

COUNCIL SUPPLEMENTARY REPORT

Panel Reference	2017HCC030
DA Number	DA/1556/2017
Local Government Area	Lake Macquarie City Council
Proposed Development	Recreation Facility (Outdoor)
Site Address	282 Rhondda Road, WAKEFIELD (Lot 101 DP 1073163) 284 Rhondda Road, WAKEFIELD (Lot 76 DP 755262) 286 Rhondda Road, WAKEFIELD (Lot 75 DP 755262) 236 Rhondda Road, WAKEFIELD (Lot 1 DP 963356) 288 Rhondda Road, WAKEFIELD (Lot B DP 339863) 102 Miller Road, WAKEFIELD (Lot 391 DP 1064199)
Applicant	Elemenop Pty Ltd
Owner	Mount Thorley Operations Pty Limited (Owner's consent from LMCC for works over unformed Council road reserve)
Date of lodgement	25 August 2017
Number of Submissions	Previous Report to Panel: 99 submissions (including 3 petitions and 9 in support) After Notification of Additional Information: 32 submissions (at time of writing)
Regional Development Criteria (Schedule 4A of the EP&A Act)	General development that has a Capital Investment Value above the \$30 million threshold for Regional Development (at time of lodgement).
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • Lake Macquarie Local Environmental Plan 2014 • State Environmental Planning Policy 33 – Hazardous and Offensive Development • State Environmental Planning Policy 44 – Koala Habitat Protection • State Environmental Planning Policy 55 – Remediation of Land • State Environmental Planning Policy 64 – Advertising and Signage • State Environmental Planning Policy 71 – Coastal Protection • State Environmental Planning Policy (Infrastructure) 2007 • State Environmental Planning Policy (State and Regional Development) 2011

List all documents submitted with this report	<p>Attachment A: Recommended draft conditions of consent</p> <p>Attachment B: Amended Conservation Management Plan</p> <p>Attachment C: Operational Management Plan</p> <p>Attachment D: Noise Management Plan</p> <p>Attachment E: Covering letter</p> <p>Attachment F: RMS advice</p> <p>Attachment G: Transport for NSW advice re: LHFC</p> <p>Attachment H: Conservation and Interpretation Commitments under DA document</p> <p>Attachment I: Summary of submissions</p> <p>Attachment J: Report to the HCCRPP meeting 6 December 2018</p>
Recommendation	Approval subject to conditions
Report by	Fiona Stewart, Development Planner, Lake Macquarie City Council
Report Date	16 April 2019

CONTENTS

Executive Summary	Page 5
Background	Page 7
Additional Information Requested	
Legal advice on timing/approval (CMP)	Page 9
Roads and Maritime Services advice	Page 9
Review of Transport for NSW advice (LHFC)	Page 10
Final Noise Management Plan	Page 13
Final Operational Management Plan	Page 13
Revised Conservation Management Plan	Page 14
Maximum potential use of development	Page 15
Re-exhibition of additional information	Page 17
Review of recommended conditions	Page 17
Further Assessment of Additional Information	
Acoustics	Page 20
Traffic	Page 21
Pedestrians and Cyclists	Page 21
Heritage	Page 22
Conclusion	Page 25
Recommendation	Page 25
Endorsement	Page 26

List of Attachments:

Page 27

Attachment A: Recommended draft conditions of consent

Attachment B: Amended Conservation Management Plan

Attachment C: Operational Management Plan

Attachment D: Noise Management Plan

Attachment E: Covering letter

Attachment F: RMS advice

Attachment G: Transport for NSW advice (Lower Hunter Freight Corridor)

Attachment H: Conservation and Interpretation Commitments under DA document

Attachment I: Summary of submissions

Attachment J: Report to the HCCRPP meeting 6 December 2018

EXECUTIVE SUMMARY

This report is a supplementary report to the Hunter and Central Coast Regional Planning Panel (HCCRPP) for item number 2017HCC030 being development application for Recreation Facility (Outdoor) – BlackRock Motor Park - at 282 to 288 Rhondda Road, 236 Rhondda Road and 102 Miller Road, Wakefield, DA/1556/2017.

This report shall be read in conjunction with the report to the HCCRPP meeting of 6 December 2018.

Date Lodged:	Original Plans:	25 August 2017
	Amended proposal:	19 July 2018
	Additional Information:	21 January - 14 February 2019

CIV: \$77,547,982.82

Submission Period: 5 September 2017 to 6 October 2017
25 July 2018 to 10 August 2018*
* Re-notification of amended proposal
14 February 2019 to 6 March 2019**
** Re-notification of additional information

Zonings: RU2 Rural Landscape,
SP1 Special Activities (Mine), and
E2 Environmental Conservation,
under Lake Macquarie Local Environmental Plan 2014

Approval Bodies: NSW Rural Fire Service
NSW Water (Department of Industry)
Subsidence Advisory NSW

Referral Agencies:

Hunter Water Corporation

TransGrid

Ausgrid

Roads and Maritime Services (RMS)

Transport for NSW

Local Aboriginal Community Groups

BACKGROUND

The HCCRPP at the meeting of 6 December 2018 resolved to defer determination of the application pending the submission of additional information. The Panel requested the following:

1. *The Council to:*

- a. *Obtain legal advice on the requirements and timing of clause 5.10(10)(b) of Lake Macquarie LEP2014 in relation to approval of a heritage management document by the consent authority and whether the Panel has the power to approve such a document;*
- b. *Confirm with Roads and Maritime Services (RMS) whether a formal submission is required from RMS under clause 104 of the Infrastructure SEPP2017, having regard to the total number of car parking spaces proposed; and*
- c. *Review any application of future rail or freight corridors to the subject land.*

