

27th September 2012

Ms Gabrielle Kibble
Chair, Western Region Panel
C/- Joint Regional Planning Panels Secretariat
GPO Box 39
SYDNEY NSW 2001

Dear Ms Kibble,

**Submission on behalf of The MAC Services Group to the Western Regional Panel
Meeting for 2012WES003 –
Workforce Accommodation Village, 2 Black Lead Lane, Gulgong**

At its meeting on 14 June 2012, the Western Regional Panel deferred determination of 2012WES003, for the construction of a workforce accommodation village at 2 Black Lead Lane Gulgong, pending the receipt of legal advice on the characterisation and permissibility of the proposal under current and proposed environmental planning instruments.

The Council's legal advice, from Sandra Duggan SC, characterises the proposal as 'tourist and visitor accommodation' which is prohibited in the zone under the *Mid-Western Regional Local Environmental Plan 2008*. A Supplementary Assessment Report has been provided by Council to the JRPP referring to Ms Duggan's legal advice.

In the applicant's submission the advice received by the Council is incorrect. Please find **enclosed** a Supplementary Memorandum of Advice from Phillip Clay SC which addresses the advice the Council has received and explains why it is flawed. We confirm that our client will accept a condition of development consent that limits the use of the proposed development to mine workers. It is clear in our view that the proposed development is not **'for the purpose of'** tourist and visitor accommodation and the DA must be assessed on the basis that what is proposed is an innominate permissible use under the *Mid-Western Regional Local Environmental Plan 2008*.

Why this proposal should proceed

As set out in previous submissions, we do not believe that the recommended grounds for refusal are well founded. They are either based on legal error or do not reflect the outcome of a proper s79C assessment. The JRPP should, in our opinion, grant development consent for the following reasons:

- **There is a clear and identified need for Workforce Accommodation in the LGA**

There is a clear and pressing need for both short and long term work-force accommodation within the Mid-Western Regional Local Government Area, and within the Mudgee-Gulgong axis in particular. This need cannot be effectively met through the operation of the conventional housing market, which provides conventional detached dwellings on residential allotments, with a lead time for provision of 1 to 2 years. As reflected in current rental levels within Mudgee itself, there is a need for additional workforce accommodation now. This accommodation is needed to underpin the economic viability of the local resource projects currently underway, and those which are planned for the future.

- **The site is ideally located for the proposed use**

The Black Lead Lane site for the proposed facility site was carefully selected after a significant process of consultation with Council in 2010 and 2011. It remains ideally located for the proposed use, being sufficiently proximate to Gulgong to complement the town economically and socially, while also being well placed for transport to the numerous mining and resource sites to the north. The built form has been sited and designed to minimise impact on adjoining properties, with built areas approximately 180m from the nearest adjoining building, and to respect the rural landscape, with low-lying buildings further offset by appropriate landscaping.

- **Services are available to accommodate the development**

A Services Strategy Plan was provided in the DA documentation, noting that the proposal could utilise existing town infrastructure where available, and the proponent could contribute to amplification by way of a voluntary planning agreement. We understand that availability of water and sewer capacity will not be a constraint to the development of the facility as currently proposed.

- **Social and Economic Impacts have been assessed and will be of net benefit**

The proponent has provided substantive social impact analysis to both assess the impact of the proposal, and recommend mitigation measures to assuage potential impacts and better integrate The MAC into the local community. The MAC has a long-standing principle of sourcing employees, goods, and services from the communities it operates in, acknowledging that it is a business in the local community and it has a long-term interest in the vitality of Gulgong. The proposal is an important part of the response to increased housing market pressure caused by the growth of the mining industry, alongside permanent housing and tourist and visitor accommodation. As a result, in a comprehensive assessment of the various issues, The MAC will have a net benefit impact on the area and is in the public interest.

- **Council's approach to assessment of the proposal to date has been inconsistent and unreasonable**

Council has, since the commencement of the proponent's proposal, introduced multiple planning instruments and policies designed to defeat the proposal. The Mid-Western Regional Temporary Workers Accommodation Development Control Plan was introduced following the proponent's initiation of the DA, and through the variations of the exhibited versions, applied contradictory controls whose discrepancies indicated an absence of strategic planning, supplanted by an intention to defeat the proponent's DA.

Further, Council then introduced a planning proposal to amend the 2008 LEP and the then-draft Mid-Western Regional Local Environmental Plan 2011 which would prohibit workforce villages outside five kilometres from a mining site. Again, it would appear that the planning proposal was introduced with the express intent to defeat this proposal between exhibition and gazettal.

In our view all of the merit reasons put forward by the Council in support of refusal can be adequately addressed by the imposition of appropriate conditions of development consent.

Conclusions and Recommendations

The Applicant's supplementary legal advice has confirmed that the proposal is permissible within the Agriculture zone of the *Mid-Western Regional Local Environmental Plan 2008* and that the advice provided by the Council to the JRPP is flawed. The proposal is appropriate for the site and its built form responds to its context. It is able to be serviced by town infrastructure systems, and its social and

economic impacts will be supported by appropriate management mechanisms. The proposal is in the public interest and will contribute to the ongoing social, economic, and environmental sustainability of Gulgong, the Mid Western local government area and the State of NSW more generally.

