



**BARR PROPERTY  
& PLANNING**  
Continual Progress

# Written submission pursuant to Clause 4.6 of Lake Macquarie Local Environmental Plan 2014

Supporting contravention of development standard Clause 4.3 – Height of Buildings, at 282 Rhondda Road, Wakefield



**Prepared on behalf of:  
ELEMENOP PTY LTD**

**Prepared for Submission to:  
LAKE MACQUARIE CITY COUNCIL**

## Document Control

Title: Blackrock Motor Park  
Date: 18/07/2018  
Job No.: 15NEW0029  
Client: Elemenop Pty Ltd

### Document Issue:

Issue	Date	Prepared by	Reviewed by
Draft 1	10/07/2018	Ian Power	
Draft 2	12/07/2018	Emily Allen	Ian Power
FINAL	16/10/2018	Emily Allen	Ian Power

Signed,



Ian Power  
Senior Consultant



Emily Allen  
Project Planner

For queries about this report please contact Ian Power on 040093664 or  
[ipower@barrpandp.com.au](mailto:ipower@barrpandp.com.au).

## Table of Contents

<b>1. Introduction .....</b>	<b>4</b>
<b>2. Site Description.....</b>	<b>5</b>
<b>3. Proposed development and compliance with Lake Macquarie Local Environmental Plan 2014.....</b>	<b>6</b>
3.1 Zone objectives .....	6
3.2 Maximum Building Height imposed by Clause 4.3 .....	9
3.3 Objectives of the development standard .....	10
<b>4. Local Environmental Plan Clause 4.6: Exceptions to development standards .....</b>	<b>11</b>
4.1 Objectives of clause 4.6 .....	11
4.2 Applicability of Clause 4.6 .....	11
4.3 Considerations under clause 4.6 .....	12
<b>5. Conclusion.....</b>	<b>16</b>



# 1. Introduction

This Clause 4.6 Variation request has been prepared in support of a Development Application for the proposed BlackRock Motor Park (DA/1556/2017). The site subject of the development application is legally described as Lot 101 DP 1073163, Lot 75 DP 755262, Lot B DP 339863, Lot 76 DP 755262, Lot 1 DP 963356 and Lot 391 DP 1064199.

This Clause 4.6 Variation has been submitted to assess the proposed non-compliance with the height of buildings standard, Clause 4.3, for the development in accordance with the requirements of Lake Macquarie Local Environmental Plan 2014 (LMLEP2014) which provides the following aims and objectives:

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

In summary the variation proposed is shown in Table 1:

<b>Subject building of noncompliance</b>	<b>LMLEP 2014 Development Standard</b>	<b>Proposed Development Non Compliance</b>	<b>LMLEP 2014 Zone</b>
Parking Building (Area P)	5.5m	10.35m	E2
BlackRock Village (Area N)	8.5m	9.79m	SP1
Pit Lane Pavilion (Area J)	8.5m	9.79m	SP1
Mechanic and Emergency Centre (Area K & E)	8.5m	9.45m	SP1
Visitor Centre/ Centre of Operations (Area B)	8.5m	10.1m	SP1
Lodge (Area R)	8.5m	14.33m	SP1
Overnight Accommodation, Short Stay Cabins (Area O)	8.5m	9.9m	SP1
Site Rehabilitation and Maintenance Building (Area M)	5.5m	9.5m	E2
Site Entry/Welcome Centre (Chimney)	8.5m	14m	SP1

Consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant. The request must justify the contravention of the development standard by demonstrating under LMLEP 2014 Clause 4.6(3) that:

- (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.*

This request has been prepared in accordance with the aims and objectives contained within Clause 4.6 and the relevant development standards.



## 2. Site Description

The portion of the site on which the buildings subject to this Clause 4.6 variation are located for the BlackRock Motor Park are Lot B/DP339863, Lot 76/DP755262, Lot 101/DFP1073163 and Lot1/DP963356 at 282 Rhondda Road, Wakefield.

