

ASSESSMENT REPORT OF SECTION 8.2 REVIEW OF DETERMINATION – DA217/17 - RESTAURANT AND KITCHEN WITH OUTDOOR SEATING & AMENITIES, LOT 56 DP 791926, MAGPIE HOLLOW ROAD SOUTH BOWENFELS NSW 2790

1. PROPOSAL

Council is in receipt of a Section 8.2 Review of Determination in association with Development Application DA217/17 for a restaurant and kitchen, deck, beer garden, outdoor seating and amenities on land known as Lot 56 DP 791926, Lake Lyell Recreation Park, Magpie Hollow Road, South Bowenfels.

The applicant seeks to amend the conditions imposed by Water NSW in relation to the on-site effluent management system and to have the upgrade of the system as a separate and operational agreement. The applicant has stated that there is not a clear nexus between the conditions and the development application; in addition to being onerous and will result in significant additional obligations to the current lessees that are outside the scope of the current lease agreement.

The specific conditions are numbered 63 to 66 on the original approval that relate to the upgrade of the existing effluent disposal system that services the entire site. Water NSW conditions require upgrades of the current system and deal with the future upgrade and management at the site as general terms of approval rather than only for the development application of the restaurant.

It is requested by the applicant that these conditions 63 & 64 be removed from the conditions of consent and that Council, as the landowner, ensures that essential infrastructure is provided to the site.

The conditions require the repair and monitoring of the existing safeguards on the treatment devices, the commissioning of various reports, investigations and management documents relating to the effluent management on site.

Water NSW has indicated that it accepts the current and ongoing use of the pump out system to operate at the site; provided that the applicant enters into an agreement with a Council-approved taker service for waste water to be pumped out as required until such time as either a reticulated sewerage system becomes available or the existing on-site sewerage management system is upgraded.

2. SUMMARY

To assess and recommend determination of the Section 8.2 Review of Determination for DA217/17. The Section 8.2 requested will be approved as requested with amended conditions of consent submitted by Water NSW.

3. LOCATION OF THE PROPOSAL

Legal Description: Lot 56 DP 791926
Property Address: Magpie Hollow Road South Bowenfels NSW 2790

4. DETAILS OF CURRENT APPROVAL

The original approval was completed under delegation by Council's Planning Department and determined by the elected Council at an ordinary Council Meeting held 28 May 2018. The approval was for a restaurant and kitchen, deck, beer garden, outdoor seating and amenities.

5. PERMISSIBILITY: The development being a 'restaurant or café', as defined below is permissible under Lithgow Local Environmental Plan 2014, subject to development consent as per the RE1 zoning table.

***Restaurant or cafe** means a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, take away meals and drinks or entertainment are also provided.*

***Note.** Restaurants or cafes are a type of food and drink premises—see the definition of that term in this Dictionary.*

5.1 POLICY IMPLICATIONS (OTHER THAN DCP's)

Policy 7.1 Filling and Levelling of Land

Earthworks were previously undertaken as per DA190/16 for the sheltered area and retaining wall. Minimal earthworks are proposed as part of the current application; it includes a deck and beer garden to the existing building.

Policy 7.5 Notification of Development Applications

This policy applies to the development, however the following clause does not require Council to notify this particular application:

2. Applications For Which Notification Will Not Be Given Under This Policy

Development applications for the following types of development will not be notified. (NB: Any structure must conform to applicable setback requirements):

- *Any other development of a minor nature that, in the opinion of the assessing officer, does not have the potential to create a negative impact on the amenity of the neighbourhood by way of the emission of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil, traffic generation or otherwise.*

Given the isolated nature of the development in respect to residential properties (approximately 700 metres), relatively minor scale of the development and the existing established outdoor recreation use, the development was not notified to adjoining land owners as the development is considered to not have much potential to create a negative impact on the amenity of the neighbourhood.

Policy 7.6 Development Applications By Councillors And Staff Or On Council Owned Land

This policy states that:

Development Applications to be referred to the elected Council for consideration and determination and that no aspect of the development is dealt with under delegated authority.

Given that the property is owned by Council, the proposed Section 8.2 Review of Determination is reported to Council for determination.

5.2 FINANCIAL IMPLICATIONS

Section 94A Development Contributions Plan 2015

The Section 94A plan does not capture this development given it is for a change of use of an existing building at an estimated cost of \$75,000. This is under the minimum threshold for a levy to be applicable being \$100,000.

5.3 LEGAL IMPLICATIONS

The EP&A Act states the following for a Review of Determination:

8.2 Determinations and decisions subject to review

- (1) *The following determinations or decisions of a consent authority under Part 4 are subject to review under this Division:*
- (a) *the determination of an application for development consent by a council,*

8.3 Application for and conduct of review

- (1) *An applicant for development consent may request a consent authority to review a determination or decision made by the consent authority. The consent authority is to review the determination or decision if duly requested to do so under this Division.*
- (2) *A determination or decision cannot be reviewed under this Division:*
- (a) *after the period within which any appeal may be made to the Court has expired if no appeal was made, or*
- (b) *after the Court has disposed of an appeal against the determination or decision.*
- (3) *In requesting a review, the applicant may amend the proposed development the subject of the original application for development consent or for modification of development consent. The consent authority may review the matter having regard to the amended development, but only if it is satisfied that it is substantially the same development.*
- (4) *The review of a determination or decision made by a delegate of a council is to be conducted:*
- (a) *by the council (unless the determination or decision may be made only by a local planning panel or delegate of the council), or*
- (b) *by another delegate of the council who is not subordinate to the delegate who made the determination or decision.*
- (5) *The review of a determination or decision made by a local planning panel is also to be conducted by the panel.*
- (6) *The review of a determination or decision made by a council is to be conducted by the council and not by a delegate of the council.*

The applicant has submitted a Section 8.2 Review of Determination and the decision is subject to review to Council.

