

## COUNCIL ASSESSMENT REPORT

<b>Panel Reference</b>	<b>2017HCC030</b>
<b>DA Number</b>	<b>DA/1556/2017</b>
<b>LGA</b>	<b>Lake Macquarie City Council</b>
<b>Proposed Development</b>	<b>Recreation Facility (Outdoor)</b>
<b>Site Address</b>	<b>282 Rhondda Road, WAKEFIELD (Lot 101 DP 1073163)</b> <b>284 Rhondda Road, WAKEFIELD (Lot 76 DP 755262)</b> <b>286 Rhondda Road, WAKEFIELD (Lot 75 DP 755262)</b> <b>236 Rhondda Road, WAKEFIELD (Lot 1 DP 963356)</b> <b>288 Rhondda Road, WAKEFIELD (Lot B DP 339863)</b> <b>102 Miller Road, WAKEFIELD (Lot 391 DP 1064199)</b>
<b>Applicant</b>	Elemenop Pty Ltd
<b>Owner</b>	Mount Thorley Operations Pty Limited (Owner's consent from LMCC for works over unformed Council road reserve)
<b>Date of lodgement</b>	25 August 2017
<b>Number of Submissions</b>	<b>99 Submissions (including 3 petitions and 9 in support)</b>
<b>Recommendation</b>	<b>Approval, subject to conditions of consent</b>
<b>Regional Development Criteria (Schedule 4A of the EP&amp;A Act)</b>	General development that has a Capital Investment Value above the \$30 million threshold for Regional Development (at time of lodgement).
<b>List of all relevant s4.15(1)(a) matters</b>	<ul style="list-style-type: none"> <li>• Lake Macquarie Local Environmental Plan 2014</li> <li>• State Environmental Planning Policy 33 – Hazardous and Offensive Development</li> <li>• State Environmental Planning Policy 44 – Koala Habitat Protection</li> <li>• State Environmental Planning Policy 55 – Remediation of Land</li> <li>• State Environmental Planning Policy 64 – Advertising and Signage</li> <li>• State Environmental Planning Policy 71 – Coastal Protection</li> <li>• State Environmental Planning Policy (Infrastructure) 2007</li> <li>• State Environmental Planning Policy (State and Regional Development) 2011</li> </ul>
<b>List all documents submitted with this report for the Panel's consideration</b>	Attachment A: Statement of Environmental Effects and supporting plans/documents Attachment B: Clause 4.6 submission Attachment C: Architectural Plans Attachment D: Landscape Plans and Concept VMP Plans Attachment E: External Agencies/Authorities Responses Attachment F: Summary of submissions Attachment G: Recommended Conditions of Consent
<b>Report prepared by</b>	Fiona Stewart, Development Planner, Lake Macquarie City Council
<b>Report date</b>	22 November 2018

**Summary of s4.15 matters**

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?	<b>Yes</b>
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**Legislative clauses requiring consent authority satisfaction**

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?	<b>Yes</b>
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**Clause 4.6 Exceptions to development standards**

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	<b>Yes</b>
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**Special Infrastructure Contributions**

Does the DA require Special Infrastructure Contributions conditions (S94EF)?	<b>N/A</b>
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**Conditions**

Have draft conditions been provided to the applicant for comment?	<b>Yes</b>
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## Executive Summary

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<b>Date Lodged:</b>	25 August 2017 (Amended proposal 19 July 2018)
<b>Submission Period:</b>	5 September 2017 to 6 October 2017 25 July 2018 to 10 August 2018* * Re-notification of amended proposal
<b>Zonings:</b>	RU2 Rural Landscape SP1 Special Activities (Mine) E2 Environmental Conservation (Lake Macquarie Local Environmental Plan 2014)
<b>Approval Bodies:</b>	NSW Rural Fire Service NSW Water (Department of Industry) Subsidence Advisory NSW
<b>Referral Agencies:</b>	Hunter Water Corporation TransGrid Ausgrid Roads and Maritime Services (RMS) Transport for NSW Local Aboriginal Community Groups
<b>CIV:</b>	\$77,547,982.82

## **Proposal Description**

The development proposal is for a Recreation Facility primarily comprising a private motor track circuit with ancillary accommodation and facilities providing for activities based around a motoring experience. The uses proposed for the facility “BlackRock Motor Park”, include driver training, motor park/resort short stay accommodation, corporate functions and other motor vehicle related activities, including go-cart racing and a four wheel drive track (utilising an area of existing dirt trails for drivers to experience off road conditions).

The motor park is to be utilised as a unique recreation and resort facility based around a motoring experience, where “members” have a safe and dedicated place to participate in driving activities (their own or Motor Park cars), with an emphasis on a high quality facility that also caters for families and bespoke corporate events. The development has been modelled on the “Ascari” facility in Malaga, Spain.

The facility is not proposed to be a motorsport “racetrack” for competitive motor racing or spectator events and will not be utilised for organised racing events or championships.

## **Operational Details**

The facility will predominantly provide for:

- Driver training centre;
- Track circuit for Motoring experiences - private and public;
- Short stay accommodation (directly related to the motor park activities), and
- Corporate functions.

Operationally, the facility will cater for:

- Public Experiences – including driver training and public track days.
- Corporate Events – where the facility will be hired out for private corporate events (such as new car launches).
- Member Events – private events for members only, where the facility is closed to the public.

## **Built Form Detail**

The built components of the proposal comprise:

- Track circuit (5.58km long).
- Skid pan – for safety training under dry and wet (water jets used) conditions.
- Welcome Centre – single storey comprising foyer, training room, amenities and go-karts storage room.
- Go kart track – utilising electric go karts.
- Visitor Centre – two storey building providing performance gallery (for motor vehicles), function centre/exhibition spaces, sports bar/lounge area, commercial kitchen, ancillary rooms and amenities. Upper level comprising dining area and 37 short term accommodation units (1, 2 and 3 bedroom).

- Short Stay Accommodation - comprising four building clusters (16 two storey villa units), four units in each cluster (1, 2 and 3 bedroom).
- Resort Lodge – two storeys, comprising ground floor lounge, dining/bar and games room, kitchen and amenities. Upper level comprising 20 motel style rooms.
- Pit Lane Pavilion – two storey building for the open display of up to 56 vehicles at ground level and training room, data room, simulator, change rooms, amenities and store at upper level.
- Stable Café – Adaptive re-use of existing Pit Pony Stable building to café, with associated indoor and outdoor (open air pavilion) seating and amenities.
- Garage Buildings “BlackRock Village” – two storey buildings (64 individual modules), comprising parking at ground level for two vehicles and loft area above for short term stay (includes bedroom and bathroom facilities). The ground level providing one space for the parking of a track vehicle and one space for the member’s private vehicle.
- Covered Parking Building – two storey building for vertically stacked parking for 32 vehicles (adjacent to general parking area).

### Ancillary Components

The ancillary components of the proposal include:

- Site entry and gatehouse building.
- Mechanics shed and emergency centre building (including workshop, clinic rooms, office and amenities).
- Fuel farm – above ground fuel storage (20,000 litres).
- Maintenance shed – maintenance workshop, store, office and lunch room.
- General car parking area to accommodate 146 parking spaces.
- Sewerage pumping station (connecting to Hunter Water reticulated service).
- Irrigation pond.
- Waste storage area.
- Nature play area for children (adjacent to café).
- Concourse.
- Display lawn – for open display of vehicles.

### Hours of Operation

The hours of operation proposed:

Track Circuit activities –	8.00am to 6.00pm, seven days per week (summer) 8.00am to 5.00pm, seven days per week (winter)
Motor Park –	6.00am to 10.00pm, seven days per week.

Given the accommodation on site, facility operational hours are not considered warranted.

The expected attendee numbers at the site for the various uses of the facility are:

- Automotive Car Brand Launch - approximately 150 guests plus approximately 50 staff;
- Automotive Car Brand Driving Experiences – approximately 25 people;
- Public Track Day – approximately 40 to 60 people;
- Members Track Day – approximately 40 to 60 people; and
- Public driving experiences – approximately 100 people in the morning and 100 in the afternoon.

The Capital Investment Value of the development is \$77,547,982.82 (excluding GST).

The development is Integrated Development in relation to the *Water Management Act 2000*, the *Rural Fires Act 1997* and the *Coal Mine Subsidence Compensation Act 2017*.



**Figure 1: Perspective of the development as viewed from the south, back to site entry**

### **Site and Locality**

The development site (the Land) comprises the following:

- Lot 101 DP 1073163 – 282 Rhondda Road;
- Lot 76 DP 755262 – 284 Rhondda Road;
- Lot 75 DP 755262 – 286 Rhondda Road;
- Lot 1 DP 963356 – 236 Rhondda Road;
- Lot B DP 339863 – 288 Rhondda Road; and
- Lot 391 DP 1064199 – 102 Miller Road, Wakefield.

The site is located to the north-east of Lake Macquarie, on Rhondda Road at Wakefield, approximately 6km to the north-east from the (Toronto) “exit ramp” on the M1 Motorway, providing direct access from Sydney and other regional areas.



The site has a former mining use (Rhondda Colliery operated at the site from 1900 ceasing 1971). There is an existing quarry (metromix) use located to the east of the site, an operational mine (Newstan Colliery) to the south and the community of Wakefield, a rural/residential area, located to the west. The suburb of Teralba is located to the east (residential development approx. 1.5km from eastern site boundary) and the Lake beyond. The Main Northern rail line traverses the suburb of Teralba.

The total area of the six lots that comprise the site is approximately 255 hectares, with approximately a third of site proposed to be developed under the application. The site contains cleared areas and vegetated areas, comprising predominantly regrowth since cessation of mining operations, with vehicular access from Rhondda Road (two existing site access points)



**Figure 2: Site Locality Context**







## Relevant Legislative Clauses:

### **State Environmental Planning Policy 33 – Hazardous and Offensive Development**

- *(Part 3 Potentially hazardous or potentially offensive development; cl 11 Development to which Part 3 applies; and cl 13 Matters for consideration by consent authorities)*

The development proposes fuel storage (10 kl unleaded and 10 kl premium unleaded fuel in two above ground tanks. A SEPP 33 Risk Screening Assessment (EP Risk, 17 July 2018) has been submitted for the development. The development does not constitute *potentially hazardous development*, based on the class and volume and threshold screening criteria (the site accommodation is identified as the closest sensitive receptor), and no recommendations are therefore required.

### **State Environmental Planning Policy 44 – Koala Habitat Protection**

- *(Part 2 Development control of koala habitats; cl 7 Step 1- Is the land potential koala habitat?; cl 7 Step 2- Is the land core koala habitat?)*

Council's Development Planner – Flora & Fauna has reviewed the site and submitted information. The vegetation on the site does not constitute core koala habitat or potential koala habitat and no recommendations are therefore required.

### **State Environmental Planning Policy 55 – Remediation of Land**

- *(cl 7 Contamination and remediation to be considered in determining development application; cl 7(1), (2), (3), and (4))*

A Contamination Review (GHD Pty Ltd, 7 February 2018) has been submitted for the development. The review identifies that Environmental and Safety Professionals (ESP) completed a Preliminary Site Investigation for the Rhondda Colliery in 2017.

On consideration of the Contamination Review (GHD Pty Ltd, 7 February 2018), Council is satisfied the land is suitable for the purpose of the development as proposed, subject to the imposition of recommended conditions of consent.

### **State Environmental Planning Policy 64 – Advertising and Signage**

- *(cl 3 Aims, objectives; cl 6 Signage to which this policy applies; cl 8 Granting of consent to signage)*

Signage proposed for the development is consistent with the relevant aims and objectives under the SEPP. A condition of consent in regards to provision of signage for the development is recommended.

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

- *(Division 5 Electricity transmission or distribution; cl 45 Determination of development applications – other development; and Division 17 Roads and traffic: Clause 104 Traffic-generating development)*

The relevant clauses under Division 5, require written notice to the electricity supply authority with regard to development carried out within the vicinity of electricity infrastructure. The matter was referred to Ausgrid, with a response dated 16 October 2018, raising no objection to the development.

The relevant clauses under Division 17, requires the consent authority when considering traffic-generating development to give written notice to Roads and Maritime Services and to take into consideration any comments received.

The development proposes a carpark with a capacity of less than 200 spaces, which does not constitute development specified under Schedule 3 *Traffic-generating development to be referred to Roads and Maritime Services (RMS)*, and is therefore not traffic generating development.

In response to Council's advisory referral, RMS advised Council should satisfy itself in regard to impact on the safety and efficiency of the classified road network in the locality. Council's engineers have reviewed potential impacts on the road network which, subject to conditions of consent is satisfactory for the development.

No further consideration of the SEPP is required.

#### ***State Environmental Planning Policy (State and Regional Development) 2011***

- (Part 2 State significant development: cl 8 Declaration of State significant development: section 4.36) and Part 4 Regionally significant development: cl 20 Declaration of regionally significant development: section 4.5 (b))

Part 2: Clause 8(1) identifies State significant development for the purposes of the Act to be development that is not permissible without development consent under Part 4 of the Act and specified in Schedule 1 or 2 of the SEPP.

The development of a Recreation Facility (Outdoor) that has a capital investment value of more than \$30 million, does not comprise any of the development types under 13 *Cultural, recreation and tourist facilities* under Schedule 1, and is therefore not State significant development.

Part 4: cl 20(1) identifies regionally significant development for the purposes of the Act to be development specified in Schedule 7 of the SEPP.

The development has a capital investment value of more than \$30 million (general development over \$30 million), and therefore comprises regionally significant development in accordance with Schedule 7.

Subsequently the consent authority for the application is the Regional Planning Panel in accordance with Clause 4.5 *Designation of consent authority*, under the Act.

No further consideration of the SEPP is required.

#### ***State Environmental Planning Policy (Coastal Management) 2018***

Under the Coastal Management SEPP, a north-western portion of the site is mapped as comprising coastal wetlands (it is noted this area is not subject to development under the proposal).

The savings and transitional provisions under cl 21, specify that the Policy does not apply to a development application lodged, but not finally determined, immediately before the commencement (3 April 2018), in relation to land to which the Policy applies. The development application was lodged 25 August 2017.

The former planning provisions under *State Environmental Planning Policy No 14-Coastal Wetlands* which therefore apply are not applicable to the site as no coastal wetlands are mapped on the site under the SEPP.

No further consideration of the SEPP is required.

## ***Lake Macquarie Local Environmental Plan 2014 (LMLEP 2014)***

### **Relevant Clauses:**

- Clause 1.2 Aims of Plan.
- Clause 2.3 Zone objectives and Land Use Table.
- Clause 4.3 Height of buildings  
There are maximum building heights applicable to the site of 8.5m and 5.5m.
- Clause 4.6 Exceptions to development standards

A Clause 4.6 variation has been submitted for the development regarding contravention of the maximum height of building development standard under Clause 4.3.

The written request for contravention of the development standard, has been assessed as providing adequate justification on environmental planning grounds for variation and compliance with the standard is unreasonable and unnecessary in the circumstances of the case.

- Clause 5.10 Heritage Conservation  
The site contains two heritage items of local significance (No.167 Rhondda Colliery and No.170 Rhondda Colliery Railway). Permissibility for the development is sought (in part) under Clause 5.10 (10) Conservation incentives.
- Clause 7.2 Earthworks.
- Clause 7.7 Development on sensitive Aboriginal landscape areas.
- Clause 7.21 Essential services  
The consent authority must not grant consent unless it is satisfied the required essential services are available or that adequate arrangements have been made to make them available when required.

Water and sewer are currently not available to the site. A condition of consent is recommended for provision of water and sewer to the development.

### **Background**

A pre-lodgement (PL/46/2016) meeting was held with Council on 7 April 2016 to discuss a driver training facility with accommodation, described by the applicant as comprising “driving education and recreation centre” and “adaptive re-use and rehabilitation of a historic mine site”.

In summary, advice was provided regarding land zoning/permissibility; conservation incentives clause 5.10(10) under LEP 2014; heritage; ecology; creeks and waterways; environmental management; and traffic/parking.

The development application (DA/1556/2017) was subsequently lodged with Council on 25 August 2017.



## **Hunter & Central Coast Joint Regional Planning Panel**

The Hunter & Central Coast Joint Regional Planning Panel (JRPP) held a briefing for the development on 7 December 2017, with a site inspection undertaken before the meeting.

The key issues discussed were:

- Noise and details of wall and need for thorough acoustic assessment.
- Permissibility, needs thorough review and legal advice, incentive provision on heritage grounds warrants scrutiny.
- Advice from strategic section – if proposed land use has merit for the LGA, is this an appropriate location on strategic grounds.
- Hours of use.
- Tree removal.
- Flora and fauna impact and seven part test/SIS.
- New and draft SEPPs to be reviewed.
- Provide further briefing in new year when some further analysis completed.

The Hunter & Central Coast Regional Planning Panel (RPP) held a further briefing for the development on 20 September 2018.

