

# Development Assessment Report

## APPLICATION DETAILS:

<b>Application No.</b>	DA 0217/2012
<b>Application is for:</b>	Temporary workers Accommodation Facility comprising 400 beds, Recreation Facilities, Laundry and Dining Facilities, Conference facility, and associated car parking, landscaping and signage.
<b>Owner</b>	Mac Services Group Pty Ltd
<b>Applicant</b>	Whelans InSites on behalf of Mac Services Group Pty Ltd
<b>Lodgement Date</b>	03/01/2012
<b>Land/Address:</b>	Lots 346, 348, 350, 476 DP 755434  2 Black Lead Lane - Gulgong
<b>Land Zoning:</b>	Agriculture Mid-Western Regional Interim Local Environmental Plan 2008
<b>Capital Investment Value:</b>	\$26,000,000.00
<b>Current Use and development:</b>	Vacant Agricultural land
<b>Report Author/s</b>	Gary Bruce, Manager - Statutory Planning

## EXECUTIVE SUMMARY:

### Reason for Consideration by Joint Regional Planning Panel:

The application has been referred to the Joint Regional Planning Panel pursuant to Clause 20 of the SEPP (State and Regional Development) 2011 and schedule 4A of the Environmental Planning and Assessment Act 1979 as the proposal relates to development with a Capital Investment Value of more than \$20,000,000.00.

### Brief Description of Proposal:

The development application seeks approval for the construction and use of the land for the purpose of Temporary Workers Accommodation. The facility will be used to accommodate predominately "fly in/ fly out" or "drive in / drive out" mine workers.

The facility would incorporate 400 beds, recreational and communal facilities, car parking and landscaping. The majority of the structures are constructed off site and transported to the site.

The proponent would construct, own and operate the facility and already have a number of such facilities within Queensland, New South Wales and Western Australia.

### **Compliance with Planning Controls:**

The site is zoned Agriculture pursuant to the Mid-Western Regional Interim Local Environmental Plan 2008. The proposal has been characterised as 'tourist and visitor accommodation' as provided by the LEP. 'Tourist and visitor accommodation' is prohibited in the Agriculture Zone.

The proposal is inconsistent with the zone objectives as it does not promote agricultural uses and would pose a constraint (land use conflict) on any agricultural activity in the vicinity of the site. The proposed development would also have an impact on the rural landscape and appear as an urban land use within the locality.

The development is considered to be unworthy of support due to a number of reasons including its location in a rural area, effect on the water and sewer capacities of Gulgong, significant opposition from many members of the nearby Gulgong community, perceived and real impacts of enclosure for the adjacent property that it surrounds and because it is a prohibited land use under the relevant Local Environmental Plan.

The proposed development has limited benefit for the township of Gulgong and the wider Local Government Area and it is considered that this type of development of the scale proposed and in the location selected is not a suitable land use and therefore should be refused.

### **Consultation:**

The application was advertised and notified in accordance with Council's Notification DCP and Temporary Workers Accommodation DCP.

A large number of submissions were received (in excess of 300 submissions) with the majority objecting to the development proposal. There were a handful of submissions in support of the proposal (4) with the main reasons for support being the lack of accommodation and concern about affordable housing in terms of rental and sale prices.

The majority of submissions received citing issues against the development revolved around the following;

- Prohibited land use,
- Impact on medical/ health services,
- Concern about the housing of mine workers in this type of accommodation,
- Impact on other town services because of the sudden influx and inadequate time for the town to respond to the potential demand,
- Desire for the mine workers to be accommodated in traditional housing forms and become part of the community,
- Social impacts of a large, male dominated influx of workers,
- traffic impacts,
- Amenity issues for nearby residents, and
- Scepticism of the economic benefits because the fly in / fly out worker will be more likely to take their wages home with them rather than contribute to the local economy.

The application was also referred to the NSW Office of Water and the Roads and Maritime Services (RMS).

### **Recommendation:**

It is proposed that DA 0217/2012 for the construction of a 400 bed workers accommodation facility or temporary workers accommodation at 2 Black Lead Lane Gulgong be refused in accordance with the Recommendation contained at the end of the report.

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## **1. Proposal**

The Western Region Joint Regional Planning Panel has before it for determination an application for a temporary workers accommodation facility that would comprise four hundred beds (400) on a 66 hectare property that is 1.5 kilometres from the Township of Gulgong. The development provides for;

- 396 bedrooms and ensuites comprising 132 x 3 unit buildings known as a '316' building;
- 4 accessible bedrooms and ensuites comprising 2 x 2 unit buildings known as '224' buildings;
- Central Dining and Kitchen facility;
- Gymnasium;
- Conference/ Recreation Room;
- Multipurpose court and lap pool;
- 400 space car park and 8 bay bus parking area;
- Gazebos;
- Laundry facilities;
- Ancillary Shed and Administration buildings;
- Ancillary earthworks and civil construction for access paths, car parking, storm water treatment, electricity and telecommunications, and water and sewer reticulation;
- Landscaping and identification sign.

It is proposed that the development will cater for mine workers for a period of twenty (20) years or as required and that the development at the end of its useful life will be decommissioned and the site rehabilitated. There are a number of options available in terms of the decommissioning and legacy infrastructure and these will be explored by the community at that time.

Access to the site is from Cope Road and the facility is setback approximately 300 metres from the Main Road. The facility is designed so that there are two accommodation areas to the north and south of the central facilities with car parking provided in large clusters surrounding the accommodation and central facilities.

## **2. Site Description**

The location of the site is on the rural outskirts of the township of Gulgong, 1.5 kilometres north east of Gulgong. The surrounding land uses include rural acreage/ lifestyle properties and working farms.