The site is located in a mixed land use area comprising predominant industrial related uses, inclusive of active mine sites (Newstan, Westside and West Wallsend Colliery's), Metromix Quarry and Macquarie Coal Preparation Plant, all located to the north, east and south of the site. Residential homes are located in a rural residential – hobby farm enclave mixed with disused chicken farm buildings immediately to the west of the site and to the east of the village of Wakefield.

The site itself shows evidence of being a former mine site operation with large areas previously disturbed during mining operations. These include the Mine site pit entry (which houses the only remaining buildings including the Pony Stable and Munitions Store and former Hotel, Office and Cottage), chitter dump, open cut area and ridge quarry pit test area and numerous track linkages throughout the site.



Figure 1: Aerial photo showing the site in relation to the general vicinity of the area. Lot boundaries are marked in red (Sixmaps, 2018).

### 3. Proposed development and compliance with Lake Macquarie Local Environmental Plan 2014

The proposal seeks to gain approval for a Recreation Facility (Outdoor). It is believed that the proposal outlined below is the best use of the site as it allows for the adaptive reuse of the former mine.

#### 3.1 Zone objectives

The zoning of the land on which buildings are to be placed is both SP1 Special Activities (Mining) and E2 Environmental Conservation. The buildings located within the SP1 zoning are:

- BlackRock Village
- Pits Pavilion
- Mechanic and Emergency Centre
- Visitor Centre
- Lodge
- Overnight Accommodation, Short Stay
- Welcome Centre

The buildings located in the E2 zoning are:

- Parking Building
- Site Rehabilitation and Maintenance Building

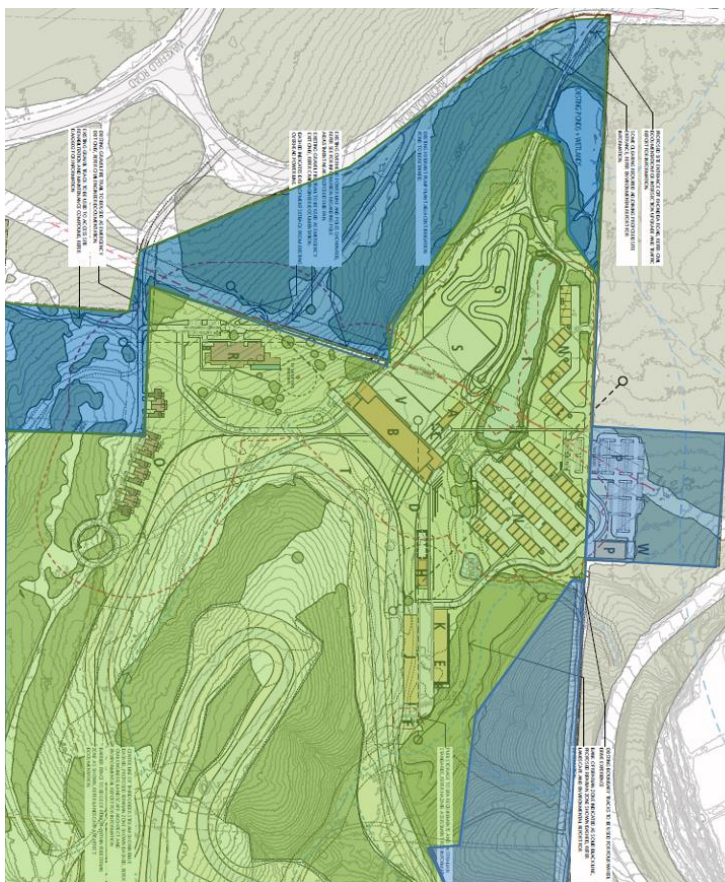


Figure 2: Building heights shown over the proposed site plan. The green area shows the 8.5m height limit. The blue area shows the 5.5m height limit



