APPENDIX E

Consideration of the Temporary Workers Accommodation Development Control Plan against the provisions of the planning principle on the assessment weight of a development control plan or planning policy, from *Stockland Development Pty Ltd v Manly Council* (2004) NSWLEC 472 at [87].

PRINCIPLE	ASSESSMENT
A development control plan is a detailed planning document which reflects a council's expectation for parts of its area, which may be a large area or confined to an individual site. The provisions of a development control plan must be consistent with the provisions of any relevant local environmental plan. However, a development control plan may operate to confine the intensity of development otherwise permitted by a local environmental plan.	The TWA DCP is not consistent with the provisions of either the 2008 LEP or the Draft LEP. The TWA DCP makes development prohibited in areas where, under the provisions of either LEP, they would be permitted. Although a DCP may regulate the 'intensity' of permitted development, a DCP cannot regulate the permissibility of development.
	The TWA DCP assumes that 'temporary workers' accommodation' is a type of 'tourist and visitor accommodation', as contended by the assessment report. If that is the case, there would be no land that could satisfy the locational requirement (within 5km of a mine site) given that tourist and visitor accommodation is prohibited in the Agriculture Zone.
A development control plan adopted after consultation with interested persons, including the affected community, will be given significantly more weight than one adopted with little or no community consultation.	Although the TWA DCP was adopted following two periods of public consultation, it is not clear what, if any, planning approach is used to justify the policy decision. The DCP appears to have been made in absence of any strategic planning justification or research.
A development control plan which has been consistently applied by a council will be given significantly greater weight than one which has only been selectively applied.	The TWA DCP, rather than being consistently applied, has been selectively made in response to The MAC's proposal. This is particularly evident with concurrent applications in Mid-Western Region local government area (the village at Ulan approved on 15 February 2012) for workforce accommodation villages being determined without the TWA DCP being applied. The TWA DCP should be given no weight.
A development control plan which can be demonstrated, either inherently or perhaps by the passing of time, to bring about an inappropriate planning solution, especially an outcome which conflicts with other policy outcomes adopted at a State, regional or local level, will be given less weight than a	The absence of planning policy, research, or consistency in relation to the TWA DCP demonstrates that its provisions are likely to bring about an inappropriate planning solution.

PRINCIPLE	ASSESSMENT
development control plan which provides a sensible planning outcome consistent with other policies.	
Consistency of decision-making must be a fundamental objective of those who make administrative decisions. That objective is assisted by the adoption of development control plans and the making of decisions in individual cases which are consistent with them. If this is done, those with an interest in the site under consideration or who may be affected by any development of it have an opportunity to make decisions in relation to their own property which is informed by an appreciation of the likely future development of nearby property.	The MAC has consulted with Council from an early stage to ensure its best chances of obtaining planning approval for this proposal. The TWA DCP is part of a broader trend of rapidly amending planning provisions on the part of Council: as shown in Section 2.3 of this letter, The MAC has had to respond to varying and often contradictory planning requirements, as Council has consistently moved its policy position and application requirements.