Gulgong is approximately 28 kilometres north of Mudgee and 22 kilometres south west of Ulan.

There are three coal mines currently operating in close proximity to Ulan; Ulan Coal Mine, Moolarben Coal Mine and Wilpinjong Coal Mine. Each of these mines is also seeking to expand their operations with the need for accommodation necessary to house construction mine workers and operational mine workers.

There are also a number of other coal mines currently carrying out exploration or preparing Environmental Assessments including Cobbora Coal Mine, Mt. Penny Coal Mine and Cockatoo Coal Mine. There is an existing coal mine at Charbon and a proposed coal mine at Running Stream which are in the south west part of the Mid-Western Regional Local Government Area. There are also two proposed wind farms on the eastern and western boundaries of the Local Government Area.

### **3. Referrals**

The application was referred to the NSW Office of Water and the Roads and Maritime Services (RMS).

The application is integrated development due to the need to obtain an approval for a new access under Section 138 of the Roads Act.

The response received from the Government Agencies is attached to the report as Annexure 4.

### **4. Environmental Planning and Assessment Act 1979**

In determining a development application, the consent authority must take into consideration matters referred to in Section 79C(1) of the Environmental Planning & Assessment Act 1979 as are of relevance to the development. The following section of this report summarises the relevant matters for consideration and provides a planning response.

#### ***Section 79C(1)(a)(i) any environmental planning instrument***

##### **State Environmental Planning Policy (Infrastructure) 2007**

Clause 101 of the SEPP deals with developments that have frontage to a main road. The application has provided a Traffic assessment that has been assessed by Council's Development Engineer and Roads and Maritime Services (RMS). It is considered that the development would not have a significant impact on the operation and function of the classified road (Cope Road). It is also considered that the amenity of the clients that may be housed in the proposed development would not be significantly impacted upon.

The proposed development is also categorised as a traffic generating development in accordance with Schedule 3 of the SEPP. The development has been referred to the Roads and Maritime Services (RMS) for concurrence under clause 104 of the SEPP and as the development is integrated development under Section 91 of the Environmental Planning and Assessment Act 1979. Cope Road is a classified road and therefore the RMS is an Approval Authority for this application.

The RMS has provided their concurrence and approval subject to a number of conditions including upgrade of the access and the provision of 450 car parking spaces.

#### SEPP (Mining, Petroleum and Extractive Industries) 2007

The SEPP makes provision for the use of temporary buildings for a period not greater than 24 months (such as mine camps or temporary workers accommodation) as complying development providing it is on the site of an approved mine.

The proposed development is seeking a greater time period than 24 months and is not located on an approved mine site.

#### SEPP Rural Lands 2008

The proposed development relates to the use of agricultural zoned land for urban purposes. The impact on capability of the site is not considered to be significant due to its size and previous land uses which have been light grazing, but the intrusion of a large accommodation facility in a rural area may impact on the ability of adjoining land owners to manage their properties for agricultural activities which is considered to be contrary to Clause 7 – Rural Planning Principles of the SEPP.

#### SEPP 44 – Koala Habitat

The ecological assessment has indicated that none of the feed species listed in schedule 2 of the SEPP are located within the property.

It is considered that the site does not contain suitable habitat for koalas and therefore no further consideration of this matter is required.

#### SEPP 55 – Remediation of Land

The development submission includes a Phase 1 Environmental Assessment that indicates that the land has been predominately used for low scale grazing activities and is unlikely to have supported a use that is potentially contaminating.

The Assessment does indicate that there is anecdotal evidence that there was a land fill site on adjoining land to the south of the development site. It is considered that given the likelihood of this potentially contaminating land use and its proximity to the proposed location of accommodation buildings that a phase 2 assessment should be undertaken to adequately demonstrate that the development is of minimal risk of contamination.

This could be imposed as a condition of consent should the application be approved.

#### Mid-Western Regional Interim LEP 2008

The land is zoned Agriculture in accordance with the Mid-Western Regional Interim Local Environmental Plan 2008 (LEP). The proposed development is characterised as '*tourist and visitor accommodation*' as defined in the Dictionary in the LEP.

'*Tourist and visitor accommodation*' is a prohibited land use in the Agriculture zone and therefore cannot lawfully be carried out and there is no power to grant development consent to the proposed development.

'*Tourist and visitor accommodation*' is defined as;

***tourist and visitor accommodation means a building or place that provides temporary or short-term accommodation on a commercial basis, and includes hotel accommodation, serviced apartments, bed and breakfast accommodation and backpackers' accommodation.***

It is also considered that the proposal may be defined as 'hotel accommodation' but as these two definitions are intertwined, ('hotel accommodation' being a subset of 'tourist and visitor accommodation') it is only necessary to explore the reasoning once.

***hotel accommodation means a building (whether or not a hotel within the meaning of the [Liquor Act 1982](#)) that provides tourist and visitor accommodation consisting of rooms or self-contained suites, but does not include backpackers' accommodation, bed and breakfast accommodation, a boarding house or a serviced apartment.***

The key elements that make up the definition of 'tourist and visitor accommodation' or 'hotel accommodation' include the use of a building or place for the short term accommodation of visitors on a commercial basis. It is contended that mine workers are visitors and that the applicant (Mac Group) is seeking to carry out the proposed development for commercial gain.

Visitors are not defined in the LEP and therefore reference to its normal definition as contained in the Macquarie Dictionary is appropriate. The Macquarie Dictionary defines a visitor as;

***“one who visits, or makes a visit, as for friendly, business, official, or other purpose”***

It is quite clear in the Statement of Environmental Effects that has been prepared for the applicant that the Mac Group target and attract the “fly in / fly out” mine worker who visits the locality for the period of time that he/she is working and then returns to their permanent place of residence when they have finished their work period.