5.3.1 Any Environmental Planning Instruments

Lithgow Local Environmental Plan 2014

The original application was assessed in accordance with the provisions of Lithgow's previous Local Environmental Plan 2014 and was found to be compliant. The Section 8.2 *Determinations and decisions subject to review*, does not require any further assessment under the LEP.

State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011

SEPP (Sydney Drinking Water Catchment) 2011 – Compliance Check	
Clause	Compliance
10	Development consent cannot be granted unless neutral or Yes

	beneficial effect on water quality	
11	Development that needs concurrence of the Chief Executive	Yes

Comment: The application is required to be assessed by Water NSW as the Review of Determination directly related to conditions imposed by Water NSW. An assessment has been undertaken and it is considered that the development will meet the requirements of a neutral or beneficial effect on water quality subject to amended conditions of consent as part of the Review of Determination.

5.3.2 Any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority

Nil.

5.3.3 Any Development Control Plan

Nil.

5.3.4 Any planning agreement that has been entered into under Section 93F, or any draft planning agreement that a developer has offered to enter into under Section 93F?

Nil.

5.3.5 Any matters prescribed by the regulations that apply to the land

The original application was assessed in accordance with the provisions of the Regulations, and was found to be compliant. The Section 8.2 Review does not require any further assessment under the Regulations.

5.3.6 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 proposed Review of Determination requests changes to the consent in relation to the onsite effluent disposal system upgrade and timing. This was assessed by Water NSW and found to be acceptable subject to amended conditions of consent.

These amended conditions removed Conditions 63 & 64 and the addition of condition 66A. Proposed condition of consent 66A implicates Council to upgrade the current onsite effluent disposal system completely to accommodate all effluent onsite for the life of operations. This is to be completed 5 years after the Occupation Certificate for the restaurant is granted.

As a result Council, as the landowner and owner of the assets will be required to upgrade the system fully to a superior system capable of achieving neutral or beneficial effect on water quality for the foreseeable future. This will most likely be at Council's cost, although Council is not the applicant, nor the developer of the land which is increasing its use. However, Council supports the ongoing recreational use of the site and it is considered a positive asset of Lithgow Government Area.

5.3.7 The Suitability of the site for the development

The surrounding land uses are for recreational and rural residential pursuits surrounding Lake Lyell. The size and nature of the development is consistent with the existing camping and recreational park. The proposal is compatible with the objectives of the zone and is considered to have minimal impact on the surrounding amenity. Therefore, the site is considered to be suitable for the proposed development.

5.3.8 Any submissions made in accordance with this Act or the Regulations

Given that the Section 8.2 *Review of Determination* relates to Water NSW original conditions of consent a notification was sent to Water NSW for review. The application was also referred to Council's Director of Operations, Director Economic Development & Environment and Director Water & Wastewater in relation to the financial burden to replace the waste water management system. It was agreed by these directors that the proposed amended conditions of consent may be acceptable given there is allowances with the current budget.

Water NSW

I refer to your email received 11 April 2019 requesting a change to Water NSW's previous concurrence advice under Clause 11 of *State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011 (the SEPP)*. The request seeks to amend Concurrence Condition 7 regarding the time frame of the condition.

The subject property, which has been previously inspected by Water NSW, is located within the Warragamba catchment which forms part of Sydney's water supply. Water NSW has considered the email dated 11 April 2019 along with previously provided documents in its assessment.

Based on the site inspection and the information provided, Water NSW has assessed that the development as proposed is likely to achieve a neutral or beneficial effect on water quality, provided appropriate conditions are included in any development consent and are subsequently implemented.

Water NSW concurs with Council granting consent to the application subject to the following conditions. This advice replaces Water NSW's previous concurrence advice provided to Council on 22 October 2018.

If, after receipt of this letter, revisions are made to any of the DA plans, Council does not need to refer the plans to Water NSW if the revisions would have no impact on water quality. Council is requested to amend the relevant Water NSW condition/s to reference the revised plans and notify the assessing officer by email.

General

1. The site layout and works shall be as specified in the Statement of Environmental Effects prepared by Nuala Dewhurst (dated August 2017) and shown on the Site Plans prepared by Ian Laing Drafting (Proj. No. 21685; Sheets 1A & 1B; Rev 1, dated 27.9.2017). No revised site layout, staging or external works that will impact on water quality, shall be permitted without the agreement of Water NSW.

Reason for Condition 1 - Water NSW has based its assessment under the State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011 on this version of the development.

Stormwater Management

2. A rainwater collection and reuse system for the restaurant roof shall be installed that incorporates the following specifications and requirements:
 - rainwater tanks with a minimum total capacity of 10,000 litres above any volume required for mains top-up
 - roofs and gutters designed so as to maximise the capture of rainwater in the tanks
 - the tanks plumbed to toilets and other areas for non-potable use including landscape watering, and
 - all rainwater tank overflow shall be directed to a level spreader such that discharge does not result in erosion.
3. No wash water used in cleaning the floors of the restaurant facility or kitchen shall be directed to the stormwater system.
4. No variation to stormwater treatment or management that will impact on water quality shall be permitted without the agreement of Water NSW.

Reason for Conditions 2 to 4 – To ensure appropriate stormwater treatment and quality control measures are designed, implemented and maintained so as to achieve a sustainable neutral or beneficial impact on water quality, particularly during wet weather, over the longer term.

