

MODIFICATION OF CONSENT DA 058/10 (S96 016/12) DWELLING ALTERATIONS, 4 CABINS AND A SHED, LOT 122 DP 757063, 769 JENOLAN CAVES ROAD, GOOD FOREST NSW 2790

1. PROPOSAL

Council is in receipt of a modification of development consent application from Mr. G. Kitchener. The application seeks to modify the following conditions:

Condition 23. The intersection treatment is to be completed prior to any physical works being undertaken on the site; prior to the issue of Stage 1 Construction Certificate.

Condition 24: The existing access on the property is to be permanently removed before the construction deliveries and works commence; which is to be done prior to Stage 1 Construction Certificate.

Condition 25: All access on the property is to be via the public crown road adjacent to the southern boundary of Lot 122 DP 757063.

Condition 26: The intersection of the property and the crown road is to be upgraded to conform to the standard basic rural intersection treatment as detailed in Figure 4.5.2 of the RTA Road Design Guide.

Condition 27: The right turn treatment of the 'Type BAR' (Basic Right Turn) to be constructed adjacent to the north bound lane is to be sealed. (This is required to provide a reasonable level of safety for traffic turning right into the access and to allow traffic an area to pass the right turning vehicle on the left hand side).

Condition 29: The public road is to be sealed for a minimum of 20 metres from the edge of the south bound traffic lane of the property.

Condition 32: The intersection should be formed so as to provide a layby on the departure of the south eastern part of the intersection to be used also as a school bus stop/mail service shelter.

Condition 33: The applicant is required to demonstrate that safe intersection site distance (SISD) will be achieved from the intersection of the crown road with the property for a 100kilometer per hour zone in accordance with the RTA Road Design Guide. In this respect an adjustment of the cut batter to the north of the intersection may be required.

Condition 39: The above intersection treatment is to be completed prior to any physical work being undertaken at the site; As part of Stage 2.

Condition 64. The applicant is to submit a Construction Certificate for Stage 1 regarding the upgrading of the Crown Road.

As stage 1 consists of the development of the shed and alterations to an existing dwelling, it is considered to have minor impacts in the volume of traffic using Jenolan Caves Road. Stage 2 consists of the construction of the cabins (tourist facility) and therefore will involve additional traffic generation. The modification was sent to the Roads and Maritime Services (RMS) (originally RTA) for re-assessment of these conditions. The RMS response is further in this report and they have agreed that the existing access is a more suitable access point for the development rather than utilising the Crown Road..

The modification also seeks to delete the following conditions:

Condition 46. Given the scale and nature of the proposed alterations and additions to the existing building, the existing building is to be brought into conformity with the provisions of BCA2010 (applicable at the date of lodgement).

Condition 47. Supportive documentation, prepared by a competent person, should be submitted with Stage 1 Construction Certificate application to demonstrate how the existing building will be brought into conformity with such provisions, particularly in relation to the following:

- *Natural light and ventilation to habitable rooms*
- *Termite protection measures to AS3660.1*
- *Internal ceiling heights*
- *Waterproofing of concrete floor and external walls*
- *Sub-floor ventilation*
- *Capability of the structure to be able to withstand likely forces acting upon it (e.g. wind, snow, earthquake).*

Council's Building Surveyor acknowledges that the structure was originally a dwelling and when it was built it did not need to comply with the Building Code of Australia Standards. As the structure is an existing dwelling, it does not need to comply with the BCA. Therefore condition 46 & 47 can be deleted from the consent conditions.

Condition 68. Section 94 Contributions of \$4080 for the dwelling will need to be paid to Council for Rural Roads prior to the release of the Stage 1 Construction Certificate.

Condition 69. Section 94 Contributions of \$269 for the dwelling will need to be paid to Council for Rural Fire prior to the release of Stage 1 Construction Certificate.

The development will no longer front a Council road as the RMS is allowing access directly onto Jenolan Caves Road. Also, Council acknowledges that the existing structure is a dwelling. Therefore Section 94 Contributions for Rural Roads relating to the dwelling can be deleted from the consent conditions.

Section 94 Contributions for Rural Fire will need to remain and conditioned to be paid prior to the Construction Certificate for stage 2.

Early in 2012 the applicant put an illegal structure on the property that looked like a cabin to replace the original office building. It was submitted with this application that the structure is a portable ablution and office facility. It is advised that the portable ablution block and office facility will only be temporary.

The application will be assessed under Section 96 (1A) of the *Environmental Planning and Assessment Act 1979*.

2. SUMMARY

To assess and recommend determination of Section 96 Modification of Consent S96 016/12 of DA 058/10. Recommendation will be for approval subject to conditions.

3. LOCATION OF THE PROPOSAL

Legal Description : LOT 122 DP 757063
Property Address : 769 JENOLAN CAVES ROAD, GOOD FOREST NSW 2790

4. DETAILS OF CURRENT APPROVAL

DA No. 058/10 was approved on the 10 October 2011 by the elected Council with the approval documentation being issued on the 12 October 2011, for dwelling alterations, 4 cabins and a shed.

5. PERMISSIBILITY: The development was originally permissible in the 1(a) Rural (General) zone of Council's current LEP which indicates that a dwelling and tourist facility is permissible. This permissibility is not proposed to change as part of this modification.

It is considered that the proposal is consistent with the aims and objectives of 1(a) Rural (General)

5.1 POLICY IMPLICATIONS (OTHER THAN DCP's)

The original application was called in under Policy 7.7 – Calling in of Development Applications by Councillors. Accordingly, the modification also requires determination by the elected Council.

5.2 FINANCIAL IMPLICATIONS (eg Section 94)

Section 94 Contributions

Section 94 Contributions for Rural Roads and Rural Fire Services were assessed as part of the original Development Application through a condition of consent. It is proposed that the Section 94 Contributions for rural roads is no longer applicable as the development will no longer front a Council road

Section 94 Contributions for Rural Fire will need to remain and conditioned to be paid prior to the Construction Certificate for stage 2.

Section 94 Contributions for the tourist cabins are also still applicable and will remain a condition of consent.

Planning Agreements

No.

5.3 LEGAL IMPLICATIONS

5.3.1 Environmental Planning and Assessment Act 1979- Section 96 (1)

- (1) ***Modifications involving minor error, misdescription or miscalculation***
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify a development consent granted by it to correct a minor error, misdescription or miscalculation. Subsections (1A), (2), (3), (5), (6) and (7) do not apply to such a modification.

Not applicable in this instance.

5.3.2 Environmental Planning and Assessment Act 1979- Section 96 (1A)

- (1A) **Modifications involving minimal environmental impact**
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:
- (a) *it is satisfied that the proposed modification is of minimal environmental impact, and*
 - (b) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
 - (c) *it has notified the application in accordance with:*
 - (i) *the regulations, if the regulations so require, or*
 - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
 - (d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

Subsections (1), (2) and (5) do not apply to such a modification.

Comment:

Council is satisfied that the modification, is of a minimal environmental impact. The modification is similar to what was previously approved, the modification only relates to:

- the staging of the RMS and Councils Engineering conditions,
- deletion of Section 94 Contributions and building conditions that do not relate to the current BCA requirements; and
- the usage of temporary buildings that will be removed once stage 1 has been completed.

The Regulations require the notification of the modification to relevant Government Authorities such as the Roads and Maritime Services (RMS) and the Crown Lands Department, Councils Building Surveyor and Councils Engineers for commenting.

The application was further referred to adjoining neighbours and placed on public display in Councils Administration Building for a period of 14 days.

These comments are found later in this report.

5.3.3 Environmental Planning and Assessment Act 1979- Section 96 (2)

- (2) **Other modifications**
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:
- (a) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*
 - (b) *it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a*

concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and

- (c) it has notified the application in accordance with:
- (i) the regulations, if the regulations so require, or
 - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and
- (d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.

Subsections (1) and (1A) do not apply to such a modification.

Not applicable in this instance.

5.3.4 Environmental Planning and Assessment Act 1979- Section 96 (3)

- (3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application.

Any Environmental Planning Instruments

Lithgow City Local Environmental Plan 1994

LEP 1994 – Compliance Check		
Clause	Compliance	
9	1(a) zoning table	Yes
11	General Considerations for development in rural zones	Yes
17	Erection of a dwelling in Zone No 1(a)	Yes
26	Development along arterial roads	Yes
30	Land subject to bushfire hazards	Yes

Comment: The original application was assessed in accordance with the provisions of Lithgow's Local Environmental Plan 1994, and was found to be compliant. The modification does not require any further assessment under the LEP. The modification does not involve any change that requires the application to be resent to the Rural Fire Service. The application was resent to the Roads and Maritime Services (RMS) as the development is located along an arterial road. The application also involves modification to the original consent conditions which were required by the RMS. The RMS comments are found later in this report.