It is simply a matter of characterisation that a person is either a permanent resident of the area or a visitor. If they have a permanent place of residence and or a residential address outside of the locality/ region, then it stands to reason that they must be a visitor. The accommodation of a visitor for a temporary or short term period, whilst they are working their roster means that the development although a specific type of development as a mine workers camp or temporary workers accommodation fulfils the definition of 'tourist and visitor accommodation'.

The application contends that the use of the proposed development is not specifically defined in the LEP and is therefore an innominate use which is permissible with consent. This has been further argued through the provision of legal advice<sup>1</sup>.

It is contended in the legal advice on behalf of the Mac Group that the proposed development is not 'tourist and visitor accommodation' on the following basis;

- The definition of 'tourist and visitor accommodation' is arguably a 'means and includes' definition and the four types of accommodation identified (hotel accommodation, serviced apartments, bed and breakfast accommodation and backpackers accommodation), are an exhaustive list of uses that fall within the definition. It suggests that the development does not fall within any of those listed types of development.

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<sup>1</sup> The Mac Services Group P/L – Gulgong Workers' Accommodation Facility - Memorandum of Advice – Philip Clay – 18 April 2012

- Use must be for a purpose. The provision of accommodation is a physical act by which the land is made to serve some purpose. It suggests that the purpose is the provision of accommodation for tourists and visitors. It concludes that the workers could not be described as tourists or visitors, and as such, the development would not fall within the definition.

Council does not agree with the conclusion set out in the legal advice that the development would not be characterised as 'tourist and visitor accommodation'. In this regard the following comments are made:

- If the proper construction of the definition is that it is exhaustive, (i.e. 'tourist and visitor accommodation' can only be one of the four types of accommodation specified in the definition), this does not alter the Council's conclusion that the proposed development is prohibited because the proposed development, as well as fitting within the definition of 'tourist and visitor accommodation' also falls within the definition of 'hotel accommodation' which is also listed as being a prohibited use in the Agricultural zone.
- Mineworkers can be considered to be visitors for the purposes of the definition of 'tourist and visitor accommodation'. It is clear from the legal advice that the mine workers pack up their gear at the end of each roster and return home to their permanent place of residence. Upon their return they are accommodated into any room that is available much like a hotel or motel. In fact the Statement of Environmental Effects makes a point of comparing the facility to a "boutique holiday resort" (pg. 6 Insites, SoEE). It is therefore contended that mine workers are visitors because they do 'visit' the region for a purpose; that being employment and the fact that they come back on a regular basis is not a relevant consideration because the definition does not stipulate how often.
- As set out above, the Macquarie Dictionary definition of visitor includes "one who visits, or makes a visit, as for..., business, official, or other purpose". The Mac Group legal advice refers to the Australian Oxford Dictionary definition of "visit" which includes: "go or come to see (a person, place etc) ..... on business or for a purpose,.....' It is considered that the attendance by workers on the short term basis which is identified in the proposal would fall within the definition of 'visit' as they are attending on business or for the purpose of work.
- It therefore follows that if mine workers are visitors and a place or building seeks to accommodate them on a commercial basis, then the land use would be defined as tourist and visitor accommodation.

#### Clause 12 - Zone objectives and land use table

The objectives of the Agriculture Zone are;

- *To protect and maintain land for agriculture and other rural purposes.*
- *To avoid the fragmentation of agricultural land and conflict between land uses, and to restrict unnecessary dwellings and incompatible development.*
- *To provide for other rural land uses, such as mining, extractive industries, forestry and energy generation.*

- *To provide for the protection, enhancement and conservation of areas of significance for nature conservation, of habitat of threatened species, populations and ecological communities and of other areas of native vegetation.*
- *To maintain the scenic amenity and landscape quality of the area.*
- *To promote the sustainable management, use and development of certain land for agriculture, mining and other primary industries.*
- *To promote the conservation of productive agricultural land for agricultural purposes, particularly cropping and grazing.*
- *To preserve the area's open rural landscapes and environmental and cultural heritage values by the maintenance of large holdings accommodating both intensive and extensive forms of agriculture.*
- *To avoid development that would conflict with or unreasonably impact upon the efficient use of land for rural or other primary industries, such as small lot rural residential subdivision and hobby farms.*
- *To protect the residential and visual amenity of existing and future residents of rural areas by applying appropriate building siting and design controls.*
- *To ensure that development does not significantly detract from the existing rural character or create unreasonable or uneconomic demands for provision or extension of public amenities and services.*
- *To permit some non-agricultural land uses and agricultural support facilities, such as rural industries and tourist facilities, which are in keeping with the other zone objectives and which will not adversely affect agricultural capability or capability of the land the subject of the development (or adjoining land).*
- *To encourage high quality advertising signs in association with approved uses that provide business identification, that are appropriately integrated into the site development, and that contribute positively to the visual amenity of the surrounding area.*

The proposed development is considered to be inconsistent with the objectives of the Mid-Western Regional Interim LEP Agriculture Zone as the development;

- does not maintain land for agricultural and rural uses;
- is likely to introduce new land use conflicts between rural residential and rural land uses and the proposed land use;
- does not preserve the locality's open rural landscapes

#### Clause 27 – Classified Roads

The development site would gain access off a classified road (Cope Road) and therefore was referred to the Roads and Maritime Services (RMS) for concurrence and approval under section 91 of the EP&A Act 1979.

The report considers matters relating to access and traffic at a later section.

#### Clause 32 – Heritage Conservation

The subject site is not listed as an item of environmental heritage under the Mid-Western Regional Interim LEP 2008 or the State Heritage Register.