Wastewater Management

5. The following improvements/repairs to the existing pump-out system shall be undertaken prior to the issuance of an Occupation Certificate for the development:
 - install flow meters at all wastewater generation points to measure actual wastewater flow generated at the site
 - install a cut-off/switching mechanism at the upper amenities collection well to direct effluent no greater than the daily design treatment capacity to the amended soil mound
 - repair the damage to the amended soil mound to ensure its proper functioning, and
 - install/repair/replace high water level alarms and float activated visual alarms, and replace existing submersible pump/s with macerating pump/s as recommended in the Onsite Sewage Management System Review Report for Lake Lyell Recreation Park and Conceptual Upgrade Plan prepared by Whitehead and Associates (dated 25 September 2017).
6. The capacity of the existing pump-out system shall also be upgraded, prior to the issuance of an Occupation Certificate, in accordance with the recommendations in the Onsite Sewage Management System Review Report for Lake Lyell Recreation Park and Conceptual Upgrade Plan prepared by Whitehead and Associates (dated 25 September 2017) but with the following specific requirements and modifications:
 - primary treated effluent in excess of the existing design capacity of the amended soil mound and upper amenities collection wells shall be pumped to further collection tanks with a minimum storage capacity of 40,000 litres which shall meet the following requirements:
 - be provided with a visible indicator for wastewater level and an visual alarm for excessive wastewater levels
 - the alarm shall be triggered when an individual tank volume exceeds 70% of its capacity
 - the pump line shall be a 50mm diameter, Class 12 pressure pipe
 - the tanks shall be provided with bunding on the downslope side to prevent any spilled or leaked effluent reaching Lake Lyell
 - all pump lines shall be connected to a pump-out stand concreted into the ground and shall be fitted with a "Kamlock" (or similar) cover that can be readily accessed by pump-out trucks

- all pump-out stand shall be located in a spillage well with a valve for the collection of any spilt sewage, and
 - the applicant shall enter into an agreement with a Council-approved tanker pump out service for regular weekly pumping during peak holiday periods and “as needs” pumping during other times.
7. The existing onsite wastewater treatment and disposal system shall be fully replaced/upgraded within 5 years from the date of the Occupation Certificate for this application. The new system shall be suitably designed and located, as agreed to by Water NSW, and shall have capacity to treat and dispose of the total wastewater generated on site for the life of the operations.
 8. These conditions of consent relating to wastewater management shall be provided to the installer of the wastewater system.
 9. The installers of the wastewater management system shall certify to Council in writing that the system has been constructed and installed as per these conditions of consent, and that the system has been tested and is functioning properly.
 10. No Occupation Certificate for the development shall be issued until Council has received the written certification from the installers, and approved the onsite wastewater management system under the *Local Government Act 1993*.

Reason for Conditions 5 to 10 – To ensure that the wastewater management system is appropriately designed, located and constructed so as to have a sustainable neutral or beneficial effect on water quality over the longer term.

Operation Environmental Management Plan and and Performance Reporting

11. An Operational Environmental Management Plan (OEMP) shall be prepared in consultation with Water NSW by a person with knowledge and experience in the preparation of such plans prior to the issuance of any Occupation Certificate. The OEMP shall be implemented which shall include but not be limited to:
 - details on the location, description and nature of wastewater and stormwater management structures such as tanks, pipes, alarms, flow meters, pumps, desludging of tanks, grease trap, and rainwater collection system
 - an identification of the responsibilities and detailed requirements for the inspection, monitoring and maintenance of all wastewater and stormwater management structures, including the frequency of such activities
 - a monthly monitoring and performance program for the onsite sewage management system that shall include, but not be limited to:
 - wastewater flow generated at all wastewater generation points
 - quantities of wastewater directed to amended soil mound
 - condition of amended soil mound, alarms, flows meters and pumps
 - quantities of wastewater in all tanks
 - sludge levels in all tanks
 - quantities of wastewater being pumped out, and
 - records of wastewater received by a licensed facility.
 - the identification of the individuals or positions responsible for inspection and maintenance activities including a reporting protocol and hierarchy, and
 - checklists for recording inspections and maintenance activities.
12. The monitoring and performance reports of the existing onsite sewage management system as required in Condition 12 above shall be prepared by a person with knowledge and experience in the preparation of such reports and be submitted to Council and Water NSW. The report/s shall be submitted on a 6-monthly basis following the date of the Occupation Certificate.

Reason for Conditions 11 & 12 – To ensure appropriate wastewater and stormwater treatment and quality control measures are managed, monitored and maintained so as to achieve a sustainable neutral or beneficial impact on water quality, particularly during wet weather, over the longer term.

Construction Activities

13. An Erosion and Sediment Control Plan shall be prepared for all works required for the proposed development by a person with knowledge and experience in the preparation of such plans. The Plan shall:
- meet the requirements outlined in Chapter 2 of NSW Landcom's Soils and Construction: Managing Urban Stormwater (2004)
 - be prepared prior to issuance of a Construction Certificate and to the satisfaction of Council, and
 - include controls to prevent sediment or polluted water leaving the construction site or entering any natural drainage lines or stormwater drain.
14. The Erosion and Sediment Control Plan shall be implemented, and effective erosion and sediment controls shall be installed prior to any construction activity. Erosion and sediment controls shall be regularly inspected, monitored and maintained until works have been completed and groundcover established.

Reason for Conditions 13 & 14 - To manage adverse environmental and water quality impacts during the construction phase of the development and to minimise the risk of erosion, sedimentation and pollution within or from the site during this construction phase.

Director Of Operations, Director Water & Wastewater And Director Economic Development & Environment

In summary, no objection is raised to the condition providing it is able to be changed from 'within five years from the date of the Council determination for this application' is to 'within five years from the date of final occupation certificate for the restaurant'. Having a condition relating to final determination is problematic as it requires works irrespective of whether the consent is actually acted upon. Therefore the linkage to the occupation certificate.

5.3.9 The public interest

There have been no issues raised from the public regarding planning issues.

6. DISCUSSION AND CONCLUSIONS

The proposed Section 8.2 complies with the *Environmental Planning and Assessment Act 1979* Section 8.2(1) and the *Environmental Planning and Assessment Regulation 2000*. As such it is recommended that Section 8.2 is approved subject to amended conditions of consent.

