

2 November 2021

Daniel James
Team Leader
Alpine Resorts Team – Regional Assessments
Department of Planning, Industry and Environment
NSW Government

Mills Oakley
ABN: 51 493 069 734

Your ref: EF21/9120
Our ref: 7169980

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Dear Mr James

DA 10688 – 9 Valley Close, Thredbo

Lot 619 DP 1118588

We refer to the above matter and confirm we act for Redwin Investments Pty Ltd.

We have to hand a copy of your undated letter (copy **enclosed** for your ease of reference) addressed to Andrew Collins of Collins Pennington Architects requesting additional information about the abovementioned development application.

On behalf of our client, we respond to two points of your letter, namely:

1. the intended purpose, use and permissibility of the proposed building; and
2. justification for intended BCA classification.

While Collins Pennington Architects will respond to the balance of your letter, we now provide the following for your consideration.

1 The development application

- 1.1 In July 2021, a development application was submitted for 'Woodridge Lodge'. This development is for the knock-down and rebuild of a four-bedroom house, used as a ski lodge, in Thredbo in NSW.
- 1.2 Specifically, the Statement of Environmental Effects (**SEE**) which accompanied the development application sought approval for "a new tourist accommodation development" which "proposes the demolition of the existing building consisting of a new alpine lodge consisting of living spaces and four bedrooms spread over two levels with basement carparking."

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- 1.3 The SEE expressly identified, in section 4.0 'General Information' that:
- (a) *the proposal seeks to replace the existing lodge with a modern building, constructed to modern environmental standards;*
 - (b) *a ski lodge for tourist accommodation is the present use of the site. The proposed development is to replace the existing ski lodge with no change of use;*
 - (c) *the site is currently used as a lodge with 4 bedrooms and the proposal is for a 4-bedroom lodge; and*
 - (d) *the proposal is for the modernisation of the existing lodge.*
- 1.4 The SEE also considers the *State Environmental Planning Policy (Kosciuszko National Park – Alpine Resorts) 2007 (NSW) (SEPP)* and states:
- (a) *the proposed development is considered as 'tourist accommodation'; this is permitted with consent;*
 - (b) *the proposal is permissible and satisfies the objectives of the [SEPP]; and*
 - (c) *the proposed tourist accommodation development...complies with all of the regulatory and statutory requirements.*
- 1.5 The SEE states, in the relevant section relating to the Building Code of Australia (**BCA** (part of the National Construction Code)), that "*as part of the certification process a BCA report will be undertaken with the correct classification.*"
- 1.6 The NSW Department of Planning, Industry and Environment (**Department**), in assessing the application, has raised concerns including that a BCA classification of Class 1a "*is not appropriate as dwellings are prohibited.*"
- 1.7 This document seeks to explain the interaction between the various instruments and codes which affect the proposed development, and in support of the applicant's contention that approval of the development as Class 1a is appropriate.

2 The law

- 2.1 The registered owner of Lot 619/DP 1118688 is the Minister Administering the *National Parks and Wildlife Act 1974 (NPW Act) (Minister)*. This lot includes, relevantly, 9 Valley Close, Thredbo NSW (**Site**), the subject of the development application.
- 2.2 We understand that the Minister has granted a lease over the Site to Kosciusko Thredbo Pty Limited (**Thredbo**) under Head Lease registration Book 4513 Folio 643 (**Head Lease**).
- 2.3 We have been provided with a Sublease dated 25 July 2007 between Thredbo and Detaro Pty Ltd (**Detaro**) which grants Detaro a 50-year lease over the Site (**Sublease**). The Sublease is provided as a variation to the Head Lease and appears to refer to defined terms within the Head Lease.
- 2.4 The Certificate of Title for the Site records in the Second Schedule, the Sublease as having been transferred to Redwin Investments Pty Ltd (**Redwin**).