State Environmental Planning Policies

SEPP(Sydney Drinking Water Catchment) 2011 – Compliance Check		
Clause	Compliance	
10	Development consent cannot be granted unless neutral or beneficial effect on water quality	Yes
11	Development that needs concurrence of the Chief Executive	Yes

Comment: The original application was assessed in accordance with the provisions of the relevant SEPP above, and was found to be compliant. The modification does not require any further assessment under any SEPP.

SEPP (Rural Lands) 2008 – Compliance Check		
Clause		Compliance
10	Matters to be considered in determining development applications for rural subdivisions or rural dwellings	Yes

Comment: The original application was assessed in accordance with the provisions of the relevant SEPP above, and was found to be compliant. The modification does not require any further assessment under any SEPP.

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.

Any Development Control Plan

The original application was assessed in accordance with the provisions of the relevant DCP's, and was found to be compliant. The modification does not require any further assessment under any DCP.

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?

None.

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 modification does not require any further assessment under the Regulations.

The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

Access and Road Impacts: The Roads and Maritime Services (RMS) requested within the original application that the existing access off Jenolan Caves Road is to be removed and a new access is to be formed off the Crown Road (currently being transferred to Council) adjoining the property. The RMS and Council further required conditions to be enforced prior to any construction work beginning on the property. As part of this modification it was proposed that the RMS and Councils Conditions be a part of Stage 2 rather than as part of Stage 1 which is for the construction of a shed and building additions. The application was referred to the RMS and Councils Engineers, who have made comments which are located further in this report.

Amenity: The temporary building structure has been located behind the existing dwelling and can only be slightly seen from Jenolan Caves Road. The building structure can not be seen from adjoining dwellings as they are located over 500 meters away. This building structure will only be temporary and will be conditioned if approved to be removed once occupation of the dwelling has been granted. This building structure will only be permissible to contain an office and ablution block and will not be permissible for sleeping purposes.

The Suitability of the site for the development

The original application was assessed in terms of site suitability and was found to be suitable. The modification does not require any further assessment of suitability.

Any submissions made in accordance with this Act or the Regulations

The modification application was referred to the Roads and Maritime Services (RMS), Crown Lands Department, Councils Building Surveyor and Councils Engineers. The application was also sent to adjoining neighbours and placed on public display in Councils Administration Building for a period of 14 days.

ROADS AND MARITIME SERVICES (RMS)

RMS does not object to the modification and makes the following comments:

- Under the proposed modification, Stage 1 is for improvements to an existing dwelling. There will be no increase in traffic generation, or changes to access.
- Proposed Stage 2 is to construct 4 tourist cabins. The traffic generation of the site is expected to increase as part of Stage 2.
- The previous requirements have been reviewed and RMS will no longer require the access to be relocated to the Crown road reserve.
- For Stage 1, as the access is for an existing single dwelling and there will be no increase in traffic generation at the site. RMS will not require the Basic Right Turn (BAR) intersection treatment. The requirement for a sealed rural property access still stands. As such a Works Authorisation Deed will not be required for roadwork.
- RMS will not object to removal of conditions 24, 25 and 29 in the Notice of Determination dated 12 October 2011.

Council required further clarification in regards to all of the original RMS consent conditions. The RMS then went through all of the original conditions and advised that after re-assessing the development the current access is found to be suitable and is able to remain for both stages of the development.

Therefore the conditions relating to the Crown Road can be removed from the consent.

The RMS further provided clarification in regards to the staging of each condition and advised that the Rural Basic Intersection treatment is still required prior to any physical works. The intersection then has to be upgraded to form a Type BAR Intersection prior to physical works for stage 2.

The conditions that are to be modified and deleted are further in this report.

CROWN LANDS DEPARTMENT

The Roads and Maritime Services (RMS) have re-assessed the application and the access is no longer required to connect to the Crown Road. Therefore the Crown Lands Department have no comments or conditions in relation to the application.

COUNCILS BUILDING SURVEYOR

Reference is made to the development requesting comments.

Comments are provided in relation to the following relevant matters:

1. Condition Nos 46 & 47 – Upgrading of dwelling

2. Request for permission to live on site in the existing building (shack / dwelling) in conjunction with the use of an existing portable ablution / office structure (installed on site without Council approval).
3. Connect the portable ablution/office structure to the existing approved Onsite Wastewater Management System (vide S68019/12)

1. Condition Nos 46 & 47 – Upgrading of existing dwelling

The modification seeks to delete the following conditions of consent issued vide 058/10DA on 12/10/2011 on the grounds of a previous submission regarding ceiling heights and more detailed audit of the existing dwelling by Council and Council's subsequent response:

46. *Given the scale and nature of the proposed alterations and additions to the existing building, the existing building is to be brought into conformity with the provisions of BCA2010 (applicable at the date of lodgement).*
47. *Supportive documentation, prepared by a competent person, should be submitted with Stage 1 Construction Certificate application to demonstrate how the existing building will be brought into conformity with such provisions, particularly in relation to the following:*
 - *Natural light and ventilation to habitable rooms*
 - *Termite protection measures to AS3660.1*
 - *Internal ceiling heights*
 - *Waterproofing of concrete floor and external walls*
 - *Sub-floor ventilation*
 - *Capability of the structure to be able to withstand likely forces acting upon it (e.g. wind, snow, earthquake).*

Suitable construction details have been provided (vide 040/11CC) to satisfy the provisions of the BCA in respect to any new building work proposed. The construction of the existing dwelling (albeit a crudely built dwelling commonly referred to as the 'shack') has inherent non-compliances when compared to the current BCA provisions; however this is not an uncommon occurrence with alterations and additions to existing dwellings.

Recommendation (1)

The terms of the above conditions have been addressed through negotiation and are no longer relevant. These conditions should be deleted.

2. Request for permission to live on site in the existing building (shack/dwelling) in conjunction with the use of an existing portable ablution/office structure.
3. Connect the portable ablution/office structure to the existing approved Onsite Wastewater Management System (vide S68019/12)

Notwithstanding the unauthorised nature of the existing portable ablution/office structure that has been installed on this land, the installation of a temporary structure is an activity for which development consent (S96) must be obtained from Council.

Such a structure is included in the definition of a 'building' under the EP & A Act 1979 and does not meet with the exempt criteria under Subdivision 39 (Temporary Builders' Structure) of the General Exempt Development Code under the SEPP (Exempt & Complying Codes) 2008 as it is to be used for 'residential purposes'.

Furthermore, as the portable structure is not a self-contained dwelling no separate approval is required / obtainable under Section 68 of the Local Government Act 1993.

Recommendation (2 & 3)

No objections are raised to approval being granted for the purpose sought subject to the following conditions being imposed:

- Temporary connection of the portable ablution block to the existing onsite wastewater management system by a licensed plumber and drainer.
- Prior to the issue of any occupation certificate under 040/11CC the portable ablution block must be disconnected from the onsite wastewater management system by a licensed plumber and drainer and removed from the site.
- The ground or other surface on which the portable ablution block is erected must be sufficiently firm and level to sustain the structure while in use.
- Smoke alarms complying with AS3786 being installed within the existing dwelling in accordance with Pt 3.7.2 of BCA2012 by a licensed electrician. A certificate prepared by the installer is to be furnished to Council prior to the commencement of temporary living arrangements.

COUNCILS ENGINEERS

As the RMS requirements for the proposed modification will result in the upgrade of the existing property access, and will no longer require the dedication and formation of the existing Crown Road, there are no engineering conditions regarding 058/10 DA.

ADJOINING NEIGHBOURS

The application was referred twice to the adjoining owners. Two submissions were received from the first neighbour notification which includes the following concerns:

Having multiple structure on the property all at once.

It will be a condition of consent that all temporary structures will need to be removed from property prior to the issue of the occupation certificate for stage 1. The temporary structure on the property at the moment is one structure is being used as an office and ablution block, another office and shipping containers.

The shack is in an unsalvageable state therefore conditions (46, 47 & 68) relating to the structure should remain.

Councils building surveyor has re-inspected the building structure who made the following response:

“Suitable construction details have been provided (vide 040/11CC) to satisfy the provisions of the BCA in respect to any new building work proposed. The construction of the existing dwelling (albeit a crudely built dwelling commonly referred to as the ‘shack’) has inherent non-compliances when compared to the current BCA provisions; however this is not an uncommon occurrence with alterations and additions to existing dwellings.”