The key issues discussed were:

- Previous comments from site inspection/briefing 7 December 2017 remain valid
- Permissibility of all uses (including ancillary uses), and compliance with permissibility under the heritage provisions needs to be addressed, and desirably supported by legal advice.
- Acoustic assessment will be a major consideration for the proposal, and this needs to be robust and cover all relevant impacts, including noise generation from all activities to be conducted (including uses operating concurrently), concurrent noise impacts with other surrounding uses (ie mining), impacts on flora and fauna, impacts on residential development (including land at Teralba).
- Comments from NSW Subsidence, NSW Water and the RFS to be considered.
- Ecological assessment is ongoing and there is some improvement with relocation of the track to reduce vegetation removal. A framework for ongoing management of the balance lands is also proposed.
- Operational details need to be clearly defined, and consideration could be given to an Operational Plan of Management. This should include details of the operation of all uses, including accommodation and the function centre

## **Community Views**

The development application was notified in accordance with the Development Notification Requirements outlined in section 1.15 of Part 1 of Development Control Plan 2014 as adopted by Lake Macquarie City Council.

Over the two notification periods, a total of 99 public submissions were received (including three petitions and nine submissions in support).

The main issues raised in the public submissions include:

- Noise
- No benefit to local community
- Impact on safety of local roads for vehicles, cyclists and pedestrians (Great North Walk)
- Impacts on fauna
- Increased traffic
- Safety and security
- Ecological impacts
- Impact on rural character
- Air pollution
- Consistency with zone objectives

The matters raised in these submissions were considered as part of the assessment of the development. Attachment F provides a summary of the response to submissions.

### **The Assessment**

Under LEP 2014, the site is zoned SP1 Special Activities (Mine), RU2 Rural Landscape and E2 Environmental Conservation. A Recreation Facility (Outdoor) is permissible within the RU2 zone, with permissibility of the development over the other zones sought under Clause 5.10 (10) Heritage incentives, under LEP 2014.

The development as proposed is considered to meet the requirements of Clause 5.10 (1) as detailed in the report. Key issues identified during assessment of the proposal are in regards to permissibility; heritage conservation; potential ecological impacts and potential acoustic impacts to surrounding residential land uses.

The proposal, whilst departing to a degree from a number of development controls, is assessed as being consistent with LEP 2014, Development Control Plan 2014 and relevant State Environmental Planning Policies.

A comprehensive assessment of the application has been carried out under Section 4.15 of the Environmental Planning and Assessment Act 1979, as amended. The development is satisfactory in terms of the relevant matters for consideration under the Act:

- considering the likely impacts of the development on the natural and built environments, the development on balance is considered appropriate.
- the suitability of the site for the development, including characteristics and constraints of the land.
- Matters of public interest in relation to social, economic and environmental outcomes.

The development application is recommended for approval subject to conditions of consent (refer to Attachment G).

# Assessment Report

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## Assessment Report Contents

1. Integrated Development
2. Development Type and Permissibility
3. S.5A Assessment (7-part test)
4. Section 4.15 considerations
5. Conclusion
6. Recommendation



## **1. Integrated Development**

The applicant nominated the proposal as Integrated Development under:

- Section 100B of the Rural Fires Act 1997;
- Section 89,90,91 of the Water Management Act 2000; and
- Section 22 of the Coal Mine Subsidence Compensation Act 1961

The proposal was referred to Subsidence Advisory NSW; Department of Primary Industries (Water); and NSW Rural Fire Service in accordance with Section 4.55 (s91A) of the Environmental Planning and Assessment Act 1979, seeking their respective General Terms of Approval (GTAs).

### **1.1 Coal Mine Subsidence Compensation Act 1961**

The application was referred to Subsidence Advisory NSW on 5 September 2017, with GTAs issued for the development, dated 18 September 2018.

### **1.2 Water Management Act 2000**

The application was referred to the Department of Primary Industries - Water on 6 September 2017. Discussions with DPI (Water) officers indicate GTAs are being prepared, although the GTAs had not been received by Council at the time of writing the report.

### **1.3 Rural Fires Act 1997**

The application was referred to the NSW Rural Fire Service on 5 September 2017, with GTAs issued for the development, dated 8 November 2018.

## 2. Development Type and Permissibility

The development application was initially lodged with Council for assessment proposing a Recreation Facility (Major) at the site, which followed on from preliminary Council advice to the applicant based on information available at pre-lodgement stage, that Recreation Facility (major) was the most appropriate definition of the proposed development.

Further assessment of the development application once lodged, however, revealed the correct classification of the development type as Recreation Facility (Outdoor), based on detailed consideration of the definitions and having regard to recent Caselaw.

Under Lake Macquarie Local Environmental Plan 2014 (LMLEP 2014), the following development is either permitted with development consent or prohibited within the relevant zones:

Recreation Facilities (Outdoor) is permitted on land zoned RU2 Rural Landscape and is prohibited on land zoned SP1 Mining - Special Activities and E2 Environmental Conservation; and

Recreation Facilities (Major) is prohibited on land zoned E2 – Environment Conservation, SP1 Mining - Special Activities and RU2 Rural Landscape.

The applicant was advised by Council to seek legal advice in this regard, with the subsequent advice from McCullough Robertson Lawyers, dated 23 March 2018, excerpts as follows:

*“In light of the recent decision of the NSW Court of Appeal in **Cheetham v Goulburn Motorcycle Club Inc** [2017] NSWCA 83 (**Cheetham**), we have been asked to consider whether ‘Recreation Facility (Major)’ is the most appropriate characterisation for the Proposed Development or whether it would be more appropriately characterised as ‘Recreation Facility (Outdoor)’.*

*‘Recreation Facility (Outdoor)’ is defined in the LMLEP 2014 as:*

*‘means a building or place (other than a recreation area) used predominantly for outdoor recreation, whether or not operated for the purposes of gain, including a golf course, golf driving range, mini-golf centre, tennis court, paint-ball centre, lawn bowling green, outdoor swimming pool, equestrian centre, skate board ramp, go-kart track, rifle range, water-ski centre or any other building or place of a like character used for outdoor recreation (including any ancillary buildings), but does not include an entertainment facility or a recreation facility (major).’*

*...we have analysed the key factors considered in the Cheetham decision against the elements of the Proposed Development.*

*In Cheetham, the NSWCA considered what constitutes a ‘Recreation Facility (Major)’ as opposed to ‘Recreation Facility (Outdoor)’.*

*The following sections of the judgment are relevant (our emphasis in **bold**), noting that in the Cheetham case, the approved development was found to be ‘Recreation Facility (Outdoor)’:*

- 'LEP 2009 defines "recreation facility (major)" to mean:  
  
     "a building or place used for large-scale sporting or recreational activities that are attended by large numbers of people whether regularly or periodically, and includes theme parks, sports stadiums, showgrounds, racecourses and motor racing tracks";
- the five facilities specified in the definition of "recreation facility (major)" are intended to be illustrative of the general requirements stated in the first part of the definition. That is, each of the five identified facilities is **within the definition only if it is "a building or place used for large-scale sporting or recreation activities that are attended by large numbers of people".**' (at para 14);
- As we have explained, the definition of "recreation facility (major)" in the 2009 LEP, properly construed, is not satisfied simply because particular numbers of people are likely to attend motorcycle events conducted on the Land in conformity with the Consent. The motorcycle activities must be conducted on a "large scale" and must be attended by large numbers of people. **The definition requires the attendees to include large numbers of members of the public (as distinct, for example, from the limited membership of a club) who are required, at least on some occasions, to pay for admission to the events'** (at para 30)

*In light of the decision in the majority judgment in Cheetham, we are of the opinion that the Proposed Development is properly characterised as 'Recreation Facility (Outdoor)' for the following reasons:*

- (a) *when the Proposed Development is compared to the illustrative list of developments in the definition of 'Recreation Facility (Outdoor)', the Proposed Development is comparable in size and scale to that of a golf course. Specifically, it is noted that:*
  - i. *golf course facilities will often include ancillary development (similar to that proposed at the BRMP) such as function premises, accommodation, car parking and workshops;*
  - ii. *bookings are required to undertake motor sport activities at the BRMP and Automotive Car Brand Launches will be by invitation only. Accordingly, the number of attendees can at the Site at any particular time can be controlled;*
  - iii. *there is no public transport available within approximately 10 kilometres of the Site. Accordingly, this is prohibitive for large numbers of people to attend the Site, other than by private vehicle. The Proposed Development is only seeking consent for approximately 150 car parks for public use; and*
  - iv. *the Proposed Development will attract a similar number of people to the various surrounding industrial activities at Macquarie Coal Preparation Plant, Newstan Colliery and Metromix Quarries.*



- (b) *when the Proposed Development is compared to the illustrative list of developments in the definition of 'Recreation Facility (Major)', the Proposed Development is distinguishable on the basis that:*
- i. *the Proposed Development will not attract the hundreds or thousands of people that may attend a theme parks, sports stadiums, showgrounds, racecourses and motor racing tracks on any given occasion. In contrast, the Proposed Development is designed to cater for approximately 200 people in a day, which is not considered large in the context of other development;*
  - ii. *the Proposed Development will not charge any fees to enter the park and as such there is an argument that the Proposed Development is not analogous to the other examples provided in the definition of 'Recreation Facility (Major)' such as theme parks and motor racing tracks.*

Subsequently, the amended proposal was lodged with an amended description of the development of "Recreation Facility (Outdoor)". Council is in agreement, having regard to the likely attendance numbers and nature of the facility; the applicant's legal advice; and confirmation from Council solicitors, that "Recreation Facility (Outdoor)" is the most appropriate land use definition of the proposed development and the application has been assessed accordingly.

The Recreation Facility (Outdoor) is the primary land use proposed, with the tourist and visitor accommodation elements of the development considered ancillary and subservient to the recreational use of the land as proposed.

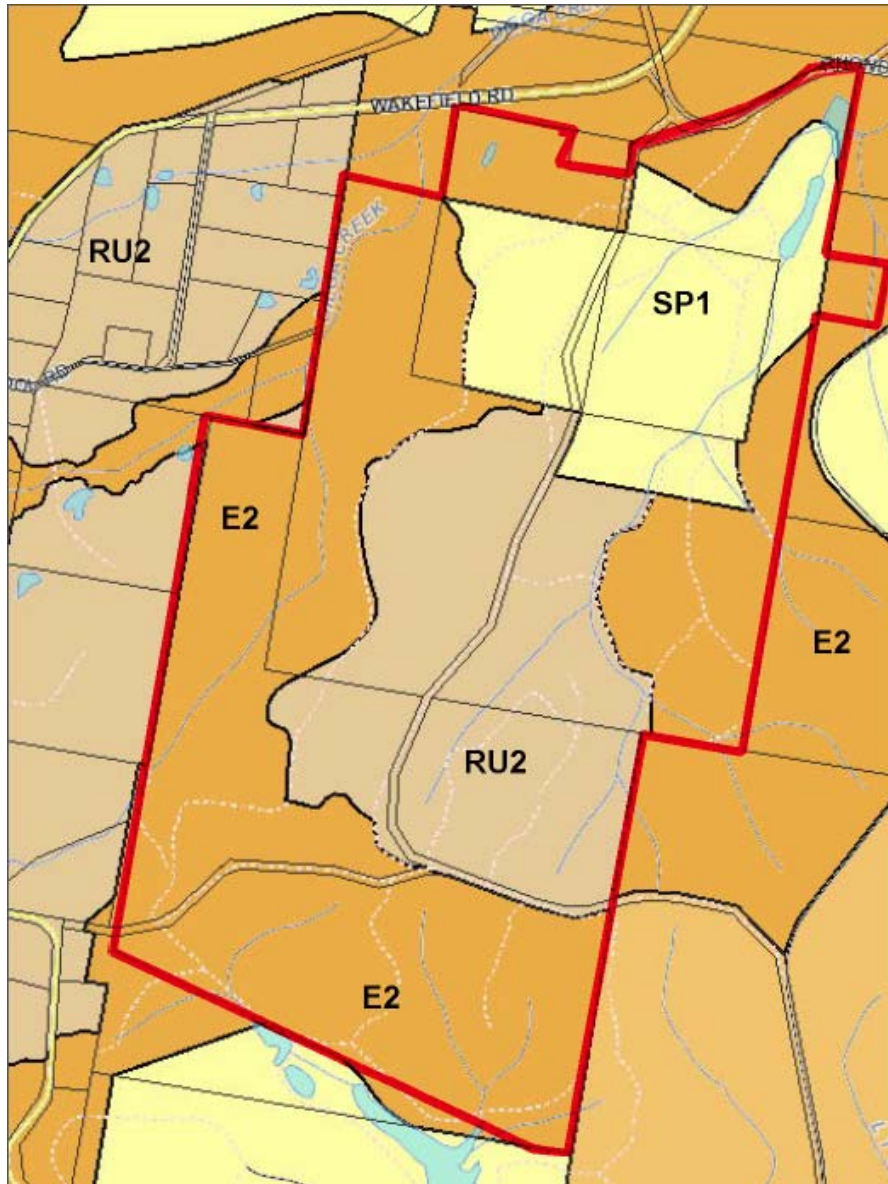
The accommodation proposed is to be utilised directly in relation to the recreational activities on site, which is also stipulated in a recommended consent condition and would not operate independently of the primary land use. Taking into account the scope of the overall development and the ratio/sizes of buildings that are exclusively for accommodation (not car related activities), this element of the development is considered to be limited and subservient to the motor track, being the dominant use of the site.

The site comprises three different land use zones, under LMLEP 2014, as follows:

- RU2 Rural Landscape
- SP1 Special Activities (Mine)
- E2 Environmental Conservation

In addition, three of the lots have more than one zoning:

- Lot B DP 339863 - E2 zoning;
- Lot 75 DP 755262 - E2 + SP1 zoning;
- Lot 76 DP 755262 - SP1 zoning;
- Lot 1 DP 963356 - E2 zoning;
- Lot 101 DP 1073163 - E2, SP1 + RU2 zoning; and
- Lot 391 DP 1064199 – E2 + RU2 zoning.

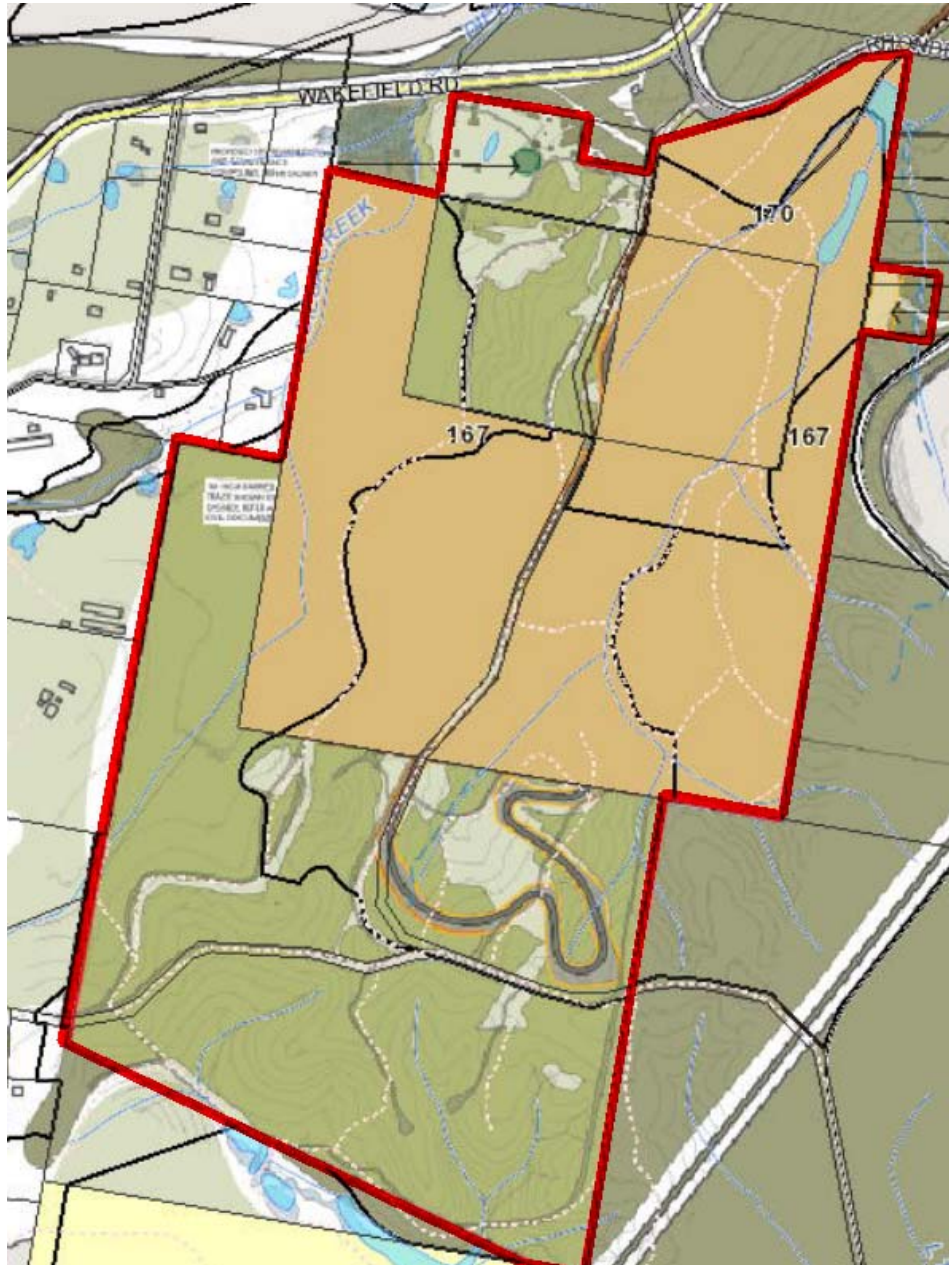


**Figure 4: Map of land use zones over the Development Site**

The development (built form and track) would extend over areas zoned SP1, RU2 and E2 within Lot 101 in DP 1073163; Lot 76 in DP 755262; Lot 391 DP 1064199; Lot 1 DP 963356; and Lot B DP339863.