- 2.5 Under the Sublease, among other restrictions in respect of the use of the Site, Redwin must only use the Site for holiday accommodation, for up to 8 people, and only for a maximum of 26 weeks in a year, and Redwin may license the use of the Site to members of the public for reasonable fees
- 2.6 Consequently, there are two distinct but related uses of the Site:
- (a) for holiday accommodation by Redwin, for a maximum of 26 weeks in a year; and
 - (b) for tourist accommodation by members of the public for reasonable fees, for a minimum of 26 weeks in a year.
- 2.7 Development of the Site must be consistent with the SEPP. This is an environmental planning instrument pursuant to section 3.29 of the *Environmental Planning and Assessment Act 1979* (NSW) (**EPA Act**). Relevantly, section 11 of the SEPP provides that the “Land Use Table” at the end of Part 2 specifies various developments and the consents or prohibitions impacting upon them. In reality, all development requires consent, and only certain types of development will be permitted with consent, as follows:
- (a) *Advertisements; Building identification signs; Business identification signs; Car parking; Commercial premises (other than brothels and workshops); Community facilities; Conference facilities; Educational establishments; Emergency services facilities; Entertainment facilities; Fences; Food outlets; Health profession consulting rooms; Helipads; Infrastructure facilities; Lifting facilities; Management trails; Medical centres; Places of public worship; Public utility undertakings; Recreation facilities; Recreation infrastructure; Shops; Ski slope huts; Ski slopes; Snow-making infrastructure; Stream flow monitoring stations; Telecommunications facilities; **Tourist accommodation**; Transport facilities; Vehicle repair stations; Weather stations* (emphasis added)
- 2.8 Tourist accommodation is a development that is to be ‘permitted with consent’. Tourist accommodation is defined in the Dictionary in the SEPP as follows:
- tourist accommodation means—*
- (a) *building or buildings used for the accommodation of visitors, including apartments, serviced apartments and lodges that may have facilities for the convenience of those visitors, such as conference facilities, entertainment facilities, recreation facilities and restaurants, or*
 - (b) *staff accommodation, or*
 - (c) *a hotel.*
- 2.9 This definition contains no reference to the BCA or the classes of buildings identified under that Code.
- 2.10 Relevantly, if a type of development is not ‘permitted with consent’ in accordance with Item 2 of the Land Use Table, it will be a prohibited development. This mirrors the typical

approach taken by environmental planning instruments, whereby all development is prohibited unless expressly permitted.

2.11 The SEPP does not provide definitions for many relevant terms. However, section 3.20 of the EPA Act provides that the Governor of NSW may publish an order prescribing the standard form and content of environmental planning instruments. The Governor has relevantly done so with the *Standard Instrument (Local Environmental Plans) Order 2006 (Standard Instrument)*.

2.12 The standardised Land Use Table in Direction 5 of the Standard Instrument prescribes that “*only the following type of development may be included in the land use table*”. Among the types of development listed are:

- (a) *Attached Dwellings.*
- (b) *Dual occupancies; Dual occupancies (attached); Dual occupancies (detached); Dwelling houses.*
- (c) *Multi dwelling housing.*
- (d) *Secondary dwellings.*
- (e) *Semi-detached dwellings.*
- (f) *Tourist and visitor accommodation.*

2.13 The Dictionary in the Standard Instrument also defines these relevant terms as follows:

dwelling means a room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile.

dwelling house means a building containing only one dwelling.

residential accommodation means a building or place used predominantly as a place of residence, and includes any of the following—

- (a) *attached dwellings,*
- (b) *boarding houses,*
- (c) *dual occupancies,*
- (d) *dwelling houses,*
- (e) *group homes,*
- (f) *hostels,*
- (g) *multi dwelling housing,*
- (h) *residential flat buildings,*
- (i) *rural workers’ dwellings,*

- (j) secondary dwellings,
- (k) semi-detached dwellings,
- (l) seniors housing,
- (m) shop top housing

but does not include tourist and visitor accommodation or caravan parks.

tourist and visitor accommodation means a building or place that provides temporary or short-term accommodation on a commercial basis, and includes any of the following—

- (a) backpackers' accommodation,
- (b) bed and breakfast accommodation,
- (c) farm stay accommodation,
- (d) hotel or motel accommodation,
- (e) serviced apartments,

but does not include—

- (a) camping grounds, or
- (b) caravan parks, or
- (c) eco-tourist facilities.