2. *The applicant to prepare and submit to Council:*

- a. *A final Noise Management Plan and final Operational Management Plan consistent with the requirements set out in Schedule 2;*
- b. *A revised Conservation Management Plan (CMP) which separates the impact assessment from the CMP and the related conservation framework and schedule of work and commitments, in order to address the requirements of clause 5.10(10) of Lake Macquarie LEP 2014; and*
- c. *Further information and documentation on the maximum potential use of the development in terms of patron/visitor numbers and vehicle trips, and including concurrent use of different facilities.*

3. *That:*

- a. *Council re-exhibit any additional information provided for the application prior to reporting to a Panel Meeting; and*
- b. *Any future report to the Panel review the recommended conditions, including but not limited to references to interim occupation certificates which are no longer available, hours of operation (to apply for the whole year, and for all relevant activities) and any changes required as a result of the revised Conservation Management Plan, the Noise Management Plan or Operational Management Plan.*

The additional information and requested documentation was submitted to Council during the period from the 21 January 2019 to 14 February 2019. Upon receipt of all of the additional information, the application was notified for a period of 20 days, ceasing 6 March 2019. 25 submissions were received in response to the notification, including one in support. A summary of the issues raised is contained in Attachment I.

Requests for further comment/information were sent by Council to Roads and Maritime Services (RMS) and Transport for NSW, with responses dated 21 January 2019 and 8 February 2019 respectively, which are provided as Attachments F and G.

Further review of the documentation received was undertaken by Council staff as discussed in this report and review of recommended conditions undertaken. The revised recommended conditions of consent are provided in Attachment A.

ADDITIONAL INFORMATION REQUESTED FROM RPP MEETING OF 6 DECEMBER 2018

1. Legal advice on the requirements and timing of clause 5.10(10)(b) of Lake Macquarie LEP 2014 in relation to approval of a heritage management document by the consent authority and whether the Panel has the power to approve such a document.

Council sought independent legal advice, provided by Maddocks Lawyers, in accordance with the Panel's request to clarify requirements for timing of clause 5.10(10)(b) of Lake Macquarie LEP 2014 in relation to approval of a heritage management document by the consent authority and whether the Panel has the power to approve the heritage management document (namely the Conservation Management Plan).

Maddocks advise the RPP is the consent authority for the Development Application, with the Panel having the same functions that the Council would have under Part 4 (of the Environmental Planning and Assessment Act 1979) for the Development Application. The advice states there is no limitation on the powers of the Panel under the EPA Act, which would prevent the Panel as the consent authority, from approving the Conservation Management Plan as the "heritage management document" required under clause 5.10(10)(b).

The advice is that the approval of the CMP however, must occur prior to the determination of the Development Application. However, Maddocks opinion is that the Panel could approve the CMP and the Development Application at the same meeting.

A copy of the full legal advice received, has been provided to the Panel.

Irrespective of the legal advice provided, Lake Macquarie City Council will, at the Ordinary Meeting of Council, on 29 April 2019, consider a report requesting the adoption of the "*Conservation Management Plan – former Rhondda Colliery Site*" as the heritage management document for the site. Council will adopt the Conservation Management Plan prior to the determination meeting of the RPP for this development application, DA/1556/2017.

2. Confirmation from Roads and Maritime Services (RMS) whether a forma submission is required from RMS under clause 104 of Infrastructure SEPP 2017, having regard to the total number of car parking spaces proposed.

Council sought further comments from Roads and Maritime Services (RMS) via a referral letter, dated 14 December 2018. Council detailed that comment was being requested regarding clause 104 Traffic Generating Development, under State Environmental Planning Policy (Infrastructure) 2017.

The referral letter included details of parking arrangements proposed for the development to illustrate the on-site parking proposed (as advised to the RMS), being:

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, the “BlackRock Village” element contains 64 units with double garage within each (128 spaces), and 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.

The RMS responded via email, dated 21 January 2019, advising Council must satisfy itself that the proposal will not have significant impact on the safety and efficiency of the classified road network in the assessment of the application. Council’s Asset Management Department is satisfied the development will not adversely impact on Council’s road network subject to conditions of consent.

Given the brevity of the response, Council sought confirmation from the RMS by email dated 22 January 2019, that the comments provided had taken into account the development being classified as Traffic Generating Development under the SEPP. The RMS confirmed via return email they have reviewed the information provided and raise no objection to, or requirements for, the proposed development, referred to Roads and Maritime Services for comment in accordance with clause 104, schedule 3 of the State Environmental Planning Policy (Infrastructure) 2007.

3. Review any application of future rail or freight corridors to the subject land.

Background: Infrastructure Australia’s *Corridor Protection: Planning and investing for the long term*, September 2017 identifies that protection of a corridor for a realignment of part of the Hunter Valley freight rail network is a high priority initiative in Infrastructure Australia’s Priority List.

Transport for NSW is currently undertaking preliminary investigations to assess options for the Lower Hunter Freight Corridor (LHFC) rail line. The site of the proposed development is within a broad area under investigation for the LHFC between Fassifern and Hexham.

Council referred the development application to Transport for NSW, 16 February 2018, for comment. A response provided by Transport for NSW, dated 12 March 2018, advised:

“The *Draft Future Transport Strategy 2056* has been released to the public for comment. This strategy includes the *Draft Greater Newcastle Future Transport Plan* and the *Draft NSW Freight and Ports Plan 2017*, which forms a vision for how transport can support growth and the economy of Greater Newcastle and New South Wales over the next 40 years.”