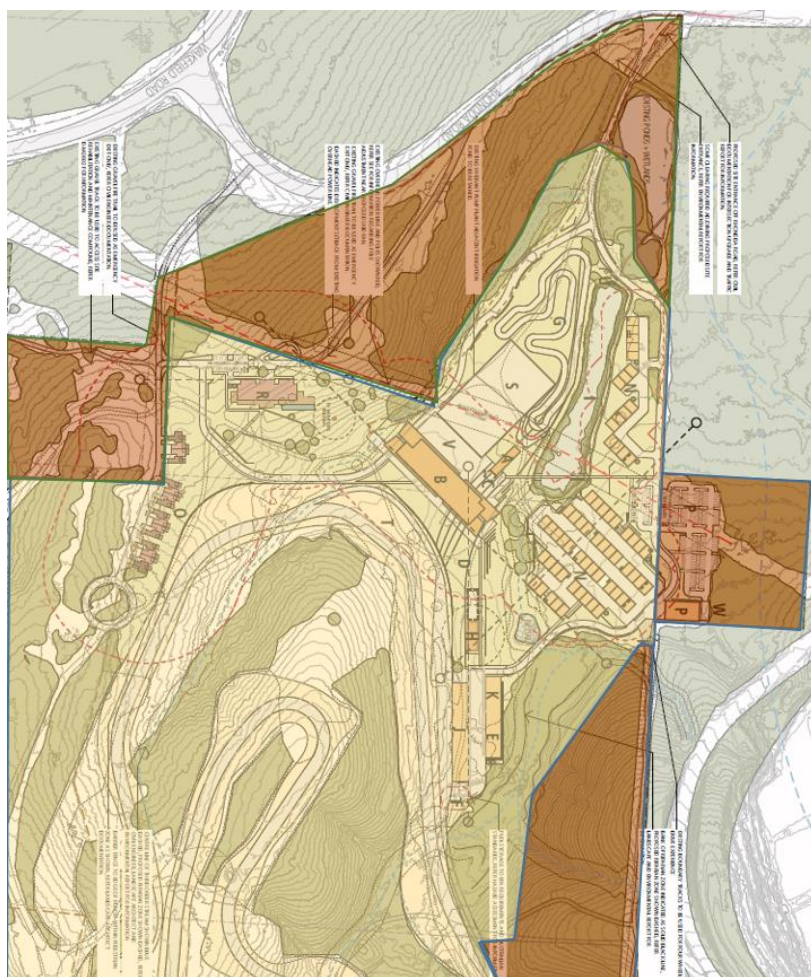


Figure 3: Land zoning shown over the proposed site plan. Orange shows the E2 zone. Yellow shows the SP1 zone.

The objectives of each of these zones are set out below:

## Zone SP1 Special Activities

### 1 Objectives of zone

- 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

### 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.

The proposed development, for a Recreation Facility (Outdoor), is not permissible under these zones. The development is however permissible under Clause 5.10(10) Conservation Incentives in the LMLEP 2014. This Clause allows for development in accordance with the below;

*The consent authority may grant consent to development for any purpose of a building that is a heritage item or of the land on which such a building is erected, or for any purpose on an Aboriginal place of heritage significance, even though development for that purpose would otherwise not be allowed by this Plan, if the consent authority is satisfied that:*

- (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.*

This path of approval doesn't require the development to meet the objectives of the SP1 land zoning as this is where the heritage area is situated. However the proposed development does align with the values of the intended SP1 objectives. The site was formally a mine, and due to this is constrained in the nature of the types of development that can occur on site.

The facility will be multi-use incorporating a driving track, driver training facilities, accommodation, parking, function centre, bar and bistro. This is a unique development and is not necessarily suitable on land in other zones, though the characteristics of the proposed site make it ideal for a development like this. The sites location is also ideal due to the surrounding land uses and distances between residential properties.