hotel or motel accommodation means a building or place (whether or not licensed premises under the Liquor Act 2007) that provides temporary or short-term accommodation on a commercial basis and that—

- (a) comprises rooms or self-contained suites, and
- (b) may provide meals to guests or the general public and facilities for the parking of guests' vehicles,

but does not include backpackers' accommodation, a boarding house, bed and breakfast accommodation or farm stay accommodation.

residential flat building means a building containing 3 or more dwellings, but does not include an attached dwelling or multi dwelling housing.

serviced apartment means a building (or part of a building) providing self-contained accommodation to tourists or visitors on a commercial basis and that is regularly serviced or cleaned by the owner or manager of the building or part of the building or the owner's or manager's agents.

- 2.14 The SEPP provides its own definitions for some terms. Relevantly for the purposes of this advice:

tourist accommodation means—

- (a) *a building or buildings used for the accommodation of visitors, including apartments, serviced apartments and lodges that may have facilities for the convenience of those visitors, such as conference facilities, entertainment facilities, recreation facilities and restaurants, or*
- (b) *staff accommodation, or*
- (c) *a hotel.*

lodge *means a building providing temporary accommodation to persons, whether those persons stay for a single night or for a longer period.*

- 2.15 Notably, the SEPP does not prescribe specific classes of structure by reference to the BCA. It also does not contain particularly exacting definitions of different types of building. This results in odd outcomes when the specific definitions are followed precisely.
- 2.16 For example, the specific requirements in the definition of ‘hotel accommodation’ in the Standard Instrument could be met by a detached house (in the common meaning of that concept) if it provided short-term accommodation on a commercial basis, so long as it “*comprises rooms*”. Similarly, ‘residential flat buildings’ and ‘serviced apartments’ do not have prescriptive forms, with the only difference being the use of the various flats or apartments, and the requirement for cleaning by the operators of serviced apartments.
- 2.17 Consequently, the types of development permitted by the SEPP are not strictly and expressly tied to the classification requirements of the BCA. This permits flexibility in planning which means that only developments that comply with both BCA classification (for safety purposes) and the SEPP (for land-use purposes) will be permitted.
- 2.18 In this regard, a Class 1a structure could, in theory, functionally meet the definitions of ‘dwelling’, ‘lodge’, ‘hotel’, and ‘tourist accommodation’ under the SEPP. It would likely face difficulty being classified as a hotel once the BCA was further considered, but this is a separate consideration from the requirements of the SEPP.
- 2.19 This interpretation is also precisely aligned with the *State Environmental Planning Policy (Affordable Rental Housing) Amendment (Short-term Rental Accommodation) 2021 (NSW) (STRA)*, which came into effect on 1 November 2021. This regulation introduces requirements on dwellings being used for both hosted and non-hosted short-term rental accommodation. Relevant definitions include:

non-hosted short-term rental accommodation *means short-term rental accommodation provided where the host does not reside on the premises during the provision of the accommodation.*

permanent resident of a dwelling *means a person who permanently resides at the dwelling.*

short-term rental accommodation *means a dwelling used by the host to provide accommodation in the dwelling on a commercial basis for a temporary or short-term period*

2.20 Regulation 51A 'Aims of Part' provides as follows:

The aims of this Part are as follows—

- (a) *to support short-term rental accommodation as a home sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,*
- (b) *to provide for the safety of users of short-term rental accommodation who may be less familiar with the dwelling,*
- (c) *to clarify the types of housing that may be used for the purposes of short-term rental accommodation.*

2.21 The STRA is part of a suite of policy measures which include:

- (a) amendments to the *Environmental Planning & Assessment Regulation* to introduce minimum fire safety standards for dwellings used for STRA and associated penalty notice offences for non-compliance; and
- (b) the implementation of a new Government-run STRA register that will ensure compliance with the new fire safety standards, as well as tracking day limits of each STRA dwelling and provide details to assist local councils with monitoring STRA in their local government areas.

