

Response on behalf of The MAC Services Group to the Assessment Report for DA0217/2012 – Workforce Accommodation Village, 2 Black Lead Lane, Gulgong

1 Introduction

Thank you for the opportunity to respond to Mid-Western Regional Council's assessment report for DA0217/2012 (the DA) for the construction of a 400-room workforce accommodation village and associated works at 2 Black Lead Lane, Gulgong. Urbis has prepared this submission on behalf of the applicant, The MAC Services Group.

This letter is lodged for your consideration prior to the Joint Regional Planning Panel (JRPP) meeting on 14th June 2012 and provides a detailed response to:

- The concerns raised by the Council's assessment; and
- Its recommendation for refusal.

It is requested that the JRPP defer its determination to:

- Obtain its own legal advice about the permissibility of the development;
- Allow clarification by Council of the basis on which estimates of water and sewer demand have been calculated, and meaningful consultation between Council and The MAC's relevant technical consultants on the proposed timetable for augmentation of capacities (if required);
- Allow negotiations between the Council and the Applicant, about the terms of a voluntary planning agreement (VPA) that addresses any issues associated with servicing of the development and its perceived social impact;
- Allow the Council to prepare draft conditions of consent so that the JRPP can fully consider the impact of the development if operated in accordance with the conditions that could be imposed to manage its perceived impacts.

2 Description and Background to the Proposal

2.1 THE MAC SERVICES GROUP

The MAC is a leading provider of integrated accommodation, specialising in quality living facilities for the men and women working in key resource regions. The MAC develops, owns and operates workforce accommodation villages in regional areas of economic significance across Australia.

The MAC currently operates seven workforce accommodation villages across NSW, Queensland, and Western Australia, with more than 7,200 permanent rooms under its management and 600 staff members in its workforce. As developer, owner, and operator of their facilities, The MAC has a keen

interest in both delivering a well-designed facility and ensuring that a high quality service that relates to the existing community is provided.

2.2 THE PROPOSAL

DA0217/2012 is for the construction of a 400-room workforce accommodation village, including a central facilities building, conference facility, administration building and associated car parking, site works, landscaping and signage. The site at 2 Black Lead Lane is located approximately 1.3km from the Gulgong urban fringe and 2.3km northeast of the Gulgong town centre. The site is 60 hectares in area, horseshoe in shape, and predominantly cleared of vegetation having formerly been used for agricultural purposes. The development is focused in the southeast corner of the site, with accommodation buildings no higher than one storey. Each accommodation room includes a bed, bathroom, desk, television, and storage space. Dining and recreational spaces are provided in common areas.

The development will provide accommodation facilities to meet part of the demand generated by the men and women coming to the Mid-Western Regional local government area, as part of the region's ongoing mining growth

Attached in Appendix A is a map which shows the relationship of the site to surrounding mines and other current and proposed major project sites.

A review of local employment demand projections indicates that normal urban growth will not be able to accommodate the anticipated rapid increase in demand for accommodation, nor respond to subsequent fluctuations generated by both construction and operational workforce requirements of the regional resources industry. The MAC's facility is proposed as a necessary component of the multifaceted solution that will be required to effectively address housing market stress in the local area over the next decade and beyond.

2.3 MOVES BY COUNCIL TO DEFEAT THE PROJECT

Since April 2011 The MAC has been actively consulting with Council and the local community regarding the proposed establishment of an accommodation facility in the Gulgong area. Appendix B provides a timeline summary of actions and events relating to the current proposal.

The conduct of the Council is directly relevant to the weight the JRPP should give various planning controls that the Council has either implemented or proposes to implement.

3 Characterising the Proposal and Consideration of Planning Controls

3.1 MID-WESTERN REGIONAL INTERIM LOCAL ENVIRONMENTAL PLAN 2008

The Statement of Environmental Effects (SEE) supporting the DA was prepared by Whelans InSites. In the SEE the proposed development is identified as an innominate use under the *Mid-Western Regional Local Environmental Plan 2008* (the 2008 LEP) and the Draft Mid-Western Regional Local Environmental Plan 2011 (the Draft Comprehensive LEP). This approach was based on an assessment of all available definitions in the relevant LEPs, information provided by Mid-Western Regional Council (examples of such email correspondence is included in Appendix C) and legal advice.

As shown in Appendix C, on 22 November 2011 Council advised The MAC that the proposal would now be characterised as 'tourist and visitor accommodation', and was therefore a prohibited development in the Agriculture Zone under the 2008 LEP. The reason for this change in characterisation was not made clear by Council and is not made clear in the assessment report. The

Council does not provide any legal advice it has obtained to support its characterisation of the proposed development.

Following this change in position, the Council prepared a DCP, and a planning proposal to additionally define such proposals as 'temporary workers' accommodation' under the 2008 LEP and the Draft LEP. The sole purpose of all of these steps was to defeat the current DA and has been driven by politics rather than the objectives of the EP&A Act.

We provide in Appendix D legal advice from Philip Clay SC of Martin Place Chambers which clearly shows that the proposal should not be characterised as 'tourist and visitor accommodation' and rather should be characterised as an innominate use. Mr Clay SC is one of the leading planning barristers in NSW. The Council effectively asks the JRPP to ignore his fully reasoned advice without providing any legal advice to suggest the advice is incorrect. The approach taken to characterisation by the Council is wrong and contrary to established authority. At the very least, the JRPP should take its own advice on whether the proposed development is permissible in the Agricultural Zone.