The site has heritage and ecological values which need to be protected, which is required under the objectives of E2 zoning, and the development has considered this in its proposal. The development will aid in the protection of the existing heritage items and values on site and also protect the majority of the existing vegetation on site. The developed area of the site is primarily within the area already previously disturbed for mining (SP1 zone). Some areas of land outside of this need to be cleared, though the majority of the existing bushland will be kept and maintained in perpetuity.

The development will meet the objective of Clause 5.10(10) which aim to conserve the heritage significance of the items on site. RPS has prepared a Conservation Management Plan (CMP) which accompanied the development application. The proposed development will facilitate the conservation of Rhondda Colliery and the Rhondda Colliery railway. This is through the conservation and adaptive reuse of the standing infrastructure, interpretation of removed infrastructure and interpretation of the wider cultural significance. The CMP outlines the schedule of work and commitments that would be undertaken as part of the conservation and interpretation. This meets the objectives of Clause 5.10(10).

The zoning of the site is shown below on Figure 4.

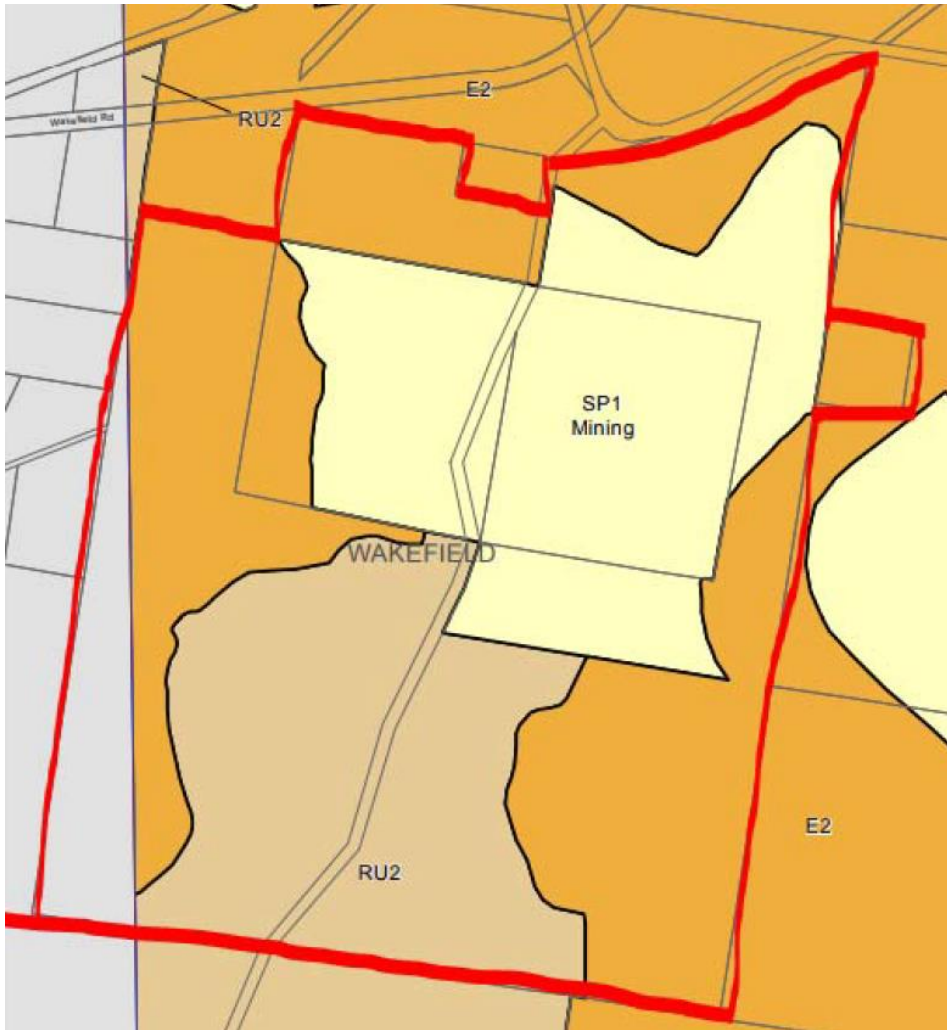


Figure 4: Map demonstrating the land use zones across the site. Lot boundaries are marked in red (LMLEP2014 Maps009A)