3 Permitted SEPP use sought by the development application

- 3.1 There does not appear to be any dispute that the development application is for tourist accommodation as contemplated by the SEPP. It appears that the only contention is the type of BCA classification appropriate for the structure.
- 3.2 There appears to be a conflation of the terms "dwelling" and "residential accommodation" (under the SEPP) with Class 1a for a detached house (under the BCA), which has led to the impression that such development is prohibited.

4 The Building Code of Australia

- 4.1 Part 6A of the 2019 (and forthcoming 2022) version of the BCA explains that buildings are grouped into 10 different "classes". This is done by grouping "*buildings and structures by the purpose for which they are designed, constructed, or adapted to be used, rather than by the function or use they are put to*".

4.2 The BCA provides explanatory information about the classification process as follows:

"Classification is a process for understanding risks in a building or part, according to its use. It must be correctly undertaken to achieve NCC aims as appropriate to each building in each circumstance.

It is possible for a single building to have parts with different classifications. Part of a building can also have more than one classification. Where there is any conflict between what requirements the part should comply with, the more stringent requirement applies.

Where it is unclear which classification should apply, appropriate authorities have the discretion to decide. They base their decision on an assessment of the building proposal.

*They will look at what classification **the building most closely resembles**. They will also take into account the likely fire load, plus, the likely consequences of any risks to the safety, health and amenity of people using the building.”*

(emphasis added)

- 4.3 The relevant classifications in the BCA are Class 1a and Class 3 buildings. These are described as follows:

A6.1 Class 1 buildings

A Class 1 building includes one or more of the following sub-classifications:

- (1) *Class 1a is one or more buildings, which together form a single dwelling including the following:*
 - (a) *A detached house.*
 - (b) *One of a group of two or more attached dwellings, each being a building, separated by a fire-resisting wall, including a row house, terrace house, town house or villa unit.*
- (2) *Class 1b is one or more buildings which together constitute—*
 - (a) *a boarding house, guest house, hostel or the like that—*
 - (i) *would ordinarily accommodate not more than 12 people; and*
 - (ii) *have a total area of all floors not more than 300 m² (measured over the enclosing walls of the building or buildings); or*
 - (b) *four or more single dwellings located on one allotment and used for short-term holiday accommodation.*

A6.3 Class 3 buildings

A Class 3 building is a residential building providing long-term or transient accommodation for a number of unrelated persons, including the following:

- (1) *A boarding house, guest house, hostel, lodging house or backpacker accommodation.*
- (2) *A residential part of a hotel or motel.*
- (3) *A residential part of a school.*
- (4) *Accommodation for the aged, children, or people with disability.*
- (5) *A residential part of a health-care building which accommodates members of staff.*

(6) *A residential part of a detention centre.*

(7) *A residential care building.*

4.4 The BCA does not define 'dwelling'. However, it is apparent that a 'dwelling' does not mean strictly a place of residence, or residential accommodation. For example, a Class 1b structure may be "*four or more single dwellings*" which are to be "*used for short-term holiday accommodation*". A dwelling of this kind would naturally fall within the concept of 'tourist accommodation' under the SEPP.

4.5 Consequently, the fact that a building is a "dwelling" does not exclude the possibility (and in fact, conversely suggests the probability) that it is capable of being tourist accommodation. This is further supported by the STRA.

4.6 Helpfully, the BCA provides further explanatory information about the types of buildings that fall within certain classes as follows:

A single Class 1 dwelling can be made up of more than one building. For example, it may include what is ordinarily called a house, plus one or more habitable 'outbuildings' such as sleepouts. Note that a habitable building such as a sleepout cannot be classified as a Class 10 building.

...

Class 1b buildings used for short-term holiday accommodation include cabins in caravan parks, tourist parks, farm stay, holiday resorts and similar tourist accommodation. This accommodation itself is typically rented out on a commercial basis for short periods and generally does not require the signing of a lease agreement. Short-term accommodation can also be provided in a boarding house, guest house, hostel, bed and breakfast accommodation or the like.

Class 3 buildings provide accommodation for unrelated people. The length of stay is unimportant. Some exceptions to this classification include: certain bed and breakfast accommodation, boarding houses, guest houses, hostels, or lodging houses and the like which fall within the concession provided for Class 1b buildings.