The “Recreation Facility (Outdoor)” use is permissible with consent, pursuant to the Land Use Table under LMLEP 2014 *Part 2 - Permitted or prohibited development*, within the RU2 Rural Landscape zone.

Permissibility for the “Recreation Facility (Outdoor)” use over the other lots (zoned SP1 and E2) is sought under LMLEP 2014, *Clause 5.10.(10) Conservation incentives*. The site contains two Heritage Items of local significance with the heritage affectation extending over the lots of the site that contain these items. Heritage conservation matters including the requirements of Clause 5.10 (10) are discussed in detail under the Local Environmental Plan 2014 (LMLEP) section of this report.



**Figure 5: Map showing heritage affectation over the site (brown shaded area)**

The applicant's legal advice (McCollough Robertson, 23 March 2018) also addresses the question of permissibility, as follows:

*"The construction of a 'Recreation Facility (Outdoor)' on the Site is permissible with consent on that part of Lot 101 in DP 1073163 zoned RU2, but is otherwise prohibited under the other relevant land zonings under the LMLEP 2014.*

*Nevertheless, the Proposed Development could still be approved by LMCC on this Site as a 'Recreation Facility (Outdoor)' if the requirements of clause 5.10(10) of the LMLEP 2014 are satisfied; and aspects of the Proposed Development (such as car parks etc.) could be constructed on Lot 1, provided the proposed land use is permissible with consent on Lot 1 which is zoned E2 - Environmental Conservation."*



And furthermore:

*“In our view, the Proposed Development is permissible as either ‘Recreation Facility (Major)’ or ‘Recreation Facility (Outdoor)’ over Lot 76 in DP 755262 and Lot 101 in DP 1073163 if Elemenop can satisfy the requirements of clause 5.10(10) of the LMLEP 2014.*

*The SEE refers to the Conservation Management Plan that has been prepared by RPS for the purposes of satisfying clause 5.10(10) of the LMLEP 2014. We have not been provided with a copy of the Conservation Management Plan for our review, however based on the extracts of the Conservation Management Plan provided in section 3.4 of the SEE with respect to respect to Aboriginal cultural heritage and Non-Aboriginal cultural heritage matters, we are of the view that clause 5.10(10) of the LMLEP 2014 can be satisfied by this development.”*

Council’s Corporate Legal Office has provided advice, on review of the McCollough Robertson advice, regarding the appropriate land use definition and the reliance on clause 5.10(10) for the granting of consent.

The advice from Council’s Lawyer is that consent may be granted under the clause “for any purpose” and therefore the consideration of whether the type of development is “the right type” is not required, but rather whether the application meets the criteria indicated in (a) to (e) of the clause 5.10(10).

Council assessment of the proposal against the requirements under clause 5.10(10) of LEP 2014 has been undertaken and the development considered to satisfy the requirements and, in accordance with the legal advice, the clause can be relied upon to grant consent.

There are ancillary structures comprising a Site Rehabilitation and Maintenance Building and Carparking/Parking building proposed within E2 Environmental Conservation zoned land on the site, with the location of these structures also outside of the heritage affectation. The specific uses of these ancillary structures are permissible with consent, pursuant to the Land Use Table under LMLEP 2014 Part 2 – Permitted or prohibited development, within the E2 Environmental Conservation zone.

## **Zone E2 Environmental Conservation**

### **1 Objectives of zone**

- *To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.*
- *To prevent development that could destroy, damage or otherwise have an adverse effect on those values.*
- *To conserve, enhance and manage corridors to facilitate species movement, dispersal and interchange of genetic material.*
- *To encourage activities that meet conservation objectives.*
- *To enhance and manage areas affected by coastal processes.*

### **2 Permitted without consent**

*Home occupations*

### 3 Permitted with consent

*Bed and breakfast accommodation; Boat sheds; Building identification signs; Business identification signs; **Car parks**; Community facilities; Dual occupancies (attached); Dwelling houses; Eco-tourist facilities; Emergency services facilities; Environmental facilities; **Environmental protection works**; Flood mitigation works; Home-based child care; Home businesses; Information and education facilities; Recreation areas; Roads; Water recreation structures*

### 4 Prohibited

*Business premises; Hotel or motel accommodation; Industries; Multi dwelling housing; Recreation facilities (major); Residential flat buildings; Restricted premises; Retail premises; Seniors housing; Service stations; Warehouse or distribution centres; Any other development not specified in item 2 or 3*

The general open carparking area and adjacent parking building provide for 126 parking spaces in the carpark and the capacity for 32 vehicles in an open stacked configuration within the building (approx. 626m<sup>2</sup> floor area), with the vehicles in the ownership of the facility (utilised for driver training and driver experiences). The car park and parking building are located in a previously cleared location on site and provides a centralised area adjacent to the site entry for the parking of vehicles.

The definition of **car park** under LEP 2014, as follows:

*“Means a building or place primarily used for the purpose of parking motor vehicles, including any manoeuvring space and access thereto, whether operated for gain or not.”*

The car parking area and building proposed are consistent with this definition.

The Site Rehabilitation and Maintenance Building (approx. 387m<sup>2</sup> floor area) is proposed to be located in a cleared area, devoid of vegetation, previously used for the mine’s tailings stockpiles. There are existing tracks that would provide access to the building. The building would be used for the parking of a variety of vehicles, plant and machinery required to undertake rehabilitation and environmental protection works and general grounds maintenance of the extensive site. The building would also provide for ancillary amenities for workers engaged in these activities, with areas adjacent to the building to be utilised for plant propagation/nursery purposes.

The definition of **environmental protection works** under LEP 2014, as follows:

*“Means works associated with the rehabilitation of land towards its natural state or any work to protect land from environmental degradation, and includes bush regeneration works, wetland protection works, erosion protection works, dune restoration works and the like, but does not include coastal protection works.”*

The use of the site rehabilitation and maintenance building proposed is consistent with this definition, and although “buildings” are not specifically included in the definition, the building is considered to be required to facilitate the environmental protection works and site rehabilitation to be carried out.



The location of both of these structures within previously cleared and disturbed areas of the site is consistent with the objectives of the E2 Environmental Conservation zone, as additional vegetation clearing would not be necessary and the ongoing obligations in regards to rehabilitation and environmental protection would be facilitated. Although the location of both of these structures is adjacent to existing vegetated corridors that facilitate species movement, ecological studies undertaken indicate the development will not unreasonably impede this movement.

In addition to these structures, there is a “loop” of the track, which represents a small portion (0.85km of the 5.58km total) of the track, located within the E2 Environmental Conservation zoned land. In this instance, the location does fall within an area of the site included in the heritage affectation, with permissibility subsequently facilitated by the Conservation Incentives clause 5.10(10).

The location of this portion of the track also utilises existing tracks and cleared areas, to minimise the necessity for vegetation clearing. A compensatory area of existing E2 zoned land on the site will be provided as an offset (as detailed in RFI Response, MJD Environmental, 24 October 2018). Assessment of this element of the proposal against the E2 zone objectives has concluded there is sufficient consistency to support the encroachment.

**3. Environmental Planning & Assessment Act 1979 – s.5A assessment (7-part test), as amended by the Threatened Species Conservation Act 1995**

The Biodiversity Conservation Act 2016 has repealed this Clause of the EP&A Act (replaced by new 5-part test), consideration of the impact assessment has been undertaken with the previous provisions, in accordance with the *Biodiversity (Savings and Transitional) Amendment Regulation 2017*, which applies to activities under Part 4 of the EP&A Act, with development applications lodged prior to 24 November 2018 (IDA Council) assessed under the transitional arrangements (ie. the Threatened Species Conservation Act).

Threatened Species Conservation Act is therefore applicable. The seven part test has been applied by the applicant's and Council's ecologists who are in agreement the impacts of the proposal to threatened species are not of significance to warrant preparation of a Species Impact Statement (SIS) for the development and therefore referral to the Office of Environment and Heritage has not been required or undertaken.

**4. Section 4.15 Considerations**

Assessment of the proposal against relevant Regional, State and Local Environmental Planning Instruments and Policies, in accordance with Section 4.15(1) of the Environmental Planning and Assessment Act, 1979.

**79C(1)(a)(i) the provisions of any Environmental Planning Instrument (EPI)**

***State Environmental Planning Policy 33 – Hazardous and Offensive Development***

The SEPP provides definitions for hazardous industry, hazardous storage establishments, offensive industry and offensive storage establishments. The definitions apply to all planning instruments and enable decisions to approve or refuse development based on the merit of the proposal. The policy also requires specified matters to be considered for proposals that are “potentially hazardous” or “potentially offensive” as defined under the SEPP.

A SEPP 33 Risk Screening Assessment report (EP Risk, 17 July 2018) has been submitted for the development, which proposes the on-site storage of 20,000L of fuel (petroleum). The report identifies, based on the class and volume of the dangerous goods and the threshold screening criteria outlined in *NSW Department of Planning, Hazardous and Offensive Development Application Guidelines – Applying SEPP33 (2011)*, the operation of the proposed development was assessed to not be potentially hazardous.

Therefore, no further assessment in the form of a Preliminary Hazardous Assessment (PHA) is required.

#### **State Environmental Planning Policy 44 – Koala Habitat Protection**

Clause 7 and 8 requires the identification of land that comprises “potential koala habitat” or “core koala habitat” before consent to carry out development on the land can be granted.

An Ecological Assessment report (MJD Environmental Pty Limited, August 2017) and further addendum report (MJD Environmental Pty Limited, 18 July 2018) have been submitted for the proposed development, which proposes to clear or modify (to asset protection zone standard) approximately 14.49 hectares of native vegetation.

Two tree species listed in Schedule 2 of the SEPP as “Feed Tree Species” have been identified as occurring on site, being *Eucalyptus punctata* (Grey Gum) and *Eucalyptus robusta* (Swamp Mahogany). Investigations undertaken did not detect koalas or signs of koalas on the site and the koala feed trees identified do not represent 15% or more of the total tree cover on the site.

Therefore, vegetation on the site does not constitute core koala habitat or potential koala habitat, and no further consideration under the SEPP is required.

#### **State Environmental Planning Policy 55 – Remediation of Land**

Clause 7(1)(a) requires consideration of whether the land on which development is proposed is contaminated, prior to granting of consent. The site has a history of mining and extractive industry activities.

A Contamination Review (GHD Pty Ltd, 7 February 2018) has been submitted for the development. The review identifies that Environmental and Safety Professionals (ESP) completed a Preliminary Site Investigation (ESP 2017) for the Rhondda Colliery which reported zinc concentrations for one sample, subject to statistical analysis identifying that the concentrations were below the Ecological Investigation Level (EIL) for commercial/industrial land use.

The Contamination Review considered previous contamination investigation and the development site plan for the driver training/recreational facility. Based on the proposed land use, the report considers users of the colliery area will generally only use the site for short periods of time, with minimal access to soil during normal operations. Therefore, the NEPM (2013) health and ecological criteria for commercial/industrial land use are appropriate to assess the area’s suitability for development of the skid pan and safety training area.

Council, on consideration of the Contamination Review (GHD Pty Ltd, 7 February 2018) is satisfied the land is suitable for the purpose for which the development is proposed to be carried out, subject to the imposition of a condition of consent in accordance with the recommendations of the review, requiring a Soil Management Plan for the development.

## **State Environmental Planning Policy 64 – Advertising and Signage**

Clause 6 identifies signage to which the SEPP applies as that which is visible from any public place or public reserve. There is a “BlackRock Motor Park Sign” comprising large scale letters in the form of a “Hollywood” style sign to be located on the side of the main hill (aligned with the function centre) which would have high visibility internal of the site, however, due to typography and existing vegetation, will not be visible from any public place/road. As the signage would not be visible from any public place or public reserve, assessment of the signage under the SEPP is not required.



**Figure 6: Pictorial representation of main entry wall and gate**

The main entry signage (business identification sign) comprises the “BlackRock Motor Park” logo of polished chrome and corten lettering on the face of the proposed gabion or dry-stacked granite/bluestone entry wall of the site, which would be visible from Rhondda Road, and subsequently subject to the provisions of the SEPP.

This signage has been assessed in accordance with the criteria under Schedule 1 of the SEPP and is consistent with the specified criteria, as it would be compatible with the character of the locality (adjacent to other industrial uses), and would not impact on any existing views/vistas or compromise safety for road users or pedestrians.

The signage (scale, proportion and form) proposed is of a high quality design and consistent with the objectives of the Policy as set out in clause 3(1)(a) and satisfies the assessment criteria specified in Schedule 1.

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

Division 5 Electricity transmission or distribution: Clause 45 *Determination of development applications – other development* requires written notice to the electricity supply authority with regard to development carried out within the vicinity of electricity infrastructure.

The matter was referred to Ausgrid, with a response dated 16 October 2018, raising no objection to the development in regards to potential safety risks.

Division 17 Roads and traffic: Clause 104 *Traffic-generating development* - requires the consent authority when considering traffic-generating development to give written notice to the Roads and Maritime Service (RMS) and to take into consideration any comments received.

The development has a carpark capacity of less than 200 spaces, does not constitute development specified under Schedule 3 *Traffic-generating development to be referred to Roads and Maritime Services*, and is therefore not traffic generating development.

An advisory referral of the application to RMS has been undertaken, with a response from RMS 8 August 2018, raising no objection to the proposal

## **State Environmental Planning Policy (State and Regional Development) 2011**

Part 2 State significant development: Clause 8 *Declaration of State significant development*: section 4.36

Clause 8(1) identifies State significant development for the purposes of the Act to be development that is not permissible without development consent under Part 4 of the Act and specified in Schedule 1 or 2 of the SEPP.

The development of a Recreation Facility (Outdoor) that has a capital investment value of more than \$30 million, does not comprise any of the development types under *13 Cultural, recreation and tourist facilities* within Schedule 1, and is therefore not State significant development.

Part 4 Regionally significant development: Clause 20 *Declaration of regionally significant development*: section 4.5 (b)

Clause 20(1) identifies regionally significant development for the purposes of the Act to be development specified in Schedule 7 of the SEPP.

The development has a capital investment value of more than \$30 million (general development over \$30 million), and therefore comprises regionally significant development in accordance with Schedule 7.

Subsequently the consent authority for the application is the Regional Planning Panel (for the area in which the development is to be carried out) in accordance with Clause 4.5 *Designation of consent authority*, under the Act.

## **State Environmental Planning Policy (Coastal Management) 2018**

Under the SEPP (date of commencement 3 April 2018), a north-western portion of the site is mapped as comprising coastal wetlands. It is noted that this area is not subject to development under the proposal.

However, the Savings and Transitional Provisions under Clause 21, specify that Policy does not apply to a development application lodged, but not finally determined, immediately before the commencement, in relation to land to which the Policy applies. The application was lodged 25 August 2017. Therefore the Policy does not apply to this development.

The site is not mapped as requiring consideration under the former planning provisions of *State Environmental Planning Policy No 14-Coastal Wetlands*.

## **Lifestyle 2030 and Strategic Direction**

Lifestyle 2030 is the relevant planning strategy that applies to the Lake Macquarie Local Government Area (LGA). The long-term vision for land use for Lake Macquarie under the strategy is for a city:

- *where the environment is protected and enhanced.*
- *where the scenic, ecological, recreational, and commercial values and opportunities of the Lake and coastline are promoted and protected.*
- *with a prosperous economy and a supportive attitude to balanced economic growth, managed in a way to enhance quality of life and satisfy the employment and environmental aims of the community.*
- *that recognizes, encourages, develops its diverse cultural life and talents, protects, and promotes its heritage.*
- *that encourages community spirit, promotes a fulfilling lifestyle, enhances health and social well-being, encourages lifestyle choices, and has opportunities to encourage participation in sport and recreation.*

- *that promotes equal access to all services and facilities and enables all citizens to contribute to and participate in the City's economic and social development.*
- *that promotes affordable housing.*

There are no specific Strategic Directions within Lifestyle 2030 Strategy that speak to the re-use of land which has been associated with mining activities. However, the Strategy states that many of the town and village centres of the LGA have evolved from smaller settlements, which were founded to serve the needs of coal mining, rural, and fishing communities. The Strategy also speaks of non-centre based employment areas.

Non-centre based economic activity and employment (such as industry, mining, power generation, tourism and intensive agriculture) is important to the prosperity of the LGA. It is also important that brownfield sites are rehabilitated or can be used for a landuse that achieves the objectives of LS2030 after mining or industrial development has ceased. Where coal mining activities cease to operate and have been rehabilitated to allow another use then this is supported by the Strategy, as it allows land, which could fall into disrepair or be left underutilised available for re-use. There are potential employment and tourism activities which may be associated with the re-use of rehabilitated mines, as proposed in this application.

Council's Integrated Planning department support the re-use of this site given its location and relative isolation from neighbouring properties which would assist in ameliorating any potential off-site impacts. The proposal presents a unique way of providing a new recreational facility to the LGA that is currently not available anywhere else in the region or State, whilst respecting and conserving the existing heritage significance of the site.

As the site comprises several titles, consideration was given during the assessment regarding a requirements for lot amalgamation of the development site. Requirement for amalgamation of the titles that comprise the site is not considered warranted, given the ecological site attributes will be protected through existing land zonings and conditions of consent which relate to the site as a whole.