As the DA217/17 was determined by Council being on Council owned land, it is necessary for the Section 8.2 Review to be determined by Council at a Council meeting.

7. ATTACHMENTS

Nil.

8. RECOMMENDATION

THAT the Section 8.2A Review of Determination in association with Development Application DA217/17 is approved subject to the following amended, removed and additional conditions of consent

Removed:

63. Prior to the issuance of a Construction Certificate, a report prepared by a suitably qualified person shall be submitted to Council for consideration to identify:
- a) the exact design treatment capacity of the existing amended mounds
 - b) the existing and proposed wastewater loads generated onsite, including peak and average wastewater loading
 - c) any upgrading works required to be carried out to the existing amended mounds.
64. Based on advice in Condition 63 above and prior to the issuance of any Occupation Certificate, the existing amended soil mounds shall be repaired and/or reconstructed such that they are functional and operational and a cut-off/switching mechanism shall be installed at the upper amenities collection well to direct effluent no greater than the design treatment capacity identified by the assessment in Condition 63 above.

Amended:

65. The following improvements/repairs to the existing pump-out system shall be undertaken prior to the issuance of a ~~Construction~~ **Occupation** Certificate for the development:
- install flow meters at all wastewater generation points to measure actual wastewater flow generated at the site,
 - **Install a cut/off switching mechanism at the upper amenities collection well to direct effluent no greater than the daily design treatment capacity to the amended soil mound**
 - **Repair the damage to the amended soil mound to ensure its proper functioning, and**
 - install/repair/replace high water level alarms and float activated visual alarms, and replace existing submersible pump/s with macerating pump/s as recommended in the Onsite Sewage Management System Review Report for Lake Lyell Recreation Park and Conceptual Upgrade Plan prepared by Whitehead and Associates (dated 25 September 2017).
66. The capacity of the existing pump-out system shall also be upgraded, prior to the issuance of a ~~Construction~~ **Occupation** Certificate, in accordance with the recommendations in the Onsite Sewage Management System Review Report for Lake Lyell Recreation Park and Conceptual Upgrade Plan prepared by Whitehead and Associates (dated 25 September 2017) but with the following specific requirements and modifications:
- primary treated effluent in excess of the existing design capacity of the amended soil mound and upper amenities collection wells shall be pumped to further collection tanks with a minimum storage capacity of 40,000 litres which shall meet the following requirements:

- be provided with a visible indicator for wastewater level and an visual alarm for excessive wastewater levels
 - the alarm shall be triggered when an individual tank volume exceeds 70% of its capacity
 - the pump line shall be a 50mm diameter, Class 12 pressure pipe
 - the tanks shall be provided with bunding on the downslope side to prevent any spilled or leaked effluent reaching Lake Lyell
 - all pump lines shall be connected to a pump-out stand concreted into the ground and shall be fitted with a "Kamlock" (or similar) cover that can be readily accessed by pump-out trucks
 - all pump-out stand shall be located in a spillage well with a valve for the collection of any spilt sewage, and
- the applicant shall enter into an agreement with a Council-approved tanker pump out service for regular weekly pumping during peak holiday periods and "as needs" pumping during other times.

Construction Activities

72. An Erosion and Sediment Control Plan shall be prepared for all works proposed or required as part of the development by a person with knowledge and experience in the preparation of such plans. The Plan shall:
- meet the requirements outlined in Chapter 2 of NSW Landcom's Soils and Construction: Managing Urban Stormwater (2004)
 - be prepared prior to **issuance of a Construction Certificate** and to the satisfaction of Council, **and**
 - **include controls to prevent sediment or polluted water leaving the construction site or entering any natural drainage lines or stormwater drain.**
73. The **Erosion and Sediment Control** Plan shall be implemented and effective erosion and sediment controls shall be installed prior to any construction activity. ~~The controls shall prevent sediment or polluted water leaving the site or entering any stormwater drain or natural drainage system and~~ **Erosion and sediment controls** shall be regularly **inspected, monitored and** maintained ~~and retained~~ until works have been completed and ~~ground surface stabilised or groundcover re-established.~~

Additional:

- 66A. The existing onsite wastewater treatment and disposal system shall be fully replaced/upgraded within 5 years from the date of the Occupation Certificate for this application. The new system shall be suitably designed and located, as agreed to by Water NSW, and shall have capacity to treat and dispose of the total wastewater generated on site for the life of the operations.

REASONS FOR CONDITIONS

The conditions in Schedule A have been imposed for the following reasons:

- To ensure compliance with the terms of the relevant Planning Instruments
- To ensure no injury is caused to the existing and likely future amenity of the neighbourhood
- Due to the circumstances of the case and the public interest.
- To ensure that adequate road and drainage works are provided.

- To ensure that satisfactory arrangements are made to satisfy the increased demand for public recreation facilities.
- To ensure access, parking and loading arrangements will be made to satisfy the demands created by the development.
- To ensure the structural integrity of the development.
- To ensure the protection of the health and safety of the occupants of the development.
- To protect the environment.
- To prevent, minimise, and/or offset adverse environmental impacts.
- To ensure there is no unacceptable impact on the water quality.
- To ensure adequate soil conservation and protect against movement of soil and sediments.

Schedule A

Conditions of Consent (Consent Authority)

Please Note: It should be understood that this consent in no way relieves the owner or applicant from any obligation under any covenant affecting the land.

ADMINISTRATIVE CONDITIONS

1. That the development be carried out in accordance with the application, Statement of Environmental Effects, accompanying information, plans listed in the approval and any further information provided during the process unless otherwise amended by the following conditions.
2. All waste produced by the development is to be appropriately removed to a licenced waste facility on a regular basis.
3. The approved hours of operation are between 11am to 10pm Sundays to Thursdays, and 11am to midnight on Fridays and Saturdays.
4. The maximum number of patrons at the restaurant shall be 90 with a maximum of 6 staff. This does not include people at the beer garden or deck as long as meals are not also served.