“The draft strategy specifies a number of initiatives in Greater Newcastle to support the efficient movement of freight, including a task for the identification and preservation of the Lower Hunter Freight Corridor (LHFC) over the next 0-10 years; and, development of the corridor in the following 10-20 years. The LHFC is a ‘high priority initiative’ in Infrastructure Australia’s – *Infrastructure Priority List*.”

Figure 1, below, from the Transport for NSW website, shows the map of the Fassifern to Hexham Lower Hunter Freight Corridor investigation area.

Lower Hunter Freight Corridor

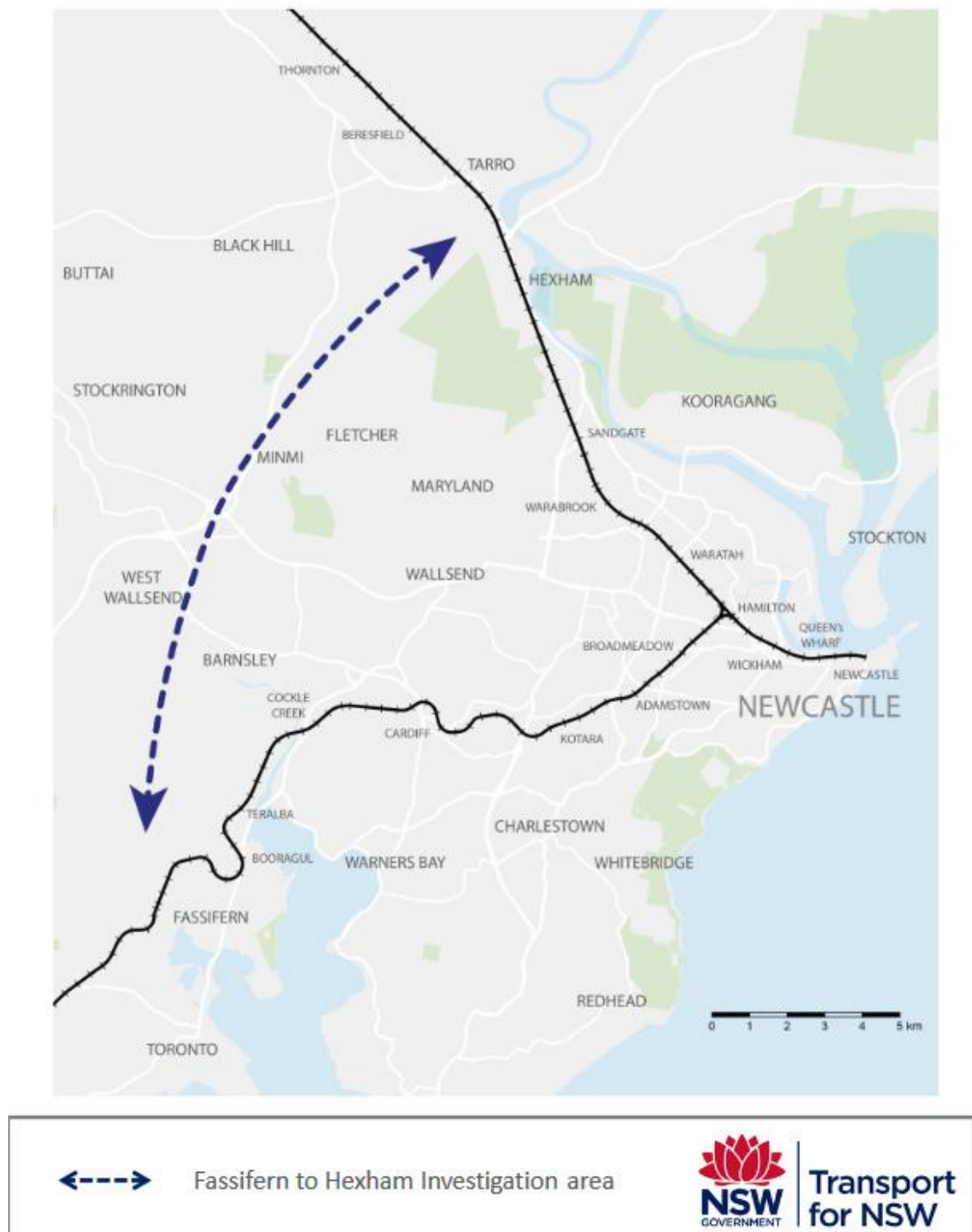


Figure 1: Map of Fassifern to Hexham Lower Hunter Freight Corridor investigation area from the Transport for NSW website

Further review: Council sought more detail regarding the LHFC and likely future location of the corridor in response to the Panel's request. A response from Transport for NSW advised the applicant had met with TfNSW on 5 April 2018 and that TfNSW had advised the LHFC was under investigation.

The further advice from TfNSW notes the updated plans include more intensive development along the eastern edge of the site (including accommodation, parking area and a section of the track) in an area being considered as an option for the LHFC presently under investigation. TfNSW recommended the location of the accommodation and track be amended to avoid impacts associated with the LHFC.

Council officers met with representatives from TfNSW on 28 March 2019 to discuss the development in relation to the proposed LHFC and seek clarity regarding their comments on the proposal to date. TfNSW reiterated that the development site is located within a broad study area under investigation for the LHFC between Fassifern and Hexham.