Condition 68 relates to the Section 94 Contributions for Rural Roads. The property does not adjoin any of Councils controlled roads therefore this condition is no longer applicable.

Condition 23 involving the upgrading of the Crown Road should be undertaken at stage 1 not stage 2 as he will still be using the Crown Road.

This concern is not of relevance as the development will not be utilising the Crown Road. The access will be from the current driveway.

Temporary living arrangements – The 10,000 litre water tank is said to be temporary but later will be connected to the 100,000 litre tank which is the main water supply. The 10,000 litre tank will therefore not be temporary.

The water tank will be only temporary otherwise it will not meet Councils requirements for the development. A larger water tank will need to be provided and as such this will be reflected within the conditions of consent if approved.

The septic system has been installed but the cabins are to be located further down the property therefore the waste would be pumped up the hill. Another Geotechnical report and disposal system may need to be submitted, approved and installed.

A new Geotechnical Report will need to be submitted with the proposed cabin site. It will further need to be assessed by the Sydney Catchment Authority (SCA) to ensure that the effluent disposal System is compatible with the land and the development. This was previously noted to the applicant on the original consent conditions.

The second notification period was necessary after the Roads and Maritime Services re-assessed the application and amended their conditions for the applicant to get access from the current access and not utilise the Crown Road. Three submissions were received for the second notification period with the main concerns including;

The construction of the left hand turn as it is noted that from the edge of the road to the fence there is a sloping bank. The bank contains a survey marker and a cement power pole which is located on the verge close to the gate way.

Any construction on Jenolan Caves Road will need to be approved by the Roads and Maritime Services (RMS). As such the RMS have inspected the property and believe that here is sufficient space for the right hand turn to be satisfactory for the development.

Visibility of the driveway onto the road.

The RMS has conditioned that the road way will need to be visible from the driveway by removing vegetation on the road reserve

The safety on Jenolan Caves Road as it is still a 100km zone.

Council has referred these submissions to the RMS and who have not made a comment in relation the development and the speed zone.

The public interest

The original application was assessed in terms of the public interest. The proposed modification does not change whether the development is within the public interest.

5.3.5 Environmental Planning and Assessment Act 1979- Section 96 (4)

- (4) *The modification of a development consent in accordance with this section is taken not to be the granting of development consent under this Part, but a reference in this or any other Act to a development consent includes a reference to a development consent as so modified.*

Comment:
Noted.

5.3.6 Environmental Planning and Assessment Act 1979- Section 96 (5)

(5) *Threatened species*

Development consent of the kind referred to in section 79B (3), or in respect of which a biobanking statement has been issued under Part 7A of the Threatened Species Conservation Act 1995, is not to be modified unless:

- (a) *in the case of development referred to in section 79B (3)—the requirements of section 79B (3)–(7) have been complied with in relation to the proposed modification as if the application for the proposed modification were an application for development consent, or*
- (b) *in the case of development in respect of which a biobanking statement has been issued under Part 7A of the Threatened Species Conservation Act 1995—the applicant has made an application for modification of the biobanking statement in relation to the proposal and a new biobanking statement has been issued or the consent authority is satisfied that the modification will have no impact on biodiversity values (within the meaning of that Act).*

Not applicable in this instance.

6. DISCUSSION AND CONCLUSIONS

The application has been thoroughly assessed under Section 96 (1A) of the *Environmental Planning and Assessment Act 1979*, and is appropriate for recommendation of approval subject to conditions.

7. ATTACHMENTS

Schedule A- Conditions of consent.

8. RECOMMENDATION

THAT the Section 96 Modification of Consent application S96 016/12 associated with DA 058/10 be approved subject to the following amendments/removal/additional conditions and further outlined in Schedule A:

Condition 23: The intersection treatment is to be completed prior to any physical works being undertaken on the site; prior to the issue of Stage 1 Construction Certificate.

This condition is to remain but will be incorporated with Condition 26. Condition 26 will be amended to read:

Condition 26: The rural property access to the existing property is to be sealed (stage 1). The intersection of the property to the existing access is to be upgraded to conform to the standard basic rural intersection treatment as detailed in Figure 4.5.2 of the RTA Road Design Guide. This is to be completed prior to any physical works being undertaken on the site.

Condition 24: The existing access on the property is to be permanently removed before the construction deliveries and works commence; which is to be done prior to Stage 1 Construction Certificate.

This condition is to be deleted as the access will now be off the existing access.

Condition 25: All access on the property is to be via the public crown road adjacent to the southern boundary of Lot 122 DP 757063.

This condition is to be deleted as the access will now be off the existing access.

Condition 27: The right turn treatment of the 'Type BAR' (Basic Right Turn) to be constructed adjacent to the north bound lane is to be sealed. (This is required to provide a reasonable level of safety for traffic turning right into the access and to allow traffic an area to pass the right turning vehicle on the left hand side).

This condition will be amended to read:

The right turn treatment of the 'Type BAR' (Basic Right Turn) to be constructed adjacent to the north bound lane is to be sealed. (This is required to provide a reasonable level of safety for traffic turning right into the access and to allow traffic an area to pass the right turning vehicle on the left hand side); The right turn treatment of the 'Type BAR' (Basic Right Turn) to be constructed for Stage 2 adjacent to the north bound lane is to be sealed. (This is required to provide a reasonable level of safety for traffic turning right into the access and to allow traffic an area to pass the right turning vehicle on the left hand side). This is to be completed prior to any physical work being undertaken as part of Stage 2.at the site.

Condition 29: The public road is to be sealed for a minimum of 20 metres from the edge of the south bound traffic lane of the property.

This condition will be deleted as the Crown Road will no longer be used for this development.

Condition 32: The intersection should be formed so as to provide a layby on the departure of the south eastern part of the intersection to be used also as a school bus stop/mail service shelter.

This condition will be deleted as the Crown Road will not utilised for this development.

Condition 33: The applicant is required to demonstrate that safe intersection site distance (SISD) will be achieved from the intersection of the crown road with the property for a 100kilometer per hour zone in accordance with the RTA Road Design Guide. In this respect an adjustment of the cut batter to the north of the intersection may be required.

This condition will be deleted as the Crown Road will not utilised anymore for this development.

Condition 39: The above intersection treatment is to be completed prior to any physical work being undertaken at the site; As part of Stage 2

This condition will be incorporated with Condition 27 above.

46. *Given the scale and nature of the proposed alterations and additions to the existing building, the existing building is to be brought into conformity with the provisions of BCA2010 (applicable at the date of lodgement).*

47. *Supportive documentation, prepared by a competent person, should be submitted with Stage 1 Construction Certificate application to demonstrate how the existing building will be brought into conformity with such provisions, particularly in relation to the following:*

- *Natural light and ventilation to habitable rooms*
- *Termite protection measures to AS3660.1*
- *Internal ceiling heights*
- *Waterproofing of concrete floor and external walls*
- *Sub-floor ventilation*
- *Capability of the structure to be able to withstand likely forces acting upon it (e.g. wind, snow, earthquake).*

These conditions are to be deleted.

Condition 64. The applicant is to submit a Construction Certificate for Stage 1 regarding the upgrading of the Crown Road.

This condition is to be deleted as the Crown Road will not be utilised.

Condition 68. Section 94 Contributions of \$4080 for the dwelling will need to be paid to Council for Rural Roads prior to the release of the Stage 1 Construction Certificate.

This condition is to be deleted as access will not be off a Council Road.

Condition 69. Section 94 Contributions of \$269 for the dwelling will need to be paid to Council for Rural Fire prior to the release of Stage 1 Construction Certificate.

This condition will be amended so that the contributions are to be paid prior to stage 2 Construction Certificate.

Condition 71. All shipping containers currently located on the property is to be removed prior to the Final Occupation Certificate for the cabins.

This condition will be amended as the property contains shipping containers, a portable ablution and office facilities.

The following conditions will also need to be added to the consent.

1. Temporary connection of the portable ablution block to the existing onsite wastewater management system by a licensed plumber and drainer.
2. Prior to the issue of any occupation certificate under 040/11CC the portable ablution block must be disconnected from the onsite wastewater management system by a licensed plumber and drainer and removed from the site.
3. The ground or other surface on which the portable ablution block is erected must be sufficiently firm and level to sustain the structure while in use.
4. Smoke alarms complying with AS3786 being installed within the existing dwelling in accordance with Pt 3.7.2 of BCA2012 by a licensed electrician. A certificate prepared by the installer is to be furnished to Council prior to the commencement of temporary living arrangements.

5. The office and ablution block/the temporary structure is to be removed prior to the issue of the Occupation Certificate for stage 1 of the dwelling additions.