3.2 DRAFT MID-WESTERN REGIONAL LOCAL ENVIRONMENTAL PLAN 2011

The Draft LEP is a new comprehensive LEP for the entirety of the Mid-Western Regional local government area and is based on the background work conducted in the Comprehensive Land Use Strategy. The Draft LEP was exhibited by Council 19th September-21st October 2011, before being adopted by Council on 7th December 2011 and forwarded to the Department of Planning to be made. Following conversations with the Department of Planning and Infrastructure Western Office, it is understood that the Draft Comprehensive LEP is in its final stages and gazettal is considered imminent. As a draft environmental planning instrument, it is a matter for consideration for this DA.

In its consideration of these issues, the Council's assessment report is contradictory: although the report frequently refers to the perceived incompatibility of the proposal with the Comprehensive Land Use Strategy as a reason for refusal under the Draft LEP, which is informed by the Strategy 'tourist and visitor accommodation' (which is the characterisation given to the proposal by Council) is a permissible use in the RU1 zone. On this basis, it could not reasonably be argued that the proposal is either contrary to the Draft LEP or the Comprehensive Land Use Strategy.

3.3 PLANNING PROPOSAL – TEMPORARY WORKERS' ACCOMMODATION

On 7th December 2011 Council resolved to adopt a planning proposal to amend the 2008 LEP and the Draft Comprehensive LEP (not the *Rylstone Local Environmental Plan 1996* or the *Merriwa Local Environmental Plan 1992*, which also apply to the local government area and will be incorporated into the comprehensive LEP) to prohibit the development of 'temporary workers' accommodation' outside of 5km from mine sites. The planning proposal received a revised gateway determination from the Department of Planning and Infrastructure on 2nd April 2012, and was exhibited by Council 16th April to the 14th May 2012. A report recommending the adoption of the exhibited planning proposal will be considered by Council on 6th June 2012.

The Western Region Panel of the JRPP has previously been issued with a copy of The MAC's submission to this planning proposal. The submission contends that as it is contrary to State planning policy, an example of poor planning technique and practice, and misinterprets many of the perceived impacts of workforce accommodation villages. We refer the JRPP members to this submission for more detail.

The planning proposal should be given no weight in this assessment process because:

- It is unlikely to be made and could not be regarded as either imminent or certain;

- The planning proposal, as adopted by Council, has had significant change since its exhibition, and would likely need to be exhibited again; and
- If made it is unlikely to have any application to a DA lodged prior to its preparation (as a consequence of a savings provision).

3.4 TEMPORARY WORKERS' ACCOMMODATION DEVELOPMENT CONTROL PLAN

On 7th September 2011 Council resolved to publicly exhibit the first draft of its Temporary Workers' Accommodation Development Control Plan (the TWA DCP). Following the exhibition period, Council decided on 28th November 2011 to make substantial amendments to the TWA DCP. The final DCP commenced on 10th February, after this DA was lodged. Council now uses noncompliance with the TWA DCP as grounds to refuse the DA in its assessment report.

It is clear from the chronology in Appendix B that the TWA DCP was prepared by Council to impose additional, targeted, and onerous considerations explicitly on The MAC's proposal at Gulgong. As a result, it should be given no weight in the assessment of the DA (see comment at paragraph 91 in *Stockland Development Pty Ltd v Manly Council* (2004) NSWLEC 472).

The TWA DCP has been considered against the planning principle established in *Stockland Development Pty Ltd v Manly Council* (2004) NSWLEC 472 at [87]. Appendix E provides detailed consideration of the TWA DCP against this planning principle. The TWA DCP lacks many of the essential features of a sound and robust development control plan. , As stated by McClellan CJ in *Stockland* at [91]:

If the policy has been generated with little, if any, public consultation and was designed to defeat a project which is known to be under consideration by a developer for a particular site, it may be given little weight.

Given the attempts to create a policy in response to The MAC's proposal, as shown in Appendix B, this principle holds particular relevance to the consideration of the TWA DCP as part of the assessment of this DA.

3.5 MID-WESTERN REGIONAL COMPREHENSIVE LAND USE STRATEGY AND GULGONG STRUCTURE PLAN

The draft Mid-Western Regional Comprehensive Land Use Strategy (CLUS) was prepared by Parsons Brinckerhoff between 2007 and 2009 and has acted as the key strategic planning document informing the development of the Draft Comprehensive LEP.

It is clear from a review of the CLUS that the provision of workforce accommodation facilities has not figured as a consideration during the strategic planning process. For instance, Table 1-2 of the CLUS lists the likely demographic issues for the Mid-Western Regional local government area. As stated by Council in its planning proposal, the CLUS (emphasis added):

*'was prepared to inform the Draft LEP 2011 and sets the direction for the growth of towns and villages within the region. The CLUS makes reference to the importance of mining and related development, **however, did not foresee the issues now**'.*

An influx of men and women working in the growing mining sector does not figure as a consideration. As a result it is difficult to derive much strategic planning information relating to workforce accommodation from the CLUS.

The Gulgong Structure Plan included at Figure 3-2 of the CLUS has not taken into consideration the additional land use demands placed on the town by a dramatic increase of people working in nearby

mines or resources industries. Areas identified for land use change around Gulgong in the Structure Plan are predominantly for general and large lot residential development. These future land use types cannot accommodate the demand for mining-related workforce accommodation in a timely fashion.

4 Context and Setting

4.1 SUITABILITY OF THE SITE

As shown in Appendix A, the Gulgong site is ideally located for the proposed workforce accommodation facility, being sufficiently close to Gulgong to complement the existing town while also being well placed for transport to the numerous mine and other resource industry sites to the north. While it is acknowledged that one neighbour would experience some impacts, it is considered that such impacts may be appropriately ameliorated through the various measures outlined within the SEE.