The representatives from Transport for NSW provided an outline of the broad strategy that is currently in the investigation stage, with a general timeframe of options being reviewed mid-year, with a collaborative approach to be undertaken with various stakeholders and potentially affected communities from there. TfNSW acknowledged they do not have any statutory authority to object or impose any requirements on the development as proposed and that their comments are provided in an attempt to minimise future impacts on the LHFC.

Written advice following on from the meeting was provided by TfNSW, dated 2 April 2019, recommending that potential impacts may be minimised to the future LHFC by the imposition of conditions of consent around staging of the development in regards to elements of the proposal (accommodation and part of track circuit) located along the eastern edge of the site.

Council has considered the further comments from TfNSW in the assessment of the development application; the reasonableness of impositions of conditions of consent in regards to a future rail corridor that may or may not impact on the site; and whether the development will compromise, restrict or otherwise prevent the future use of the land (development site) for infrastructure.

Concurrence from TfNSW is not required under an environmental planning instrument applicable to the site and development proposed. The development will retain all lots that comprise the site under a single ownership and there is no proposal to subdivide the land or undertake any change to boundary alignments, therefore, not resulting in any additional landowners to be potentially affected by a future freight rail corridor. TfNSW acknowledged the development was not incompatible with any future freight rail corridor.

The applicant has taken into account the advice of Transport for NSW and the current status of the investigation area, and potential future integration with the rail corridor in the amended development plans.

The specific alignment of the future Lower Hunter Freight Corridor (LHFC) has not been finalised. An investigation area has been identified on plan. The LHFC does not comprise a designated "infrastructure corridor", in accordance with Part 5 clause 5.30 of the Environmental Planning and Assessment Act 1979, in that:

- a) the land is not zoned for that future use under an environmental instrument, or
- b) the land is not identified for that future use under a strategic plan under Division 3.1, or
- c) the land is not identified in an environmental planning instrument as requiring the concurrence of a public authority before consent is granted to development on the

land if the public authority is required to take into account the likely impact of the development on that future use.

Given the freight rail investigations hold no statutory weight as noted above, requests from TfNSW to have a staged development are not appropriate. Additionally, conditions around the development having regard to a corridor that has not been defined and does not have statutory weight are not considered reasonable and should not be applied to any consent.

4. Final Noise Management Plan and final Operational Management Plan consistent with the requirements set out in Schedule 2.

Noise Management Plan: The applicant has prepared and submitted a final Noise Management Plan (NMP), dated 12 February 2019. The plan sets out procedures and strategies for managing, mitigating and minimising potential noise impacts arising from the operation of the development.

The NMP includes detail of procedures for:

- Track usage
- Measurement of noise sources (vehicles)
- Calculation of cumulative sound power level for activities on the track, including site specific conditions
- Real-time noise monitoring
- Attended noise monitoring
- Reporting and complaint handling

There is also a diagram included in the plan to show the location of permanent unattended noise monitoring stations and weather station location.

The NMP is considered to provide a satisfactory document for the identification and detail of a noise management regime for the facility. However, given the dynamic nature of noise management and in recognition of the difficulty of identifying a complete control regime until in operational mode, it is anticipated that the NMP will likely require updating prior to operations commencing and also ongoing modification on an “as needs” basis in order to ensure compliance with the identified project specific noise levels.

Condition 10 of the recommended conditions, requires the operation of the facility to be carried out in accordance with the approved Noise Management Plan (NMP), which will be subject to updating and refinement as required to effectively manage noise from ongoing operation of the facility.

Operational Management Plan: The applicant has prepared and submitted a final Operational Management Plan (OMP), dated 12 February 2019. The plan sets out procedures for the management of activities and facilities at BlackRock Motor Park.

The OMP includes detail regarding the ongoing operation and management of the development and specific facilities and activities (track and non-track related), as well as security management measures to be implemented for the development. The plan sets out what the development comprises (and does not comprise) and provides detail regarding the

facilities on site, their use, expected frequency of activities and examples of operating scenarios for particular days.

The typical daily scenarios outlined in the plan, include a description of the activity, anticipated capacity for activities, and frequency per week.

The OMP includes detail regarding site access management procedures (with access limited to members or public who have pre-booked an activity/experience) and traffic management, particularly during peak times in order to prevent any potential queueing or congestion impacts to the local road network.

The hours of operation of the development, as stipulated in the plan are as follows:

Track activities (includes skid pan, all motor vehicle and other noise generating activities –

8.00am to 6.00pm, seven days per week (Australian Eastern Daylight Savings Time)

8.00am to 5.00pm, seven days per week (Australian Eastern Daylight Time)

Non-track related activities –

6.00am to 10.00pm, seven days per week.

Due to the nature of the use, the accommodation operation on the site would be 24hr operation.

The OMP and NMP together form the framework for ongoing operation and management of the development and include procedures and measures to minimise potential impacts.

The final Operational Management Plan and Noise Management Plan are recommended to be included in the approved documents for the development set out in condition 2 of the recommended conditions set. Conditions are recommended to require the ongoing operation of the development to adhere to the OMP and NMP at all times, being conditions 10 and 11 of the recommended conditions set.

It is anticipated that the OMP will require updating prior to operations commencing and also ongoing modification on an “as needs” basis, and also in response to any updating of the NMP.

Condition 11 of the recommended conditions, requires the ongoing operation of the facility to be carried out in accordance with the approved OMP, which will be subject to updating and refinement as required to effectively manage ongoing operation of the facility.

It is noted that there is an error in the document (OMP), with the table on page 6 notating the track as being 5.68km long, when it should read 5.58km long, which has been corrected in the document version comprising attachment C.