## ***Lake Macquarie Local Environmental Plan 2014 (LMLEP 2014)***

### **Part 1 Preliminary**

#### Clause 1.2 Aims of Plan

Assessment of the development has found it to be consistent with the aims of LEP 2014.

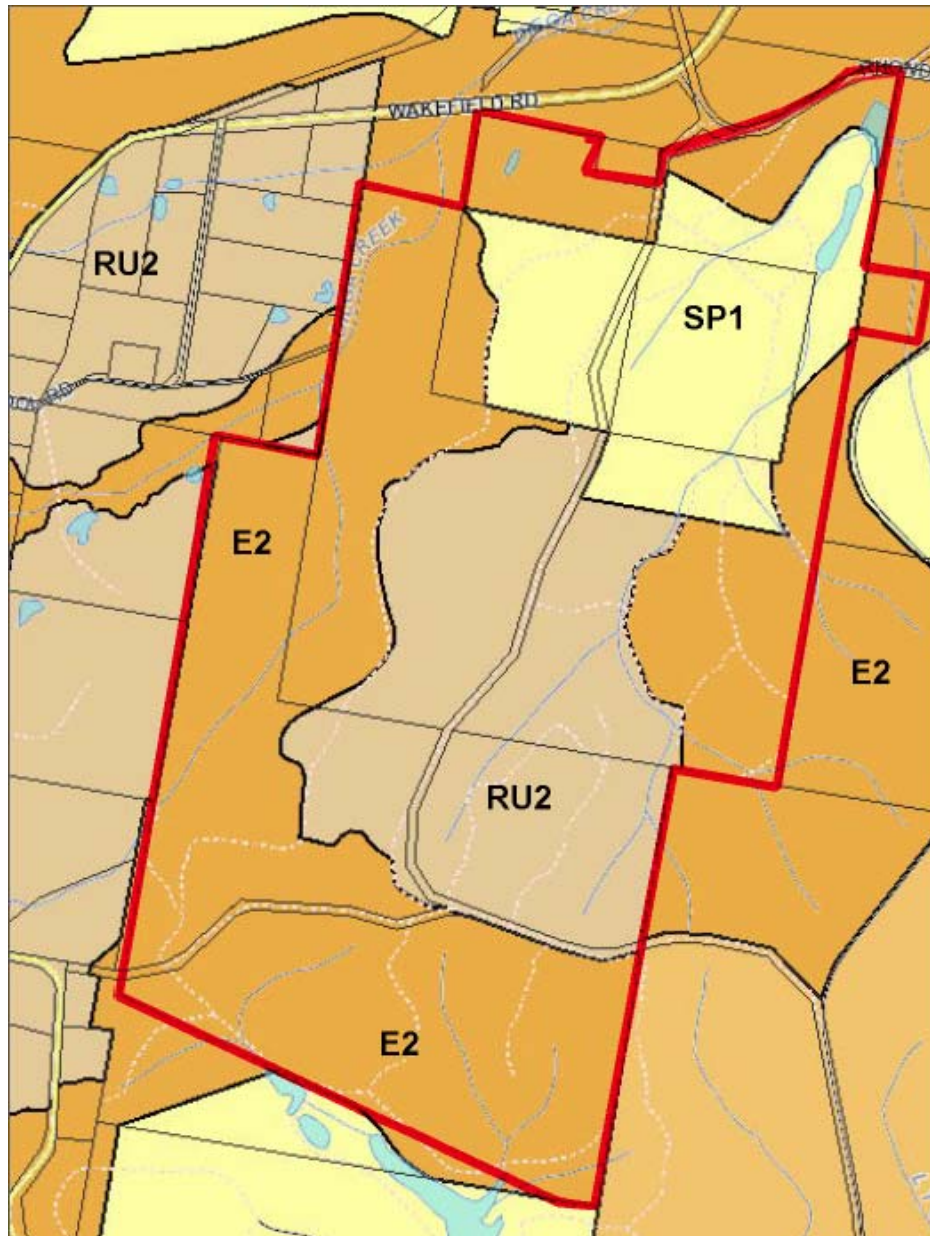
### **Part 2 Permitted or Prohibited Development**

#### Clause 2.3 Zone Objectives and Land Use Table

##### *Zoning*

The land is zoned RU2 Rural Landscape; SP1 Special Activities (mine); and E2 Environmental Conservation – as per Figure 7 below.





**Figure 7: Land Zoning map under LMLEP 2014**

The permissibility of the proposed development, pursuant to the Land Use Table (zonings) has been discussed previously in this report. The development is permissible on all land zonings or permissibility is achieved through application of clause 5.10(10) *Conservation Incentives* of LMLEP 2014.

Under this clause, the zone objectives (which stipulate objectives for development within the zone) of the three separate zonings over the site are as follows:

Zone RU2 Rural Landscape:

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
- To maintain the rural landscape character of the land.
- To provide for a range of compatible land uses, including extensive agriculture.
- To maintain and enhance the natural amenity and the ecological values of the land.

- To provide for sustainable land management and forestry practices.

#### Zone SP1 Special Activities:

- To provide for special land uses that are not provided for in other zones.
- To provide for sites with special natural characteristics that are not provided for in other zones.
- To facilitate development that is in keeping with the special characteristics of the site or its existing or intended special use, and that minimises any adverse impacts on surrounding land.

#### Zone E2 Environmental Conservation

- To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.
- To prevent development that could destroy, damage or otherwise have an adverse effect on those values.
- To conserve, enhance and manage corridors to facilitate species movement, dispersal and interchange of genetic material.
- To encourage activities that meet conservation objectives.
- To enhance and manage areas affected by coastal processes.

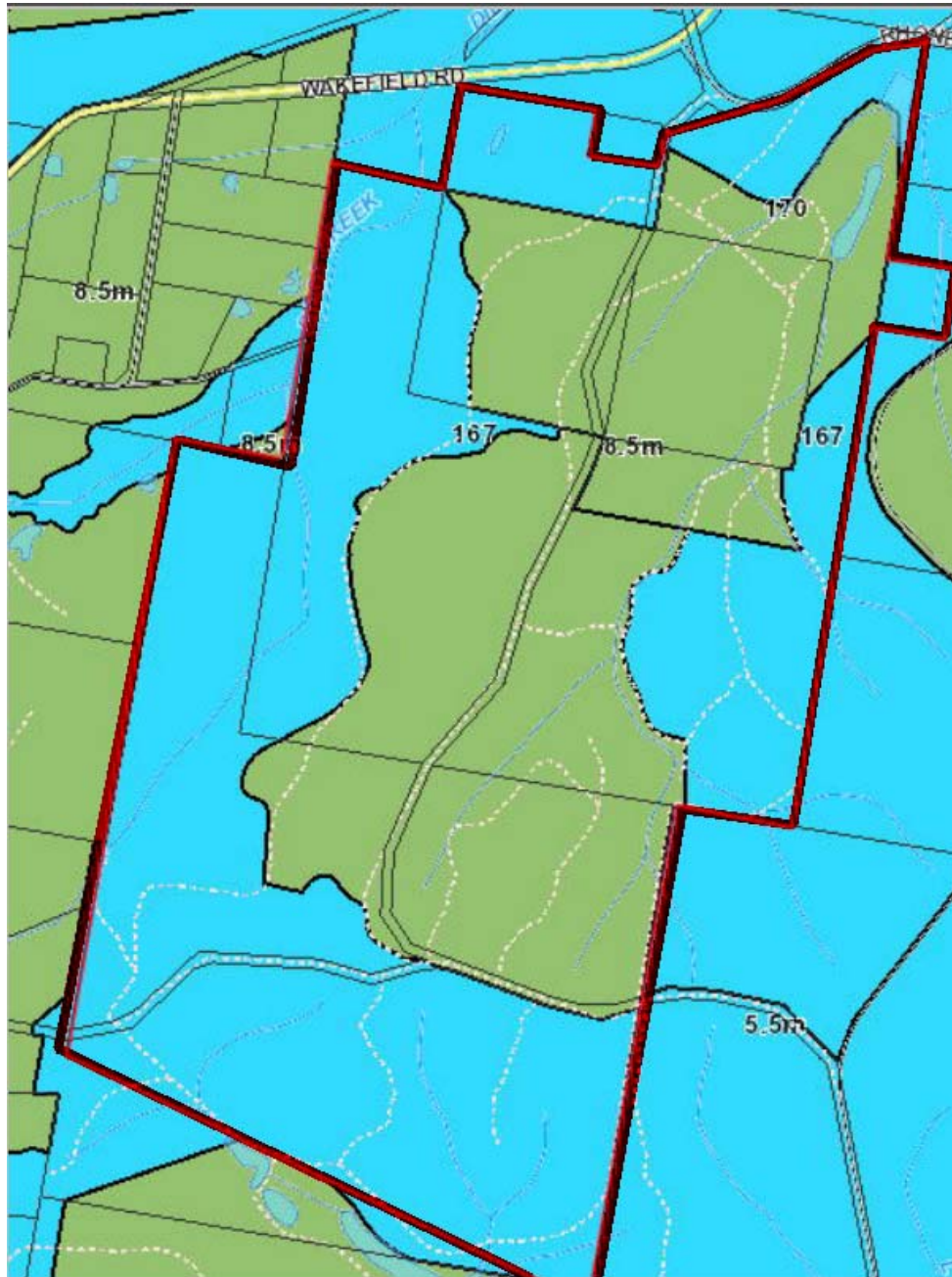
The development is considered to achieve/support the relevant zone objectives as follows:

- The existing rural landscape character of the locality is not impacted by the development and the natural amenity and ecological values of the land are maintained for the site, with areas to be rehabilitated and designated offset area provided. The proposed use on balance is considered a compatible land use, particularly given other industrial uses existing in the vicinity of the site and distances to adjacent rural and residential uses.
- Mining operations are not proposed under the application, the site has been rehabilitated (in accordance with requirements under mining lease that is still in force) to enable another use to be considered on the site. Given the industrial history of the site, existing underground workings and heritage items, the proposal that preserves the site as a whole and conserves the heritage and ecological significance is considered an appropriate adaptive re-use of the site.
- Tree and vegetation clearing is required to facilitate the development, however, a large portion of the overall site will be left in its existing vegetated state. Outcomes of the proposal will result in the protection, management and restoration of areas of high ecological, cultural and aesthetic values.

## Part 4 Principal Development Standards

### Clause 4.3 Height of Buildings

Under Clause 4.3 of LMLEP 2014 and the Height of Building Maps the site has a maximum height of 5.5m (over the E2 zoned land) and 8.5m (over the RU2 and SP1 zoned land).



**Figure 8: Height of Building excerpt from the LMLEP 2014 Maps**

The objectives of clause 4.3 are as follows:

- (a) to ensure the height of buildings are appropriate for their location,
- (b) to permit building heights that encourage high quality urban form.

This development standard stipulates the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

A number of the buildings proposed for the development exceed the maximum building heights applicable to the site, as illustrated in the table below:

<b>Buildings in exceedance of control</b>	<b>LMLEP 2014 Maximum Building Height (for zone)</b>	<b>Proposed Building Heights</b>	<b>Amount of exceedance (%)</b>
Parking Building	5.5m	10.35m	88%
BlackRock Village	8.5m	9.79m	15%
Pit Lane Pavilion	8.5m	9.79m	15%
Mechanic and Emergency Centre	8.5m	9.45m	11%
Visitor Centre/Centre of Operations	8.5m	10.1m	19%
Lodge	8.5m	10.1m	19%
Overnight Accommodation, Short Stay Cabins	8.5m	9.9m	16%
Site Rehabilitation and Maintenance Building	5.5m	9.5m	73%

**Table 1: Height of Buildings**

An assessment of the building heights proposed has been undertaken, taking into account the written submission under *Clause 4.6 – Exceptions to development standards*, of LEP 2014 provided by the applicant in support of the variation. The heights proposed for the various buildings that comprise the development overall are appropriate to their location and allow for buildings of high quality urban form.

#### Clause 4.6 Exceptions to development standards

The Clause 4.6 submission is provided in Attachment B.

Clause 4.6 provides the following objectives:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Subclause (3) provides:

*Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*



- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

The applicant has provided a written exception to the development standard in accordance with clause 4.6, the Department of Planning's Circular and relevant caselaw.

The flexibility sought for the development, with regard to the maximum height of building limits across the site is considered adequately justified and acceptable as follows:

- The buildings will sit primarily within an industrial context in the locality, including the active mine sites of Newstan, Westside and West Wallsend Colliery's, the adjacent Metromix Quarry and a Coal Preparation Plant. The site is separated from the nearest rural residential development to the west in the village of Wakefield by dense bushland. The surrounding residential properties will be unable to view the buildings within the site.
- There will be no amenity impacts arising from the heights proposed to adjacent or nearby sites in regard to view loss, overshadowing, overlooking or any impact on the existing rural character or operations of adjacent land uses.
- Within the site, the relationship of the buildings to each other and the surrounding landscape is appropriate for the existing and proposed setting. Exceedance of the height limits allows for smaller building footprints, reducing the need to remove more vegetation and allowing larger separation between buildings.
- The form and scale of the former infrastructure that existed on site is reflected in the proposed built form and landscaping. Figure 9 provides a historical photograph of the site showing structures exceeding the 8.5m height, now applying to the site, including a large chimney, screening building and associated mining infrastructure. The proposed Visitors Centre, is located in the area of the former screening infrastructure and has been designed to reflect the relative scale and form of the former screen infrastructure.
- The Lodge and cabins are recessed into the surrounding landscape through the layered landscape and horizontal design elements. This aids in visually minimising the Lodge, to allow the ammunitions store (heritage item) to stand alone despite the building height exceedance.
- The parking building and site rehabilitation and maintenance building are located further towards the fringes of the site, and subsequently the parking building may be visible from the neighbouring mine site to the east, however no amenity impacts are likely. The site rehabilitation and maintenance building located in the northern portion of the site may be visible along Wakefield Road, however in keeping with the form and bulk of rural buildings within the locality.
- The variations in heights of buildings proposed relates to the specific building uses across the site and respond to the natural landform.



- The buildings that comprise the development are of a high quality architectural design to fit sensitively within the existing bushland environment. The proposed materials and colours create a cohesive built form scheme between the various buildings and environment and draw on the sites bushland setting through the textures and colours.
- Council's Integrated Planning department advises the building heights applied to the site, specifically the 8.5m applying to the SP1 zone, comprise heights imposed under conversion to the standard instrument LEP in 2014. No analysis of the appropriateness of heights to the site or uses was undertaken at the time and the assessment of building heights proposed should focus on the proposed use, context, typography and appropriateness of heights proposed, taking into account adjacent development and potential amenity impacts.

The heights of buildings proposed for the development are assessed as being acceptable.

The written request for contravention of the development standard, has been assessed as providing adequate justification on environmental planning grounds for variation and compliance with the standard is unreasonable and unnecessary in the circumstances of the case.

Clause 4.6 further states under subclause (4):

Development consent must not be granted for development that contravenes a development standard unless:

(a) *the consent authority is satisfied that:*

- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

(b) *the concurrence of the Secretary has been obtained.*

The clause 4.6 variation submitted by the applicant has been reviewed and is considered to adequately address the matters required to be demonstrated by clause 4.6(3).

The height non-compliances proposed have been assessed and are considered acceptable on merit and having regard to the circumstances of the case and the justification put forward by the applicant. Compliance with the development standard is unreasonable or unnecessary for the subject buildings within the development and sufficient environmental planning grounds have been put forward to justify the contravention of the development standard in this particular case.

The development is deemed to satisfy the objectives of the development standard, is identified as being consistent with the zone objectives (refer to Section 79C(1)(a)) and is therefore in the public interest.

In accordance with Planning Circular PS 08-003 dated 9 May 2008 and PS 18-003 dated 21 February 2018 assumed concurrence for contravention of the height non-compliances is provided to the RPP for regionally significant development.

## **Part 5 Miscellaneous provisions**

### **Clause 5.10 Heritage Conservation**

The site comprises a former colliery which operated at the site from October 1900, and contains two heritage items (local), listed under Schedule 5 of LMLEP 2014 – “Rhondda Colliery” (282 & 284 Rhondda Rd) and “Rhondda Colliery Railway” (as mapped). There are two remaining structures on site existing from the previous mining use, being the “pit pony stable building” and “munitions store”.

The former colliery complex included screening infrastructure, a brick office, a hotel, shops, manager’s house, chimney, stables, a concrete coal bunker and a railway to connect Rhondda with Cockle Creek for the transport of coal. The mining lease in place required the removal of above ground infrastructure to rehabilitate the land, with some structures removed as recently as the 1990s. Substantial ground disturbance also resulted from works associated with extinguishing an underground fire, which burnt from 1971 to 2006, that spread through the coal seam at the cessation of mining.

The objectives of this clause are as follows:

- To conserve the environmental heritage of Lake Macquarie City.
- To conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views.
- To conserve archaeological sites.
- To conserve Aboriginal objects and Aboriginal places of heritage significance.

Development consent is sought under the application for the alteration of the site and the erection of the buildings and ancillary structures that comprise the development on the land containing items of heritage significance.

The effect of the development on the heritage significance of the site has been assessed having regard to the objectives of this clause and the Heritage Conservation Management Plan (CMP) submitted for the proposal, in accordance with the requirements of the clause.