### 3.2 Maximum Building Height imposed by Clause 4.3

Clause 4.3 of the LEP applies to development on the site as mapped in the LMLEP 2014. Clause 4.3 states that:

#### **4.3 Height of buildings**

*(1) The objectives of this clause 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.*

*(2) 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.*

In respect of buildings located within the SP1 Special Activities zone the Maximum Building Height is 8.5m. In respect of buildings located within the E2 Environmental Conservation zone the Maximum Building Height is 5.5m.

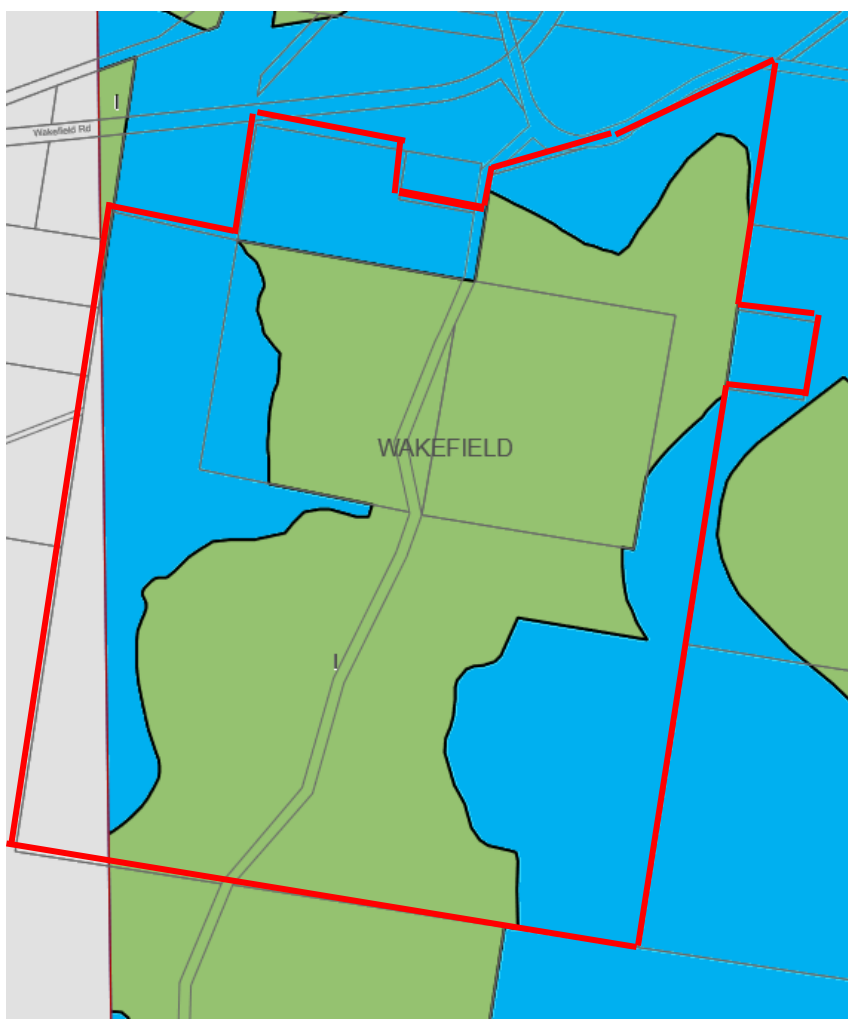


Figure 5: Map demonstrating the height of building restrictions across the site. Blue – maximum height 5.5m; Green – maximum height 8.5m. Lot boundaries are marked in red (LMLEP2014 Maps009A)

### 3.3 Objectives of the development standard

Under the Environmental Planning and Assessment Act 1979 a development standard is defined as:

***development standard*** means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development.

Consistency of the proposed development with the development standard and associated objectives of Clause 4.3 are a key consideration in determining whether to grant consent to a contravention of the development standard. The objectives of clause 4.3 are outlined in sub clause (1):

- (1) *The objectives of this clause 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.*

The development is considered to be compliant with the objectives of Clause 4.3, notwithstanding the noncompliance with the building height mapped in the LMLEP 2014. An assessment of this is within Section 4 of this report.