An AHIMS search and Due Diligence assessment was carried out by the proponent and it was revealed that there are no known or registered indigenous artefacts. It is



considered that the landforms over the site are relatively consistent and there is no increased risk of finding artefacts on the subject site due to sensitive landscapes such as rivers or elevated land forms.

The site does contain three items of potential heritage value including a mine shaft and two mullock heaps. It is proposed to retain these and exclude them from the development area. The original plans detailed the provision of landscaping and earth mounds through the mine shaft; these plans have been amended to retain the mine shaft and provide for the landscaping and earth mounds around these historic artefacts.

#### Clause 63 – Excavation and Filling of Land

The proposed development poses limited excavation and filling for the proposed buildings but does propose significant earthworks in order to deal with stormwater. Whilst the design may adequately deal with stormwater disposal, it would appear to also reduce any water harvesting attributed to the nearby neighbour and this is considered an unacceptable impact.

#### ***Section 79C(1)(a)(i) any draft environmental planning instrument that is or has been placed on public exhibition***

##### Draft Mid-Western Regional Local Environmental Plan 2012

The draft Mid-Western Regional Local Environmental Plan 2012 is a relevant consideration in the assessment of the application. The Draft LEP proposes to zone the subject site “Primary Production” in which tourist and visitor accommodation of this nature is proposed to be permissible.

The Draft LEP is with the Department of Planning and is considered to have limited statutory weight as Council has not reviewed any proposed changes to be made by the Department and it cannot be considered as imminent or certain.

##### Planning Proposal – Temporary Workers Accommodation

The planning proposal seeks to amend the Mid-Western Regional Interim LEP 2008 and the draft Mid-Western Regional LEP 2012 to insert provisions into the LEP in terms of providing a specific definition and development standards in relation to temporary workers accommodation.

The planning proposal defines temporary workers accommodation to mean “any habitable buildings and associated amenities erected on a temporary basis for the purpose providing a place of temporary accommodation for persons employed for the purpose of carrying out works associated with a large scale infrastructure projects, including mining, renewable energy or electricity transmission or distribution networks”.

The development is considered to be consistent with the definition but does not comply with the development standards in so far as the proposed clause requires these facilities to be within 5 kilometres of a major project site and to have minimal impact on the road network. The development site is approximately 22 kilometres from Ulan and therefore does not reduce commuter traffic or lessen the impact of additional traffic on the road pavement.

The Planning Proposal is currently on exhibition at the time of writing this report and is likely to have been reported to Council after exhibition by the time of the Western Region JRPP Meeting. It also is not considered to be imminent or certain but does certainly portray Councils view on where these facilities should be located.

### ***Section 79C(1)(a)(iii) any development control plan***

#### ***Temporary Workers Accommodation Development Control Plan***

The Temporary Workers Accommodation DCP was adopted on 17 February 2012, after the development application was lodged with the Council on the 3 January 2012. However, as the DCP is in force prior to the determination of the application and does not provide for any savings provisions, it must be considered as a relevant consideration under s79C(1).

The proposed development is considered to be inconsistent with the intent of the DCP as the location is considered unsatisfactory given its remoteness to the mines and location within a rural area.

The following is a Compliance Table to demonstrate the adequacy of the application against the standards provided in the DCP.

DCP Standard	Proposal	Compliance
Permissibility	Defined as tourist and visitor accommodation under the Mid-Western Regional Interim LEP 2008 and is prohibited in the Agriculture Zone.	No
Location	<p>The proposal is considered to be remote from the mine sites and likely to create an additional commuter route such as Ulan Road.</p> <p>The development site is inconsistent with the Comprehensive Land Use Strategy.</p> <p>Proposal is not located in a scenic or visual attraction area.</p> <p>Not located on a tourist route but is in close proximity to a tourist town and may alter the fabric of the town in terms of its make up as a community and how it portrays itself.</p>	No

	<p>The proposal is not located on industrial zoned land.</p> <p>May have some impact on agriculture as is located in an Agricultural zoned locality.</p>	
Within or adjacent a town	<p>Yes (within 1.5km)</p> <p>Can be connected to reticulated water and sewer, but inadequate assessment of capacity of existing town water and sewer supply to cater for this demand.</p> <p>Capacity for legacy infrastructure either through water/ sewer mains, roads, and buildings depending on community needs.</p> <p>Did not address need for cycle path/footpath. To be conditioned if the application were to be approved</p> <p>No replication of facilities.</p> <p>Traffic impact statement prepared.</p> <p>Limited visual impact.</p> <p>Likely impact on rural amenity through land use conflict with an urban land use.</p> <p>Plan of Management provided.</p> <p>Social impact assessment provided.</p> <p>Economic impacts identified.</p>	<p>Yes, but did not assess impact on water and sewer reticulation infrastructure adequately.</p>
Within or adjacent a village (500m)	N/A	N/A

At Major Project Site	N/A	N/A
Other locations	N/A	N/A
Need	Yes, in a limited capacity	Yes
Social Impact Statement	Provided.	Yes
National Construction Code	Not specifically, but can be conditioned if required.	Yes
Moveable Dwellings	Details to be provided with Construction certificate.	Yes
Accessibility	Addressed in application but to be conditioned if approved to comply with Access to Premises Code and AS1428.1 :2009.	Yes
Density (100/ha)	6 beds / hectare	Yes
Facilities	Ensuites to each room, laundry, covered areas, BBQ areas, conference facilities, recreation facilities, paved footpaths.	Yes
Traffic and Parking	Can be provided in accordance with DCP requirements	Yes
Services	Water, sewer, waste collection and first aid facilities.	Yes
Landscaping	Provided at front of site, within site at around site.	Yes
Plan of Management	Draft provided. Condition of consent, if required.	Yes
Decommissioning Plan	Draft provided. Condition of consent, if required.	Yes
Developer Contributions	Section 94A Contributions Plan is applicable but applicant has also advised that the developer is willing to enter into VPA, should application be approved.	No

#### Notification Policy DCP

The development was notified to adjoining and adjacent owners during March and April 2012. A large number of submissions in excess of 300 were lodged in the form of objection and four submissions were lodged in the form of support. The content of these submissions are considered as an attachment to this report (Annexure 5).