6. The office and ablution block/the temporary structure is not to be used for sleeping purposes.

Report prepared by:.....Supervisor:.....

Dated:.....Dated:.....

REASONS FOR CONDITIONS

The conditions in Attachment 1 have been imposed for the following reasons:

- To ensure compliance with the terms of the relevant Planning Instruments
- 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 lots are adequately serviced.
- To ensure there is no unacceptable impact on the water quality.
- To ensure compliance with the requirements of the Rural Fire Services.
- 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.

The amended and additional Conditions are highlighted in bold.

Administrative Conditions

1. That the development be carried out in accordance with the application, Statement of Environmental Effects, accompanying information, plans submitted with the application and any further information provided during the process unless otherwise amended by the following conditions.
2. All vehicles must be parked on the property and will not be permitted to park on the road side.
3. No camping on the property is permitted under this development consent. A new Development Application will need to be submitted and approved by Council prior to the property being used for camping purposes.

SCA Conditions

4. The works and site layout are to be as specified in the Statement of Environmental Effects (dated 6 September 2010) and as shown on the Site Plans (Drawing No. 210 Kitchener-001; 002 and 005; dated 11 August 2010) and the Floor Plans of Tourist Cabins and Storage Shed (Drawing No., Author and date not specified) and includes:
 - four 1-bedroom tourist cabins
 - a storage shed
 - enhancement and additions to existing building
5. Any revision to the site layout or works is to be agreed to by the Sydney Catchment Authority;

Wastewater Management

6. The aerated wastewater treatment system including the effluent irrigation area must be located, designed and installed in accordance with the recommendations in the On-site Effluent Management Study prepared by Envirowest Consulting Pty Ltd (dated 28 September 2010), but with the following specific requirements and modifications:
 - the Aerated Wastewater Treatment System must have a minimum treatment capacity of 4000 litres/day;
 - the effluent irrigation area is to have a minimum size of 3000 square metres which is to be subdivided into a series of appropriately sized fields;
 - the effluent irrigation areas must be located within the recommended application area as shown on the Appendix 1 of the On-site Effluent Management Study (Job Ref. No. R10266e; dated 23 September 2010) and must provide a minimum 40 metres buffer to a dam located to the east of the proposed new dwelling;
 - the irrigation disposal must be either by subsurface means using a wick-based system or pressure compensating drip emitters with root barriers, or must employ

- surface irrigation with fixed sprinkler points using quick-coupling valves or similar, with sprinklers to be rotated throughout the irrigation area;
- the irrigation system must be fitted with a series of valves or an automatic sequencing valve that enable different parts of the irrigation area to be utilised at any one time;
 - the effluent irrigation system must be hydraulically designed and tested to ensure there is uniform delivery to all parts of the irrigation areas;
 - the effluent irrigation areas are to be fenced off from livestock and vehicles;
 - the effluent irrigation areas are to be mown regularly with grass clippings to be disposed of outside the irrigation areas;
 - the effluent distribution pipe from the tank to the irrigation areas is to be fitted with non-return valves where appropriate and buried at a minimum depth of 300mm and in a manner that provides protection against mechanical damage or deformation;
 - a pump with sufficient capacity is to be provided to ensure effective and even delivery of effluent to and throughout the delivery areas;
 - all run-on and stormwater collected from roofs, access ways and other hard surface areas is to be diverted away from the effluent irrigation areas, e.g. by means of a stabilised bund or drain with provision for energy dissipation at the outlet to prevent scouring or erosion;
7. The on-site wastewater management system must be maintained according to Section 5 of the Department of Local Government's guidelines *On-site Sewage Management for Single Households* (1998) and AS/NZS 1547:2000 *On-site Domestic Wastewater Management*;
 8. All effluent must be assimilated within the boundaries of the property;
 9. No effluent irrigation areas are to be located within 150 metres of a named river, 100 metres of any perennial or intermittent creek or watercourse, or within 40 metres of a dam or drainage depression. In this regard it is noted that a drainage depression is located to the east of proposed new dwelling and a minimum 40 metres buffer is to be provided to the dam from the effluent irrigation areas;
 10. These conditions of consent relating to wastewater management must be provided to the installer of the on-site wastewater management system;
 11. The installers of the wastewater management and effluent disposal system must certify to Council in writing that the wastewater management and effluent disposal system has been constructed and installed as per these conditions of consent and in accordance with current recommended practices, and that the systems have been tested and are functioning properly;
 12. No Occupation Certificate is to be issued until Council has received the certification from the installers and approved the onsite wastewater management system under the *Local Government Act 1993*;

Stormwater Management

13. Rainwater tank/s with a minimum total capacity of 50,000 litres are to be installed to collect roof runoff from the tourist cabins, storage shed, new dwelling and enhanced existing building. Roof drainage is to be constructed in a manner that all runoff is

directed to rainwater tanks. The rainwater tanks as a minimum are to be plumbed for toilet flushing and other non potable use including landscape irrigation;

14. Any variation to stormwater treatment and management is to be agreed to by the Sydney Catchment Authority;

Construction Activities

15. An Erosion & Sediment Control Plan (ESCP) is required for all works proposed or required as part of the development, in particular the tourist cabins, storage shed and new dwelling. The ESCP is to be prepared by a person with knowledge and experience in the preparation of such plans and is to meet the requirements outlined in Chapter 2 of NSW Landcom's *Soils and Construction: Managing Urban Stormwater* (2004) manual - the "Blue Book" and be to the satisfaction of Council;
16. Effective erosion and sediment controls are to be installed prior to any construction activity. The controls must prevent sediment entering dams and drainage depressions, and are to be regularly maintained and retained until works have been completed and groundcover established.

RFS Conditions

Asset Protection Zones

17. At the commencement of building works and in perpetuity the land surrounding the existing dwelling on proposed Lot 122 DP 7570636, to a distance of 20 metres, shall be maintained as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of Planning for Bush Fire Protection 2006 and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

Water and Utilities

18. In recognition that the existing dwelling on proposed Lot 122 DP 7570636 has no reticulated water supply, a 20,000 litre dedicated water supply and concrete or metal tank shall be provided. The tank should (where practicable) be located no closer than 10 metres from the existing dwelling and no greater than 20 metres. A 65 mm metal Storz fitting and ball valve shall be installed to the tank. The ball valve, pipes and tank penetration must be adequate for full 50 mm inner diameter water flow through the Storz fitting and are metal rather than plastic. Adequate access to within 4 metres of the dedicated water supply connection point for a Category 1 heavy bushfire tanker shall also be provided.
19. Water, electricity and gas are to comply with sections 4.1.3 and of Planning for Bushfire Protection 2006.

Design and Construction

20. An emergency/evacuation plan is to be prepared that is consistent with section 4.2.7 of Planning for Bush Fire Protection 2006.
21. The development proposal is to comply with the layout identified on the drawing prepared by McNiven Consulting, number: 210Kitchener-005, dated 11/08/2010.

22. The existing dwelling on proposed Lot 122 DP 757063 is required to be upgraded to improve ember protection. This is to be achieved by enclosing all openings (excluding roof tile spaces) or covering openings with non-corrosive metal screen mesh with a maximum aperture of 2mm. Where applicable, this includes any sub floor areas, openable windows, vents, weepholes and eaves. External doors are to be fitted with draft excluders.

RTA Comments and Conditions

23. **The rural property access to the existing property is to be sealed (stage 1). The intersection of the property to the existing access is to be upgraded to conform to the standard basic rural intersection treatment as detailed in Figure 4.5.2 of the RTA Road Design Guide. This is to be completed prior to any physical works being undertaken on the site.**
24. **The right turn treatment of the 'Type BAR' (Basic Right Turn) to be constructed adjacent to the north bound lane is to be sealed. (This is required to provide a reasonable level of safety for traffic turning right into the access and to allow traffic an area to pass the right turning vehicle on the left hand side); The right turn treatment of the 'Type BAR' (Basic Right Turn) to be constructed for Stage 2 adjacent to the north bound lane is to be sealed. (This is required to provide a reasonable level of safety for traffic turning right into the access and to allow traffic an area to pass the right turning vehicle on the left hand side). This is to be completed prior to any physical work being undertaken as part of Stage 2.at the site.**
25. The level of the intersection treatment is to match the levels of the property.
26. Any gate, grid or similar structure constructed on the public road is to provide suitable storage capacity for an articulated vehicle away from the edge of the southbound traffic lane (minimum 20 metres).
27. Vegetation and grasses within the road reserve are to be maintained at a level to ensure clear site distance of approaching vehicles;
28. All current OHS requirements are to be met when carrying out works in the road reserve;
29. All activities including loading and unloading of goods associated with the development must be carried out on site;
30. All traffic movements into and out of the development are to be in a forward direction;
31. The largest vehicle to be permitted access to the site prior to completion of the required intersection treatment is a two-axle heavy rigid vehicle.
32. Advertising signage is to be contained wholly within the development and not prove a hazard or nuisance to road users on public roads;
33. A Road Occupancy Licence is required prior to any works commencing within three metres of the travel lanes of the property. This can be obtained by contacting Mr Paul Maloney on (02) 6861 1686. Submission of a Traffic Control Plan developed in

consultation with the RTA to ensure that adequate measures are proposed to address road user safety and traffic management issues is required as part of this licence;

34. As the access is located on a State road, and the developer will be required to undertake private financing and construction of the works on a road in which RTA has a statutory interest, a formal agreement in the form of a Works Authorisation Deed (WAD) is required between the developer and the RTA;
35. All works associated with the development are to be at no cost to the RTA.