5 Servicing

5.1 WATER AND SEWER

Council was consulted at an early stage in the preparation of the proposal regarding available capacities and preferred options for the provision of utility services to the Black Lead Lane site.

On 27 October 2011, Council was formally requested to provide advice about:

- Whether the potable water supply from Gulgong's water supply is sufficient to service 1500 rooms and ancillary services of kitchens, dining room, gymnasium etc.;
- The point of connection to the water supply and desired route of a main pipe to the site;
- The connection of the development to Council's sewerage treatment plant and whether the plant has sufficient additional capacity to service the development;
- The point of connection to the sewerage treatment plant and desired route of a rising main;
- Whether the rising main and pump station should be part of Council's system;
- The requirements for a pump station within the site;
- The time frame for availability of the above services;
- Any other constraints Council on servicing ; and
- All Fees and Charges applicable for the above works.

In response to this request, a brief email response was received from Council's (then) Manager Water & Waste Strategy, on 18 November 2011, advising that:

"I am not in a position to answer some of your questions, particularly in regard to capacities of our water supply and sewerage schemes. We don't presently have capacity in the water supply system to service 400 rooms. We won't have capacity to service 1500 rooms for 20+ years."

Subsequent verbal advice from Council on 24 November 2011 indicated that 'the current water and sewer treatment plants and supply infrastructure would be able to accommodate 400 rooms, but not 1500'.

In the absence of appropriate information from Council, it was therefore necessary to develop an outline strategy for the servicing of the proposal, as summarised at Section 3.7 within the Statement of Environmental Effects:

“Whelans InSites Plan No. H044EG-P3 (Water and Sewer Services Strategy Plan) shows an extension of the Gulgong water supply from existing infrastructure in Black Lead Lane. The pipeline extension would be located within Cope Road and then directed into the site, along the entry road. Service for the development would be via connections to this main in accordance with the requirements of MWRC. Requirements of the service extension will be fully addressed at the construction stage, in accordance with the requirements of MWRC.

The plan also shows that it is proposed to collect sewage from the development and pump to the Council’s sewer treatment plant approximately 1km from the site. Again, detail design will be required in accordance with the requirements of MWRC.

*Utility Services including electricity and telecommunications are available within the surrounding area and will be available to service the proposed development, subject to completion of standard authority requirements. Details of proposed electrical connections have been prepared by GHD Pty Ltd are included in **Appendix 6.**”*

The adopted approach to road construction, stormwater drainage and the provision of internal hydraulic services is also set out within the Statement of Environmental Effects at sections 3.5, 3.9 and 3.10 respectively.

It is noted that at the Council’s Development Assessment Report at page 15, indicates that

“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.”

Council’s comments about the placement of a higher priority on providing water supply to planned and permanent urban development over unplanned and temporary development are also acknowledged. However, precise details of the currently available capacity and the timing of its projected take-up by planned developments in the Gulgong area do not appear to be available.

It is also relevant to note that there is an opportunity for the Applicant to enter into a VPA with Council. This may bring additional capacity online in the Gulgong area sooner than would otherwise occur. Alternatively, a requirement for the Applicant to assist in upgrading infrastructure could be made via conditions of consent of a development approval, or via contributions under Section 64 of the *Local Government Act 1993*. Either way, the servicing of the proposed development can be dealt with by a condition of development consent.

5.2 TRAFFIC

The increasing number of skilled workers demanded by mining projects over the coming years is certain to be in excess of the labour supply of local towns and villages. As a result, mining companies will need to bring in skilled workers from outside the Mid-Western Regional local government area who will need to stay in the area, resulting in an increase in vehicle movements through the region.

As mining sites are remote from urban development, it is preferable to use a bus transport system that moves employees in groups from, for example the proposed development, to the mining sites at shift

times. This is a practice that is established by The MAC at its other villages, and one which both The MAC and mining companies prefer to minimise vehicle movements and focus transport requirements.

This is supported by the Traffic Assessment issued as part of the DA, which estimates that, based on experiences in other facilities, 85% of traffic generated by The MAC would be bus movements, rather than private vehicles. This is supported by the submission of Roads and Maritime Services (RMS) to the DA, reducing traffic movements and improving road safety.

Both the Traffic Assessment and the RMS submission have made recommendations for road treatments consequential on the proposal, including turning lane treatments and signposting to improve access. These could be instituted as part of the conditions of consent for the development.