5. Revised Conservation Management Plan (CMP) which separates the impact assessment from the CMP and the related conservation framework and schedule of work and commitments, in order to address the requirements of clause 5.10(10) of Lake Macquarie LEP 2014.

The applicant submitted a revised Conservation Management Plan (CMP) for the development, prepared by RPS, dated 7 February 2019.

The revised CMP is not notably changed in content, although more detail and costings have been included in the Schedule of Work Commitments in Part 3, section 14. The Due Diligence Assessment has been appropriately separated to comprise a stand-alone document and the impact assessment, under the revised document, as requested by the Panel, forms a separate part to the related conservation framework and schedule of work and commitments.

In response to further queries raised by Panel members in regards to the CMP, the document has been further revised, with a final document submitted to Council, dated 10 April 2019.

The revised CMP has been amended to comprise an overarching heritage management document for the former Rhondda Colliery site and provides further clarity and detail in regarding the conservation commitments and all necessary conservation works to be implemented for any development of the site.

Council has reviewed the final CMP and is satisfied that the document will facilitate the conservation of the heritage significance of the heritage items (local), listed under Schedule 5 of LMLEP 2014, Rhondda Colliery (282 & 284 Rhondda Rd) and Rhondda Colliery Railway (as mapped), including remaining associated fabric, cultural significance, and setting.

A report seeking adoption of the “*Conservation Management Plan – former Rhondda Colliery Site*” will be provided to the Ordinary Meeting of Council of 29 April 2019. The report seeks to have Council adopt the “*Conservation Management Plan – former Rhondda Colliery Site*” as the approved heritage management document for the site.

An additional document, which sets out the specific conservation commitments for the Blackrock Motor Park development in accordance with the approved Conservation Management Plan, was submitted on 15 April 2019.

6. Further information and documentation on the maximum potential use of the development in terms of patron / visitor numbers and vehicle trips, and including concurrent use of different facilities.

The Panel resolved to require the applicant provide additional details regarding the proposed maximum potential use of the development in terms of patron/visitor numbers and vehicle trips, and including concurrent use of different facilities.

A response to the Regional Planning Panel request for further information document has been submitted (to be read in conjunction with the OMP), that provides additional detail regarding the BlackRock business model, management of activities, accommodation types and usage, and includes an example of a weekly event track activity calendar.

The documentation advises the business model for the development is based on low volume, high value activities and experiences and on a daily basis there is a maximum number of vehicles that can run on the track, with all session times pre-booked in advance.

A figure for a maximum total site capacity on any given day of 500 people (includes members, guests and staff) is stated in the document, however, most daily scenarios modelled indicate capacity will not reach this figure.

This figure is based on the maximum potential traffic movements identified in the previously submitted Traffic Impact Assessment (SECA Solution Pty Ltd, dated 26 July 2017 and

addendum, dated 17 July 2018) which allows for a worst-case trip generation of 120 vehicles inbound and 120 trips outbound occurring concurrently during the cross-over of morning and afternoon sessions. A maximum of 300 trips per day (150 inbound, 150 outbound) was also assessed.

Therefore, the maximum number of people on site has been considered based on 150 car movements and an assumed car occupancy of between 3 and 4 people per car. The resultant total of patron/visitor numbers would be between 450 and 600. Therefore, as it is unlikely that all vehicles will comprise 4 people, a figure between the two numbers (being 500) has been identified as the maximum capacity, as a liberal figure.

When the capacity of individual activities on site (and operating scenarios modelled) are taken into account as documented, with a mean daily amount of 59 participants (anticipated each typically to be accompanied by one other person), an assumption of 120 people arriving on site per day on average, which does not include staff (identified in previous documentation to be 30 on site at any one time), is identified. This is illustrative of the applicants claim that the maximum capacity of 500 will not be reached for most days of operation.

The numbers of participants for individual activities on site are limited by factors that include the following:

- Noise limits (maximum sound power level)
- Safety considerations
- Types of vehicles (which relates to the noise limits)
- Track density (less congestion resulting in better customer experience)
- Vehicle availability (for experiences utilising BlackRock park vehicles)

The noise limits are a determining factor in composition of events, with these noise limits identified in the acoustic assessment (RAPT Consulting, October 2018) of the development. The Noise Management Plan (included in Condition No.2 identifying approved documents for the development) referenced in Condition No.10, provides the framework and detail for management procedures to achieve compliance with the identified project specific noise levels for the development.

Not all activities at the site will be available at all times, as there is an available capacity for each activity. An example of operating scenarios has been included in the document to illustrate how different activities may operate concurrently under different operating scenarios. The five scenarios modelled, include:

- Public Track Days;
- Driving Experiences;
- Members Track Day;
- Car Brand Experience; and
- Car Brand Launch,

The activities for each day will be operated in accordance with a detailed run-sheet to manage peak traffic flow and parking demand on site. The frequency with which particular activities are scheduled is determined by market demand, appropriate day of week for an activity and weather conditions.

The maximum capacity figure of 500 people as identified in the documentation provides a level of certainty for the maximum potential traffic movements, the scale/scope of the development and the appropriateness of the development type identified as Recreation Facility (Outdoor) for the proposed development.

7. Re-exhibition of additional information provided for the application.

The additional information requested by the panel in the Record of Deferral, dated 6 December 2018 (apart from the legal advice, which is subject to legal professional privilege) has been uploaded to Council's website for re-exhibition, as requested by the Panel, and includes:

- further advice from RMS;
- further advice from Transport NSW regarding future freight rail corridor;
- final Noise Management Plan;
- final Operational Management Plan;
- further information regarding potential maximum patron/visitor numbers and vehicle trips; and
- a revised CMP.