Building Code of Australia

5. All building work must be carried out in accordance with the provisions of the Building Code of Australia.

FOOD & HEALTH REQUIREMENTS

Water Supply

6. The applicant must demonstrate that the drinking water will be provided by a licensed Water Carter and must comply with NSW Health Guidelines for Water Carters. The name of supplier to be given to Council.
7. The source of the drinking water must comply with the Australian Drinking Water Guidelines *2011* and any subsequent amendments to the Guidelines.
8. An appropriate drinking water management system, in compliance with NSW Health requirements and Public Health Act 2010 and Regulation 2012, or an appropriate filtration and disinfection process must be used to be potable water.
9. All water supplied for hand washing, showering, food preparation – all water for human contact is to be potable water.
10. All waste removed by a waste contractor is to be taken to Lithgow Waste Facility.

Food Premises

11. The proposed food premises areas are to be designed and constructed in accordance with the Food Act 2003. In this regard, the Applicant is to provide a detailed food premises fit-out plan and specification illustrating compliance with AS 4674-2004 - Design, construction and fit-out of food premises, for Council's approval prior to the commencement of demolition/construction activities.

Walls

12. The walls surrounding the food preparation areas shall be of solid construction.
13. The walls in the food preparation area of the premises shall be: sealed to prevent the entry of dirt, dust and pests; unable to absorb grease, food particles or water; and able to be easily and effectively cleaned. Walls in food preparation areas shall be finished with one or a combination of the following materials:
 - (i) Glazed tiles.
 - (ii) Stainless or aluminium sheeting.
 - (iii) Polyvinyl sheeting with welded seams.
 - (iv) Laminated thermosetting plastic sheeting.
 - (v) Similar impervious material adhered directly to the wall.

Floors

14. The flooring in the food preparation, storage and bar areas of the premises shall be designed and constructed so that they can be effectively cleaned; be unable to absorb grease, food particles or water; be laid so that there is no ponding of water; and to the extent that is practicable, be unable to provide harborage for pests. Floors in the food preparation areas shall be finished with one or a combination of the following materials:
 - (i) Sealed quarry tiles or ceramic tiles.
 - (ii) Stainless steel.
 - (iii) Polyvinyl sheeting with welded seams.
 - (iv) Laminated thermosetting plastic sheeting.
 - (v) Epoxy resin.
 - (vi) Steel trowel case hardened concrete
15. Coving of not less than 25mm in radius shall be provided to the intersections of floors with walls in the food preparation area. The coving shall be integral to the surface finish of both floor and wall in such a manner as to form a continuous uninterrupted surface.
16. The floor of the food preparation areas is to be drained to a floor waste connected to the sewer. The floor waste is to consist of a removable basket within a fixed basket arrestor and is to comply with the Sydney Water requirements.

Ceiling

17. The ceiling in food preparation areas and storage areas shall be finished with impervious sealed material without joints, cracks and crevices. (Note: Drop-in, removable panel ceilings shall not be used in food preparation areas or over areas where open food is stored, displayed or served.)

Washing Facilities

18. A separate hand wash basin, supplied with a constant supply of warm running water through a single outlet or mixer, shall be provided in food preparation areas.
19. All hand wash basins installed within the premises, including those inside the toilets, shall be supplied with warm running water delivered through a single outlet.
20. Adequate hand wash basins shall be installed inside the food preparation areas. They shall be located no further than 5m from any place where food handlers are handling open food.

21. A liquid soap dispenser (that dispenses liquid soap) and a towel dispenser (that dispenses a single-use paper or cloth towel) shall be provided adjacent to or near each hand wash basin.
22. The wash up sink shall be supplied with hot and cold water.

Lighting and Light Fittings

23. Artificial lighting provided to the premises shall comply with the requirements of AS 1680.1 and AS/NZS 1680.2.4.
24. In areas where open food is handled or stored, light fittings shall be designed and constructed to prevent contamination of food should the globe or tube shatter and free from any features that would harbour dirt, dust or insects or make the fitting difficult to clean.

Mechanical Exhaust Ventilation System

25. Where cooking or extensive heating processes or such other processes as may be specified are carried out in the kitchen or in food preparation areas, an approved mechanical exhaust ventilation system shall be installed and operated in accordance with AS/NZS 1668.1 - 1998 and AS 1668.2 – 2012.
26. The mechanical exhaust ventilation system shall be designed and installed in accordance with AS/NZS 1668.1 – 1998 and AS 1668.2 – 2012. A certificate (issued by a licensed mechanical ventilation contractor) stating compliance with these Australian Standards shall be submitted to Council.
27. A mechanical exhaust ventilation system that complies with the AS/NZS 1668.1-1998 and AS 1668.2-2012 shall be provided in the food preparation areas to remove the steam from the dishwasher or other washing and sanitizing equipment.

Coolroom

28. The open space between the top of the coolroom and the ceiling shall be fully enclosed and kept insect and pest proof.
29. The coolroom must have a smooth concrete floor, which is to be sloped to the door. A floor waste connected to the sewer must be located outside the coolroom.
30. The coolroom shall be able to be opened from the inside without a key and fitted with an alarm that can only be operated from within the coolroom.

Fixtures, Fittings and Equipment

31. All fixtures, fittings and equipment shall be constructed so as to be capable of being easily and effectively cleaned.
32. Service pipes, conduits and electrical wiring shall either be –
 - (i) concealed in floors, plinths, walls or ceiling; or
 - (ii) fixed on brackets so as to provide at least 25mm clearance between the pipe and
 - (iii) adjacent vertical surface and 100mm between the pipe or conduit and adjacent horizontal surfaces

Toilet Cubicles

33. The toilet cubicles shall be –
- (i) separated from areas where open food is handled, displayed or stored by an intervening ventilated space fitting with self-closing doors; or
 - (ii) provided with self-closing doors and mechanical exhaust system that operate when the sanitary compartment is in use and for at least 30 seconds after the cubicle is vacated.