Councils Building Conditions

36. The development shall take place in accordance with the approved development plans containing Council's approved development stamp and all associated documentation submitted with the application, except as modified in red by Council and/or any conditions of this consent.
37. At least one (1) accessible cabin shall be provided in accordance with provisions of D3.2 and F2.4 of BCA2010. Access to the cabin must be provided from a conveniently located car space complying with AS2890.1 and D3.5. The cabin must provide a closet pan, washbasin, shower and shelf within the sanitary compartment to the requirements of AS1428.1. Details of access and sanitary compartment fitout are to be submitted with Stage 2 Construction Certificate application.
38. An application under Section 68 of Local Government Act 1993 is to be lodged together with the prescribed fee of \$270.00 in respect to the proposed wastewater management system. Details of the proposed system shall be submitted including:
 - primary / secondary tanks
 - pumps
 - irrigation reticulation system
 - NSW Health accreditation approval conditions
39. All building work must be carried out in accordance with the provisions of the Building Code of Australia.
40. Prior to commencing any construction works, the following provisions of the Environmental Planning and Assessment Act 1979 are to be complied with:
 - a) a Construction Certificate is to be obtained in accordance with Section 81A(2)(a) of the Act, and
 - b) a Principal Certifying Authority 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
 - c) 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.
41. Building work that involves residential building work (within the meaning of the Home Building Act 1989) must not be carried out unless the Principal Certifying Authority for the development to which the work relates:
 - a) in the case of work to be done by a Licensee under that Act:

- i) has been informed in writing of the licensee's name and contractor Licence Number, and
 - ii) it is satisfied that the Licensee has complied with the requirements of Part 6 of that Act, or
 - b) in the case of work to be done by any other person:
 - i) has been informed in writing of the persons name and Owner-Builder Permit Number, or
 - ii) has been given a declaration signed by the owner of the land that states that the reasonable market cost of the labour and materials involved in work is less than the amount prescribed for the purposes of the definition of Owner-Builder Work in Section 29 of that Act,
and is given appropriate information and declarations under paragraphs (a) and (b) whenever arrangements for the doing of the work are changed in such a manner as to render out of date any information or declaration previously given under either of those paragraphs.
42. Under clause 97A(3) of the Environmental Planning & Assessment Regulation 2000, it is a condition of this development consent that all the commitments listed in each relevant BASIX Certificate for the development are fulfilled.
In this condition:
- a) relevant BASIX Certificate means:
 - (i) a BASIX Certificate that was applicable to the development when this development consent was granted (or, if the development consent is modified under section 96 of the Act, a BASIX Certificate that is applicable to the development when this development consent is modified); or
 - (ii) if a replacement BASIX Certificate accompanies any subsequent application for a Construction Certificate, the replacement BASIX Certificate; and
 - b) BASIX Certificate has the meaning given to that term in the Environmental Planning & Assessment Regulation 2000.
43. All exposed earthworks and disturbed areas shall have suitable sediment control measures in place **prior** to the commencement of construction to prevent soil erosion and the transport of sediment off the site during rainfall and runoff. The sediment control measures shall be continually monitored and maintained for the duration of construction and for six months after completion. All disturbed areas shall be revegetated with native vegetation endemic to the area.
44. Prior to the commencement of any works on the land, a single vehicle/plant entry/access to the site shall be provided to minimise ground disturbance and prevent the transportation of soil onto any public place. Single sized 40mm or larger aggregate placed 150mm deep, and extending from the street, kerb/road to the site is to be provided as a minimum requirement.
45. 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.

46. Before work starts, toilet facilities must be provided for construction personnel on the site on the basis of 1 toilet for every 20 workers. Amenities are to be installed and operated in an environmentally responsible and sanitary manner. Toilets cannot remain on site for any longer than 12 months, without the further approval of Council.
47. A copy of the stamped and approved plans, development consent and the construction certificate are to be on the site at all times.
58. 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 and
 - (ii) the date of installation of the system and
 - (iii) the installer's or manufacturers recommendations for the scope and frequency of future inspections for termite activity.
49. Prior to the commencement of any works, documentary evidence of structural adequacy prepared by an approved practising Structural Engineer are submitted to and approved by Council. (**Note:** any such Certificate is to set forth the extent to which the Engineer has relied on relevant specifications, rules, codes of practice or publications in respect of the construction):
 - a. reinforced concrete floor slab on ground. (**Note:** Certification shall make specific reference to Australian Standard AS 2870-1986 and clearly indicate the soil classification for the given site).
 - b. suspended reinforced concrete slabs;
 - c. structural steelwork;
 - d. retaining walls;
 - e. pier and beam footings;
 - f. roof trusses;
 - g. footings;
 - h. steel beams;
 - i. timber beams;
50. That a Certificate from an approved practising Structural Engineer attesting to the structural adequacy of the existing 'shack' structure to support the proposed addition is to be submitted to Council prior to the commencement of construction.
51. To ensure structural integrity, the maintenance of minimum health standards, the management of the buildings surrounds and the protection of the environment, compliance certificates are to be issued at significant stages throughout the construction period. These stages are:
 - a) Pier holes/pad footings before filling with concrete.
 - b) Trenches complete with reinforcing and prior to filling with concrete.
 - c) Internal drainage carried out by licensed plumber prior to covering
 - d) Reinforcing steel in position and before concrete is poured (footings, lintels,

beams, columns, floors, walls and the like.

- e) Slab base if no piers required and prior to placement of the membrane.
- f) Floor frame, dampcourse, antcapping, foundation walls before floor material is laid.
- g) Framing when external wall and roof cladding is in place and prior to internal linings.
- h) External drainage (including onsite waste disposal system) installed by a licensed plumber and prior to covering.
- i) Wet area flashing prior to tiling or covering.
- j) Stormwater drainage between building and discharge point (drainage pipes, soakage pits and the like) prior to covering.
- k) Completion of the development and sign off to all conditions of the consent including landscaping, prior to occupation and use.

At each inspection, erosion and sediment control measures and site management will be inspected.

Note: forty-eight (48) hours notice shall be given to Council prior to inspections.

52. To ensure compliance with Australian Standard 3500 – National Plumbing and Drainage and Council (being the Water and Sewer Authority), compliance certificates are to be issued by Council for the following:

- a) Internal drainage carried out by licensed plumber prior to covering.
- b) External drainage (including onsite waste disposal system) installed by a licensed plumber and prior to covering.
- c) Hot and cold water plumbing installation

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

53. 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

54. Temporary connection of the portable ablution block to the existing onsite wastewater management system by a licensed plumber and drainer.

55. Prior to the issue of any occupation certificate under 040/11CC the portable ablution block must be disconnected from the onsite wastewater management system by a licensed plumber and drainer and removed from the site.

56. The ground or other surface on which the portable ablution block is erected must be sufficiently firm and level to sustain the structure while in use.

57. Smoke alarms complying with AS3786 being installed within the existing dwelling in accordance with Pt 3.7.2 of BCA2012 by a licensed electrician. A certificate prepared by the installer is to be furnished to Council prior to the commencement of temporary living arrangements.

58. The office and ablution block/the temporary structure is to be removed prior to the issue of the Occupation Certificate for stage 1 of the dwelling additions.

- 59. The office and ablution block/the temporary structure is not to be used for sleeping purposes.**

Section 94 Contributions

60. Section 94 Contributions of \$269 for the dwelling will need to be paid to Council for Rural Fire prior to the release of Stage 2 Construction Certificate.
61. Section 94 Contributions of \$500 per cabin will need to be paid to Council for Tourist Accommodation prior to the release of Stage 2 Construction Certificate.