## 4. Local Environmental Plan Clause 4.6: Exceptions to development standards

### 4.1 Objectives of clause 4.6

Clause 4.6 of LMLEP 2014 has the objectives:

***4.6 Exceptions to development standards***

*(1) The objectives of this clause are as follows:*

- (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.*

Clause 4.3 is a development standard relating to the maximum building height for a development. Clause 4.6 provides flexibility in the application of this development standard, allowing for better and more consistent development outcomes.

The proposed development will enable the attainment of the objects of the *Environmental Planning and Assessment Act, 1979* (the Act) on the site, including the following relevant objects:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
- (c) to promote the orderly and economic use and development of land,
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
- (g) to promote good design and amenity of the built environment,

The proposed development does promote the social and economic welfare of the community through the recreation use provided and the jobs that will be created. The environmental and heritage values of the site will be upheld and maintained by providing a compatible development that can respect and protect these values.

The attainment of the objects of the Act demonstrates that flexibility in the application of the maximum building height will enable the achievement of better outcomes for and from development in this instance. The objectives of clause 4.6 are also supported by the way in which the proposed development satisfies the considerations outlined in Clause 4.6(3) and following, outlined in Section 4.3 of this report.

### 4.2 Applicability of Clause 4.6

The development standard in Clause 4.3 is not expressly excluded from the operation of Clause 4.6. Clause 4.6(2) therefore grants Council the discretion to consent to the proposed development despite the contravention of this development standard.



### 4.3 Considerations under clause 4.6

Council's considerations in determining whether to grant consent for development that contravenes a development standard are outlined in Clause 4.6(3) and (4) of LMLEP 2014. These considerations are addressed below:

**Clause 4.6(3)(a) Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case**

The objectives of Clause 4.3 Height of buildings are listed below along with assessment against the objective of the noncompliance.

*(a) to ensure the height of buildings are appropriate for their location,*

The subject site in its broader locality is located within a mixed land use area, comprising predominantly industrial uses, including the active mine sites of Newstan, Westside and West Wallsend Colliery's. There is also a Metromix Quarry and Coal Preparation Plant. These are all located to the north, east and south of the site. Rural residential homes are located to the west in the village of Wakefield. The site is separated from the nearest residential development by dense bushland. It is unlikely the surrounding residential properties will be able to view the buildings within the site. Due to this, no views will be impeded upon and the heights proposed will not impact upon the existing height and character of development in the rural residential areas. It is also unlikely the surrounding industrial facilities will have sightlines to the proposed buildings on site. Due to the nature of the surrounding uses, exceedance of building height is unlikely to cause any adverse impact upon those businesses.

Within the site the relationship of the buildings to each other and the surrounding landscape is appropriate for the existing setting. The buildings are all situated within a large area of land with ample setbacks between buildings. This allows the buildings to avoid a bulky appearance within the landscape and create visual breaks through the landscaping between buildings. By allowing the buildings to exceed the height limit it also allows for a smaller footprint, reducing the need to remove more vegetation and allowing those larger setback between buildings.

The form and scale of the former infrastructure that existed on site is reflected in the proposed built form and landscaping. The chimney which is associated with the Welcome Centre forming the entrance of the site, provides a historical reference to the former chimney that formed part of the surface infrastructure associated with Rhondda. The scale of the chimney is similar to what would have previously existed and provides an affective gathering and wayfinding point within the landscape. The proposed Centre of Operations, 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 to stand alone even with the Lodges exceeding building height. This approach to design has been taken to ensure that even the buildings that exceed the height limit work into the existing landscape and draw on the former infrastructure to inform the newly proposed buildings.