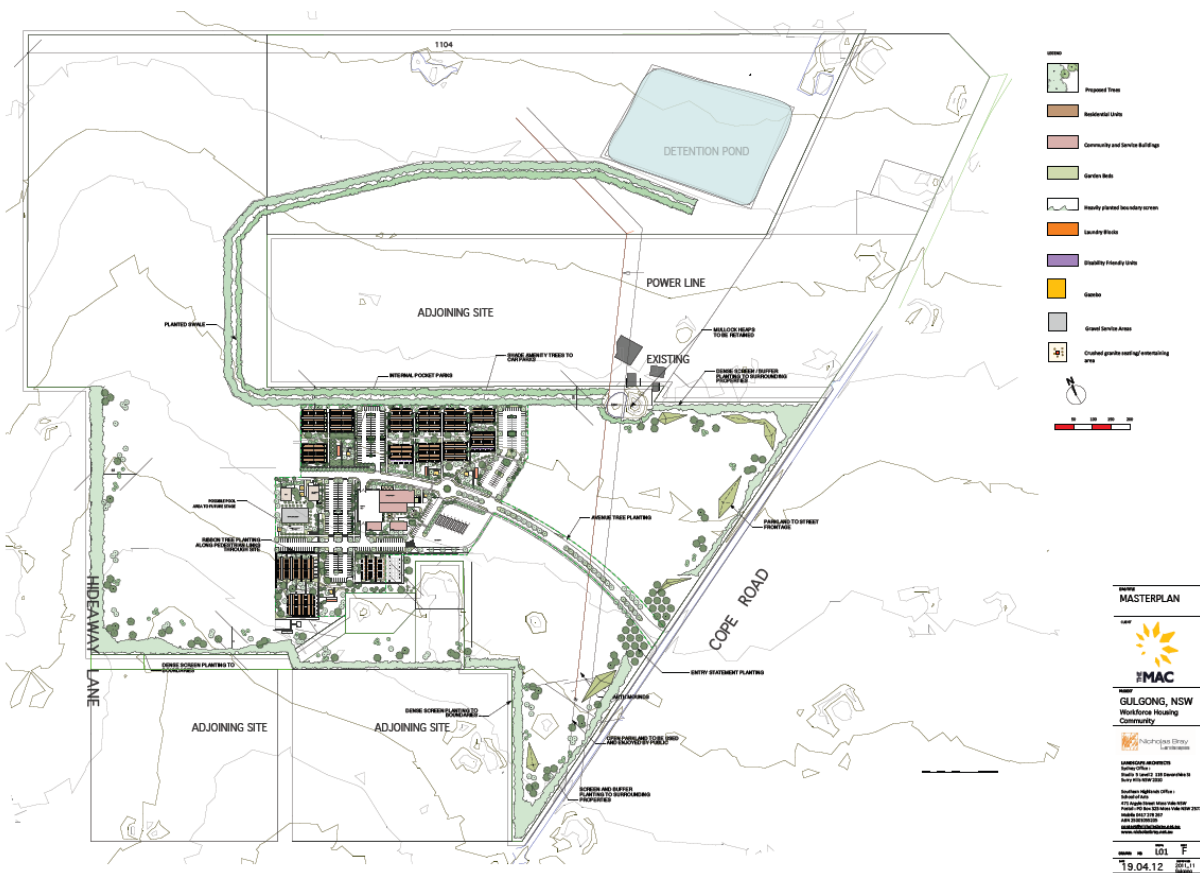
6 Perceived Land Use Conflict

The Council's assessment report has commented (pp. 14-5) on a perceived sense of land use conflict between the proposal site and adjacent landholders, with particular reference to the lot at 159 Cope Road. In particular there is concern that the proposal would be visually 'out of character' and result in a 'sense of confinement and loss of amenity' for the 159 Cope Road lot. Number 159 Cope Road is surrounded by the horseshoe shape of the proposal site boundaries. The assessment of the proposed development does not reflect the actual context of the site and layout of the proposal which seeks to minimise these perceived impacts.

An image of the landscape plan is shown below in Figure 1. The proposed development of the site would result in a single-storey, low-density development concentrated in the southern central portion of the site. Landscaped and car parking areas are set back 280m from Cope Road and the accommodation rooms closest to the road allow a 320m setback. From the shed at 159 Cope Road nearest to the proposed development, landscaped areas are 140m away, and the accommodation rooms are approximately 180m away. Any visual impact of the development would be reduced by a swale which would be constructed along the boundary between the development site and 159 Cope Road.

The proposal has been sited and designed to minimise impact on adjoining properties. As part of both the initial DA documentation and the additional information requested by Council, The MAC has prepared a traffic impact assessment, an acoustic impact assessment, and a lighting assessment such that the built form and its operation would minimise impact on the adjacent landholder.

FIGURE 1 – LANDSCAPE PLAN



The design of the development sought to minimise the sense of confinement to the occupants of 159 Cope Road by concentrating development to the southern central portion of the site. As indicated in Figure 1, views from 159 Cope Road to the north, northwest, west, and southeast would be largely unchanged, aside from the establishment of the swale, a detention pond to the north, and a distant driveway to the south.

Given the low height of the proposal and its distance from existing proximate development, the assessment report overstates the visual and amenity impact. There are many other land uses permissible in the Agricultural zone that would have a greater impact than the proposed development.

7 Key Community Issues and Concerns

7.1 SOCIAL IMPACT

Urbis Public Policy was engaged by The MAC Services Group Pty Ltd to conduct a peer review of the Socio-Economic Report prepared by the Western Research Institute (WRI) as part of the DA. The peer review was based on a detailed review of WRI's report, as well as relevant development application documentation, the draft Development Control Plan for Temporary Workers Accommodation, relevant media coverage and communications documented on the 'Proposed MAC Group Mining Village' website.

The Socio-Economic Report provides a good overview of the local context and issues to be considered. WRI identify a number of potential benefits, impacts and mitigation measures. These are outlined below.