Waste Management

34. Waste and recyclable material generated from the operations of the business shall be managed in a satisfactory manner that does not give rise to offensive odour or encourage pest activity. Food residues, food scraps, and waste material shall be regularly removed from the premises. Waste shall not be permitted to accumulate near the allocated waste storage bins.
35. A stainless steel cleaner's sink or a floor waste shall be provided for the disposal of waste water. The cleaner's sink or floor waste shall be located outside of areas where open food is handled.

Pest Control

36. Practicable measures shall be taken to exclude and prevent the entry of vermin into the food preparation area through windows and doors. Where premises are enclosed, windows shall be protected against the entry of pests by being –
- (i) tight-fitting and permanently fixed closed;
 - (ii) fitted with mesh screens that can be removed for cleaning; or
 - (iii) protected by a permanent mesh screen that can be cleaned in place
37. Entrances/exits, serving hatches and similar openings to food premises shall be protected against the entry of pests by –
- (i) tight-fitting solid self-closing doors, roller shutters or other means of closing off the entrance; or
 - (ii) tight-fitting self-closing mesh screen doors.
38. The layout, disposition and method of installation of fixtures and fittings, together with wall, floor, and ceiling finishes to all preparation, storage areas and cool rooms (AS4674, the Food Act 2003 and Regulations there under.
39. Premise to be registered with Council prior to opening.

Food Safety Supervisor

40. A food safety supervisor shall be appointed in accordance with Food Act 2003 and a copy of the Food Safety Supervisor Certificate shall be submitted to Council prior to the commencement of the food business.
41. All sinks in the food preparation area should be fitted with fixed sink screens.
42. Floor waste's in the food preparation areas and waste collection areas should be fitted with dry basket arrestors.
43. Food preparation activity will need to discharge to a suitable sized grease arrestor sized according to the inflow rate and instillation must comply with the requirements of AS3500 and Council's Trade Waste Guidelines.

44. A grease arrestor shall not be located in areas where food, equipment or packaging materials are handled or stored. Access to the grease arrestor for emptying shall not be through areas where open food is handled or stored or where food contact equipment and packaging materials are handled or stored.
45. If the property is connected to the Council reticulated water supply, a hose cock with RPZ backflow protection valve is required to be installed within 15m of the grease arrestor to assist with maintenance / cleaning. An annual backflow test report needs to be furnished upon installation.

REQUIREMENTS PRIOR TO COMMENCEMENT OF WORK

Construction Certificate – Building

46. A construction certificate for the completion of the restaurant and for the commercial kitchen is required prior to the carrying out of any further building works. This certificate can be issued either by Council as the consent authority or by an accredited certifier.
47. Prior to commencing any construction works, the following provisions of the Environmental Planning and Assessment Act 1979 are to be complied with:
 - a) a Principal Certifying Authority (PCA) is to be appointed and Council is to be notified of the appointment in accordance with Section 81A(2)(b) of the Act and Form 7 of the Regulations, and
 - b) Council is to be notified at least two days prior of the intention to commence building works, in accordance with Section 81A(2)(c) of the Act in Form 7 of Schedule 1 of the Regulations.

Signage

48. Prior to the commencement of any works on the land, a sign/s must be erected in a prominent position on the site:
 - a) Showing the name of the principal contractor (if any) for any building work and a telephone number on which that person can be contacted outside working hours.
 - b) Stating that unauthorised entry to the work site is prohibited and
 - c) Showing the name, address and telephone number of the principle certifying authority for the work.The sign/s are to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

REQUIREMENTS DURING CONSTRUCTION

Workers toilet facilities

49. Before work starts, toilet facilities must be provided at the work site before works begin and must be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site.

Erosion and sediment control

50. To contain soil and sediment on the property, controls are to be implemented prior to clearing of the site vegetation and the commencement of site works. This will include:
 - a) The installation of a sediment fence with returned ends across the low side of the site so that all water flows through. These shall be maintained at no less than 70% capacity at all times. Drains, gutters, roadways etc., shall be kept clean and free of sediment.Soil erosion fences shall remain and must be maintained until all disturbed areas are restored by turfing, paving, revegetation.

Waste disposal

51. Prior to any building works commencing a suitable Waste Container for the deposit of all building rubbish and litter must be provided and emptied as soon as full at a waste management facility. Building rubbish and litter must be contained on the building site and the work site left clear of waste and debris at the completion of the works.

Construction hours

52. All work on site shall only occur between the following hours:
- | | |
|----------------------------|------------------|
| Monday to Friday | 7.00am to 6.00pm |
| Saturday | 8.00am to 1.00pm |
| Sunday and public holidays | No work |

Excavations

53. All excavations and backfilling associated with the approved works must be executed safely and in accordance with appropriate professional standards. All excavations must be properly guarded and protected to prevent them from being dangerous to life or property.

Licensed plumber

54. That all plumbing and drainage work be carried out by a licensed plumber and drainer and inspected by Council officers.

Fire Safety Upgrade of Existing Buildings

55. In accordance with Clause 94 of the Environmental Planning & Assessment Regulation 2000, the existing building shall be upgraded to comply with the following provisions of the Building Code of Australia (Volume 1):-
- The existing exit doors on both sides of the restaurant shall be fitted with panic bars or lever-type handled latches in accordance with Clause D2.21. The doors must be capable of being opened by a single-handed downward or pushing action on a single device which is located between 900mm and 1.1 metres above the floor without the need to resort to a key;
 - Emergency lighting complying with Australian Standard AS2293-2005 must be provided throughout the restaurant in accordance with Clause E4.2;
 - Illuminated exit signs complying with Australian Standard AS2293-2005 must be provided above the exit doors in accordance with Clause E4.5; and
 - Portable fire extinguishers and fire blankets must be provided in the buildings in accordance with Clause E1.6 and AS2444.