It is noted the CMP has been further revised and will be provided to Council for adoption as the heritage management document for the site in accordance with clause 5.10(10) of Lake Macquarie Local Environmental Plan. It is noted the legal advice is not publically available. The legal advice from Maddocks Lawyers has been provided under separate cover to the Panel in its entirety.

Re-notification of the application was undertaken commencing 14 February 2019 and ceasing 6 March 2019. Re-notification has included all properties previously notified of the application and any additional previous submitters.

In response to the notification, 32 submissions have been received.

8. Review of recommended conditions, including but not limited to references to interim occupation certificates, which are no longer available, hours of operation (to apply for the whole year, and for all relevant activities) and any changes required as a result of the revised Conservation Management Plan or Operational Management Plan.

As a result of the additional information and documentation submitted and in response to the Panel's request to review the recommended conditions of consent and further assessment, several conditions of consent previously recommended to be included in any consent are proposed to be amended. The main changes to conditions are detailed below:

- **Condition 2 – Approved Documentation**

Amended to remove reference to the Conservation Management Plan (as previously approved), to include reference to CMP Commitments document (for specific commitments under DA) and to include final Noise Management Plan and Operational Management Plan.

- **Condition 5 – Occupation Certificate**

Amended to remove reference to “Interim Occupation Certificate”.

- **Condition 7 – Commencement of the Use of the Land**

Amended to remove reference to “Interim Occupation Certificate”.

- **Condition 9 – Hours of Operation and Site Capacity**

Amended to change the reference to “summer” to Australian Eastern Daylight Time and “winter” to Australian Eastern Standard Time, for clarity. Further detail added regarding time restrictions for all relevant activities on site.

Addition of maximum site capacity as set out in the Operational Management Plan.

- **Condition 10 – Operational Management Plan**

Amended to reference the final Operational Management Plan (included in the “Approved Documents” condition) and require the ongoing operation of the development to be carried out in accordance with the plan.

- **Condition 11 – Noise Management Plan**

Amended to reference the final Noise Management Plan (included in the “Approved Documents” condition) and require the ongoing operation of the development to be carried out in accordance with the plan.

- **Condition 12 – Acoustic Certification**

Amended to remove reference to “Interim Occupation Certificate” and to correct acoustic report reference.

- **Condition 17 – Conservation Management Plan**

Amended to reflect revised Conservation Management Plan reference and add additional requirements (incorporated from previous condition 18 regarding interpretation landscape).

- **Condition 18 – Public Access to site**

New condition setting out public access arrangements for the site.

- **Condition 22 – Aboriginal Heritage**

Amended to reflect revised Conservation Management Plan reference.

- **Condition 28 – 4WD Experience - Restrictions**

Amended to delete “These restrictions shall be detailed in the required final Operational Management Plan for the development”. The OMP has been finalised and includes reference to the restrictions.

- **Condition 31 – Stormwater Detention Required**

Amended to remove reference to “Interim Occupation Certificate”.

- **Condition 46 – Car Parking and Allocation of Spaces**

Amended to remove reference to “Interim Occupation Certificate”.

- **Condition 63 – Removal, Management and Transportation of Fill**

Amended to remove reference to “Interim Occupation Certificate”.

- **Condition 69 – Topsoil and Stockpile of Materials**

Duplicated condition (same as Condition No.43), deleted and replaced with new condition, as follows:

New Condition 69 – Council Road Reserve (south of development area)

No works or obstruction shall result from the development to the existing Council owned road reserve (connecting 334 Miller Road, Wakefield and 106 Miller Road, Fassifern) to the south of the approved development area on site. This road reserve shall be maintained in Council ownership to allow for potential future re-routing of the Great North Walk between Teralba and Wakefield.

For clarification as to the original wording of proposed conditions, the original condition set is provided in Attachment G, of the previous report to the HCCRPP, dated 22 November 2018.

FURTHER ASSESSMENT OF ADDITIONAL INFORMATION

Acoustics

In response to the submitted final Operational Management Plan and final Noise Management Plan, and on review of submissions resulting from notification of the additional information, Council officers, assisted by advice provided by Councils Principal Environmental Officer, have undertaken a further assessment of acoustic matters.

The acoustic reporting submitted during the course of assessment of the development application and specifically the RAPT Consulting report (Noise Impact Assessment – BlackRock Motor Park, October 2018), in combination with the final Operational Management Plan and final Noise Management Plan, provide sufficient certainty that compliance can be achieved for the ongoing operation of the development within the identified project specific noise levels.

The Noise Policy for Industry (NPI) 2017 is the appropriate tool for acoustic assessment of the development. It is noted that “*noise from sporting facilities, including motor sport facilities*” is listed as an exclusion from the policy. As detailed in the Council Assessment Report to the Regional Planning Panel, dated 22 November 2018, the development application for a Recreation Facility (Outdoor), has been assessed as a recreation facility comprising a private motor track circuit with ancillary accommodation and facilities providing for activities based around a motoring experience. The facility is not proposed to be a motorsport “racetrack” for competitive motor racing or for a spectator sport and will not be utilised for organised racing events or championships.

Legal advice obtained by Council, support the classification of the development as a Recreation Facility (Outdoor). The Operational Management Plan specifies that the facility will not be utilised as a motorsport racetrack. Council’s Principal Environmental Officer advises the determination of the application by using the NPI is most appropriate in the absence of any other approved EPA guideline; the acoustic consultants have determined the NPI as the best method of determining the various aspects of the activities proposed. The NPI is also a more stringent protocol as opposed to the Noise Guide for Local Government.