Other Considerations

62. All shipping containers currently located on the property is to be removed prior to the Final Occupation Certificate for the cabins.
63. The cabins are to be only used for short term accommodation.
64. Noise at all times must take all measures to minimise noise and reduce community annoyance.
65. Noise shall not exceed 5 db (A) differential for "intrusive noise", as described in the OEH Noise Guide for Local Government (2004), at the closest point of impact or where any complaint may arise. At such time an acoustic study (undertaken at the cost of the applicant) will be undertaken to clearly demonstrate to Council that noise will not be intrusive or a source of community annoyance.
66. The applicant shall provide an amended site plan for the approval of the General Manager. The amended site plan shall relocate the four proposed cabins to sites within the property situated further to the east so as to reduce their visual impact from the Jenolan Caves Road and any residences fronting the Jenolan Caves Road.

Hello

Thankyou for meeting with us. I hope that the schedule suggested for our DA modifications being able to make the Council meeting on the 23rd July eventuates.

I wish to advise that in response to the latest RMA assessment allowing for a change in access point to our property at 769 Jenolan Caves Rd that I agree to it being from the existing rural access point and no longer via the Crown Rd.

I have obtained letters from each of the 5 adjacent neighbours that we share boundaries with. They have expressed their support for us personally and for the plans we have for the property. I do hope that this will serve to temper the couple of complaints that you have received.

I phoned from RMS to confirm the requirements for the existing driveway and he informed me that the change to our access point was a consideration precipitated by a request from council to reassess the suitability of the existing entry point. It seems that the application to stage the Crown Land road works has been interpreted by RMS as a request to reassess the whole situation. He has informed me that there will be no requirements from RMS for me to make any adjustments and changes to our existing entry point until we undertake stage 2 of the development. I asked his advice about my desire to create a better entry and he said that even though it is preferable that I do so, that under the current circumstances the RMS has no authority to insist upon it and would not be requesting anything.

I am obviously pleased with this result and thank council for initiating this change.

You should be able to understand why I question council about the decision making and handling of our DA when I get these conflicting messages. I would like to think that I have some control over what is happening with our application but much of the time it feels like I do not know what is going on.

He informed me that he had fielded an enquiry from a neighbour, who he could not identify, regarding the change. I find it distressing that yet again we confront the problem of people in the district trying to meddle in and influence the decision making of a statutory authority charged with making decisions about our DA. It is ridiculous that these people who fought bitterly about me using the Crown Land access point are now trying to stop me going back to the existing entry. I believe it is another attempt to complicate our situation.

I also wish to respond to the submissions resulting from the 2 recent public response periods for the requested section 96 amendments and the RMS amendment to our DA. I know we have discussed these but I would like to respond to these claims and have my reply on record. This is a huge waste of my time but I feel necessary if I am to thwart the trouble making efforts of some people in the district.

I must say that although Kathy's comments were rather emotive in last Mondays meeting she was expressing our true feelings about the matter. Now having read the copies of these original complaints the sentiment is even stronger. We cannot understand why it is that council has not made it clear to these people that their claims are mostly spurious and that they should desist. Their approaches have now become vexatious. Seeing as they are using council's anonymous process to attack us we feel it is time that council stepped in and put a stop to it and this is what I am requesting from you.

I also better understand why council is making us go through this procedure, I do not believe it should be taking this long but I can comprehend the need for accountability and the paper trail that you are trying to establish in response to these complaints. Much of what is being argued in these objections is baseless opinion and often makes little sense. It is obvious that these people are now going to find any objection that they can to slow up the process. I understand that council cannot be seen to agree with this comment or take sides and so a process has to be clearly demonstrated if such claims are to be dismissed in a formal manner.

Section 96 neighbour notification submissions ending 12/6/12
Submission 1

[Complaint](#)

***‘The DA application was passed by the sitting councillors in 2011, with it was attached some 75 conditions. It seems now that these conditions do not suit Mr Kitchner. Mr Kitchner would have been aware of these conditions before the DA was tabled at the council meeting, and had ample opportunity to object to them then.’

Response

This claim demonstrates a lack of understanding of the DA process. The conditions are obviously not available before the council meeting, the councillors did not review these and in fact set some of them in the meeting. They do not seem to realise that these conditions are determined once approval is granted. Regardless, these people do not understand that the system does not consider DA conditions as set in stone and this is why the section 96 process exists. It is hard to think that anyone would assume that DA conditions could not be revisited. The fact that RMA have changed their assessment 2 times during the application period is evidence that such reconsideration is necessary. With 75 conditions it goes without saying that some of these may not have been applied correctly, as has occurred, and so they need to be able to be reviewed.

Complaint

***Condition 46,47 & 68

These conditions are fair and should stay seeing in Mr Kitchner’s own words “the shack was in an unsalvageable state”. He himself has done the repairs to the shack without any confirmation from council.’

Response

On what expert advice is the claim made that the conditions are “fair”. My statement was actually “almost unsalvageable” and regardless of what I said its intention was never one to be used as a reason not to make the attempt to revive the old building. The fact is it has been salvaged and it was achievable.

Does “he himself has done the repairs” suggest they think I am not capable of doing such work. I have built 3 houses, was taught by my father who was a builder, have been assisted and guided by a friend who is a builder and possess an owner builders permit.

They have not been on site to know anything about the situation, yet for some reason feel qualified to make this assessment. Councils own expert staff have been on site and assessed the structure deeming it a preexisting dwelling and suitable for upgrading to a habitable state. The previous complaints about this matter resulted in an inspection of the repairs undertaken and they were found to have not gone beyond the scope of that allowable to such a structure. An agreed set of plans and engineering details for the proposed works has been submitted. These people are making comments based upon their own opinion with no regard for the likelihood that contrary facts may exist. I do not understand their angst with our intentions for the old house as it is one repeated in dozens of old buildings throughout the district.

Imagine if every old building in Lithgow had to brought up to current code – impossible. Maybe they are not of a mind to live in one of these old structures but that does not mean we have to think likewise. I have fielded many positive comments from people in the district who are pleased to see it preserved.

Complaint

***Condition 23 (required Crown Rd access)

‘Is council going to buy the portion of road from the Crown Lands Dept. only to have adjoining neighbours have the upkeep of it? I don’t think so. The Crown Lands Dept cannot ask the users of the road to upkeep it, only to maintain it for their use. Mr Kitchner asks he not upgrade this section of road until stage 2 but utilise it in stage 1. Then he will say we have used it in stage 1 and there is no need to upgrade it now.’

Response

I know that this point is now mute following the RMA’s reassessment and permission to use the existing driveway but I still wish to make some points that clearly show how baseless some of these statements are.

What this person “thinks” is quite irrelevant. It has been stipulated in the DA where the responsibility would lie and these requirements are binding. A more careful reading of the 75 conditions they often quote should have been done before making these claims. Again an assumption is being made that I will

not adhere to the DA conditions. It is simply not reasonable that people can raise complaints based upon what they presume to be an action that they think will occur.

What's more this person is not one of the neighbours adjoining the road for whom there might be some cost inconvenience that they talk about. The 4 affected neighbours have all had discussions and are in amicable agreement about the situation. Why this person feels they have the right to comment without being part of that discussion I do not know. Ironically these are the same people who battled with the RMA to stop any road works initially. It seems they are now suggesting I should be undertaking them. It is clear evidence that they are simply trying to invent any concern possible to complicate things for us.

Complaint

***Temporary Living arrangements

'This is just a formality as the existing structure is being lived in, I believe without an occupation certificate/permit. Mr Kitchner has 2 existing residences nearby, why does he need this?'

Response

Again these are accusations that have no foundation. In affect what harm would it do to them if it were the case, there is no mention of how this is inconveniencing their lives or causing trouble in the district and amounts to 'Dobber Dan' behaviour. This person makes the claims totally unaware of the numerous discussions on the matter that we have had with council regarding what activities we are allowed to do on site. They are not aware as Council is, that we have a ridiculous routine of off site sleeping arrangements that we have been forced to adopt as a result of their complaints and the resulting council stipulations. They would be fully aware, as we are, of the other folk in the district living in temporary buildings, but for reasons only known to them we are the only ones they are targeting. Regarding the 2 residences nearby, it is no business of neighbours how many dwellings I own or in which of them I decide to live. It is a matter for council to stipulate the suitable conditions needed for us to occupy the intended structure and decide if we have met them adequately. If I wish to suffer the inconvenience of living in a house while I am building it then that is no business of anyone but my family. I wonder how these people first established themselves on their properties, I actually know for certain that there is a double standard happening here.

Complaint

***"The portable office facility has been on site for some months without council consent (talk about the cart before the horse.'