Also, any sized building can be classified as Class 1 or Class 2 if it is used to house any number of unrelated people who jointly own or rent it, or share it on a non-rental basis with an owner or tenant.

Class 3 buildings include—

- *the residential parts of hotels and motels; and*
- *hotel or motel caretakers', managers' or owners' flats, noting that under certain circumstances such dwellings could be Class 1, Class 2 or Class 3 buildings; and*
- *dormitory accommodation, in schools or elsewhere, noting that a dormitory is generally (but not always) considered to be a sole-occupancy unit; and*

- *bed and breakfast accommodation, a boarding house, guest house, hostel, or lodging house; and •*
- *backpackers' accommodation; and •*
- *a building which houses elderly people or other people who require special care. (In some States or Territories it is not acceptable for a Class 1b building to be used to house elderly people or other people who require special care - it is recommended the local building regulatory body be consulted.); and*
- *workers' quarters, including shearers' or fruit pickers' accommodation, or hotel workers' accommodation.*

...

Class 3 buildings, where the occupants are generally unfamiliar with the building and have minimum control over the safety of the building, represent a higher risk level and therefore require higher safety levels. In a case where the classification is unclear, a decision should be made according to the perceived risks inherent in the use of the building.

5 BCA classification of the proposed development

- 5.1 The only sensible classification of the proposed development under the BCA is a Class 1a building, as this is “*the classification the building most closely resembles.*”
- 5.2 Specifically, it is clearly and obviously a dwelling and ‘a detached house’, not being used for residential accommodation, but instead as a lodge, being a form of tourist accommodation.
- 5.3 It is a four-bedroom, four-bathroom structure with one kitchen and living area. This “*most closely resembles*” “*what would ordinarily be called a house*”, under the BCA, where the use of that structure under the SEPP is for tourist accommodation.
- 5.4 This is consistent with the purpose of the SEPP and the limits on use of land envisaged by that instrument, being primarily focussed on limiting permanent residential accommodation in favour of tourist uses. It is also consistent with the STRA.
- 5.5 This is outlined in the table **enclosed** with this response, which identifies certain types of development as contemplated under the SEPP and the BCA classifications for those types of development, which vary considerably depending on the actual physical structure to be built (as opposed to the intended use under the SEPP).
- (a) In this document, each type of development is listed in the column headings, with the BCA classes which could be applicable depending on the actual structure proposed.
- (b) Where there is an entry for “yes”, this indicates that the relevant development type for that row could also be considered a valid development type for that column, depending on the physical structure that was to be built.

- (i) For example, a dwelling could be a detached house, which must be a Class 1a structure.
 - (ii) Similarly, a dwelling could be a lodge, which could be any class from 1a to 3, depending on the physical structure.
- (c) Where there is an entry for “No”, there is a sub-entry which indicates which instrument means that development is not applicable for that type.
- (i) For example, a detached house cannot be a residential flat building, as a detached house must be a class 1a structure and a residential flat building must be at least class 1b under the BCA.
 - (ii) Similarly, a detached house cannot be residential accommodation, as the SEPP prevents development for residential accommodation.

6 Feedback from the Department

- 6.1 Initial feedback on the proposed development noted that “*Classifying the building a Class 1a is not appropriate as dwellings are prohibited.*”
- 6.2 Further feedback included a request for “*additional information and amendments*” in respect of several aspects of the development. Critically, it sought further clarification on the “*intended purpose, use and permissibility of the proposed building*” and “*justification for intended BCA classification.*”
- 6.3 With the benefit of subsequent and further informal discussions, it was confirmed that the Department has formed a view that a building that meets the definition of ‘tourist accommodation’ under the SEPP cannot meet the definition of a Class 1a building under the BCA, as this would mean it was a dwelling and therefore residential accommodation and therefore prohibited. There does not seem to be any textual foundation for this view.
- 6.4 There is no restriction or incompatibility where a dwelling is used as tourist accommodation. If there were such a restriction, it would naturally be in the list of developments that are not included as tourist accommodation. This occurs for other definitions in the Standard Instrument, which expressly preclude dwellings, such as farm buildings or residential care facilities.
- 6.5 Similarly, if there was an intention for dwellings (as defined under the Standard Instrument) to be a ‘prohibited’ development under the SEPP, then such an intention would be manifest on the face of the SEPP.
- 6.6 There is no strict requirement that tourist accommodation must have “*facilities for the convenience of those visitors*”. This definition is inclusive, and is presumably intended to identify that tourist accommodation may include those types of facilities without a requirement to also meet the standalone definitions of, and development approvals for, those facilities.
- 6.7 Relevantly, the proposed use of the development meets the definition of ‘tourist accommodation’, as it is expressly seeking to be used “*for tourist accommodation*” as a “*lodge*”.

