applicable
Not applicable	Not applicable
(d) any statement of environmental effects required to accompany the development application for the development,	This statement of environmental effects demonstrates that the proposal would have minimal environmental impacts.
(e) if the consent authority is of the opinion that the development would significantly alter the character of the alpine resort—an analysis of the existing character of the site and immediate surroundings to assist in understanding how the development will relate to the alpine resort,	The proposal would not lead significant alteration of the character of the alpine resort.
(f) the <i>Geotechnical Policy—Kosciuszko Alpine Resorts</i> (2003, Department of Infrastructure, Planning and Natural Resources) and any measures proposed to address any geotechnical issues arising in relation to the development,	The proposal would not lead to additional geotechnical risk or impacts.
(g) if earthworks or excavation works are proposed—any sedimentation and erosion control measures proposed to mitigate any adverse impacts associated with those works,	Not applicable

(h) if stormwater drainage works are proposed—any measures proposed to mitigate any adverse impacts associated with those works,	Not applicable
(i) any visual impact of the proposed development, particularly when viewed from the Main Range,	The visual impact of the proposal would be minor and would have similar impacts as other nearby lodges.
(j) the extent to which the development may be connected with a significant increase in activities, outside of the ski season, in the alpine resort in which the development is proposed to be carried out,	Not applicable
(k) if the development involves the installation of ski lifting facilities and a development control plan does not apply to the alpine resort:	Not applicable
(i) the capacity of existing infrastructure facilities, and	Not applicable
(ii) any adverse impact of the development on access to, from or in the alpine resort,	Not applicable
(2) The long term management goals for riparian land are as follows:	
(a) to maximise the protection of terrestrial and aquatic habitats of native flora and native fauna and ensure the provision of linkages, where possible, between such habitats on that land,	The proposal would not have adverse impacts on terrestrial and aquatic habitats of native flora and native fauna.
(b) to ensure that the integrity of areas of conservation value and terrestrial and aquatic habitats of native flora and native fauna is maintained,	No impacts on areas of conservation value and terrestrial and aquatic habitats of native flora and native fauna would occur as a result of the proposal.
(c) to minimise soil erosion and enhance the stability of the banks of watercourses where the banks have been degraded, the watercourses have been channelised, pipes have been laid and the like has occurred.	There would be no riparian impacts as a result of the proposal.

- **The likely impacts of the development** – the proposal will have minimal environmental impact as demonstrated above.
- **The suitability of the site.** The proposal involves alterations to an approved development, and the site is suitable for the development.

We trust this provides sufficient information for the Department to consider the application. Please do not hesitate to contact the undersigned or Mark Cambourn (mjcambourn@hotmail.com) should you require further details or clarification.

Yours sincerely



Des Brady
Director