Council is of the opinion that the NPI is the most appropriate policy for assessment of potential acoustic impacts of the development. The Noise Guide for Local Government would only be applied to a development application specifically proposing a motor sport facility.

The evaluation of a motor sport facility or race track involving competition driving (under the Noise Guide for Local Government) is notably less stringent (than assessment under the NPI), and would allow the use of super touring, muscle cars and sports sedans and the like to compete under full race mode. Although motor sport facilities generally have restricted numbers of meetings per year, the allowable noise levels to the residential interface is very high, and well in excess of that allowed and determined by applying the Noise Policy for Industry. Council’s Principal Environmental Officer advises that the Noise Guide for Local Government, is unsuitable to be applied to this application.

It is concluded the facility will be operated, in accordance with strategies contained within the OMP and NPI, to achieve compliance with the logged daytime background noise levels, and intrusiveness criteria. This compliance is reliant upon stringent vetting of vehicle noise at all

times the track is in use and therefore necessitates ongoing monitoring and review (with strategies for this set out in the OMP and the NMP).

Submitters have raised ongoing concerns with the proposed noise monitoring locations for ongoing monitoring and the fact that noise monitoring is not proposed to be carried out within the boundaries of adjacent residential properties. The site for the monitoring locations has been selected having regard to the identified nearest sensitive receivers (from the previous monitoring undertaken) and also the need for equipment to be located in a secure and readily accessible location.

In the event that significant ongoing acoustic impacts are being reported by residents, part of the investigation process of the complaint shall be for monitoring to be carried out at the complainants property, to assist in resolution of the issue (refer to Condition 11)

Clause 5.10(10)(e) of Lake Macquarie LEP 2014 states consent may be granted to development otherwise not permitted if the consent authority is satisfied:

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

The application, including substantial review of the information provided by external and internal acoustic experts, demonstrates the development will not have a significant adverse effect on the amenity of the surrounding area. The clause does not require that the development will have no adverse impact on the area; rather the test is of significance. The development will result in a change to the area however; the changes will not be significantly adverse.

Traffic

A Traffic Impact Assessment Report (SECA, 17 July 2018) has been provided assessing the development in accordance with Austroads Guides and the RMS Guide to Traffic Generating Development. The additional trips per hour predicted in the assessment are acceptable for the surrounding road network.

The largest traffic generation scenario provided is 120 vehicles inbound and 120 vehicles outbound in any one hour period. This level of traffic generation is acceptable for the surrounding road network. Due to the location of the site, there are three directions attendees may travel to the site; from the south, east and north west. The number of directions assists with the distribution of traffic flows. Council does not raise concern regarding the traffic generation from the development site creating issues on the classified road network.

Pedestrians and Cyclists

Both Wakefield Road and Rhonda Road currently form part of the Great North Walk. These roads are considered less than satisfactory in their current form for the passage of hikers/pedestrians due to the lack of formed shoulders or separated footpath.

Council has ownership of the Council owned road reserve, which connects 334 Miller Road Wakefield and 106 Miller Road Fassifern at the southern end of the site, to allow for a future re-routing of the Great North Walk between Wakefield and Teralba in conjunction with landowners to the east. It is appropriate to provide a condition (condition 69) to ensure no

works or obstruction occurs to the existing Council owned road reserve (connecting 334 Miller Road, Wakefield and 106 Miller Road, Fassifern) to the south of the approved development area on site.

Heritage

A revised Conservation Management Plan (as discussed previously in this report) supports the application, and will be reported to the elected Council for adoption at the Ordinary Council Meeting of 29 April 2019.

Aboriginal Heritage

The Due Diligence Assessment (RPS, dated 1 February 2019) has been revised in format as a stand-alone document, with no amendment to the content. The document provides assessment of potential impact by the proposal on Aboriginal heritage.

In accordance with the requirements of Lake Macquarie LEP2014, Part 5, Clause 5.10(8)b) and the Lake Macquarie Aboriginal Heritage Management Strategy (LMAHMS) 2011 part 4, 6.1.6 referral procedures for Development Applications for Local and Regional Development, Council referred the development proposal to the following registered Aboriginal community groups for comment for 28 days (from 13 September 2017):

- Lower Hunter Aboriginal Incorporated
- Awabakal Descendants Traditional Owners Aboriginal Corporation
- Awabakal Traditional Owners Aboriginal Corporation
- Biraban Local Aboriginal Land Council

The Council referral process is in addition to any consultation undertaken by the Heritage Consultant for the applicant, as detailed in the Due Diligence Assessment. Concerns were raised initially by the Awabakal Traditional Owners Aboriginal Corporation (ATOAC) with the form of the documentation; that is, the inclusion of the Aboriginal Due Diligence assessment within the CMP. ATOAC also raised concern with communication from RPS prior to lodgement of the Development Application. ATOAC did not raise any specific concerns with the development proposal.

It is not common practice and there are no requirements under Lake Macquarie LEP2014 or LMAHMS 2011, for Council to re-refer an amended proposal to Aboriginal community groups for further comment, during the development assessment process. The development has not been re-referred as the comments made from ATOAC regarding the Due Diligence Assessment being a separate document have been taken on board and incorporated into the revised documentation.