The parking building and site rehabilitation and maintenance building are located further towards the fringe of the site and in the E2 zone. The parking building may be visible from the neighbouring mine to the east-west, though due to the nature of the mine the height of the parking building should not pose any adverse impact upon their amenity. The site rehabilitation



and maintenance building is positioned to the north, and may be visible along Wakefield Road. This building even though above the 5.5m height limit, is in keeping with the nature and context of the types of buildings expected in the locality. The building is a large shed structure and is characteristic of the rural residential and hobby farm nature of the locality.

Accordingly the site is not visible from any sensitive residential receptors or businesses. The internal visual impact of the built form is suitable to the past and present context of the site and has been designed to complement the sites natural landform. Therefore the transition to a lower building height is considered highly unnecessary.

*(b) to permit building heights that encourage high quality urban form.*

The design of each building is of high architectural quality. The buildings have been carefully designed to fit sensitively within the existing bushland environment. The colour schemes used help create a cohesive colour scheme between the environment and the buildings. For instance, the roof forms, which are the main areas which extend over the building height limit, are of simple design and of earthy tones to blend into the existing bushland. This helps prevent the buildings potential bulk and dominance within the site.

The materials and finishes also incorporate elements to echo the former infrastructure that existed on site. The use of steel with a strong, angular appearance reflect the previous industrial surface and subsurface infrastructure. The use of materials such as; red brick, charcoal timber cladding, off form concrete is drawn from the history of the sites industrial past. The use of materials such as: colorbond cladding, stone cladding, timber and concrete draw on the sites bushland setting through the textures and colours.

Accordingly the building heights and building form contribute to a quality urban environment. The choices of materiality and colour have been thoughtfully considered in the context of the sites past and present setting. Therefore any requirement for the reduction in building height is considered unreasonable.

**Clause 4.6(3)(b)      There are sufficient environmental planning grounds to justify contravening the development standard**

#### **Relevant Local Environmental Plan**

Guided by Section 4.15 of the Act, the development is subject to the consent of Lake Macquarie Council's Local Environmental Plan 2014. The aims of the LMLEP 2014 include:

- a) to recognise the importance of Lake Macquarie and its waterways, including the coast, as an environmental, social, recreational and economic asset to Lake Macquarie City and the Hunter and Central Coast regions,*
- (b) to implement a planning framework that protects areas of significant conservation importance, while facilitating development and public facilities in appropriate areas, that are accessible to a range of population groups, to accommodate Lake Macquarie City's social and economic needs,*
- (c) to promote the efficient and equitable provision of public services, infrastructure and amenities,*
- (d) to facilitate a range of accommodation types throughout Lake Macquarie City so that housing stock meets the diversity of community needs and is affordable to as large a proportion of the population as possible,*
- (e) to apply the principles of ecologically sustainable development,*

*(f) to encourage development that enhances the sustainability of Lake Macquarie City, including the ability to adapt to and mitigate against climate change.*

The Blackrock Motor Park balances the protection of the existing heritage items and environmental value of the site with the proposed recreation facility. The development will facilitate the protection of the heritage items and significant vegetation on site whilst providing the community with a recreation facility appropriate to the sites surroundings and in an accessible location.

The development will also provide an economic benefit to Lake Macquarie in the expected amount of jobs the development will create. Jobs will be provided during the construction phase of the development and staff will be required for the ongoing operation of the facility. Further information on the social and economic contribution the development will provide can be found in the Social Impact Assessment and Economic Impact Assessment which accompanied the original development application.

The proposal can be considered consistent with these aims, as it provides a positive social, environmental and economic addition to the Lake Macquarie area.