- 6.8 Redwin intends to use Woodridge Lodge for 26 weeks each year as tourist accommodation for the directors, Andrew and Justine Redwin, whose place of residence remains in Red Hill in the ACT. For the remaining 26 weeks of each year, the property will be made available for rent on a commercial basis as tourist accommodation. This precisely mirrors the intent and purpose of the STRA.
- 6.9 Consequently, the development cannot be classed as residential accommodation under the SEPP. Even if Andrew and Justine Redwin intended to change their place of residence for 6 months each and every year, the premises would be used, at most, equally rather than predominately as a place of residence. Where there is a precisely equal division of use, neither can be described as predominate.

7 Is the proposed development consistent with the Sublease?

- 7.1 Under the Sublease, the use of land for 'tourists and visitors' is plainly authorised. Similarly, provision of accommodation is permitted as an incidental purpose, which must be read consistently with the SEPP (that is, as a form of tourist accommodation). Similarly, 'staff accommodation' is permitted under the SEPP as a form of accommodation. Consequently, the proposed use for the development is consistent with the Sublease.

8 Summary

- 8.1 There is no prohibition on a 'dwelling' under the SEPP which prevents the construction of a Class 1a structure, so long as that structure is used as a lodge for the purposes of tourist accommodation as defined by the SEPP. Such an interpretation is supported by the text, context and purpose of the SEPP.
- 8.2 That land use is expressly contemplated by the Sublease and the SEPP, and is expressly identified in the SEE.
- 8.3 That land use is consistent with the STRA, which also introduces additional fire safety requirements and monitoring through the Government-run STRA register.
- 8.4 The table below sets out the current and proposed features of the Site:

	Current	Proposed
Use of the land	Tourist accommodation	Tourist accommodation
Physical structure	Detached house	Detached house
Can it be used by a single family or group	Yes	Yes
Can it be used by multiple unrelated families or groups?	No	No
BCA classification	Class 1a	Class 1a

	Current	Proposed
Could it be Class 3?	No, because it cannot provide <i>“long-term or transient accommodation for a number of unrelated Persons”</i>	No, because it cannot provide <i>“long-term or transient accommodation for a number of unrelated Persons”</i>
Consistent with STRA?	Yes – non-hosted short-term rental accommodation	Yes – non-hosted short-term rental accommodation

We trust the above clarifies our client’s position as concerns the development application.

If you have any questions or require further information, please do not hesitate to contact Nick Ahern on +61 2 6196 5232 or nahern@millsoakley.com.au.

Yours faithfully



**BERNICE ELLIS
PARTNER**

Enc



Andrew Collins
Collins Pennington Architects
S13/Level 1, 14-16 Franklin Street, Griffith ACT 2603
info@collinspennington.com.au

Dear Andrew,

**Request for Additional Information
DA 10688
9 Valley Close, Thredbo
Lot 619 DP 1118588**

I refer to the above development application (DA) that you have lodged with the Department of Planning, Industry and Environment for the Alpine Resorts Team – Regional Assessments on 22 June 2021.