As the remaining fabric (built structures) is limited as the mining lease required above ground structures be removed to rehabilitate the land, interpretation and adaptive reuse will be the dominant forms of conservation (strategies included in the CMP), including landscape interpretation, to communicate cultural significance of the place of the two remaining structures.

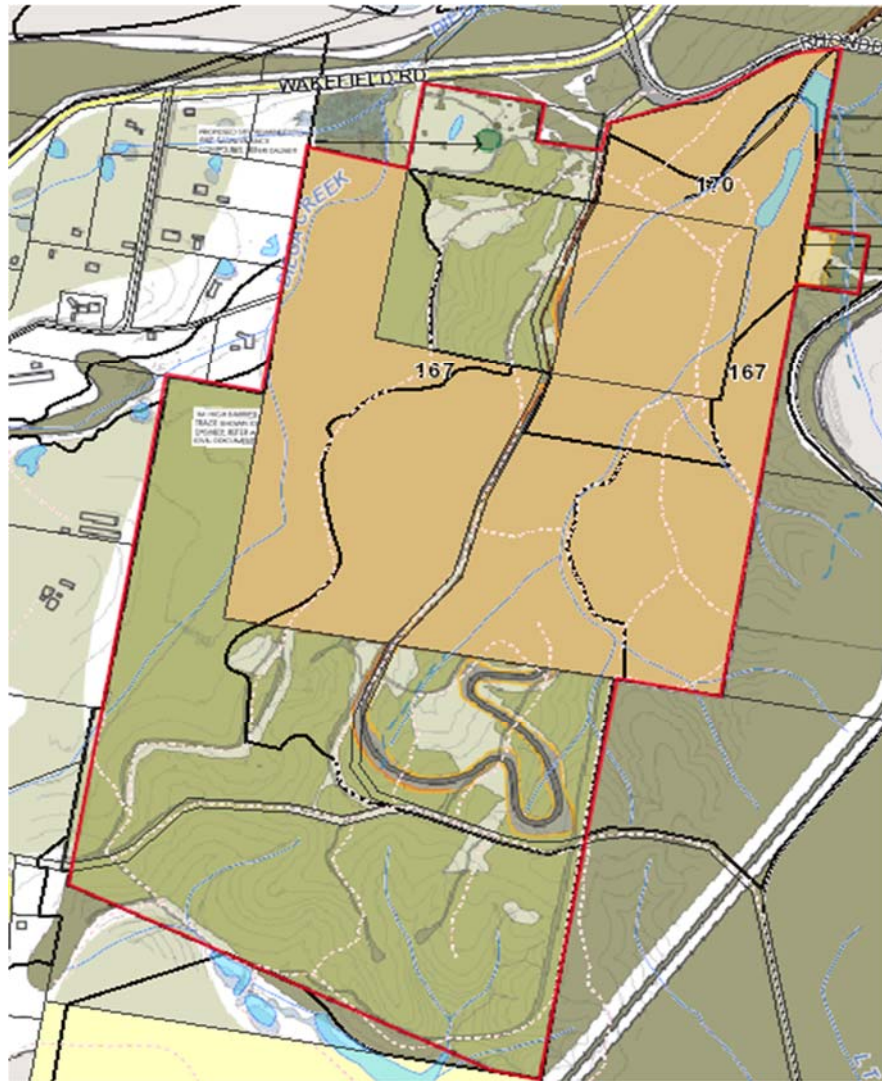


Figure 9: Heritage affectation excerpt from the LMLEP 2014 Maps



Figure 10: Historical photo of former Rhondda Colliery





**Figure 11: Existing site conditions, with two buildings (munitions store in foreground)**



**Figure 12: Pit pony stable building as existing**

The Rhondda Colliery is identified in the Lake Macquarie Heritage Study 1993 as:

*“An important local coal mine, which, because it was tucked away over a hill from Teralba, and had its own pub and shops, and a railway unconnected with Teralba, was forgotten by the town. It is significant for its early use of electric coal cutters, and for its long-term use of a private railway system. Colliery history would have considerable local interest if researched and published.*”

*The site has great potential as an archaeological and historical resource. Existing buildings, particularly the Manager's House and the Stables, have potential for restoration and re-use in any future development of the site. The site is picturesque and has potential for interpretation as a stop on an Industrial Heritage Trail and as a link with the Great Northern Walk and with possible cycleway following path of the former Rhondda railway."*

The Heritage Study 1993 identifies the site as having moderate Regional significance and high Local significance.

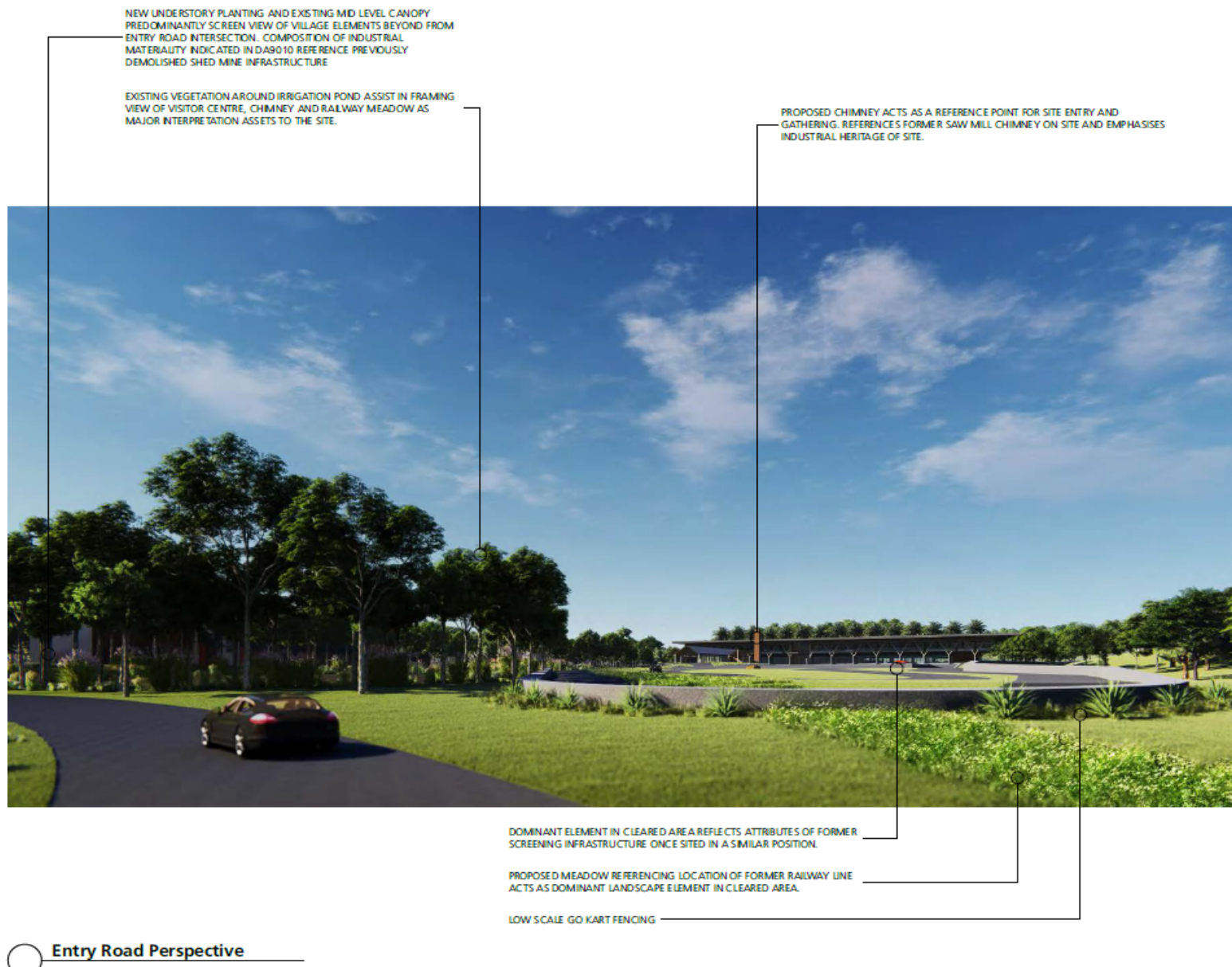
Since completion of the 1993 Heritage Study, and without Council consent, all buildings (aside from stables and munitions store) have been removed, in accordance with obligations for rehabilitation of the site under the existing mining lease. The development aims to adaptively reuse the former colliery site, while conserving existing building fabric and interpreting the former use of the site. Both the existing structures will be retained, with the stable being adaptively reused as a café.

The munitions store will be included as part of the interpretive reuse proposed as part of the CMP, enabling opportunities for story telling around this structure.

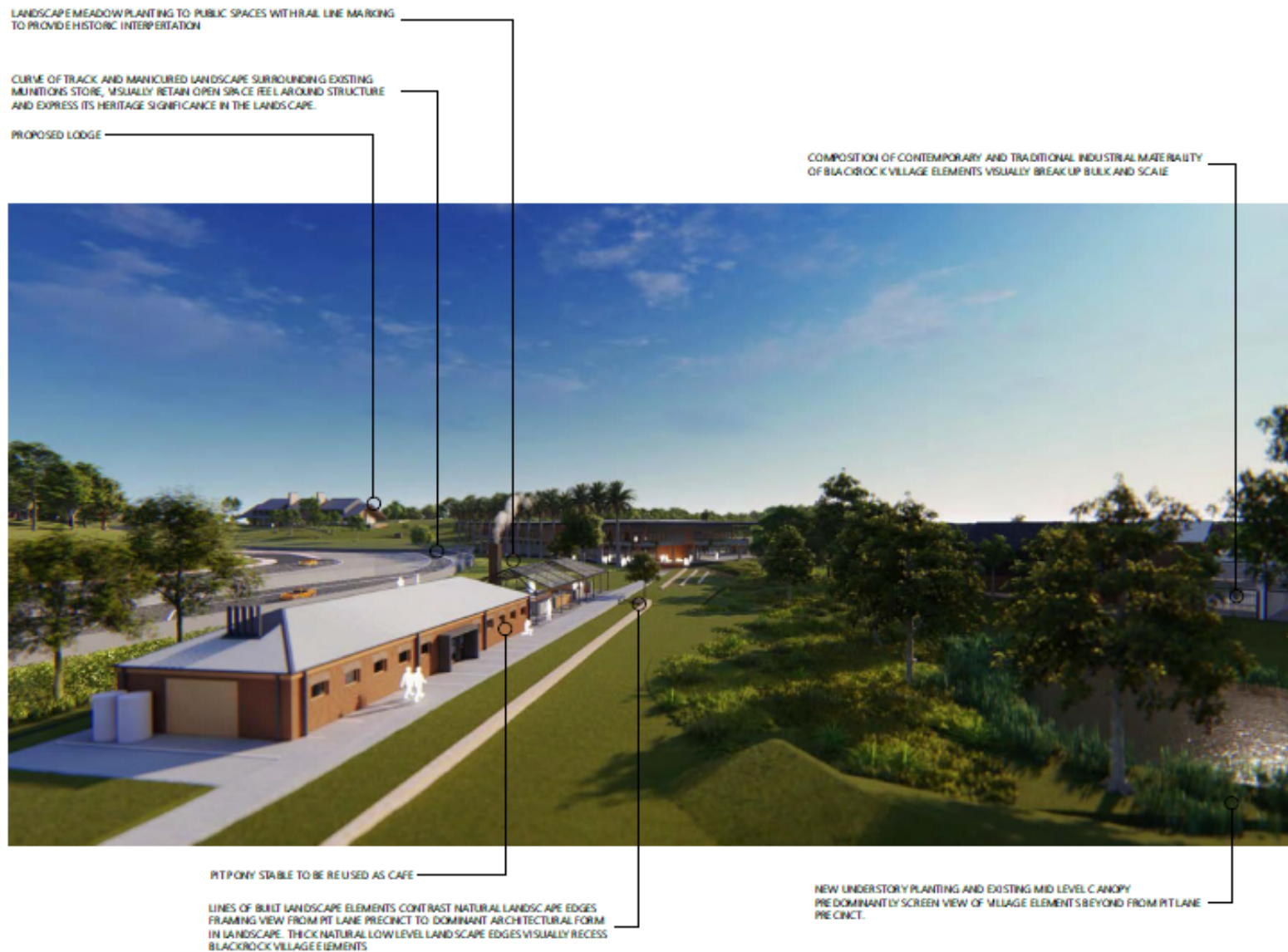
The proposal includes the construction of a Visitors Centre, where the former screening structure was located and later replaced by the coal preparation plant and associated conveyor belts. The main buildings within the development have been designed with strong industrial influence and the amended proposal provides for appropriate curtilage to the existing heritage structures. Built form proposed is appropriately located and allows for the retention of existing vegetation. Interpretation has been included in the landscape plans and the location for interpretative structures and wayfinding signage has been identified.

The "BlackRock Village" element of the development includes "loft" level accommodation above garaging to provide for members to stay for short periods of time. Council's Development Planner – Heritage, raised concern with the bulk and scale of this element of the development and potential for dominance when viewed on entering the site.

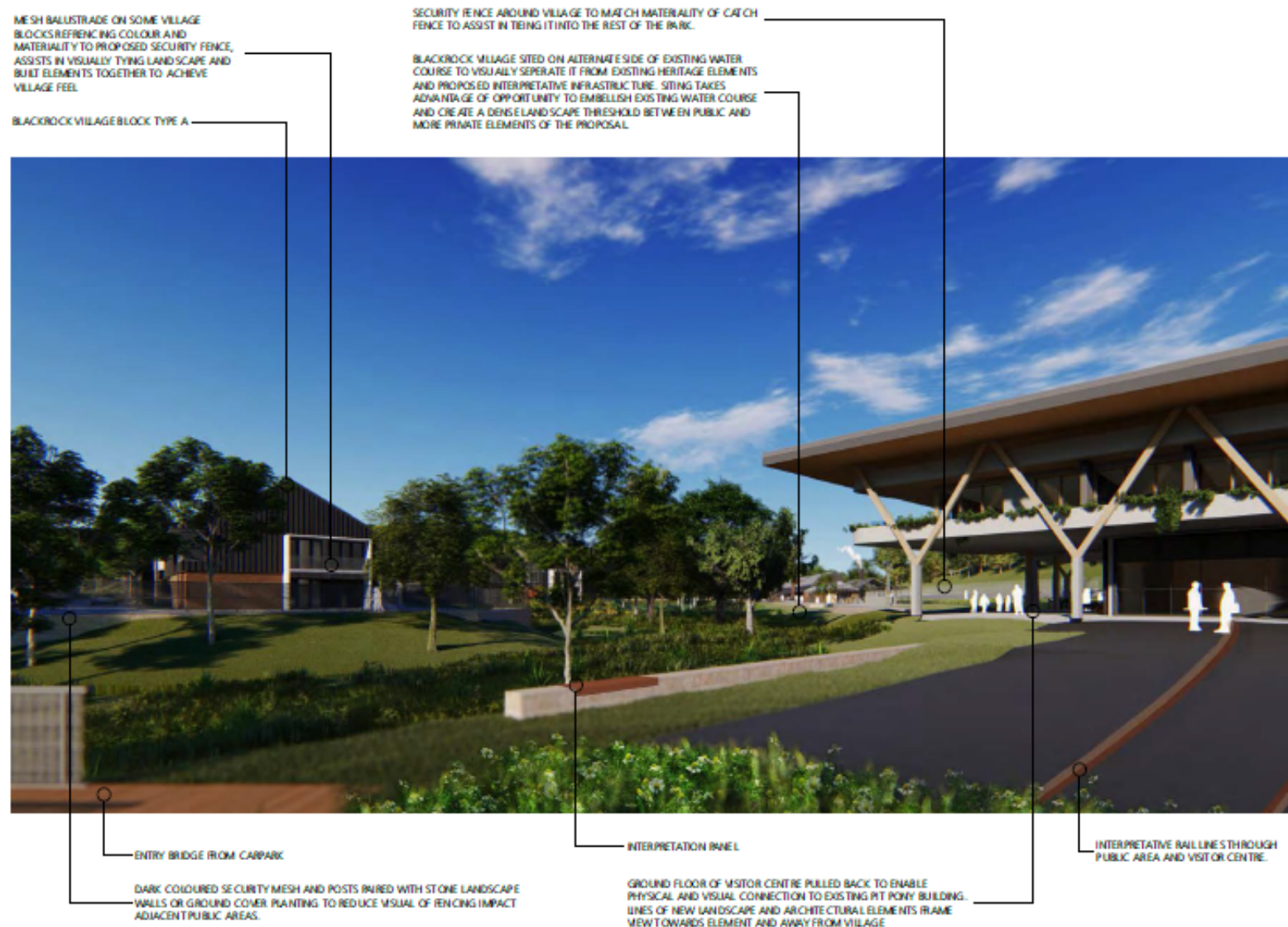




**Figure 13: Perspective showing “BlackRock Village” from main entry road**



**Figure 14: Perspective showing “BlackRock Village” from stables and pit lane**



**Figure 15: Perspective showing “BlackRock Village” and welcome centre**



Additional detail was sought to demonstrate how this area will be recessive/neutral and sympathetic to the overall proposal, without dominating views to the relevant elements of the site. Perspective views have been submitted, illustrating materials and screen planting to reduce potential dominance, which are now considered to have acceptable planning merit.