### **Relevant Strategies**

Lifestyle 2030 is the relevant planning strategy that applies to the Lake Macquarie Local Government Area (LGA). The strategy sums up the vision of the city as the following:

- *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.*

The proposed BlackRock Motor Park will help facilitate the goals of the city vision. It will do this by providing a recreational facility which will respect the existing heritage and environmental significance of the site. The local and broader community will benefit from having a new recreational facility that is currently not available anywhere else in the locality, region or State. There will also be a benefit from the increased job opportunities the construction and ongoing operation of the facility will bring.

The above considerations outline the significant benefits that the development will bring and provides sufficient environmental planning grounds to justify the contravention of the development standard in this particular case.

**Clause 4.6(4)(a)(i) The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3)**

In addition, Clause 4.6(4)(a)(i) states that prior to granting consent, Council is to be satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3). Those matters have been addressed in detail in the preceding paragraphs and are considered to provide a sound basis for contravention of the development standard in this particular instance.

**Clause 4.6(4)(a)(ii) The proposal is 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**

Whether the proposal is in the public interest can be assessed by its compliance 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 (Clause 4.6(4)(a)(ii)).

The assessment contained within Section 3 of this report has demonstrated that the proposal is consistent with both the objectives of the standard within clause 4.3 of the LMLEP 2014, Clause 5.10(10) Conservation incentives and the objectives for development within E2 and SP1 zones.

Accordingly, Council can be satisfied that the development is in the public interest.

**Clause 4.6(4)(b) The concurrence of the Secretary has been obtained**

Further to Council's considerations outlined above, Clause 4.6(4)(b) states that Council must be satisfied that the concurrence of the Secretary has been obtained for the contravention of this development standard.

In this case, concurrence from the Secretary is not applicable according to the planning circular 'Variations to development standards' PS18-003 Issued 21<sup>st</sup> February 2018. The circular states that:

*"All consent authorities may assume the Secretary's concurrence under:*

- Clause 4.6 of a local environmental plan that adopts the Standard Instrument (Local Environmental Plans) Order 2006 or any other provision of an environmental planning instrument to the same effect, or*
- State Environmental Planning Policy No 1 – Development Standards."*

The circular specifically states that:

*Sydney district and regional planning panels may also assume the Secretary's concurrence where development standards will be contravened.*

As the development is to be approved by the Regional Planning Panel, the developments contraventions of the building heights will be considered by the panel rather than council or the Secretary. Therefore, concurrence of the Secretary is not required.

**Clause 4.6(5)(a) Whether contravention of the development standard raises any matter of significance for State or regional environmental planning**

There are no significant matters for State or regional environmental planning that will be affected by the contravention of this development standard for this particular development. This Clause 4.6 objective simply requests alignment with the lot size provided in Clause 4.3 of the LMLEP.

#### **Clause 4.6(5)(b)      The public benefit of maintaining the development standard**

Maintaining the development standard on the proposed site will not provide the same public benefit compared to the consent to the contravention of Clause 4.3.

The public will gain no benefit from insistence on the maintenance of the development standard in this instance. The building height limitation will prevent the appropriately sized and placed buildings to be developed on site. It is considered that the public would benefit from the development of the site, in a manner consistent with the objectives of the zone and the sites past land use, for a purpose which is permitted in its zone by the current planning instrument. This is also consistent with the objectives of the Act.

## **5. Conclusion**

The relevant considerations of Clause 4.6 have been discussed above, and support contravention of the development standard for this instance. This report has systematically addressed the matters required to be demonstrated by sub clause (3), and satisfied the considerations required to be made by Council under Clause 4.6(4)(a)(i). The deviation from the prescribed building heights is consistent with the zone objectives and the objectives of the development standard in Clause 4.3(1), and Council may be satisfied that it is in the public interest pursuant to clause 4.6(4)(a)(ii).

In accordance with the requirements of sub clause 4.6(4), subject to the concurrence of the Secretary, development consent may be granted for the proposed development.