TABLE 3 – POTENTIAL BENEFITS AND IMPACTS IDENTIFIED BY WRI

POTENTIAL BENEFITS	
SOCIAL	ECONOMIC
<ul style="list-style-type: none"> ▪ Potential for legacy infrastructure to remain once the MAC facility has moved on, perhaps facilitating a new housing estate for the benefit of residents and the community. ▪ Eased pressure on the rental housing market by reducing demand generated by miners. 	<ul style="list-style-type: none"> ▪ Increased employment opportunities for local residents during construction and operation. ▪ Eased demand from miners for accommodation, allowing vacancies in accommodation providers (motels, hotels etc.) for tourists, leading to increases in tourism and related economic gains. ▪ Increases in gross regional product, household income and full-time equivalent jobs in sectors such as agriculture, retail trade, and forestry and fishing. ▪ Local business operators are likely to experience improved business and trading, particularly licensed premises, cafes and restaurants.
POTENTIAL IMPACTS	
SOCIAL	ECONOMIC
<ul style="list-style-type: none"> ▪ Concern that a large facility at the Hunter Valley gateway to Gulgong could affect the heritage image of the town, reducing tourism. ▪ Concern that Gulgong and Mudgee do not have the capacity or capability to supply goods and services to the MAC facility. ▪ Concern that an influx of young men will lead to anti-social behaviour. It is possible some residents may feel uncomfortable or concerned due to negative perceptions of non-resident workers. ▪ Possible increases in traffic volumes, potentially resulting in increased road accidents. ▪ Impacts on the character and value of one immediate neighbour's property. 	<ul style="list-style-type: none"> ▪ Businesses are facing difficulties in attracting employees because local workers are taking up opportunities at the mines. ▪ There are concerns regarding negative effects on supply, demand and rising prices in the housing market. ▪ Minimal concern from operators of accommodation venues that they will lose business from miners staying with them due to the presence of the facility.

The proposed accommodation facility will benefit the local area as described by WRI. In particular, the facility may alleviate pressure on tourist accommodation, increase patronage to local businesses and leave legacy infrastructure for use in future housing development. It is important, however, to consider the potential impacts on adjoining properties, traffic volumes and safety, and community concerns about anti-social behaviour.

7.1.1 MITIGATION MEASURES

There are a number of mitigation measures that may be employed to manage potential impacts. WRI identify the following mitigation measures:

- The completed facility could run open days where the community can inspect the premises;
- A facility liaison officer be established;
- Encouraging temporary workers to be involved in local events (e.g. sporting events) to encourage connection to the local community; and
- Monitoring the conversion rate from temporary resident to permanent resident of Gulgong.

The WRI report outlines a range of issues, potential impacts, and mitigation strategies for consideration. Urbis supports this analysis, and has identified some further measures for ongoing consideration in partnership with the community. These include The MAC:

- Implementing a strict Code of Conduct that applies to all people staying within their villages and conducting random drug and alcohol testing of all their staff. This should be encouraged and could be further augmented by providing a tailored Crime Prevention Strategy;
- Undertaking a community sponsorship program and supporting the Gulgong Folk Festival, to demonstrate commitment to the local culture;
- In cooperation with the mine operators, encouraging use of designated buses to mines by providing incentives;
- Establishing a car-pool on-site to minimise individual car use at peak times;
- Negotiating deals with local businesses to encourage patronage by residents of the facility;
- Conducting a detailed social infrastructure audit to confirm the capacity in social services and infrastructure to accommodate the incoming population and consider contributions to those most at-risk of extending beyond capacity; and
- Continuing to work closely with the local community, as it has done in Narrabri, to identify benefits that the accommodation facility can deliver in partnership (e.g. The MAC may engage in discussions with local businesses and education providers to identify potential opportunities for education, skills development and employment benefits through the construction, operation and management of The MAC on an ongoing basis).

The MAC is prepared to implement these mitigation measures. They can be required either by condition or, where monetary contributions are required, by the use of a VPA.

The social impact of the development following the implementation of the mitigation measures does not warrant refusal of the DA.

7.2 ECONOMIC IMPACT

The assessment report (p. 20) argues that:

- It is not certain that The MAC would source as much goods and services from local providers as possible;

- The nature of fly-in/fly-out (FIFO) and drive-in/drive-out (DIDO) practice limits the potential economic benefit for the host community; and
- The proposal, although 'unlikely to pose any physical constraints on the [heritage] conservation area', could have an impact on the local tourism industry by altering 'the social fabric of the town'.

The MAC has established operations in a number of other regional locations throughout Australia. It has a proven track record of engaging with and contributing to the local business community of other towns it works in. By September 2011, shortly after opening its Narrabri village, The MAC estimated it's spend in that town at \$4.7 million, including the employment of construction contractors, permanent village staff, and purchases of goods and services from local suppliers. Based on its audited financial reporting, The MAC estimates that, even in the early stages of its Narrabri village's establishment, it spends the equivalent of \$8,000 per person per year in the Narrabri economy on behalf of the people staying in the village. This does not include personal discretionary spending in town done by the occupants themselves.

In the communities where it has villages, The MAC has a significant sponsorship program, supporting local sporting, business, cultural, and community events. If workforce accommodation villages are located close to the mine site, there would be no reason for village users to engage with the business community of a distant town or village: Gulgong would obtain no economic benefit from FIFO and DIDO operations.

The concern raised for the Gulgong tourism industry has not taken into account the fact that if this proposal does not go ahead, mining companies will continue to use rental properties and tourist accommodation to house their employees. Extremely marginal vacancy rates in both hotels and motels and rental accommodation not only have significant impact on the tourism industry, but on local families who are struggling to find affordable rental properties. A recent investigative campaign by the *Mudgee Guardian* has highlighted the acute shortage of affordable rental housing in the Mid-Western Regional area, as insufficient housing options have been provided in the area in recent years to respond to booming demand. As such, The MAC sees itself as part of the solution, along with new land releases and freed up tourist accommodation, to help manage the housing market stress that is building in the Mid-Western Regional area.