The extended track layout has a larger encroachment into an area of the site identified under the report as being an area of Aboriginal sensitivity within the south-eastern portion. There are no works proposed under the application within the other area identified as an area of Aboriginal sensitivity, adjacent to the swamp on the north-western side, where two quartz artefacts were located on inspection of the project area. Council's Heritage Planner has considered the impact and raised no concern.

European Heritage

The Conservation Management Plan will constitute a heritage management document referred to in clause 5.10(10) of LMLEP 2014, and defined as:

- a) *a heritage conservation management plan, or*
- b) *a heritage impact statement, or*
- c) *any other document that provides guidelines for the ongoing management and conservation of a heritage item, Aboriginal object, Aboriginal place of heritage significance or heritage conservation area.*

Clause 5.10(10) – Conservation Incentives, of LMLEP 2014 states:

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*
- 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.*

In terms of the above points, the following is provided:

The development will facilitate the conservation of the heritage item, being the Rhondda Colliery.

The elected Council will consider a report requesting Council adopt the “*Conservation Management Plan – former Rhondda Colliery Site*” at the Ordinary Meeting of Council of 29 April 2019. Additionally, the applicant has provided a detailed report identifying the specific commitments from the Conservation Management Plan that will be incorporated in to the Blackrock Motor Park development. The documents identifies that all conservation work identified in the Conservation Management Plan will be carried out as part of the development. Additionally, a condition of consent is proposed to ensure the development complies with the commitments under the Conservation Management Plan.

The Conservation Management Plan supports and enables a strategic approach to adaptive reuse. The Conservation Management Plan assesses the cultural significance and sets out strategies and policies for conservation and management of the heritage of the site. The heritage item is the whole of the Rhondda Colliery site, the remaining fabric for this site includes the stables building and the munitions building. Development for the purpose of the use proposed under this application will not adversely affect the heritage significance of the

heritage item, including the setting. Maintaining the site in one ownership enables the site to be interpreted in its entirety.

The development will have a minor effect on the amenity of the surrounding area; however, the impact is mitigated through measures provided for within the application and as a part of the recommended conditions of consent. The effect on the amenity of the surrounding area is not described as major or significant. Therefore the development meets the five parameters within clause 5.10(10) of Lake Macquarie Local Environmental Plan 2014.

It is important, given the more limited built fabric retained on the site, to ensure the history of the site is appropriately interpreted for future generations to appreciate. The Conservation Management Plan and commitments under the development application provide for adaptive reuse and detailed interpretation to ensure the story of Rhondda Colliery and mining within Lake Macquarie is appropriately recorded within a contextual setting. The development of the site for the proposed use as BlackRock Motor Park enables this to occur. Public access will be available to the site to ensure the audience is not limited to users and participants of the facility. The development proposes open days and educational visits to the site throughout the year to ensure access to the accumulated history on site.

The amended Conservation Management Plan includes additional detail of policies and strategies for conservation and interpretation in line with the heritage significance of the site. Specific timeframes for works to be carried out and associated costings are detailed in a Schedule of Work and Commitments under a separate document in support of the development application. The Schedule of Works and Commitments is also included in a summarised version within Part 3 of the Conservation Management Plan.

Council obtained legal advice speaking to the format of the Conservation Management Plan. The advice states there is no legal framework guiding the preparation of such a document and no requirement for the heritage management document to be in two separate parts (or documents) where one addresses the impact assessment and the other the conservation framework and schedule of commitments. It is noted in the legal advice a review of case law on the matter reveals applicants adopt varying to the format, structure and sequence of Conservation Management Plans. The document has been separated into two documents, as requested by the Panel, being the Conservation Management Plan and the Statement of Heritage Impact.

Council's Heritage Planner supports the findings and recommendations of the Conservation Management Plan as provided to Council for adoption. Additionally, Council's Heritage Planner supports the use of Clause 5.10 – Conservation Incentives as a pathway for determination of the application for the use of the site as the BlackRock Motor Park, acknowledging the heritage value of the site exists over the whole of the site and is not just related to the two remaining buildings on the site. The site has a specific listing being the Rhondda Colliery; rather than individual items which assist with the interpretation of this sites heritage listing. The development of the site in this format enables the site to be kept in one ownership for greater heritage interpretation value.

Council's Heritage Planner has reviewed the revised documentation considering both European and Aboriginal Heritage.

CONCLUSION

Based on the above assessment, and having regard to the submissions received regarding the development throughout the assessment process, the additional information, along with previously submitted documentation for the proposal is considered sufficient assurance is provided that the development is capable of operating within identified parameters in order to minimise potential impacts to acceptable levels, particularly in regards to potential acoustic impacts.

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 Lake Macquarie 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 regarding 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.

Approval of the development, subject to conditions of consent, is recommended.

RECOMMENDATION

It is recommended Development Application DA/1556/2017 being for a Recreation Facility (Outdoor) and associated facilities be granted consent subject to conditions as listed in Attachment A.

ENDORSEMENT

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 assess and review 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
Development Assessment and Certification

LIST OF ATTACHMENTS

- Attachment A: Recommended draft conditions of consent**
- Attachment B: Final approved Conservation Management Plan**
- Attachment C: Operational Management Plan**
- Attachment D: Noise Management Plan**
- Attachment E: Covering letter**
- Attachment F: RMS advice**
- Attachment G: Transport for NSW advice (Lower Hunter Freight Corridor).
Letters, dated 12 March 2018 and 2 April 2019**
- Attachment H: Conservation and Interpretation Commitments under DA
document**
- Attachment I: Summary of submissions**
- Attachment J: Report to the HCCRPP meeting 6 December 2018**