#### Design for Accessibility DCP, Access to Premises Code and AS 1428.1: 2009

The proposed development does not adequately address accessibility and all buildings are proposed to be located on piers. The elevations of the buildings show steps and only four buildings appear to have ramps. There is limited provision for accessible rooms within the development.

The AS 1428.1 2009 and the Federal Access to Premises Code require a certain number of Class 3 rooms to be provided with accessible features and all common facilities to be provided with accessible features.

This has not been provided and would need to be addressed prior to any approval of the development. The applicant has provided that an exemption should be provided due to the use of buildings for mine workers and that they must be able bodied. Council does not support the use of the exemption clause for this purpose and has advised the applicant. The applicant has agreed that if any consent were to be issued, the development consent would require that the development fully comply with the Access to Premise Code and AS 1428.1:2009. This could then be addressed at the Construction Certificate stage.

#### Car Parking DCP

Council's Car Parking DCP does not specifically address this type of development however, consistent with the motel provision in the DCP, the development should cater for 1 space per room and staff parking.

The development provides for approximately 400 spaces which is consistent with the suggested standard of 1 space per room. In addition to the requirement to cater for client parking, the DCP also requires that staff parking be accounted for at a rate of 2 spaces per 3 employees. The DA submission notes that there will be approximately 20 staff at any one time and therefore an additional 12 spaces are required.

It is considered that the other facilities on site are ancillary to the main function of providing accommodation and therefore do not generate a car parking demand.

Should the application be approved, a condition would be imposed requiring the provision of 412 car spaces, however it should be noted that RMS have required 450 spaces.

#### Mid-Western Regional Comprehensive Land Use Strategy

The proposed development is not considered to be compatible with Council's adopted Comprehensive Land Use Strategy as the development is residential and urban in its nature and the adopted Town Structure Plan for Gulgong does not identify the subject land as a location for future urban development.

It should also be noted that the Comprehensive Land Use Strategy has been endorsed by the NSW Department of Planning and Infrastructure on the 1 August 2011.

The applicant has argued that the development will make it suitable for urban purposes by extending reticulated water and sewer to the locality. This may provide some benefit but it is not as simple as this and Gulgong's whole demand and supply for urban land would need to be revisited.

Council has spent a lot of time and resources identifying future urban land and carrying out community consultation to determine the most appropriate structure for Gulgong and an ad hoc development cannot seek to undermine this Strategy without extensive consultation and consideration of the relevant issues.

#### Section 94A Development Contributions Plan

The Section 94A Contributions Plan is relevant to the proposed development and would be levied at 1% of the estimated cost of the development. This would equate to \$260,000.00 based on an estimated development cost of \$26,000,000.00.

#### Development Servicing Plan – Water

The SoEE provided with the application identifies that approximately 250 litres of water is required for each worker accommodated onsite. Council's Development Engineer has reviewed the DA submission and formulated a water supply demand of 167 ET's or 'equivalent households'. This equates to water head works of \$1,271,379.28.

#### Development Servicing Plan – Sewer

Council's Development Engineer has reviewed the DA submission and formulated a sewerage demand of 247 ET's or 'equivalent households'. This equates to sewer head works of \$858,025.76.

#### ***Section 79C(1)(a)(iia) any planning agreement***

None apply.

#### ***Section 79C(1)(a)(iv) the regulations (to the extent that they prescribe matters for the purpose of this paragraph)***

There are no matters applicable to this application.

#### ***Section 79C(1)(b) the likely impacts of the development***

This section of the report outlines the environmental impacts of the proposed development and any measures required to protect the environment or lessen the harm to the environment.

The impacts have been identified through an assessment of the proposed development against the provisions of section 79C(1)(b) and the former NSW Department of Urban Affairs and Planning's (nd) *Guide to Section 79C*.

#### Context and Setting

The proposed development is situated in close proximity to the town of Gulgong and the surrounding area is characterised by farm land and rural small acreage properties. The proposal would be a significant element in any future locality that would rival Gulgong in terms of its scale.

The proposed development is not considered to be compatible with the surrounding locality and despite the significant provision of landscaping and earth mounds is still likely to be visible to adjoining properties and commuters along the Cope Road. This is not to say that it is going to be visually unattractive but it will be noticeable as a large urban development surrounded by rural land uses and buildings and therefore would appear out of character.

The proposed development site also surrounds a neighbouring parcel of land and it is likely that the adjoining owner would have a genuine feeling of confinement because of the development. It is acknowledged that the land parcels currently exist in this context but it is considered that because the development proposed is of an urban

nature and not considered to be in context with the adjoining locality, the feeling of confinement and loss of amenity would be significantly greater and more unacceptable than if the land was being developed for rural purposes.

#### Access, transport and traffic

The proposed development provides for an avenue from Cope Road to the development site. There is a main thoroughfare for access to the facility and common facilities. Car parking is provided in several distinct areas around the facility to enable ease of access from the accommodation buildings to these spaces. It is understood that the intention of the facility is that the mine workers will leave their vehicles in these car parks and that the facility is to be predominately pedestrian focussed.