Response

They are making claims again unaware that council has set down the process by which we can have their consent to keep it. I still contend, as does my solicitor, that this structure satisfies exempt code provisions and so should not be a concern to council at all. This argument aside we have been duly fined and given instructions about how to keep it on site in an approved fashion - we have followed these instructions. These people complained about the structure initially, had us fined for it and still wish to use it as a source of trouble. Without their interference this would not have ever been an issue. I note that this person has not demanded its removal and I would presume this is because they themselves have containers and a number of shabby looking structures that may or may not have the proper approval and constitute a permanent eyesore for passers by.

Complaint

***‘The 10,000 litre water tank is said to be temporary but later will be connected to the 100,000 litre tank which is the main water supply. The 10,000 litre water tank is therefore not temporary.’

Response

There does not seem to be any identified problem with this but again this is a misinterpretation of the proposal. The siting of these tanks temporarily is in a place I would definitely not want them to stay. Why anyone would think I would keep them after I had installed a 100,000 litre tank is puzzling. The permanent tank is one that will be sited underground and will not create any visual disturbance for anyone. This is unlike the ‘hotch potch’ array of tanks that exist on the property of the person complaining. I also wonder if all of theirs have the proper approval.

Complaint

***‘The DA for the shed has been approved and therefore negates the need for all the temporary structures as stated in this latest application.’

Once again these are claims made without any understanding of the process involved. The shed cannot be built until the CC for the DA is granted. It is their complaints in large part that are holding up the granting of the CC. I was required by council to include the shed with the DA to avoid any further problems caused by such complaints even though it could have rightly been built a long time ago under exempt code. These people and their complaints have created the delay in being able to build the shed that would see away with the temporary structures. Now they have the hide to complain about them. I would presume, seeing as they are so insistent about our temporary structures that the containers and structures on their property are properly passed by council. At least my temporary structures are going to be removed, the mishmash of structures on their property are permanent.

Complaint

***‘May I point out the septic system has been installed but according to condition 75 all cabins in stage 2 are to be in a position further down the block of land. Is there to be another septic system installed for these cabins, or the waste be pumped back up the hill? Maybe stage 2 will not go ahead after the completion of stage 1 (being the house)’

Response

I suppose that people can “point out” anything they like but it does not mean that they have any right to do so.

Of course it has been installed and at the permission of council and with the required section 68 application and inspection certifications. What is the point being made ????

If the doubt is about whether this system is the full system and so the cabins may be sited above them and not ‘down the block’ then council is very aware of the 2 stage system that has been approved.

Of course stage 2 may not occur and that is the point of staging it, but again this is not any of their business. Is the complaint now that it may not happen??? Septic systems are the domain of council inspectors, why do these people feel they have some right to get involved in these details that form part of the normal inspection process. These folk think they have the right to tell me what I can and can’t do and tell council how to do their job. Council should be reminding them that this is not their concern and to let the regulated process attend to such matters.

It is this sort of meddling in matters that they have no need to concern themselves with that has resulted in the majority of our hold up we have experienced.

Submission 2

Complaint

***‘What we would like to know is why this man is allowed to want to change so many conditions?’ He approved all the conditions before they were passed by the council – and now he will not adhere to anything.’

Response

Yet another suppositional claim without basis and what’s more is none of this person’s business.

I addressed this suitably already in the submission 1 responses. The changes are minimal, especially considering the number that have been placed on this DA. Some of the changes were at council suggestion and I cannot believe that we have changed as many as sometimes are changed in other DA's. Everything requested is quite reasonable. It is almost as if the suggestion is that I am being shown some favour that is not afforded all other applicants. The reality is that I am being asked to jump through hoops that most do not because they do not have these sorts of farcical submissions.

Complaint

***'We have read all of the modifications and requests he wants and would like to know why and how you can put stage 2 before stage 1'

Response

I don't know how this misinterpretation occurred but it is obviously not the case that stage 2 will be done before stage 1.

Complaint

***'Also why does he request temporary living arrangements when he has a big house at Maxwell Drive only minutes away.'

Response

Amazingly 2 people think they know what is best for my family. I have explained to council the reason we cannot live permanently in the Maxwell Dr house. In actual fact it is no ones business where we decide to live and not a suggestion they have any right to make. The simple reason we are wanting to live in the building while we construct is because it is likely permissible and we have every right to ask to do so. This is not something I have to seek a neighbour's permission to be able to do.

Nor have they identified how it might inconvenience them in any way and this should be the basis of any valid complaint.

Complaint

***'We would also like to know how it is possible to be running a B & B when no one in the area was notified.'

Response

Again, false claims. I presume this is about Maxwell Drive. The DA application is not for a B & B although I can understand they may not understand the distinction. At my request the notification was sent to all 12 residents in our subdivision even though Council only required it to go to the 4 adjacent neighbours. None of these immediate neighbours raised any concerns and in fact they are all very positive about it.

It now seems these people feel they have the right to start badgering us about a place they cannot even see from where they live. This is just further evidence that they have created a personal vendetta and it is time council let them know to limit their complaints to things that actually have the potential to affect them.

Complaint

***'With regards to the dwellings on the property, how come he can have two, and also run a business on 40 acres when according to councils rules and regulations this is illegal'

Response

Well I hope this is not the case. Why would someone think that council got it all so wrong and that the DA would have been given any consideration at all if this were the case. We seem to be going back over old ground here and it should be made clear to them that this is an incorrect assumption they need to let go of. I imagine as self-appointed upholders of local legislation that they have also raised concerns about the nursery, 2 truck operations and the horse riding establishment all within view of their properties.

It is a very difficult situation we find ourselves in when we are required to defend ourselves continuously against claims and demands that are not informed and simply incorrect.

Submission 1

I understand that the RMS has changed their minds in regards to the entrance to the property. In altering the DA to have the entrance in the current location I would like to make the following points:

I can understand that Council would welcome this change as they would then not be responsible for the upkeep of the public road. It would also not set any precedence for landholders asking that Council look after other pieces of road that are currently crown or public roads.

There is no precedent that would have been set. Any land that is Crown Land access means council has no responsibility. Any public roads that are being referred to are already the responsibility of council. Council is quite aware that I was not requesting them to look after the road but had appealed to be allowed to purchase and control it myself. The reality of the original requirement amounted to substantial DA conditioned public works being undertaken by myself at no expense to RMS or council and this is a precedent that would probably suit both statutory authorities very nicely.

1. Will the entrance alterations have to be fully completed prior to construction of Stage 1 as per Condition 23 of RTA Comments and Conditions?

There is no indication why such information would be needed by this person or what problem, if any, there is associated with it. RMS will obviously set down and monitor the required conditions. I am fairly sure this is the same person who has contacted RMS and they have been told exactly what the conditions are. I do not understand how this enquiry is relevant. The staging of the driveway is the purpose of the section 96 amendment and obviously what we would be requesting.

2. How will the left turn in lane be achieved? The highway is on a curve travelling uphill and the level of the roadway, from the edge of the road to the fence is a sloping bank. On this bank is a survey marker that I believe must remain in place. There is also a cement power pole located on the verge close to the gate way that would have to be moved for safe entry.

The RMS inspector came to site for the reassessment and obviously has reviewed all of these aspects. It concerns me that this person thinks that the duly appointed employees of the various statutory authorities are not sufficiently qualified to make this assessment.

The left turn is not beyond the curve but actually has about 1 km sight distance approaching it. I am unsure about the location of any survey marker, there is a small sign to that effect on the fence line. I am sure that when and if the turning lane is constructed there will be surveying required and the marker if affected can be reestablished with very little concern. I find it disturbing that this person knows so much about my property, it seems there are closer inspections, than most would approve of, being made of our property by these people. The power pole is not in as close a position as is being suggested and, I feel sure, that this was also considered by the RMS inspector.

3. Will Condition 30 be met? Maybe the fence would have to be altered to allow space for this alteration. I am wondering if the established trees would have to be removed.

Why anyone would be so interested in the details to this extent is a bit bewildering and verges on dogmatic nuisance making.

The site has been deemed by RMS to be a safe entry point. In fact the height of the property compared to the roadway was seen as being an advantage to this entry point as it afforded extra sight distance when exiting the property and obviously causes no problem when entering.

If the concern is about the loss of the established trees then it might interest this person to know that they are radiata pines that have been planted only recently. I am keen to keep the trees and they form a valuable wind break and visual barrier. What's more they are inside the fence line and therefore not affected by the road works that are required to be undertaken entirely within the roadway boundaries.

4. Opposite the current driveway would make Condition 27 difficult to put in place.

Again this is a concern raised that is not supported by any evidence or explanation. The verge on the left is level with the roadway and exactly the same width as at any other point on the road. It is hard to understand why it would be suggested that this site would not be suitable. It is clear of vegetation and is the point on the road that provides the maximum sight distance from the south in the direction that the passing traffic will be coming from.