Access for People with Disabilities

56. Access to the building for people with a disability shall be in accordance with the recommendations in the Report by Bio-Building Design Pty Ltd dated 26 February 2018. All of the recommendations in the Report must be complied with prior to the issue of an occupation certificate.

PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

Occupation Certificate

57. Prior to the use/occupation of the buildings, an Occupation Certificate must be issued by the Principal Certifying Authority (PCA).

58. Prior to the issue of the Occupation Certificate, the following shall be submitted to the Principal Certifying Authority:
- a) A Structural Engineer's certificate of adequacy for the restaurant and kitchen buildings; and
 - b) Certification from an Access Consultant to confirm that the recommendations in the Report by Bio-Building Design Pty Ltd dated 26 February 2018 have been complied with.

WATER NSW REQUIREMENTS

General

59. The site layout and works shall be as specified in the Statement of Environmental Effects prepared by Nuala Dewhurst (dated August 2017) and shown on the Site Plans prepared by Ian Laing Drafting (Proj. No. 21685; Sheets 1A & 1B; Rev 1, dated 27.9.2017). No revised site layout, staging or external works that will impact on water quality, shall be permitted without the agreement of Water NSW.

Stormwater Management

60. A rainwater collection and reuse system for the restaurant roof shall be installed that incorporates the following specifications and requirements:
- rainwater tanks with a minimum total capacity of 10,000 litres above any volume required for mains top-up
 - roofs and gutters designed so as to maximise the capture of rainwater in the tanks
 - the tanks plumbed to toilets and other areas for non-potable use including landscape watering, and
 - all rainwater tank overflow shall be directed to a level spreader such that discharge does not result in erosion.
61. No wash water used in cleaning the floors of the restaurant facility or kitchen shall be directed to the stormwater system.
62. No variation to stormwater treatment or management that will impact on water quality shall be permitted without the agreement of Water NSW.

Wastewater Management

63. ~~Prior to the issuance of a Construction Certificate~~, a report prepared by a suitably qualified person shall be submitted to Council for consideration to identify:
- d) ~~the exact design treatment capacity of the existing amended mounds~~
 - e) ~~the existing and proposed wastewater loads generated onsite, including peak and average wastewater loading~~
 - f) ~~any upgrading works required to be carried out to the existing amended mounds.~~
- (Removed as per Review of Determination)*
64. Based on advice in Condition 63 above and ~~prior to the issuance of any Occupation Certificate~~, the existing amended soil mounds shall be repaired and/or reconstructed such that they are functional and operational and a cut-off/switching mechanism shall be installed at the upper amenities collection well to direct effluent no greater than the design treatment capacity identified by the assessment in Condition 63 above.
- (Removed as per Review of Determination)*

65. The following improvements/repairs to the existing pump-out system shall be undertaken prior to the issuance of a ~~Construction~~ **Occupation** Certificate for the development:
- install flow meters at all wastewater generation points to measure actual wastewater flow generated at the site,
 - **Install a cut/off switching mechanism at the upper amenities collection well to direct effluent no greater than the daily design treatment capacity to the amended soil mound**
 - **Repair the damage to the amended soil mound to ensure its proper functioning, and**
 - install/repair/replace high water level alarms and float activated visual alarms, and replace existing submersible pump/s with macerating pump/s as recommended in the Onsite Sewage Management System Review Report for Lake Lyell Recreation Park and Conceptual Upgrade Plan prepared by Whitehead and Associates (dated 25 September 2017).
- (Amended as per Review of Determination)*
66. The capacity of the existing pump-out system shall also be upgraded, prior to the issuance of a ~~Construction~~ **Occupation** Certificate, in accordance with the recommendations in the Onsite Sewage Management System Review Report for Lake Lyell Recreation Park and Conceptual Upgrade Plan prepared by Whitehead and Associates (dated 25 September 2017) but with the following specific requirements and modifications:
- primary treated effluent in excess of the existing design capacity of the amended soil mound and upper amenities collection wells shall be pumped to further collection tanks with a minimum storage capacity of 40,000 litres which shall meet the following requirements:
 - be provided with a visible indicator for wastewater level and an visual alarm for excessive wastewater levels
 - the alarm shall be triggered when an individual tank volume exceeds 70% of its capacity
 - the pump line shall be a 50mm diameter, Class 12 pressure pipe
 - the tanks shall be provided with bunding on the downslope side to prevent any spilled or leaked effluent reaching Lake Lyell
 - all pump lines shall be connected to a pump-out stand concreted into the ground and shall be fitted with a "Kamlock" (or similar) cover that can be readily accessed by pump-out trucks
 - all pump-out stand shall be located in a spillage well with a valve for the collection of any spilt sewage, and
 - the applicant shall enter into an agreement with a Council-approved tanker pump out service for regular weekly pumping during peak holiday periods and "as needs" pumping during other times.
- (Amended as per Review of Determination)*
- 66A. The existing onsite wastewater treatment and disposal system shall be fully replaced/ upgraded within 5 years from the date of the Occupation Certificate for this application. The new system shall be suitably designed and located, as agreed to by Water NSW, and shall have capacity to treat and dispose of the total wastewater generated on site for the life of the operations.**
- (Added as per Review of Determination)*
67. These conditions of consent relating to wastewater management shall be provided to the installer of the wastewater system.

68. The installers of the wastewater management system shall certify to Council in writing that the system has been constructed and installed as per these conditions of consent, and that the system has been tested and is functioning properly.
69. No Occupation Certificate for the development shall be issued until Council has received the written certification from the installers, and approved the onsite wastewater management system under the *Local Government Act 1993*.