7.3 COMMUNITY CONSULTATION

Throughout the DA process, The MAC has made sure to engage with the local community and to make itself available to residents who have concerns over the proposal. The MAC has:

- Met with the Gulgong Chamber of Commerce and the broader community on 13 October 2011 to introduce the concept proposal;
- Distributed a flyer in the week commencing 30 January 2012 to every property in Gulgong, including information on the proposal, frequently asked questions, and contact details;
- Hosted, on 25 February 2012, an open information session for the community on the proposal, which approximately 50 residents and business people attended;
- Sent personal letters to 28 surrounding property owners on 30 January 2012, advising them of the proposal and inviting them to discuss it;
- Established on 30 January 2012 a community engagement register to log all communications with all local community members;

- In October-November 2011, commissioned the Western Research Institute to prepare the aforementioned socioeconomic impact assessment, which involved interviews and focus groups with local residents and business operators;
- Spoken with Superintendent Martin Fileman of the Mudgee Local Area Police on 22 February 2012 to discuss the proposal; and
- Sent letters or emails to the Gulgong Historical Society (9 February 2012), Orange MP Andrew Gee (14 February 2012), Mudgee Regional Tourism (28 February 2012), and Mid-Western Regional councillors (14 March 2012), inviting them to organise conversations to discuss any issues or concerns that they may have.

From the start, The MAC has been aware that the community may have apprehensions or concerns about the proposal. Hence it instituted a thorough, open, and approachable community consultation process, described above, to help alleviate these concerns. The MAC has endeavoured to engage the local community and to always make itself available. This community consultation approach has always been supported by a thorough technical assessment process that has been aware of these considerations and has incorporated design and operation features in response.

The MAC understands that its community consultation and engagement process would not end with the grant of a development consent. As detailed above, The MAC will accept conditions that would facilitate its interaction with the local community to constantly improve its social, economic, and civic relationships in Gulgong and the wider Mid-Western region.

8 Public Interest and Benefit

The assessment report has provided no proper consideration (p. 21) of the public interest. The report states that the proposal is not in the public interest due to:

- The number of objecting submissions made during the exhibition period;
- The promotion of a FIFO/DIDO practice that limits economic benefit to the local community;
- An inadequate consideration of principles of ecologically sustainable development in the DA material;
- The distinct establishment of a new community separate from and potentially competing with the existing community; and
- A workforce accommodation village being 'not considered a sustainable way of life for [its] inhabitants'.

The proper approach to considering the public interest was described by Senior Commissioner Roseth SC in *Double Bay Marina v Woollahra Council* [2009] NSWLEC 1001 at [49] where he said:

47 Consideration of the public interest may usefully be broken into three steps: defining the public whose interest is being invoked; defining the benefit towards which a proposal claims to make a contribution (or from which it is claimed to detract); and making explicit the weight given to the public interest relative to other considerations.

48 "The public" is an amorphous term. Like "locality", it requires redefinition in every case. At its broadest (for example when impacts that have no borders, such as pollution are considered), the public may be all people in the world. At its narrowest, the public may be the people who live or work in a locality or a business centre or use a public

facility, such as a park or a beach. At mid-level, the public may be the residents of a suburb, a local government area or a city.

49 Councils often confuse the public interest with the complaints of individual objectors. In most cases the interest of objectors is a private interest. The fact that the number of objectors is large does not, by itself, render their interest public. For the interest of objectors to be equated with the public interest, the objectors must be identifiable as a section of the public as described above. The fact that their number may be small (for example the users of a park), does not deny the public nature of their interest.

50 The next step is to make explicit the benefit to which a proposal contributes or from which it detracts. Where the benefit or detriment can be quantified, this should be done; however, not all benefits lend themselves to accurate measurement. Moreover, not all benefits are universally recognised as benefits. In the case of some benefits there is likely to be general agreement that they are benefits. For example, everyone would agree that reducing the risk of traffic accidents is a benefit. Hospitals, nursing homes and schools, whether public or private, are usually considered a public benefit. When it comes to changing a view composed of natural elements of the landscape into one dominated by man-made elements, the benefit-detriment debate becomes less clear-cut, though most people would prefer natural landscapes. However, when it is a question of a new building replacing an old one, opinions may split evenly on whether this is desirable or undesirable. Where there are competing and feasible claims whether a proposal contributes to or detracts from the public interest, there is no option for the decision-maker but to make a subjective choice between them.

51 The final and most difficult step is the ranking of the various interests. This may require weighing one public interest against another or balancing the public interest against private interests. Although only few planning instruments contain a statement that the public interest is paramount, in planning decisions, other things being equal, the public interest overrides the private interest. However, other things are rarely equal, and where a public detriment is minor, a major private benefit may take precedence over it.

52 The hardest conundrum occurs when the decision-maker must choose between competing public interests. For example, does the public benefit of a wind farm producing renewable energy justify the public detriment of covering a scenically beautiful area with turbines? In these cases decision-makers cannot avoid making value judgments but they owe it to the readers of their judgment to make the value judgments explicit.

When considering public interest, the negative impacts arising from a proposal should be weighed against the potential benefits. The assessment report does not consider the potential benefits of the proposal as it relates to the Gulgong and Mid-Western Regional communities. It also fail to assess the benefits to the State of NSW, which is part of 'the public' whose interest is affected.