At the turn off to Maxwell Drive, there is already a turn off lane that could be continued further on or commenced further on, and a new entrance could be put into Mr Kitchener's property. This entrance would be into a paddock that is not being used for any construction. A roadway put in place to the cabins and dwelling, in an area that would not obstruct anything else, and be a safer option. There would also be good visibility opposite this entrance for the turn right lane to be constructed.

I am amazed that this person feels they have the right to override expert opinion and suggest options that are obviously much less convenient and much more expensive for us. Can you imagine what would happen if I were to go to them and insist they change a driveway on their property.

This is simply a ridiculous suggestion that introduces a very unsafe aspect. This proposal would have traffic traveling north needing to undertake vehicles turning across the traffic with a very much reduced sight distance being just after a blind curve. The south traveling vehicles would have only half the sight distance that they would at the proposed existing entrance. The road verges are at their narrowest at this place and there is insufficient room to do what is required. The paddock they are suggesting we enter is below the road and this is a situation the RMS will not allow.

Just recently the neighbours with a drive way opposite where this suggestion is talking about have had RMS investigate changing the speed limit on the road because they feel their entrance is dangerous, another entrance complicating that part of the road is simply an absurd suggestion. I do not think the neighbours opposite this proposed entrance would be very happy with this suggestion.

Other points that Mr Kitchener has asked be altered or modified from the original approved DA.

These matters were not part of the modification sent for public appraisal this time round. These are the same matters that have been raised previously. If these people are allowed to continuously raise the same matters time and time again then we will never be able to finalise anything. Hopefully council has made this point to them.

Mr Kitchener is asking that conditions 46 & 47 be deleted. He states that the submission, site visit, discussions, and advice from council staff (which has not been disclosed) entitle him to have these conditions deleted. These conditions were part of the approved DA.

I do not understand the 'not disclosed' insinuation. Surely this person is not suggesting that they should be notified every time I have a discussion with council. These conditions were set after the DA was approved and following review of the situation by appointed council staff. It was decided that they were unworkable and unnecessary. There is no impact, adverse or otherwise, upon these people of the decision/request. To insist that this not be allowed can only be viewed as a bitter act blatantly done to cause us expense and inconvenience.

Mr Kitchener and his family have lived in the building on and off for a considerable amount of time and in his request for the 'Modification of the DA', he is requesting 'temporary' living permission. He is doing everything in the wrong order. Proceeding and then asking permission.

This issue has been answered in the first round of responses. Once again there is no suggestion how this is adversely affecting the people complaining. Initially we were staying overnight on site on weekends and during holidays at the permission of council. We had previously asked for permission to do what we were doing and were granted it but this advice changed as these people complained more to council. We have discussed the situation with council and have followed their directions in this matter much to our own inconvenience. It seems these people think they have the right to deny us access to our own property and can dictate our use of it. The ridiculous situation they have put us in is that we have a very adequate building that could be used as a permanent residence but we are unable to do so because of their continual interference.

As to connecting the site office, and removing buildings and connections for the water tank, correct septic system etc, Mr Kitchener must abide by all conditions as set by Council and all other authorities.

There is no identifiable complaint in this. Not sure what is being requested here but it goes without saying that this is to happen. I suppose that the insinuation here is that if it does not happen then these people will be checking and will make complaints in the future. It is only a very presumptuous person that would try to throw their weight around in this manner and certainly something that most people would not tolerate from a neighbour.

In regard to the deletion of Section 94, Contributions, Mr Kitchener again mentions that the submission, site visit, discussions and advice from the council staff, should entitle him to have the fees waived. These conditions were set when the DA was approved.

Now that the Crown road entrance is not going to be used, the fee for the Rural Roads, is the only fee that could be waived. The other fees should remain in place for the development.

I am simply astonished at the arrogance of this person. The only possible reason for challenging council about fee charges is to ensure that we suffer the maximum possible expense in all of this. It was council's own suggestion that the Rural Roads fee was inappropriately applied, and of course it no longer applies, but what business is it of the neighbours in any case. I ask what normal person would bother getting involved in another person's DA to this extent unless they were bearing some sought of a resentment and were seeking retribution. I just wish I could understand what the resentment is but without ever having had any direct complaint or communication with these people I am at a complete loss.

It is clearly evident, now that I look at the original transcripts that are being sent to council, that the vast majority of what has stalled us is very simply trouble making, and 'muck raking' without any substantiation behind the complaints. In this current submission they have pulled apart the points in the section 96 request and tried to present an argument against each of them, most times without any logic, reason and often with a lack of understanding. In a couple of circumstances they have contradicted their previous complaints in an attempt to create further problems.

I think I should fairly expect that council has sent back to these people something to the effect that they are overstepping the mark and they need to let council do their job. Is it possible to see the council responses that have been sent back to them so I can better assess where we stand because I am not at all sure that there is a clear path ahead in all of this. These people are hiding behind the anonymity afforded them by Council process and council needs to take responsibility for the situation and deal with these people accordingly so our rights are also observed.

I have forwarded this response to the Local Member and all of the councillors so that it is well known by them the situation we are battling and to better inform their decision making that will hopefully occur in the near future. Up until now I have patiently sat back and waited for things to sort themselves out but I am no longer willing to do this and will become more proactive if the interfering continues. I am most upset that this quite ridiculous campaign by a couple of neighbours has caused us so much delay and inconvenience. It is clear from the letters of support given to me by the other neighbours in the district that the animosity being shown to us by these couple of people is not the general feeling towards us and our plans.

I acknowledge that council staff, are at present, giving our situation some degree of priority and this is what I intend to ensure continues.

Five Supportive Responses by Adjoining Landowners

Dear Greg and Kathy

I regret I did not get a chance to see your new development plans while they were on display until 11/6/12, life and the weather you understand! You know we are very impressed with your drive and enthusiasm for your place especially the tourist cabins concept.

As a matter of fact the previous owners of our property had a very similar development in mind. I'm nearly sure it had been passed by council as the building envelopes had survey markers laid out. That wasn't our dream but I remember they left us the plans and geotech designs in case we ever wanted to

use them. We love Good Forest and its our dream to retire to our farm in a couple of years so I cannot understand why you are not allowed to live at your place even though some buildings are temporary. As a matter of fact it would give us great peace of mind if you moved in right away and started building. In my estimation Lithgow is a very progressive area, look at all the development on McKane's Falls Road and we are very happy to share our love of the mountains with all comers. We wish you all the best in your endeavours at Serendipity and look forward to the finished product in the near future.

Regards

To whom it may concern

I have no objection to the proposed Development Application which Kathy and Gregory Kitchner are trying to finalise. It would be a step in the right direction if the Lithgow Council would allow Kathy, Greg and their children to get on with their lives. I live to the right hand side of their property and I have always found them to be decent people.

If you wish to discuss this matter further please do not hesitate to call.

Sincerely Yours

To Lithgow City Council

I am writing this letter to you in regards to Greg Kitchners cabin. We have no objection to the cabin. Also we have absolutely no problems with Greg and his family living there while the works are completed. I also feel that Greg is doing a good thing for the Lithgow area, Lithgow is in great need of more development into the area. Development of any kind brings work and money into the area. Having met Greg and his family quite a few times now i have no hesitation on him being a good neighbour. They have our full support in their venture.

To whom it may concern, As landowners at Good Forest, and planning to reside as neighbours to him and his young family, please accept this submission as in favour of his vision, as part of his involvement in promoting Lithgow and District Tourism.

Mr and Mrs Kitchner made themselves available to outline their intentions in regards for the use of the property at 769 Jenolan Caves Road, Good Forest. This was followed by a more detailed letter, explaining who they were as a family, and their aspirations for their new life at Good Forest. Mr & Mrs Kitchner emphasized in the letter, that they were more than happy to discuss any concerns we, or other neighbours, may have about their plans.

We have no objections to Mr & Mrs Kitchner and family living on site, additions to the dwelling, shed and (4) cabins.

Yours sincerely,

Dear Sir/Madam

I'm just writing to indicate I have no objections or issues relating to the proposed development at Lot 122 DP 757063 Jenolan Caves Road, Good Forest NSW 2790.

This covers any temporary or permanent structures, processes or procedures associated with the proposed structures or any associated activities such as person or persons living on site and/or working in and around this area.

In the context of the area I see a development of this type as a positive contribution to the areas tourism industry and a viable business proposition solution for the Lithgow region.

If you have any questions please feel free to call me on.....

Yours sincerely