Operation Environmental Management Plan and and Performance Reporting

70. An Operational Environmental Management Plan (OEMP) shall be prepared in consultation with Water NSW by a person with knowledge and experience in the preparation of such plans prior to the issuance of any Occupation Certificate. The OEMP shall be implemented which shall include but not be limited to:
- details on the location, description and nature of wastewater and stormwater management structures such as tanks, pipes, alarms, flow meters, pumps, desludging of tanks, grease trap, and rainwater collection system
 - an identification of the responsibilities and detailed requirements for the inspection, monitoring and maintenance of all wastewater and stormwater management structures, including the frequency of such activities
 - a monthly monitoring and performance program for the onsite sewage management system that shall include, but not be limited to:
 - wastewater flow generated at all wastewater generation points
 - quantities of wastewater directed to amended soil mound
 - condition of amended soil mound, alarms, flows meters and pumps
 - quantities of wastewater in all tanks
 - sludge levels in all tanks
 - quantities of wastewater being pumped out, and
 - records of wastewater received by a licensed facility.
 - the identification of the individuals or positions responsible for inspection and maintenance activities including a reporting protocol and hierarchy, and
 - checklists for recording inspections and maintenance activities.
71. The monitoring and performance reports of the existing onsite sewage management system as required in Condition 70 above shall be prepared by a person with knowledge and experience in the preparation of such reports and be submitted to Council and Water NSW. The report/s shall be submitted on a 6-monthly basis following the date of the Occupation Certificate.

Construction Activities

72. An Erosion and Sediment Control Plan shall be prepared for all works proposed or required as part of the development by a person with knowledge and experience in the preparation of such plans. The Plan shall:
- meet the requirements outlined in Chapter 2 of NSW Landcom's Soils and Construction: Managing Urban Stormwater (2004)
 - be prepared prior to **issuance of a Construction Certificate** and to the satisfaction of Council, **and**
 - **include controls to prevent sediment or polluted water leaving the construction site or entering any natural drainage lines or stormwater drain.**
- (Amended as per Review of Determination)*

73. The **Erosion and Sediment Control** Plan shall be implemented and effective erosion and sediment controls shall be installed prior to any construction activity. ~~The controls shall prevent sediment or polluted water leaving the site or entering any stormwater drain or natural drainage system and~~ **Erosion and sediment controls** shall be regularly **inspected, monitored and** maintained and retained until works have been completed and ground surface stabilised or groundcover re-established.
(Amended as per Review of Determination)

ADVISORY NOTES

Building Code of Australia Compliance

- AN1. All building work must be carried out in accordance with the provisions of the Building Code of Australia. In this regard, the following information must be submitted with the Construction Certificate Application:-
- a) Structural Engineer's Certification that the kitchen floor will be structurally adequate to withstand the loads from a commercial kitchen fit-out having regard to the approved plans and the conditions of this Consent;
 - b) Endorsement of the architectural plans by the Access Consultants, Bio-Building Designs to ensure that the recommendations in their Report dated 26 February 2018 have been incorporated in the design of the buildings;
 - c) The provision of tactile indicators where the accessway meets the vehicular way in accordance with Clause D3.8(a)(v)(B);
 - d) Details for the design of the balustrades in accordance with Clause D2.16 with specific details for where the floor of the proposed deck may be more than 4 metres high;
 - e) Amended plans to indicate additional sanitary facilities to comply with Table F2.3 and ambulant sanitary facilities in accordance with Clause F2.4;
 - f) Details of the proposed floor coverings/linings, wall and ceiling linings to indicate compliance with Specification C1.10 – Fire Hazard Properties; and
 - g) A Section J Energy Efficiency Report by a suitably qualified consultant

Inspection schedule – Drainage and Plumbing

- AN2. As the Certifying Authority for water and sewer inspections Council must be contacted to undertake inspections of the various stages of construction as follows:
- a) Internal and sanitary external drainage
 - b) Hot and cold water plumbing prior to covering
 - c) Final inspection of system prior to occupation of the building.

Note: forty-eight (48) hours notice shall be given to Council prior to inspections and inspection fees must be paid.

Mandatory Building Inspection schedule

- AN3. To ensure structural integrity, the maintenance of minimum health standards, the management of the buildings surrounds and the protection of the environment, inspections are to be carried out at significant stages throughout the construction period. These stages are:
- a) Pier holes/pad footings before filling with concrete.
 - b) Reinforcing steel in position and before concrete is poured (slab, footings, lintels, beams, columns, floors, walls and the like).
 - c) Floor frame, dampcourse, antcapping, foundation walls before floor material is laid.

- d) Framing when external wall and roof cladding is in place and prior to the hemp masonry be placed.
- e) Wet area flashing prior to tiling or covering.
- f) Stormwater drainage between building and discharge point (drainage pipes, soakage pits and the like) prior to covering.
- g) Completion of the development and sign off to all conditions of the consent including landscaping, prior to occupation and use.

- AN4. That the building is to be protected from the attack of subterranean termites by employing construction methods conforming with Australian Standard 3660.1. A durable notice must be permanently fixed to the building in a prominent location (such as the meter box) indicating:
- (i) the method of protection;
 - (ii) the date of installation of the system; and
 - (iii) maintenance requirements.
- AN5. Certification to indicate that the wet areas comply with AS3740 and that the glazing complies with AS1288 & AS2047 shall be submitted to the PCA prior to the issue of an occupation certificate.
- AN6. A Section 68 application for the proposed water and sanitary drainage works must be submitted to, and approved by Council prior to work commencing. The application must include a proposed drainage diagram prepared by a licensed plumber together with details and specifications for the proposed device for pumping effluent to the existing system if adequate falls cannot be achieved.
- AN7. A Section 68 application for the installation of a solid fuel heater must be submitted to, and approved by Council prior to the installation of the solid fuel heater in the restaurant.
- AN8. For any work associated with the repair and or reconstruction of the On-site Wastewater System, a Section 68 shall be lodged and approved by Lithgow City Council.