The broader public interest benefits of the proposal have been discussed in this letter and the DA. In summary these include:

- The delivery of an accommodation village for men and women coming into the area to work in the mining sector, operated by an experienced firm committed to high-quality accommodation and service;
- The entry of a large and committed business into the Gulgong community, looking to employ local workers, trade with local firms, and support the local community and businesses;

- An accommodation response that will help to alleviate the housing market stress being experienced by Gulgong and the Mid-Western Regional area, a situation that will likely become worse in the future as the mining industry grows;
- An opportunity for FIFO/DIDO workers to get to know the Gulgong community, from which perspective they may decide they would like to bring their family and relocate to the area on a permanent basis. This benefit of the proposal recognises that The MAC is part of a sustainable solution to housing a rapidly growing population;
- A site appropriately located in relation to the existing Gulgong urban area, which balances connections to both the local town, community, and economy, and the mining sites it serves; and
- The potential for The MAC to transfer to the local community, upon the closure of the accommodation village in the future, legacy infrastructure which would support the long-term urban growth of the Gulgong area, as was detailed in the submitted draft Decommissioning Plan submitted with the DA.

These are substantial benefits in the public interest that should be taken into consideration as part of the assessment of this DA.

9 Summary and Conclusions

This submission has provided a response to the key issues and concerns raised in the assessment report. The table below provides a response to each of the assessment report's reasons for refusal.

TABLE 1 – RESPONSE TO REASONS FOR REFUSAL AS LISTED IN THE ASSESSMENT REPORT

REASON FOR REFUSAL AS LISTED IN COUNCIL'S REPORT	SUMMARY OF RESPONSE
1. <i>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.</i>	<p>The proposed development is not properly characterised as 'tourist and visitor accommodation'. It lacks the characteristics and purpose associated with 'tourist and visitor accommodation' and does not fall within any other defined use. It is therefore innominate.</p> <p>See Section 3.1 and Appendices C and D of this letter.</p>
2. <i>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.</i>	<p>The proposal is not inconsistent with the aims of the Interim LEP. The CLUS does not include any consideration of the impact of the growth in mining-related employment on the urban centres of the Mid-Western Regional local government area. As a result, it makes little provision for their housing. The MAC's proposal is intended to form part of the housing market response to this immense economic change.</p> <p>The site allows the development of a major workforce village able to serve several nearby mines close to a town and is an efficient use of land that avoids the fragmentation of more remote rural land.</p>

REASON FOR REFUSAL AS LISTED IN COUNCIL'S REPORT	SUMMARY OF RESPONSE
	See Section 3.5 of this letter.
<p><i>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.</i></p>	<p>The Council has previously approved a number of developments in the Gulgong Area, to which water and sewer capacity has been allocated. Investigations are continuing about the potential servicing of the lands south of Gulgong zoned R2 in the Draft Comprehensive LEP.</p> <p>Advice has previously been requested from Council about the likely upgrading works that may be required to service the proposed workforce accommodation village at Black Lead Lane. No specific advice has been provided to date.</p> <p>Advice provided by Floth Sustainable Building Consultants on 3 February 2012 confirms that the estimated water demand from Council's water main would be 250L/person/day, including allowance for kitchen, laundry uses etc.</p> <p>In common with development proposals of a similar nature, works associated with upgrading of water supply and sewer treatment (if required) could be appropriately addressed by way of conditions of development consent and/or by way of a VPA between the Council and the Applicant.</p> <p>As noted above, the opportunity for the applicant to enter into a VPA with Council has been flagged, with opportunity to bring additional capacity on-line in the Gulgong area sooner than would otherwise occur.</p> <p>See Section 5.1 of this letter.</p>
<p><i>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.</i></p>	<p>The TWA DCP should be given no weight given that it is based on limited planning research or strategy and is designed to defeat this development. The TWA DCP is also inconsistent with the 2008 LEP, Draft Comprehensive LEP and the recently exhibited planning proposal.</p> <p>The location of workforce accommodation villages within close proximity of a mine is a poor planning and social outcome. They would, on the Council's</p>

REASON FOR REFUSAL AS LISTED IN COUNCIL'S REPORT	SUMMARY OF RESPONSE
	<p>characterisation, be prohibited in zones that surround the mines. Such sites would be unserviceable by in-ground water or sewer infrastructure, contravening a key requirement of the TWA DCP.</p> <p>The site is within 1.5km of the edge of a town and satisfies the TWA DCP's locational requirements.</p> <p>The CLUS takes no account and makes no provisions for the growth of employment in mines in the Mid-Western Regional LGA, which limits the weight it should be given in the process. In any event, on the Council's characterisation, the proposal would be permissible under the draft LEP that implements the strategy.</p> <p>See Section 3.4 of this letter.</p>
<p><i>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.</i></p>	<p>The Temporary Workers Accommodation (TWA) DCP was not a matter for consideration at the date of lodgement of the application, as the TWA DCP did not commence until 17 February 2012.</p> <p>However, it is noted that at Section 7.2, Point 1, the TWADCP indicates that:</p> <p><i>"The applicant must demonstrate that the reticulated system can support the additional demand generated by the Temporary Workers Accommodation whilst allowing adequate capacity to service existing demand, demand to meet land already zoned within the catchment , uses already approved to connect to the reticulated service and land identified in the Comprehensive Land Use Strategy. "</i></p> <p>The applicant has sought advice from Council in relation to the available capacity within the catchment, but to date no detailed information has been provided.</p> <p>The estimated water demand from Council's water main associated with the workforce accommodation village would be 250 l/person/day, including allowance for kitchen, laundry uses etc.</p> <p>Works associated with upgrading of water supply and</p>