Conditions of consent are recommended regarding BlackRock Village.

The proposal provides for appropriate interpretation of the former mining site and associated structures whilst being sympathetic to the existing environment. The amended proposal has provided a layout of buildings reflective of previous structures on the site, utilising existing cleared areas and appropriate separation to the existing remaining buildings.

Overall, the adaptive reuse of the colliery, with the improvement in interpretation of the former mining site and associated structures under the amended proposal, is considered a positive outcome and is supported as a way to conserve and manage the heritage items and cultural heritage of the site. While the site is highly constrained, the re-development enables retention of heritage structures, adaptive re-use and enables the public access to this interpretive re-use and adaptation.

### Conservation Management Plan

A full updated Conservation Management Plan (CMP) has been provided for the development which includes policies and strategies for interpretation and conservation of significant fabric. The CMP includes consideration of both European cultural heritage and Aboriginal cultural heritage.

The Conservation Policies set out in the CMP are summarised as follows:

### Role of CMP including Adoption and Review of CMP

- Policy 1: The CMP shall be adopted as the basis for the management of the place.
- Policy 2: The conservation policies contained within CMP shall be reviewed as appropriate and in consultation with Council.

### Retaining significance

- Policy 3: The cultural significance of the former Rhondda Colliery shall be adopted as the basis for the management of the place. Decisions relating to the adaptive reuse and management of the place shall consider the cultural significance of the place through conserving and interpreting significant fabric, cultural landscape and setting.

### Conserving Significant Fabric

- Policy 4: Significant fabric shall be conserved utilising conservation processes appropriate to the assessed level of significance. In particular, the stables and munitions store, which contribute to the cultural significance of the Rhondda Colliery.

### Adaptive-reuse

- Policy 5: The cultural significance of the place shall be interpreted as part of the adaptive reuse.
- Policy 6: The fabric and setting associated with existing structures shall be retained and interpreted as part of the cultural landscape.
- Policy 7: Development shall not adversely affect the cultural significance of the place. It shall be sited so as not to adversely affect the landscape setting, or the setting associated with significant existing structures.

### Landscape and Setting

- Policy 8: The landscape and setting shall be managed and developed as a fundamental part of the cultural significance of the place.
- Policy 9: The layout of the former Rhondda Colliery will be interpreted through landscaping and landscape architecture

### The Archaeological Resource

- Policy 10: Aboriginal objects are protected under the National Parks and Wildlife Act 1979 and will be conserved, managed and interpreted in consultation with the Aboriginal community.

### Non-Aboriginal Archaeological Resources

- Policy 11: Archaeological relics are protected under the Heritage Act 1977 and will be conserved and interpreted.
- Policy 12: Should archaeological relics be identified, the Heritage Division of the Office of Environments and Heritage must be notified under Section 146 of the Heritage Act 1977.

### Qualifications and Experience

- Policy 13: Specialist advice shall be sought for assessing the potential for development or alterations and additions to affect the cultural significance of the place and for conservation advice.

### Interpretation

- Policy 14: Interpretation shall be implemented as part of the adaptive reuse with interpretation also incorporated as part of additional or associated development at the former Rhondda Colliery.

### Implementation

- Policy 15: Development and alterations and additions to significant fabric shall be assessed for compliance with the conservation policies. The conservation policies shall be implemented with appropriate expertise as required.

The CMP also sets out opportunities for interpretation for the development in accordance with the policies identified and details selected interpretation options, which include:

- Landscape interpretation;
- Exhibition;
- Interpretation panels;
- Plan and image reproduction;
- Sculpture; and
- Interpretation walk; and digital interpretation.

Interpretation is included in the architectural and landscape plans for the development with landscape interpretation being a major component.

The Conservation Management Plan has been reviewed by Council's Development Planner – Heritage Focus who advises the document is satisfactory as a guide for future conservation works on site; a condition of consent is proposed in relation to this.



Conditions of consent are recommended regarding implementation of the CMP, heritage interpretation and requirements for a schedule of colours and materials for the development to be approved by Council's Development Planner – Heritage Focus, prior to the issue of a Construction Certificate for the development.

#### Clause 5.10(10) Conservation incentives

The proposed land use is prohibited under the SP1 Special Activities and RU2 Rural Landscape zoned areas of the site, with permissibility within these zones sought under this clause.

Clause 5.10(10) of LEP 2014 provides that *“consent may be granted to development for any purpose of a building/site that is a heritage item or for any purpose on an Aboriginal place of heritage significance, even though the purpose would otherwise not be allowed by this Plan, subject to the following being satisfied/addressed:*

- (a) the conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent, and*
- (b) the proposed development is in accordance with a heritage management document that has been approved by the consent authority, and*
- (c) the consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out, and*
- (d) the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, or the heritage significance of the Aboriginal place of heritage significance, and*
- (e) the proposed development would not have any significant adverse effect on the amenity of the surrounding area.”*

Assessment of the proposal pursuant to Clause 5.10 (10) to assess the significance of the items, the potential impacts and proposed mitigative measures, as well as interpretation of the heritage as relating to the land, has been undertaken

The Conservation Management Plan (CMP) submitted, which includes a Heritage Impact Statement, takes into consideration the multiple layers of heritage and the intent to use Clause 5.10(10) for permissibility purposes. In this regard, the CMP comprises an overarching document that draws together the assessments under the Heritage Impact Statement, the Aboriginal Heritage Impact Assessment and the Archaeological Assessment and provides for an integrated assessment/outcome.

Assessment of the requirements stipulated under clause 5.10 (10) is detailed below:

- (a) the conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent.*
- (b) the proposed development is in accordance with a heritage management document that has been approved by the consent authority.*

Granting of consent will facilitate the conservation of the heritage items (significant fabric and cultural heritage) on site and Aboriginal cultural heritage in accordance with the policies and strategies identified in the Conservation Management Plan (CMP) and illustrated on the architectural and landscape plans for the development.

*(c) the consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out.*

The CMP which will form part of the consent, includes a Schedule of Works and Commitments of conservation and interpretation that will be completed as part of the development.

*(d) the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, or the heritage significance of the Aboriginal place of heritage significance.*

The unique development proposed will not adversely affect the heritage significance of the heritage items on site or their setting as assessed and provides for synergies with the industrial history of the site and interpretation of former built form of the colliery through siting, form and materials of new buildings proposed.

*(e) the proposed development would not have any significant adverse effect on the amenity of the surrounding area.*

Impacts on the surrounding area, particularly regarding acoustic and traffic impacts from activities on site, have been thoroughly assessed and will be appropriately addressed through measures set out in the required Management Plans and conditions of consent. The development will not have a significant adverse effect on the amenity of the surrounding area.

The proposed adaptive use of the heritage site and granting of permissibility for the use subject to the provisions of this clause is supported, on review of the heritage management documents submitted, which include measures for appropriate levels of interpretation and provision of improved public access to the site. The heritage management documents have satisfactorily demonstrated that the conservation of the heritage items being Rhondda Colliery and Rhondda Colliery Railway are facilitated by the adaptive use.

The application of the clause is considered sound and justified in regards to the existing site and proposed development, which will facilitate desirable heritage conservation and interpretation outcomes for the site.

## **Part 7 Additional local provisions**

### **Clause 7.1 Acid Sulfate soils**

The most northern part of the site is mapped as being affected by Class 5 Acid Sulfate Soils. There are no works proposed within the affected area that would be likely to lower the watertable below 1m on adjacent Class 4 land.

Therefore, an Acid Soils Sulfate Management Plan is not required and further consideration in this regard is not required.

### **Clause 7.2 Earthworks**

The development includes cut and fill across the site to accommodate roadways, parking areas, buildings and related infrastructure.

Preliminary engineering plans (Northrop) illustrate cut and/or filling is required to create design levels for the “track”, with most significant areas of filling required in existing water flow paths, which will be provided with culverts to direct water beneath the track.

A slope stability assessment has been submitted by GHD (Ref: 2219847, dated October 2018). The assessment concludes the BlackRock Motor Park is not expected to give rise to unacceptable risks associated with slope stability.

Council engineers advise, with specific engineering design, and due to the relatively remote location of works, the level of cut and fill proposed is satisfactory, subject to recommended conditions of consent.

### Clause 7.3 Flood Planning

The development site is not mapped as being flood prone, however engineering plans for hydrology (Northrop Engineers) submitted for the proposal show that during the 1% AEP critical storm event water is detained on site via the road embankments and culverts, which results in parts of the motor park (including the race track, Blackrock Village, Visitor Centre, welcome centre, Go kart track, Mechanics/Emergency Centre, parts of overnight accommodation and entry point to the site), being inundated by more than 0.5m of water.

Advice from the applicant is that filling and floor levels of buildings proposed for the development, have accounted for these potential impacts and that ongoing track maintenance in regard to stormwater inundation has also been taken into account in the engineering design.

Council's engineers are satisfied, subject to conditions, the proposed floor heights will meet required flood clearance requirements including 0.5m freeboard.

### Clause 7.7 Development on sensitive Aboriginal landscape areas

The site is identified as being affected by Sensitive Aboriginal Landscape under mapping of LEP 2014

An Aboriginal Heritage Due Diligence Assessment is included within the Conservation Management Plan submitted. Assessment of the development in this regard has been undertaken.

An archaeological survey identified a low density Aboriginal artefact distribution (site) near the western boundary of the development site. Additionally, the report identifies areas as being of potential aboriginal archaeological sensitivity, within the western and south-eastern portions of the site.

The development will not affect the artefact site or areas of Aboriginal archaeological sensitivity as they form part of a wider ecological buffer between the development and adjacent properties. Given substantial ground disturbance from past mining activities, the report advises the archaeological potential of the development area and identified risk of harm to Aboriginal objects is low. Standard conditions of consent are recommended to ensure any items that may be found during construction are appropriately managed.

### Clause 7.21 Essential Services

Essential services required for the development include:

- Supply of water;
- Supply of electricity;
- disposal and management of sewage;
- Stormwater drainage or on-site conservation;
- Suitable vehicular access.

Electricity supply and vehicular access to the site exists. Further development/upgrading of the electricity supply and vehicular access is proposed, and stormwater drainage works.

Water supply and sewage disposal infrastructure is not currently available to the site. Under the amended development, connection to existing Hunter Water reticulated services is proposed.

Preliminary servicing advice from Hunter Water Corporation, based on knowledge of system performance and other potential development in the area, anticipates the development will place an additional demand of approximately 55 Equivalent Tenements (ET) on the water supply and 55 ET on the wastewater system. The servicing advice identifies water assets are available on Wakefield Road and wastewater connection available which drains to Barnsley 2 Wastewater Pumping Station.

Council's Development Engineer has advised the amended proposal for provision of reticulated water to the development site is supported along with water harvesting for water reuse on site for non-potable use.

A condition of consent is recommended to ensure that water quality treatment devices are delivered with the development to meet Council's pollutant reduction targets.

**79C(1)(a)(ii) the provisions of any draft EPI**

There are no draft environmental planning instruments relevant to this development proposal.

## **79C(1)(a)(iii) the provisions of any Development Control Plan (DCP)**

### ***Development Control Plan 2014***

The following Parts of Development Control Plan 2014 (DCP 2014) are considered relevant to the development:

#### **1 – Introduction**

##### *Section 1.15 – Development Notification Requirements*

The application has been notified in accordance with the provisions of section 1.15. In excess of 100 properties were notified encompassing surrounding properties, the township of Wakefield and additional submitters outside of the locality who had raised concerns in relation to the development (as originally notified).

The dates for notification of the original application were:

5 September 2017 to 6 October 2017

The dates for notification of the amended application (which underwent a wider notification in response to submitter concerns) were:

25 July 2018 to 10 August 2018

Over the two notification periods, a total of 99 submissions were received from different authors (including 3 petitions and 9 in support). The main issues raised in the submissions include:

- Noise
- Air pollution
- No benefit to local community
- Impact on safety of local roads for vehicles, cyclists and pedestrians (Great North Walk)
- Increased traffic
- Safety and security
- Ecological impacts
- Impact on rural character
- Consistency with zone objectives

Attachment F provides a table of responses to the matters raised.

### **Controls for Land Use Zones**

There are no specific controls for land zoned SP1 – *Special Uses* under DCP 2017. Part 1 Introduction Section 1.7 Lake Macquarie DCP 2014 Structure identifies that Part 5 – *Development in Industrial, Business Park and Infrastructure Zones* is applicable to the SP1 zone, as the majority of building works are contained within this area of the site, discussion of relevant DCP controls focusses on this part of the plan.

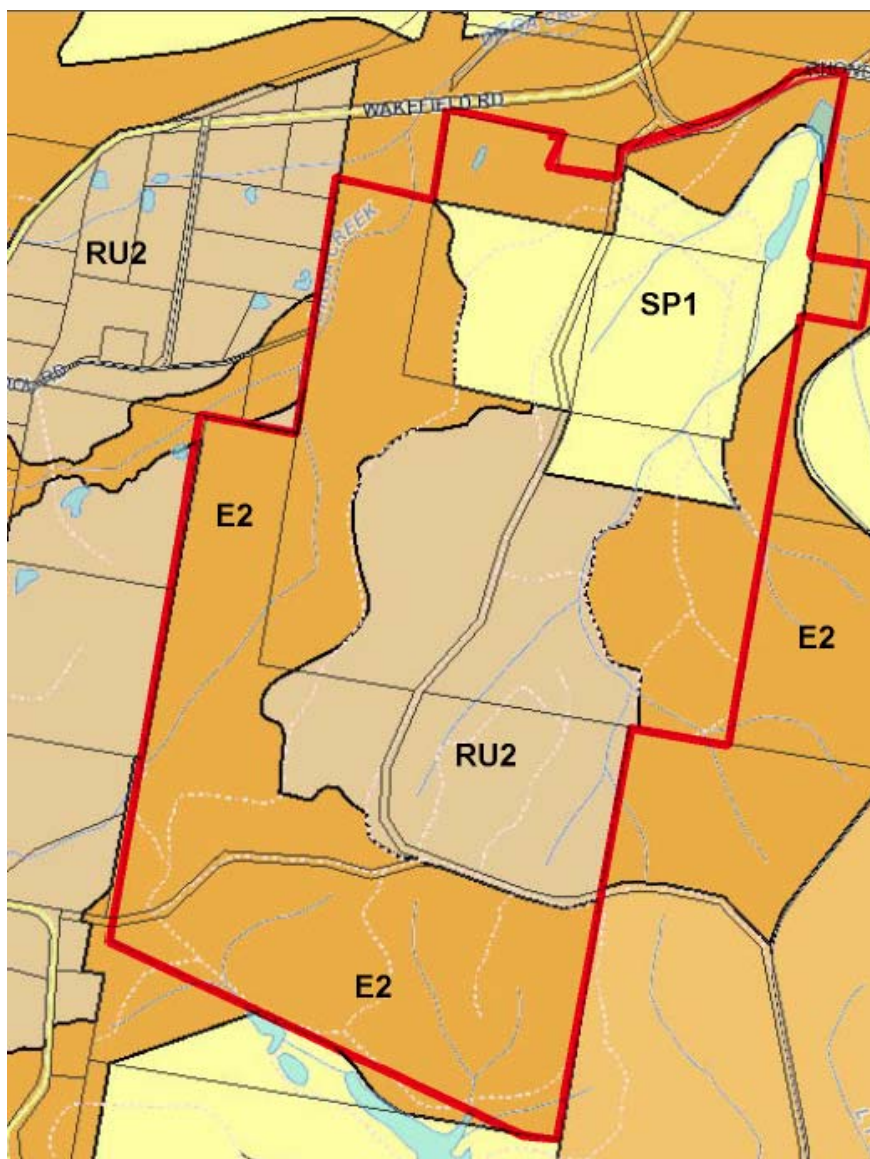
The aims for development in industrial, business park and infrastructure zones are:

1. *To provide employment opportunities within the Lake Macquarie Local Government Area.*
2. *To encourage high quality development that improves the amenity and aesthetics of industrial, business park and infrastructure zoned land.*



3. *To encourage development that will support workers in their day-to-day needs, and provide a pleasant environment for workers and the broader community.*
4. *To ensure that foreshore development contributes to the visual amenity of the area, and maximises public access to the foreshore.*
5. *To ensure that buildings promote innovation in design, energy efficiency and water reuse.*
6. *To promote landscaping that retains existing vegetation.*
7. *To ensure development incorporates safe, effective, and convenient provision for servicing, parking, pedestrian, and vehicular access.*
8. *To minimise waste and ensure rehabilitation and control of any contaminated sites.*
9. *Minimise the impact of industrial development on adjoining residential zones.*

The development is consistent with the aims nominated for industrial, business park and infrastructure zoned land, with the development comprising a high quality innovative design for a facility that will provide for employment opportunities in the area. As detailed in other parts of the report, existing vegetation will be retained and impacts on nearby residential areas minimised.



**Figure 16: Respective zoning of the land**

Relevant sections under other parts of DCP 2014, applicable to the site and proposal have been taken into consideration in the assessment and addressed later in the report, under:

- Part 2 – Development in Rural Zones
- Part 7 – Development in Environmental Protection Zones

## **Part 5 – Development in Industrial, Business Park and Infrastructure Zones**

### **2 CONTEXT AND SETTINGS**

The clauses relevant to the development are discussed below:

#### **2.1 Site Analysis**

A site analysis plan has been submitted for the proposal, which appropriately identifies the existing site conditions, opportunities and constraints.