After careful consideration, the Department requests that additional information and amendments are provided in accordance with Schedule 1 Part 1 *Environmental Planning and Assessment Regulations* 2000 (EP&A Regulation) and clause 54(1) EP&A Regulation, in relation to the following matters:

Town Planning

- **Revised Statement of Environmental Effects:**
 - clearly describing the intended purpose, use and permissibility of the proposed building
 - justification for intended BCA classification
 - justification for Access and Traffic – access for people with disabilities
 - section detailing consideration for and adherence to the Thredbo Village Master Plan (and amendments)
 - clarification of the type and total of trees intended for removal, and whether there is an arborists report for the site
- Confirmation architectural 'Preliminary' Plans utilised in the Geotechnical report are the same as the 'DA lodgement' plans, and no amendments were made.
- Detailed quantity surveyors report for the full proposed works, including complete cost of works breakdown and consideration for design costs associated with building to BAL FZ.
- Confirmation whether the demolition of the existing building includes removal of any or all base slab and supporting structures both below and at ground level. This should also be clearly indicated on the demolition plan.
- Confirmation of what 'LND' refers to on the plans, and the facilities attributed to the area.

Engineering

- Detailed *proposed development* civil and stormwater drainage plans, including:
 - stormwater pits, soak pits, connections
 - existing service points to remain (if any)
 - stormwater capture zones, and overland flow direction
- Consideration for impact of snow accumulation and melt on the western swale
- Confirmation from a qualified civil/ geotechnical engineer any absorbed stormwater and/or overland flow as a result of the development will not impact the slope stability of the land leading to Merits Creek and the bank.

Documentation and plans

- Provision of both aerial and cross section plans to scale of the existing building form.
- Provision of a clearly defined plan of the proposed development including landscaping and all setbacks against the proposed APZ Zones.
 - cross section(s) where any development (including building balconies, walls/ building envelopes, and planting) encroachment occurs into the proposed APZ
- Amendment to plans indicating compliance with:
 - Planning for Bushfire BAL FZ design requirements
 - minimum building requirements for intended BCA classification/ building class and construction type
 - minimum set back requirements and FRL
 - AS1926.1 (lower ground level)
 - accessibility provisions, including but not limited to BCA D3.10 and section D Access and Egress
 - Spa and sauna (including any septic tanks, discharge and intended use) to be constructed in accordance with applicable requirements of Public Health Act and Public Health Regulations.
- Amended plans correctly locating and indicating all proposed external stairs and indication of compliance with applicable Standards
- Vehicle turning movements diagram for in and out movement from the garage. Sufficient turning space is required to ensure vehicles can drive out in a forward direction when leaving the site and out of Valley Close, without impacting or causing pedestrian safety risks.
 - Confirmation required whether the adjoining gravel car parking space associated with Lot 619, will be maintained/ kept once the proposed development is complete.
- Consideration for any impacts to building and bushfire safety designs from snow accumulation and melt along western building side.
- Safety barriers - consideration for snow accumulation on the eastern 'lawn' and potential hazard/fall safety risks attributed to the edge above the garage.

In addition to the above, the Department would like to provide a reminder that any outstanding Agency fees associated with any applicable Concurrence or Integrated referrals requiring detailed assessments need to be paid to progress the assessment.

You are requested to provide the information, or notification that the information will not be provided, to the Department by 14 September 2021 (60 days). If you are unable to provide the requested information within this timeframe, you are required to provide and commit to a timeframe where agreed to by the Department detailing the provision of this information.

Please note, that the Department's assessment of the DA 10688 is on hold pending receipt of a satisfactory response to this request. In addition, the application is currently on Exhibition until the 21 July 2021 and the Department is waiting on submissions from Agencies and Approval bodies.

In accordance with Clause 109 of the EPA Regulation the days occurring between the date of this correspondence and the date on which you provide the requested information, or on which you advise the requested information will not be provided, as requested in accordance with Clause 54 EPA Regulation above is not taken into consideration for the assessment or deemed refusal period.

If you have any further enquiries, please email the Alpine Resorts Team Mailbox alpineresorts@planning.nsw.gov.au, or alternatively please call the Alpine Resorts Team on 6448 8500.

Kind regards



Daniel James
Team Leader

Alpine Resorts Team – Regional Assessments
Department of Planning, Industry and Environment