REASON FOR REFUSAL AS LISTED IN COUNCIL'S REPORT	SUMMARY OF RESPONSE
	<p>sewer treatment (if required) could be appropriately addressed by way of conditions of development consent and/or by way of a VPA between the Council and the Applicant.</p> <p>See Section 5.1 of this letter.</p>
<p><i>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.</i></p>	<p>The CLUS did not envisage or respond to the likely impacts of a significant growth in employment demands stemming from mining sites in the Mid-Western Regional local government area. As a result, the Structure Plan and associated strategic planning responses have not made any provision for including accommodation villages as part of their future planning for the area. In any event, the land use, even on the Council's characterisation, is permissible under the draft LEP that implements the strategy.</p> <p>See Section 3.5 of this letter.</p>
<p><i>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.</i></p>	<p>As set out in the legal advice prepared by Philip Clay SC, it is essential to differentiate between the physical act of development and the purpose for which the development operates. This acknowledges that the central purpose of the development is to support mining operations elsewhere. This explicitly satisfies the zone objectives 'to provide for other rural land uses, such as mining, extractive industries, forestry and energy generation' and '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).'</p> <p>See Sections 3.1 and 4.1 and Appendix D of this letter. See the SEE for a review of the proposal's compatibility with all zone objectives.</p>
<p><i>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</i></p>	<p>Although the site on which the proposal would be located is a horseshoe shape around another lot, the development/built form is located in a concentrated section in the southern portion of the site. The built</p>

REASON FOR REFUSAL AS LISTED IN COUNCIL'S REPORT	SUMMARY OF RESPONSE
<i>property with an urban development.</i>	<p>form is set back 180 metres from the adjacent land holder's building, and 320 metres from Gulgong-Ulan Road.</p> <p>Such distances provide substantial curtilage to the existing development and given that the proposed built form is generally only 3 metres in height, visual impact will be minimal. Extensive landscaping, mounding, and light control have been incorporated to further minimise any impacts of the proposal on adjoining landholders.</p> <p>See Sections 4.1 and 6 of this letter.</p>
<i>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.</i>	<p>The MAC has undertaken a social and economic impact assessment and community engagement process throughout the DA process, which has been detailed in the DA documentation and supplementary information.</p> <p>These issues can be adequately addressed as conditions of Consent. See Section 7 of this letter.</p>
<i>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.</i>	<p>The number of submissions is not an adequate measure of the public interest consideration. This is a sweeping statement that does not consider the actual content or concerns raised in submissions, which have been addressed through the DA documentation, response to submissions, and in this letter.</p> <p>Given the broad meaning of 'public interest', it is the responsibility of the assessing authority to consider all impacts of a development as they relate to the public interest (properly identified).</p> <p>The proposal will provide a significant facility to cater to the growing number of men and women working in nearby mines, reducing the industry's substantial impact on the local housing market. The MAC has committed to working with local businesses, which would generate substantial economic and employment benefits. These benefits outweigh negative impacts, and on balance, the proposal is in the public interest.</p> <p>See Section 8 of this letter.</p>

REASON FOR REFUSAL AS LISTED IN COUNCIL'S REPORT	SUMMARY OF RESPONSE
<p><i>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.</i></p>	<p>This comment on broader trends in the mining industry has minimal relevance to this DA. FIFO and DIDO practice is a separate policy consideration that has little relevance to the planning assessment of this proposal.</p> <p>This view does not consider the substantial public benefits that could arise from this proposal. The MAC proposes a substantial economic engagement with the community, as it has done in all other communities where it operates. The provision of the accommodation village will free up tourist accommodation and alleviate some of the housing market pressure currently being experienced in the Mid-Western Regional area.</p> <p>See Sections 7.2 and 8 of this letter.</p>
<p><i>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.</i></p>	<p>As the planning proposal was publicly exhibited following the lodgement of the DA, its provisions should be given substantially less weight in this assessment.</p> <p>The planning merits of the proposal have been reviewed in a submission to the proposal, a copy of which has been provided to the JRPP. This submission outlines our concerns with the provisions of the draft amendment. This objection contends that as it is contrary to State planning policy, an example of poor planning technique and practice, and misinterprets many of the perceived impacts of workforce accommodation villages. It is not imminent, nor certain and if made, is likely to include a savings provision limiting its application this DA.</p> <p>See Section 3.3 of this letter and the Urbis report previously issued to the JRPP.</p>
<p><i>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.</i></p>	<p>See Above</p>

We trust that this response addresses the concerns identified in the assessment report, and expect that this would assist the panel members to better understand the issues related to the proposal.

As a result of these considerations, it is requested that the JRPP defer its determination, to:

- Obtain its own legal advice about the permissibility of the development;
- Allow clarification by Council of the basis on which estimates of water and sewer demand have been calculated , and meaningful consultation between Council and The MAC's relevant technical consultants on the proposed timetable for augmentation of capacities (if required);
- Allow negotiations between the Council and the Applicant, about the terms of a VPA that addresses any issues associated with servicing of the development and its perceived social impact; and
- Request Council to prepare draft conditions of consent, so that the JRPP can fully consider the impact of the development if operated in accordance with conditions that could be imposed to manage its perceived impacts.

Appendices

Appendix A: The MAC proposal and major resource projects in the Mid-Western Regional local government area, map

Appendix B: Timeline of events relating to The MAC's proposal

Appendix C: Advice from Council regarding the characterisation of the proposal as an innominate use under the 2008 LEP

Appendix D: Legal advice on the characterisation of the proposal from Philip Clay SC, Martin Place Chambers

Appendix E: Consideration of the TWA DCP against the *Stockland* planning principle