The proposal has been developed having regard to the site analysis undertaken and in particular consideration of mine subsidence constraints.

#### **2.2 Scenic Values**

There will be no visual impact within the locality resulting from the development, as the majority of the facilities/built form are well setback from the site boundaries and located within a valley (see photos of site below). A ridgeline that runs north-east to south-west through the site prevents visual impacts to adjoining rural residential properties to the west.



**Figure 17: Existing setting looking from stables back towards Rhondda Road**

Lake Macquarie Scenic Management Guidelines 2013 identifies the applicable Scenic Management Zone 11 (hinterland, limited settlement). The development is consistent with the applicable guidelines.



**Figure 18: Existing internal road with vegetated ridge in background**

A Visual Impact Assessment has not been required for the proposal, having considered the topography of the site and location of buildings and track, with clearing of trees and vegetation proposed not extending to the ridgeline.

### 2.3 Geotechnical

A slope stability assessment has been submitted (GHD, October 2018). The assessment concludes the BlackRock Motor Park is not expected to give rise to unacceptable risks associated with slope stability provided certain recommendations occur.

A condition of consent requiring compliance with the report recommendations, and those of the submitted Preliminary Mine Subsidence Assessment (GHD, August 2017) is recommended.

### 2.4 Mine Subsidence

The development is within a Mine Subsidence area and accordingly approval from Subsidence Advisory NSW has been obtained.

### 2.5 Contaminated Land

The development site comprises a former colliery and associated activities.

Previous contaminated land assessments have been carried out for the site, with confirmation provided from the contaminated site consultant that the contaminated status of the land remains unchanged, with no illegal dumping or other activities having occurred which may have contaminated the area, and that it is acceptable for its intended use.

A condition of consent is recommended that a soil management plan be prepared prior to redevelopment to ensure soils are managed appropriately in accordance with the submitted Contamination Review (GHD, 7 February 2018).

## 1.6 Acid Sulfate Soils

The development will not be affected by acid sulfate soils. Further detail is provided under LMLEP 2014 considerations.

## 2.7 Stormwater Management

A Stormwater Management Plan has been submitted for the development which demonstrates containment of run-off from tracks, skid pan and associated buildings.

- The proposal by Northrop includes the following measures to treat the stormwater quality for the development:
  - Vegetated and bio-filtration swales
  - Grassed buffer zones
  - Rainwater reuse tanks
  - Irrigation pond
- Oil spills are proposed to be managed by the following:
  - Marshall stations to be fitted with oil spill kits
  - Hydrodynamic oil separator in the pit area fitted with alarm to alert maintenance personnel of high levels of oil
- The stormwater report by Northrop indicates from a flooding perspective:
  - There is no significant flood impact in the critical 1% AEP in neighbouring properties
  - Proposed buildings to be sited 500mm above the 1% AEP critical flood event
  - Proposed roads are able to be accessed and egressed in the 10% critical flood event and an emergency egress route for the 1% AEP event

Northrop Consulting Engineers have responded to the request for stormwater modelling to attenuate flows to pre-developed rates. The basic premise behind Northrop's response is not to provide a stormwater detention facility, rather they rely on the introduction of road embankments and culvert crossings to provide stormwater storage.

Council is accepting of the proposed culverts and road embankments acting as stormwater control and detention for the development. Conditions of consent are recommended in regards to potential flooding of structures in the development and how inundation of the race track will be managed.

## 2.10 Natural Water Systems

The application has been assessed for compliance against the requirements under this clause and Council's *Protection of Watercourses and Drainage Channels Policy* in relation to the potential impacts of the development on natural water systems.



A number of watercourses traverse the site including a first order watercourse that flows through the north-west of the site, and a third order watercourse that flows from the south to the north-east corner of the site. The two major watercourses and their associated riparian zones have been mapped on the Masterplan and Landscape Plan submitted for the proposal.



**Figure 19: Creeks and watercourses on site**

A concept Vegetation Management Plan (VMP) has been submitted which provides for riparian vegetation offsets and enhancements. Potential impacts on existing natural water systems are considered acceptable, subject to the imposition of a condition of consent recommended by Council's Development Planner – Flora & Fauna and the Department of Primary Industries – Water, requirements (which were outstanding at the time of writing the report).

## 2.11 Bushfire

The site is identified as bushfire prone land, as such the proposal has been referred to NSW Rural Fire Service as integrated development, for Special Fire Protection Purpose (Tourist and Visitor Accommodation).

The requirements of the RFS are included in the recommended conditions to the determination.

## 2.12 Flora and Fauna

The site provides habitat to a number of threatened species and significant habitat features (foraging habitat, habitat hollows, corridors and riparian habitat) as detailed in the submitted ecological reports.

The application as amended, in response to Council's request to amend the development area to decrease impacts for threatened species and their habitats on site, better utilises existing tracks and subsequently proposes to clear or modify (to asset protection zone standard) approximately 14.68 ha of native vegetation (see Table below). Approximately 190 ha of native vegetation would be retained over the site and represents a reduction in clearing from 19.58 ha originally proposed.

### **Summary of vegetation communities proposed to be retained / removed**

<b>Vegetation Community</b>	<b>Proposed to be removed (ha)</b>	<b>Proposed to be retained (ha)</b>
MU 5 alluvial tall moist forest	0.67	4.02
MU 15 coastal foothills spotted gum ironbark forest	5.2	30.28
MU 30e coastal plains stingybark apple forest	5.53	30.68
MU 30f Freemans peppermint apple bloodwood forest	0.35	7.31
MU 30h Sugarloaf lowlands bloodwood-apple forest	1.2	49.57
MU 37 swamp mahogany paperbark forest- characteristic of swamp sclerophyll forest, an endangered ecological community listed on the BC/TSC Act.	0.13	18.66
MU30b Sugarloaf uplands bloodwood-apple forest	0	10.54
MU 38a floodplain redgum rough-barked apple forest- characteristic of river-flat eucalypt forest, an endangered ecological community listed on the TSC Act.	0	23.55
Rehabilitation	0.58	14.39
Dam	0.32	0.61
Regrowth	0.7	0.87
<b>TOTAL</b>	<b>14.68 ha</b>	<b>190.48 ha</b>

The site provides habitat to a number of threatened species and significant habitat features (foraging habitat, habitat hollows, corridors and riparian habitat), with assessment of the proposal by Council's Development Planner – Flora and Fauna, concluding the application is considered to reasonably address flora and fauna requirements and no objection is raised, subject to the imposition of recommended consent conditions.

A summary of the assessment follows:

- A Flora and Fauna Assessment (MJD Environments) has been submitted which identifies and assesses the impacts of the development, including cumulative, direct and indirect impacts and those of the required asset protection zones (APZs) and provision of services and infrastructure.
- Surveys of habitat trees have been undertaken and a breakdown of hollow sizes within habitat trees have been provided as requested. One hundred and fifty-nine hollow-bearing trees were identified across the site; 15 are nominated for removal (five small, 12 medium and 5 large hollows); equating to a loss of 9.4 % of the mapped hollow-bearing trees over the site. Several of these trees may contain den trees for squirrel glider, however this level of retention of hollow-bearing trees complies with recommendations in Council's Squirrel Glider Planning and Management Guidelines.
- The development had been amended during the development assessment process to consolidate and locate the buildings, track and facilities into existing cleared areas. Whilst parts of APZs for buildings encroach into E2 zoned land adjacent to the mapped northeast-southwest native vegetation corridor, under the amended design, an increased amount of E2 zoned land is being protected for its high ecological value and the retained 30m width of unmanaged land in the corridor complies with minimum width recommendations within the Lake Macquarie Squirrel Glider Planning and Management Guidelines.
- Council's Squirrel Glider Planning and Management Guidelines state that if development of squirrel glider habitat cannot be avoided, a suitable biodiversity offset is to be provided to compensate for the impact in perpetuity. The clearing of 14.68 ha of squirrel glider habitat, requires 29.36 ha of squirrel glider habitat as a biodiversity offset. Details regarding this required offset have been provided (RFI Flora and Fauna Response, MJD 24 October 2018) which contains vegetation communities suitable as squirrel glider habitat and is acceptable as a biodiversity offset. Specific conditions of consent are proposed applying to the offset requirements for the Squirrel Glider habitat.
- The results of the submitted Ecological Review, including additional targeted surveys, impact assessment and literature review of noise impact on fauna, concluded no significant effect is likely on local populations of threatened fauna either present, or likely to reside within the site and study area. With the benefit of the additional targeted surveys, additional impact assessment, review of noise impact to fauna, and an amended development design which reduces impacts to threatened species habitat, this conclusion is supported.
- Although the proposed car parking area is already mostly cleared, the resulting development will require some vegetation clearing in the E2 zone, it is acknowledged the additional clearing required for the APZ to the parking building is limited and other options to locate the parking area to another cleared area on site are not available.
- Development as proposed will result in treatment of some riparian vegetated zones as asset protection zones. A Preliminary Vegetation Management Plan has been provided (Moir 29 October 2018). The preliminary VMP details which watercourses and associated riparian zones are to be asset protection zones and where offset riparian planting areas are proposed.



- Clarification regarding ecological impacts associated with the 4WD experience has been provided, as requested. No vegetation clearing is required. The intended use of the 4WD experience is for low speed demonstration events; one event per month is proposed. Given this activity occurs within land zoned E2 that contains watercourses and riparian vegetation, a condition of consent is recommending limiting the frequency of use of this area and to dry conditions only.
- The development as amended is designed to minimise impacts on native flora and fauna, with significant flora and fauna species, vegetation communities and habitat protected where possible through appropriate site planning, design and commitments under the VMP.

To support the biodiversity outcomes on the site, conditions of consent are recommended by Councils Development Planner – Flora & Fauna, which are included in the recommended conditions to the determination including:

*Hollow Bearing Tree Removal*

*Referencing timing and methods of removal. Compensatory nest boxes to be installed over the site.*

*Biodiversity Offset*

*29.36 ha to be secured and managed as biodiversity offset.*

*Vegetation and Fauna Management Plan*

*Details amendments and requirements of the Vegetation Management Plan and includes compensatory works required through a Corridor Strategy, to strengthen and consolidate other sections of the Native Vegetation Corridor and E2 land onsite.*

*Vegetation and Fauna Management Plan (Offset Area)*

*Provides requirements specific to the required offset area.*

*Environmental Impact of 4WD Experience –*

*Restricts the 4WD experience to one event per month, in dry conditions only.*

## 2.13 Preservation of Trees & Vegetation

Council's Tree Management Officer advises most trees throughout the site appear to be mostly regrowth remnant species, with a notable absence of any very large or over-mature old growth specimens. Assessment of potential impacts on existing trees and vegetation on the site has been undertaken and appropriate conditions recommended, as discussed above.

## 2.14 European Heritage

The development proposes an appropriate adaptive reuse of a heavily constrained site. The use enables retention of existing buildings and will enable economic development of former mining land. This matter is addressed in detail under LEP 2014 clause 5.10 *Heritage Conservation*. The economic reuse of former mining land is a preferred and desired strategy for land previously used for employment generating activities.



### 2.15 Aboriginal Heritage

An Aboriginal Heritage Due Diligence Assessment has been included within the Conservation Management Plan submitted for the proposed development.

An Aboriginal site has been identified during survey and the report identifies areas as being of potential aboriginal archaeological sensitivity.

The development would not affect the artefact site or areas of Aboriginal archaeological sensitivity as they form part of a wider ecological buffer between the development and adjacent properties. Also, given substantial ground disturbance, the report advises the archaeological potential of the development area and identified risk of harm to Aboriginal objects is low.

The report has been reviewed and deemed adequate for the purposes of assessing Aboriginal Heritage in relation to the proposal. The application was referred to the Aboriginal Community Groups, with no comments regarding the development being received.

### 2.17 Social Impact

A Social Impact Assessment (SIA) has been provided for the development, which has been reviewed by Council's Community Planner and assessment undertaken of the likely social impacts of the proposal on both the local community (Wakefield) and wider local government area (LGA).

It is acknowledged the proposal presents opportunities of social benefit in regards to the provision of public recreation facilities in the locality, as well as providing a level of public access to the heritage significance of the site and existing remaining structures, as enhanced by the measures proposed under the Conservation Management Plan and overall design and layout of the facility.

Council's Social Planner has raised concern with potential adverse acoustic impacts on the local rural community arising from the development (which has also been raised in various submissions), with any impacts in this regard required to be adequately addressed and minimised. Noise Impact Assessments have been submitted for the development. The proposal was amended during assessment of the application to further address potential acoustic impacts, including a reduction in the proposed operating hours of the track, which is considered to reduce the potentially negative social impacts of noise on the local community.

Acoustic impacts of the development have been assessed in detail and discussed below under *4.5 Noise and vibration*.

### 2.18 Economic Impact

An Economic Impact Assessment (EIA) has been provided for the development, which has been reviewed by Council's Integrated Planning department and assessment undertaken of the likely contribution to the economic growth of the LGA, support of existing development, the creation of employment opportunities and other economic benefits.

There is a need to create greater economic diversity in Lake Macquarie and more local jobs. The construction and operation of the development is likely to create positive impacts on both total output and employment for Lake Macquarie and the region. Specific economic benefits of the proposed development are summarised below:

Economic Impact (Construction) - There are estimated construction costs of approximately \$30m over two years. The economic impact of constructing the facility will be beneficial for Lake Macquarie and the region.

Ongoing Employment – It is anticipated 44 full time onsite jobs (management, driving, maintenance, security, hospitality) will result from the development, estimated to be worth \$5.2m of wages. The EIA conservatively estimates that 50% of employees will be residents living in Lake Macquarie.

Tourism - The site is expected to attract 25,000 visitors annually, largely from outside the LGA. Additional visitation to Lake Macquarie is expected to generate flow-on spending, with subsequent multiplier effects.

Public infrastructure - The proposal will result in the upgrade of site access / intersection from Rhondda Road with an estimated cost of \$338,526.

Economic diversity - The proposal will increase the economic base for Lake Macquarie, being a unique development that will help to increase economic diversity and resilience. The facility (BlackRock Motor Park) will be marketed as 'Australia's first dedicated recreation resort park for motoring enthusiasts'.

### 3 DEVELOPMENT DESIGN

The design of the development comprises an integrated and comprehensive design approach in regard to the architecture, landscape design and heritage considerations. The development, contained within a former mine site is isolated and suitably screened from adjoining development by existing typography and vegetation.

The clauses relevant to the development are discussed below:

#### 3.3 Building Bulk

A large portion of the buildings (given their use and heritage interpretation) within the development present with significant bulk and scale appropriate to the development type and the site, however, are also set well back from property boundaries and within a landscaped setting.

The only buildings that will be able to be viewed from the frontage of the site on Rhondda Road or adjacent properties (not any existing residential properties in the locality) will be the Site Maintenance/Rehabilitation shed within the north-west area of the site which would be partially visible from the road and the Parking and BlackRock Village buildings located within the north-east area of the site, visible from the adjacent Metromix Quarry site.

The buildings in the development comprise building heights and scale that relate to the typography and existing site conditions, are of a high architectural quality, well-articulated and set out to provide visual relief through building separation. The built form is appropriate for the site and context.

#### 3.6 Landscape Design

Landscape Master Plans (Moir Landscape Architecture) have been provided for the development, which provide a broad landscape proposal as a framework to support landscaping for the development with the underlying aims to enhance the cultural significance of the site, respond to existing site conditions and provide a high quality setting for the recreation facility.

Council's Landscape Architect has reviewed the design and is supportive of the overall plan which incorporates the extent of the former rail corridor as a continuous linking element throughout the site over which site features are laid and locates resort and cabin buildings in existing cleared areas to minimise bushland disturbance.

The planting palette and low grounded entry signage is supported and the landscape architecture response considered satisfactorily aligned with the heritage response to reflect the heritage context and aid in the interpretation outlined in the Conservation Management Plan.

Conditions of consent requiring compliance with the landscape plans and recommendations of Council's Landscape Architect are recommended.

### 3.10 Fencing

The main entry fencing (wall) and associated signage comprises the "BlackRock Motor Park" logo of polished chrome and corten lettering on the face of a gabion or dry-stacked granite/bluestone wall. The entry wall will reach a height of 4m and incorporate palisade steel entry gates, which will be visible from Rhondda Road. Existing chain-wire security boundary fencing will be retained for other site boundaries

The design, materials and heights of the entry feature wall is not considered to comprise a hostile design or result in any unacceptable dominance when viewed from Rhondda Road and is acceptable.

### 3.11 Traffic and Transport

The site is accessed from Wakefield Road to the south (connection with the M1 Pacific Motorway) with effective connection for traffic from surrounding regions, from the east via Teralba to Rhondda Road or from the north or south along Wakefield Road.

A Traffic Impact Statement (SECA Solution) has been provided and reviewed by Council's Traffic Engineer and assessment undertaken of likely impacts of the proposal in regards to increased traffic generation in the locality and peak hour impacts on intersections.

The report has had regard to the uses proposed on site and a number of potential operating scenarios to assess the projected number of employees and visitors utilising the site. The traffic assessment allowed for a worst-case trip generation of 120 vehicle trips inbound and 120 trips outbound occurring concurrently during the cross-over of morning and afternoon sessions. Consideration was also given to a busiest scenario with a single function on any given day with two driving sessions, seeing traffic flows in the order of 300 vehicle movements for the day (150 inbound and 150 outbound). The impact of the additional traffic generated by the development was assessed to have minimal impact upon the key intersections at the entry to the development and the intersection of Rhondda and Wakefield Roads.