The traffic assessment has identified that whilst the development has provided 1 car space per accommodation unit; in the proponent's experience workers generally access the site via public transport (plane and courtesy bus from the facility) and are transported to the mine site. This is part of the service in staying at a Mac Group facility. Council staff raised an issue with this line of thought in that whilst it is applauded that attempts are being made to reduce traffic numbers, the location of Gulgong to the Hunter, Sydney and the Central West may mean that there is not as much 'fly in' as there could be 'drive in'. Furthermore, if a mine worker has a car available, the reliance on bus transport is questioned (even if it is provided by the facility).

The advice that Council provided in a pre-DA meeting was that whilst Council encourages these types of actions, it is unlikely to rely on such a concept for assessing traffic impacts until it is a legal requirement or condition of consent for a mine to enter into these types of arrangements. Council has therefore assessed the traffic impacts on the basis of 400 clients and 20 staff all utilising separate vehicles.

The assessment has concluded that whilst the level of service for Cope Road reduces from A to B, that there is no significant impact on the road network subject to the recommendations of the traffic impact assessment report being carried out.

It should be noted that whilst the road has an engineering capacity for the number of vehicles proposed, the possibility of a large number of vehicles commuting from the site to the mines would have an impact on the road system and the character of the area.

The proposed car parking and loading areas would appear to be adequate given the size of the units and the anticipated occupants, although in accordance with Council's DCP an additional ten car parking spaces are warranted.

It should be noted that the RMS concluded that 450 car parking spaces were warranted.

#### Utilities

The development would be able to be serviced by electricity and telecommunications and is proposing to extend the reticulated water and sewer services of Gulgong to the proposed development.

The Gulgong water supply has a limited capacity to service further development and there are a number of measures being undertaken to increase this capacity. These include the use of non-potable water for the irrigation of parks and reserves, the

minor upgrade of the water treatment plant and the construction of an additional water reservoir. These have been devised to allow for the strategic alignment of urban growth and provision of infrastructure in Gulgong.

The connection of the proposed development with a significant demand on Council's water supply capacity was not considered as part of this upgrade programme. These upgrades are not all budgeted to occur immediately. The use of non potable water for irrigation of public parks and reserves is currently being undertaken and is proposed to be completed in October this year. The design of the upgrade to the water treatment plant is also currently being investigated. These were devised with the intention of catering for planned urban growth in accordance with Council Comprehensive Land Use Strategy, existing zoned land under the current LEP and land proposed to be rezoned under the draft LEP 2012. The proposed new reservoir has not been budgeted for some years.

Water supply required by planned urban growth is generally a steady and measured demand that allows for the upgrade of facilities over time. The provision of a temporary workers accommodation facility comprising 400 beds, that can be constructed in a matter of months and not years, is likely to have a significant impact on Council's ability to service the planned growth. In this respect, it is considered that the development should not be supported because of its demand for water supply that will compromise future urban development in Gulgong. In other words, Council is placing a higher priority on providing water supply to planned and permanent urban development over unplanned and temporary development. This is an object of the Environmental Planning and Assessment Act 1979 [Section 5(a)(ii)] and an aim of the Mid-Western Regional Interim LEP 2008 [Clause 2(k)].

Should the application be approved, it is considered in addition to the water head works that would be imposed that the development should offset the impact of the 167 Equivalent Tenements (ET's) and construct a new reservoir. Alternatively, the applicant could offer to enter into a VPA with Council for the construction of a new reservoir.

The connection of the development to Council's sewerage system will also place a significant burden on the existing infrastructure and the ability of Council to fund these upgrades. As detailed in the discussion on water supply, Council has identified the planned urban growth as a priority for its infrastructure and therefore the development is also not supported because of the likely impact on sewerage infrastructure resourcing and funding.

The development also proposes to capture stormwater runoff from the development site by conveying the water along a planted swale and directing it to a detention basin to be constructed. This is considered to be a relatively suitable method of disposal but it is also noted that the natural lay of the land is to the north east and that the proposed swale would have the effect of reducing the surface water harvesting of the adjoining property that is surrounded by the development site. It is considered that further investigation of this possible negative impact should be carried out in order to alleviate any concerns regarding loss of water harvesting.

### Heritage

The subject site is not listed as an item of environmental heritage under the Mid-Western Regional Interim LEP 2008 or the State Heritage Register.



An AHIMS search and Due Diligence assessment was carried out by the proponent and it was revealed that there are no known or registered indigenous artefacts. It is considered that the landforms over the site are relatively consistent and there is no increased risk of finding artefacts on the subject site due to sensitive landscapes such as rivers or elevated land forms.

The site does contain three items of potential heritage value including a mine shaft and two mullock heaps. It is proposed to retain these and exclude them from the development area. The original plans detailed the provision of landscaping and earth mounds through the mine shaft; these plans have been amended to retain the mine shaft and provide for the landscaping and earth mounds around these historic artefacts.

### Flora & fauna

The development site is located within a rural zone and has been utilised for light grazing. The Ecological assessment indicates that there were isolated trees in the site and one area of importance due to the tree species being listed as Box-gum woodland EEC but due to their isolated location and the availability of area for the development would be able to be retained.

The ecological assessment does indicate that a linear group of trees along the road side would need to be removed to allow the access to be constructed. It was concluded that although the species was Fuzzy box – Inland Grey Box and is listed as an Ecologically Endangered Community that because the vegetation was mainly regrowth, there would not be any significant impact on threatened species, populations or communities.

An ecological assessment of the proposed water and sewer main extension paths has also not been carried out and would need to be if the development were to be approved, alternatively the construction of these mains could be subject to a further application.