As a result we believe that there is sufficient evidence provided by the proponent to support the grant of development consent and the JRPP should instruct the Council to:

- Prepare draft conditions of consent; and
- Provide further information on existing water and sewer capacity with a view to negotiating an appropriate voluntary planning agreement.

Yours sincerely,

A handwritten signature in black ink that reads "H. Deegan".

Helen Deegan
Director

**THE MAC SERVICES GROUP PTY LIMITED
GULGONG WORKERS' ACCOMMODATION FACILITY
DA 0217/2012 TO MID-WESTERN REGIONAL COUNCIL**

SUPPLEMENTARY MEMORANDUM OF ADVICE

1. On 18 April 2012 I provided advice in respect of the proper characterisation of the proposed development and accordingly whether or not in my opinion the proposed development is permissible or prohibited in the agriculture zone.
2. That advice was provided by the MAC Group to the Joint Regional Planning Panel ("JRPP") and the Council. The JRPP asked the Council to obtain legal advice, and I have been provided with a Memorandum of Advice of Sandra Duggan SC dated 16 August 2012. I have also been provided with material provided to the JRPP by the Council following the provision of my advice.
3. I am asked to provide a response to the advice from Ms Duggan, and to the advice the Council.
4. Whilst accepting as I do (see [6] of advice dated 18 April 2012) that there may be differing opinions about the proper construction of a planning instrument, I remain of the view that I expressed in my advice.
5. The principal basis upon which Ms Duggan concludes that the proposed development falls within the definition of "*tourist and visitor accommodation*" is that it comprises a building or place, that provides short or long term accommodation and that the accommodation is on a commercial basis ([19],

[20] and [21]). In my opinion that neglects to give weight to the purpose of the provision of the accommodation which is found within the terms of the defined use itself – *tourist and visitor accommodation*. For the reasons set forth in my earlier advice regard must be had to that purpose in construing the whole of the definition.

6. Notwithstanding the conclusion reached, Ms Duggan at [23] opines that “*further analysis may be prudent*” and in the subsequent three paragraphs gives consideration to “*visitor*”. After noting that there are no specific definitions Ms Duggan, obviously very carefully, puts it no higher than:

“[25] Accordingly, *it is arguable that the supply of accommodation to workers could be characterised as development for the purpose of tourist and visitor accommodation...*”

(Emphasis added).

7. I agree that the proposition is arguable. However, in my opinion the better view is that mining or other workers which are being accommodated at the proposed facility are not visitors as that term would be understood in the LEP.
8. I dealt with that matter in paragraphs [74] to [80] of my earlier advice. Therein I quoted certain definitions from the Australian Oxford Dictionary and, whilst acknowledging the caution about use of dictionaries (*House of Peace v Bankstown City Council* (2000) 48 NSWLR 498) other definitions can be mentioned.

“Visitor

One who visits, or makes a visit, as for friendly, business, official, or other purposes.

(Macquarie Dictionary)

A person visiting a person or place.”

(Concise Oxford English Dictionary)

“Visit

1. *To go to see (a person, place etc) in the way of friendship, ceremony, duty, business, curiosity, or the like.*
2. *Go or come to see (a person, place etc) as an act of friendship or ceremony, on business or for a purpose, or from interest.*
3. *To call upon (a person, family etc) for social or other purposes; and*
4. *To make a stay or sojourn with, as a guest;*
5. *(In general) to come or go to.*
- ...
14. *A going to see a person, place etc.*
15. *A call paid to a person, family etc.*
16. *A stay to sojourn as a guest.*
17. *A going to a place to make an official inspection or examination.”*

(Macquarie Dictionary)

1. *Go to see and spend some time with (someone) socially or as a guest ➔ go to see and spend time in (a place) as a tourist or guest.*
2. *To go to see for a purpose, such as a to give professional advice.*

(Concise Oxford English Dictionary)

9. There is nothing in those definitions which suggests to me that construction or mine workers being accommodated at this facility are visitors. It must be remembered that the word “*visitor*” appears in the context of “*tourist and visitor accommodation*”.
10. In my opinion the notion of “*visitor*” within the LEP does not encompass workers coming regularly for days and weeks. The purpose of their stay is not

to “visit”. They have come for the purposes of employment; it is not a “visit” as that term would be understood.

11. I also note that neither Ms Duggan nor the Council has sought to reconcile the conflict between their conclusions on the one hand and the objectives and zoning table for the heavy industrial zone on the other (see my earlier advice [67] to [70]). Those provisions within that zone are a very important textual indicator that the phrase “*tourist and visitor accommodation*” does not encompass the provision of accommodation for mining workers and the like.
12. There is one matter raised in the Council material which does warrant a further observation. It is said that the facility will be open to all persons to use the accommodation. If that is the case, then it is likely that it is indeed *tourist and visitor accommodation*. I gave advice on the assumption that the accommodation was being provided to construction and mining workers and if that assumption is incorrect then my advice will need to be revisited.
13. If there is any present doubt about it, MAC should make it known to the JRPP that the accommodation will only be available to mining workers and the like.
14. I do not resile from the opinion I expressed in my earlier Memorandum of Advice based on the assumptions therein made.

24 September 2012
Martin Place Chambers

Philip R Clay

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