The proposed upgrade of the intersection for access to the main entry point (to be suitable for increased usage and heavy vehicles) includes the provision of a channelized right turn lane for vehicles entering the site from the west which is considered to be appropriate by Council's Traffic Engineer. Further detail of this turning lane and clearing of vegetation to provide for sufficient sight lines to the west have been requested and submitted.

A condition of consent is recommended for the site access intersection works and requirements that heavy vehicles not be permitted to turn right out of the site to travel

through Teralba, having regard to the steep decline at the suburb perimeter which is considered difficult for large articulated vehicles to negotiate and potential noise impacts resulting for residents.

### 3.12 Design of Parking and Service Areas

The design of parking and service areas for the development are consistent with the requirements of this section of DCP 2014, with the engineering plans illustrating that the site can be accessed by a B-double truck (to parking, skid pan and pit lane areas) and by a fire truck to all main areas of the facility.

Council engineers advise the turning paths submitted, indicate the internal roads are accommodating of the largest expected vehicles at the site and all proposed parking and access ways would be capable of compliance with AS2890.1. Conditions of consent are recommended.

### 3.13 – 3.14 Bike Parking/Facilities and Motor Bike Parking

There is sufficient capacity within the parking areas and facilities proposed for the site to accommodate any demand for motor bike parking and bicycle parking.

A condition of consent is recommended stipulating bicycle parking (for staff and potentially internal site use) requirements for the development.

### 3.15 Car Parking Rates

Car parking rates are not specified for the use under DCP 2014. The required on-site parking provision has been assessed with regard to the intended use. Car parking rates stipulated under DCP 2014 for accommodation, function centres and disability parking have been taken into consideration as a guide.

Parking for the development to be contained within the site as follows:

General parking area - 146 spaces (including 8 disabled spaces)

Parking adjacent to lodge building – 23 spaces

Cabin accommodation (one space per cabin) – 16 spaces

Total: 185 spaces

In addition to this, there is capacity within the parking building (two levels of stacked parking located in the main carpark) for 32 vehicles and in excess of 50 vehicles can be accommodated within the pit lane pavilion. There is also capacity for overflow parking to be accommodated on the skid pan.

It is noted should the accommodation provision for the development be at full capacity overnight, a total of 73 parking spaces would be required for guests. There is also a high level of cross use of facilities within the development reducing potential parking demand overall.

On-site parking provision proposed is considered sufficient to support the intended use and operational scenarios for the development (capable of compliance with AS2890.1 and AS2890.6).

### 3.16 Non-Discriminatory Access

A Disability Access Audit (Philip Chun, 24 August 2017) has been submitted and reviewed by Council's Community Planner (Senior/Disabled Access) who has raised no objection to the development. The development provides for non-discriminatory access, and conditions of consent are recommended.

### 3.17 Safety & Security

A Crime Risk Assessment Report (Barr Property & Planning, July 2017) has been submitted and reviewed by Council's Community Planner (Youth & Safety) who advises the report identifies and adequately addresses areas of crime risk associated with the development and identifies a number of strategies to mitigate risk and ensure the proposal is designed and constructed in accordance with CPTED principles.

The Security Management Plan recommended for the development by the report is required by condition to be incorporated into the required Operational Management Plan for the development.

### 3.18 Cut & Fill

The development includes cut and fill across the site to accommodate roadways, parking areas, buildings and related infrastructure.

Council's engineers have reviewed the cut and fill proposed and raise no objection to the works. Cut and fill is discussed in detail under LMLEP 2014, *Clause 7.2 Earthworks*.

## 4 OPERATIONAL REQUIREMENTS

### 4.1 – 4.2 Demolition & Construction Waste Management and Waste Management

A satisfactory Site Waste Management and Minimisation Plan has been submitted, which details construction waste management and ongoing operational waste management measures.

A dedicated waste storage area (bin compound) is illustrated on the plans adjacent to the parking building within the main carpark. The site will be privately serviced by a waste contractor.

Conditions of consent are recommended.

### 4.3 On-Site Sewerage Management

Reticulated sewer is not currently provided to the site, with the development (as amended) proposing to undertake connection to Hunter Water Infrastructure, which is considered to be appropriate for the development and site constraints.

Preliminary servicing advice from Hunter Water Corporation has been sought and advice from the applicant is that connection would be the preferred option. Conditions of consent requiring connection to HWC reticulated service are recommended.

### 4.4 Liquid Trade Waste & Chemical Storage

Liquid and trade waste generated by the development will be handled on site in accordance



with applicable regulations and standard practice. Oil spill kits will be provided at Marshall stations on site and a hydrodynamic oil separator provided in the pit area fitted with an alarm to alert maintenance personnel of high levels of oil.

Conditions of consent are recommended, including a requirement for bunding and spill management to be provided in areas where chemicals are stored in bulk form or work areas where spillages are likely to occur.

#### 4.5 Erosion & Sediment Control

A Preliminary Engineering Design Report (Northrop) has been submitted and reviewed by Council's Erosion and Sediment Control Officer, with the site considered high risk due to slope, soils, area of disturbance and waterfront lands.

Council's Erosion and Sediment Control Officer advised the concept information submitted is adequate, with recommended conditions of consent, requiring an Erosion and Sediment Control Plan (ESCP) to be submitted prior to the issue of a Construction Certificate for the development.

#### 4.6 Air Quality

Council's Sustainability section has reviewed the documentation submitted, having regard to the *National Environment Protection (Ambient Air Quality) Measure, Protection of the Environment Operations Act* (and regulations), and Council's *Development Control Plan*.

The main pollutants of concern for car tracks is deposited dust (from unsealed roads and car wear and tear); and particulate and gaseous exhaust emissions (particulate matter of 2.5 microns in diameter [PM2.5 - fine particles], PM10 - coarse particles, carbon monoxide, oxides of nitrogen, sulphur dioxide, and total volatile organic compounds). However, having regard to the particular development, resultant air pollution impacts are likely to be limited to neighbouring sensitive receptors, given:

- Deposited Dust - the use of sealed roads, a heavily vegetated site, and from a cumulative perspective - being within the Teralba mining cluster.
- Exhaust Emissions - that vehicle use will be sporadic, the site is heavily vegetated and elevated, and the high likelihood that emissions will be rapidly diluted in the airshed.

A requirement for recording of complaints received in regards to emissions, pollution or air quality, is recommended in a condition of consent to be included in the Operational Management Plan for the facility.

#### 4.7 Noise and Vibration

Assessment of the proposal has been undertaken in regard to potential adverse impacts to the amenity of neighbouring properties and their occupants and the short term occupants of the accommodation on site.

A Noise Impact Assessment (RAPT Consulting, July 2018) has been submitted with the amended proposal which has been reviewed and considered to adequately address Council's concern in relation to potential acoustic impacts resulting from the development.

The report proposes additional strategies to incorporate best management practices, which includes the adoption of particular operational procedures to manage, mitigate and minimise noise, which includes:

- “Corporate Days” are expected to consist of low noise road vehicles
- “BlackRock Experience Days” will be controlled by BlackRock management and will ensure vehicles are muffled to low road noise level
- “Member Days” and “Track Days” are expected to manage low and high noise vehicles to minimise adverse noise impact
- On-going noise monitoring is planned on-site to monitor noise levels from operations.

It is acknowledged, given the nature of the development, that there would be resultant acoustic impacts, which require feasible and reasonable noise mitigation strategies to address. Strategies have been discussed in the Noise Impact Assessments submitted for the development.

The primary strategy proposed is for vehicles to be tested (via a “rolling road”) for noise levels prior to entering the track and resultant limit on the number of cars allowed on the track at any one time to ensure that acoustic levels are maintained. Should the noise levels from vehicles proposing to utilise the track result in limits on numbers for activities, a financial “noise penalty” will be applied. Places for track activities would also be limited and all noise generating activities from vehicles would be limited to track operating hours.

Different activity scenarios have been modelled to demonstrate how the site could achieve compliance with noise levels, which forms the structure of the draft Noise Management Plan submitted.

Procedures are proposed to be implemented for all proposed operational scenarios to maintain site noise levels to below the operational noise criterion, which will be calibrated to the specific site and conditions. The calibration of the Noise Management System will require a process of attended and unattended noise monitoring as several locations in order to match noise predictions to measured levels.

Council has sought independent third party advice from an acoustic consultant (RCA Acoustics), who have conducted an independent noise review of the submitted acoustic reports. RCA found the day time operational noise criteria was determined in accordance with the Noise Policy for Industry 2017. The consultant advises:

*“The noise modelling results presented in the RAPT CONSULTING report (October 2018) demonstrates an approach to complying with all proposed operational scenarios. The procedure outlined in the Noise Management Plan (Draft 1) is sophisticated and should allow tight control over track noise emissions if correctly calibrated. Provided the Consent Conditions require the proposed Noise Management Plan be followed as stated, operational noise criteria will be met at residential receivers.”*

The independent consultant notes that whilst the RAPT report has not explicitly accounted for potential wind gradient profiles, noise modelling was conducted using the ISO 9613 algorithm (implements a source to receiver wind), which typically produces a conservative result. Council is satisfied that the RAPT report (October 2018) and independent acoustic advice has adequately addressed concerns raised over the assessment of the application in regards to acoustic impacts resulting from the development.

A condition of consent is recommended that a final Noise Management Plan is required for the development which outlines an on-site testing regime (as advised in Draft NMP) to ensure that vehicles accessing the track events will comply with the sound power level required by the applicant’s acoustic consultant in the report, as well as complaints handling procedures, record keeping and ongoing monitoring.

A condition of consent is also recommended for hours of operation for any noise generating activities on the track or skid pan to be limited to 9:00am to 6:00 pm (summer) and 9:00 to 5:00pm (winter), seven days per week. No use of the track or skid pan on Good Friday, Easter Sunday, Anzac Day, Christmas Day and Boxing Day.

Sufficient consideration has been given to internal comfort levels of villa accommodation, resort lodge facilities, office, training rooms and café areas in accordance with AS/NZS 2107 for persons using these buildings which may be affected by the intrusive noise from the motor sports activities.

Construction site noise and vibration has not at this stage has not been addressed by the acoustic consultant, and a condition of consent requiring a Construction Management Plan to include details of measures proposed to minimise impacts is recommended.

### Developer Contributions

Developer contributions totalling \$2,702.35 (contributions are subject to indexation) are applicable to the proposed development as calculated under the 2015 Glendale Plan.

It is noted the site does not fall in a traffic catchment and the calculation is based on numbers of predicted workers as advised in the Economic Impact Statement provided by the applicant.

## **Part 2 – Development Rural Zones**

The development within the rural zoned part of the site will comprise provision of part of the track only, with development consistent with the relevant aims for development in rural zones in that the amenity of the rural area and natural landscape character will be maintained and will provide for orderly economic development which maintains the viability of the land.

The clauses relevant to the development under this part of DCP 2014 have been addressed under Part 5 – *Development in Industrial, Business Park and Infrastructure Zones*.

There are no other additional clauses specific to Part 2 of DCP 2014.

## **Part 7 – Development in Environmental Protection Zones**

The development within the Environmental Protection zoned part of the site will comprise provision of the general parking area and parking building, the site rehabilitation and maintenance building and the south-eastern “loop” of the track (which falls within the heritage affectation area of the site).

Permissibility of these elements of the development have been discussed previously in this report and the development assessed as being consistent with the relevant aims for development in Environment Protection zones in that the amenity of the natural landscape will be maintained overall, with the development designed (and further amended through the development assessment) to effectively integrate with environmental and conservation uses.

The development will result in the clearing or modifying to asset protection zone standard, approximately 14.68 ha of native vegetation, with approximately 190 ha of native vegetation retained over the site.

The site has been subject to rehabilitation in accordance with obligations under the mining lease since the cessation of mining operations. The retained vegetation will be protected and a specific area in the north-western portion of the site provided as an offset area in accordance with Lake Macquarie Squirrel Glider Planning and Management Guidelines. The amenity and integrity of conservation and other environmentally valuable areas of the site would be maintained, along with the natural character of the landscape.

The clauses relevant to the development under this part of DCP 2014 have been addressed under Part 5 – *Development in Industrial, Business Park and Infrastructure Zones*. It is particularly noted that the clause regarding flora and fauna in both parts is the same.

The fencing proposed for the development is consistent with the natural character of the landscape and has been designed to reduce obstruction to fauna movement. Condition of consent recommended regarding additional security fencing.

There is no fill proposed within riparian zones of the site and there are no other additional clauses specific to Part 2 of DCP 2014.

Information has been submitted in regards to potential impacts of noise on existing fauna, which has been reviewed by Council's Development Planner – Flora and Fauna and deemed to have satisfactorily addressed concerns in this regard.

**79C(1)(a)(iia) any planning agreement that has been entered into or any draft planning agreement that the developer has offered to enter into**

There is no planning agreement that has been entered into under section 93F, and no draft planning agreement that a developer has offered to enter into under section 93F of the Act that relates to this development.

**79C(1)(a)(iv) any matters prescribed by the regulations**

None applicable to the development.

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

The likely impacts of the development have been considered in detail under an assessment of DCP 2014.

**79C(1)(c) the suitability of the site for development**

The development is compatible with the locality and the site is suitable for the development.

**Are the site attributes conducive to development?**

The site attributes are conducive to the development.

**79C(1)(d) any submissions made in accordance with this Act or the Regulations?**

**Public submissions:**

The application was originally notified from 5 September 2017 to 6 October 2017 and the amended proposal from 25 July 2018 to 10 August 2018.

Council received 99 submissions in total from different authors (including three petitions and nine in support).

50 submissions resulted from the original notification and 49 from the subsequent re-notification (amended proposal).

A summary of the issues identified as follows:

- Noise
- Air pollution
- No benefit to local community
- Impact on safety of local roads for vehicles, cyclists and pedestrians (Great North Walk)
- Increased traffic
- Safety and security
- Ecological impacts
- Impact on rural character
- Consistency with zone objectives
- 

The matters raised have been considered and addressed through the detailed assessment report. Attachment F provides planning comment as a response to the issues raised.

**Submissions from public authorities:**

A copy of the responses received is attached as Attachment E.

The following public authorities have provided comment on the proposal (discussed under the relevant sections of report):

NSW Rural Fire Service

NSW Water (Department of Industry)

Subsidence Advisory NSW

Hunter Water Corporation

TransGrid

Ausgrid

Roads and maritime Services (RMS)

Transport for NSW



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

The development application has been assessed with regard to LMLEP 2014 and DCP 2014, applicable State Environmental Planning Policies and other relevant legislation. It is acknowledged the development may result in acoustic impacts in the locality, however, this issue is considered to have been satisfactorily addressed through the assessment and imposition of conditions of consent and on balance the development will be in the public interest.

The development will facilitate heritage conservation of the site and provide for the reuse of a highly constrained former mining site in line with the strategic direction of Lake Macquarie Lifestyle 2030. There will be social benefits resulting from the development of provision of public recreation facilities in the locality and economic benefits of non-centre based economic activity, employment and economic diversity.

The development provides a unique facility which is not likely to be replicated in other areas of the state. The location of this facility on the site which enables the reuse of highly constrained former mining land (a significant employment generator for the area) is in the broader public interest.

## **5. Conclusion**

The development as proposed is considered to meet the requirements of Clause 5.10 (1) as detailed in the report. The assessment focussed on a number of issues in relation to permissibility, flora and fauna, heritage and acoustic impacts. The professional reports and assessment undertaken in relation to these matters is considered to adequately address the matters.

The proposal, is assessed as being consistent with Local Environmental Plan 2014, Development Control Plan 2014 and relevant State Environmental Planning Policies.

The development is of a high quality design and consistent with the strategic direction of Council in regards non-centre based economic activity and the rehabilitation of brownfield sites for appropriate uses and would not result in unacceptable impacts in the locality that could not be adequately addressed by conditions of consent and would not enable support of the application. The economic reuse of former mining land is a preferred and desired strategy for land previously utilised for employment generating activities in the LGA.

On balance, the development as proposed warrants approval, subject to conditions of consent pertaining to biodiversity outcomes, acoustic mitigation, heritage interpretation and overall site management.

## **6. Recommendation**

It is recommended Development Application No. 1556/2017 being for a Recreation Facility (Outdoor) and associated facilities be granted consent subject to conditions as listed in Attachment G.

## Endorsement

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The staff responsible for the preparation of the report, recommendation or advice to any person with delegated authority to deal with the application has no pecuniary interest to disclose in respect of the application.

The staff responsible authorised to determine the application have no pecuniary interest to disclose in respect of the application. The report is enclosed and the recommendation therein adopted.



Fiona Stewart  
**Development Planner**  
**Lake Macquarie City Council**

I have reviewed this report and concur with the recommendation.



Elizabeth J Lambert  
**Chief Development Planner**  
**Lake Macquarie City Council**

**Attachment A: Statement of Environmental Effects and supporting plans/documents**  
**Attachment B: Clause 4.6 submission**  
**Attachment C: Architectural Plans**  
**Attachment D: Landscape Plans and Concept VMP Plans**  
**Attachment E: External Agencies/Authorities Responses**  
**Attachment F: Summary of submissions**  
**Attachment G: Recommended Conditions of Consent**