### Noise & vibration

The development seeks to establish a temporary workers accommodation facility on the outskirts of Gulgong. The development is considered to be susceptible to noise from adjoining agricultural activities but is also likely to generate noise levels that would be intrusive to adjoining properties because of the nature of the operation in that mine workers will be accessing the site on a 24 hour basis.

The main noise sources as detailed in the assessment report include plant and equipment, site traffic, car parking and people at communal recreation areas on a 24 hour basis. The Mac Group have detailed that it is in their best interest to manage noise on site because at any one time there can be a significant amount of people sleeping but it is also considered that due to the nature of the clients to be accommodated onsite (shift workers) there will be a noticeable increase in noise from the site over a 24 hour period.

The noise assessment included assessment of background noise levels and predicted noise levels using computer modelling. It was determined that the development would not have any significant impact on adjoining residences because the levels met the required guidelines. It is fair to say that the adjoining owners would be used to minimal noise and probably located in this position for that very reason. There would be an impact on their amenity even if it complies with the appropriate guidelines.

The report does not assess, however, the likelihood of the mine workers attempting to sleep being affected by noise disturbance. The facility would have people onsite sleeping at all periods of the day and night and it needs to be noted that the facility is proposed to be located in a rural area where there is the likelihood of farm machinery and vehicles affecting the amenity of the facility.

#### Natural Hazards

The proposed development is not known to be of significant risk from any natural hazards such as bushfire, flooding or subsidence.

The DA submission also included a Geotechnical assessment that identified that the land did not pose any significant constraints for construction.

The DA submission has also considered groundwater vulnerability and salinity and concludes that there is limited risk to these or of these.

#### Technological hazards

The proposed development is not known to be of significant risk from any technological hazards.

#### Social and Economic impact in the locality

The development has the potential to alter the social fabric of the township of Gulgong in terms of incorporating a large number of people to reside adjacent to the town in a relatively quick period. The social and economic assessment identified that the majority of concerns were as a result of the proliferation of mines in the locality such as housing affordability, reduction in rental markets supply and an increase in rental prices, and demand on medical and health services.

This is true in many ways as it is a product of the mining boom and failure of State Government to adequately consider the cumulative impacts when approving major projects, but it also needs to be considered that the applicant's desire to accommodate a large number of workers in one location is likely to have some significant impacts on the host community where the facility is constructed.

It also needs to be taken into consideration that a large non resident workforce has an impact on local services as these people are not permanent residents and therefore do not affect the level of service provided by Governments. The provision of these accommodation facilities by a company that specialises in this type of development needs to assess these impacts as the provision of these facilities encourages the use of them by mine companies.

The types of impacts include added stress and pressure on local health and medical services, additional resourcing issues for other government agencies such as the Police and Ambulance, and a rapid change in the makeup of the existing community.

As defined by the NSW Government Office on Social Policy, social impacts are significant events experienced by people as changes in one or more of the following are experienced:

- peoples' way of life (how they live, work or play and interact with one another on a day-to-day basis);

- their culture (shared beliefs, customs and values); or
- their community (its cohesion, stability, character, services and facilities).

The proposed development with the sudden influx of 400 people who have limited or no connection to the locality would have an impact on Gulgong resident's way of life and the cohesion and stability of the community. The residents of the workers accommodation facility would enter town as groups either by a desire to socialise together or simply because they are transported by the village bus. This would have an effect on how the community views, interacts and otherwise relates to each other and to the inhabitants of the workers accommodation facility. These impacts are going to be significant in a town of 2,000 and whilst these impacts may be positive and negative, the DA submission has not adequately dealt with how these impacts are going to be managed. It has suggested that there will be a Community Liaison Officer and some other measures but the reality is that there may be significantly greater issues that will not be addressed.

There has also been a lot of discussion<sup>2</sup> about the potential health and social impacts on mine workers who frequently live away from home for periods of time in order to earn good money at a mine. A number of submissions dealt with a study by the Queensland University of Technology led by Professor Carrington<sup>3</sup>. The study was carried out in 2011 and involved an online survey that included resident and non resident respondents. The overwhelming responses were negative and included the following;

- *"75% felt mining developments with non-resident workforces housed in their communities had an adverse impact (47% very negative impacts and 28% a somewhat negative).*
- *75% felt the impact on housing availability and 79% on housing affordability was negative*
- *76% thought the impacts on local infrastructure was negative (and most very negative - 55%)*
- *76% felt the impact on local services was somewhat or very negative;*
- *63% felt the impact on amenities for recreation was either somewhat or very negative;*
- *62% felt the impact on local employment opportunities was somewhat or very negative;*
- *60% felt the impact on local business and economy was somewhat or very negative.*
- *59% regarded the impact on crime and justice as adverse*
- *58% felt the impact on community safety was adverse*
- *55% felt the impact on lifestyle was negative "*

Many of the impacts are related to mining in general but the key impacts to be taken away from this report is that there was perceived negative impacts on the non

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<sup>2</sup> Trenwith, C. "Dark Side of the Mining Boom", Sydney Morning Herald, December 6, 2010.

<sup>3</sup> Carrington and Pereira. "Social Impact of Mining Survey: Aggregate Results Queensland Communities", Queensland University of Technology, 2011.

resident workers that were housed in these types of facilities and their sense of lifestyle was also impacted upon.

The mine camps and mining companies that accommodate these mine workers in these facilities need to better address these impacts and the responsibility for the degradation of communities and families due to the “fly in / fly out” phenomenon. This aspect has not been adequately addressed in the DA submission.

The development may provide for some economic benefit in terms of encouraging additional business in town and during construction. The proponent has provided information that suggests that one of their key company goals is to utilise local businesses, contractors and the like. This is questionable because it is open to the management of the facility in terms of whether they resource their facility from local providers or utilise larger state or national companies.

It has also been established through a number of studies that the proliferation of fly in / fly out arrangements which a mining camp encourages, may also reduce the economic benefit to host towns as the mine workers spend their money when they return home.

Gulgong is also a heritage town and a large percentage of its area is listed as a Heritage Conservation Area under the Mid-Western Regional Interim LEP. A key attraction to the town for tourists is the ‘heritage’ feel and part of Gulgong’s economy depends on this tourism trade. Whilst the proposed development is unlikely to pose any physical constraints on the conservation area, there is some concern that if the development proceeds and it alters the social fabric of the town, that this would also have an impact on the tourism trade.

#### Safety, Security and Crime prevention

The guidelines prepared by the NSW Department of Urban Affairs and Planning (DUAP 2001) identify four (4) Crime Prevention Through Environmental Design (CPTED) principles to be considered in Development Applications to ensure developments do not create or exacerbate crime risk. These principles are discussed below in relation to the proposed development and include: surveillance, access control, territorial reinforcement, and space management.

Included in the proposal is security lighting and the provision of staff on a 24 hour basis. The 24 hour use of the site would also serve to increase casual surveillance. The proposal includes a primary entrance and signage to encourage the entry to the site from this point.

#### Construction

Construction activities have the potential to generate adverse impacts through construction traffic noise, surface water, land degradation and dust.

A key impact of construction that was not adequately addressed is the transport of the buildings to the site. The type of vehicles, haulage route and number of vehicles would require further assessment.

It is proposed to require a Construction Management Plan that will address possible impacts of the construction.

#### ***Section 79C(1)(d) any submissions***

The proposed development was publicly exhibited for a period of three weeks with a site sign erected, an advertisement in the local newspaper and written letters to adjoining land owners. The submission period resulted in approximately 360 submissions against the proposal and four submissions in favour of the proposal. Staff comment on the submissions is attached to this report due to the number of submissions received (Annexure 5).

Council received submissions from the Roads and Maritime Services (RMS) and the NSW Office of Water. These submissions are attached to the report as Annexure 4.

### ***Section 79C(1)(e) the public interest***

The proposed development is not considered to be in the public interest for the reasons stipulated in the Recommendation.

The development has not adequately addressed the principles of Ecologically Sustainable Development (ESD) and it is considered that the development is likely to be contrary to these principles because it does not encourage the development of an existing community, is distinct from and may compete with the existing community and is not considered a sustainable way of life for the inhabitants of the workers accommodation facility.

## **5. Recommendation**

The application has been assessed in accordance with the requirements of the Environmental Planning & Assessment Act 1979 and Environmental Planning & Assessment Regulation 2000. The evaluation demonstrates that the proposal is unsatisfactory in terms of the matters for consideration identified in the legislation.

It is recommended that the proposal be refused for the following reasons;

- 1. The proposed development is characterised as ‘tourist and visitor accommodation’ and is a prohibited land use in the Agriculture zone pursuant to Mid-Western Regional Interim LEP 2008;**
- 2. The development is contrary to the Aims of the Mid-Western Regional Interim LEP 2008 as it does not promote the orderly and efficient use of land as the development is contrary to the Mid-Western Regional Comprehensive Land Use Strategy;**
- 3. The demand for water supply and sewer treatment is significant in comparison to the existing urban requirements of Gulgong and would utilise a resource that is better reserved for existing and proposed urban zoned land under the Mid-Western Regional Interim LEP 2008 and the draft Mid-Western Regional LEP 2012. This is consistent with the Objects of the Environmental Planning and Assessment Act 1979 and the Aims of the Mid-Western Regional Interim LEP 2008;**
- 4. The proposed development does not comply with the Location requirements of the Temporary Workers Accommodation DCP as the development site is consider to be remote from the mine sites and inconsistent with the Mid-Western Regional Comprehensive Land Use Strategy;**

5. **The proposed development does not comply with the requirement of the Temporary Workers Accommodation DCP in terms of justifying the capacity of the water and sewer reticulation systems in Gulgong.**
6. **The proposed development is a residential style development and is inconsistent with Council's Comprehensive Land Use Strategy as the Gulgong Town Structure Plan does not envisage expansion of Gulgong in this location;**
7. **The proposed development is a residential style development and is inconsistent with the Zone Objectives of the Agriculture Zone pursuant to the Mid-Western Regional Interim LEP 2008 as it seeks to carry out an urban style development in a rural area and may lead to land use conflicts;**
8. **The proposed development is considered to have a significant impact on the amenity of an adjoining owner as the development will encompass the adjoining rural property with an urban development.**
9. **The proposed development is considered likely to have an impact on the social cohesion and nature of the Gulgong Community which has not been adequately addressed in the DA submission;**
10. **The proposed development is not considered to be in the public interest due to the significant amount of submissions received that object to the development proposal;**
11. **The proposed development is not considered to be in the public interest as it promotes and relies upon a "fly in / fly out" work force that is less economically beneficial to the community of the Mid-Western Regional Local Government Area than the housing of these workers and their families as permanent residents;**
12. **The proposed development is inconsistent with an exhibited planning proposal for temporary workers accommodation as it is located in excess of 5 kilometres from a major project site;**
13. **The proposed development is inconsistent with an exhibited planning proposal for temporary workers accommodation as it is not located on a major project site or in close proximity to such a site and therefore would not reduce the impact on local roads and infrastructure;**

Gary Bruce

Manager Statutory Planning - Mid-Western Regional Council

11 May 2012

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Annexure 1 – Locality Plan

Annexure 2 – Site Plans (separately attached)

Annexure 3 – Public Submissions (separately attached)

Annexure 4 – Government Agency Submissions

Annexure 5 – Comment on Public Submissions (separately attached)

