

MEMO



TO: HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL
FROM: FIONA STEWART, DEVELOPMENT PLANNER
APPLICATION NUMBER: DA/1556/2017 **DATE:** 29 APRIL 2019
PROPOSAL: RECREATION FACILITY (OUTDOOR)
LOCATION: 282 TO 288 RHONDDA ROAD, 236 RHONDDA ROAD AND 102 MILLER ROAD
WAKEFIELD NSW 2278

I refer to the subject application to be considered at the Hunter and Central Coast Regional Planning Panel meeting scheduled for Wednesday, 1 May 2019.

Having regard to the assessment report and appendices, the following information is provided:

Council Supplementary Report and Recommended Conditions of Consent

There are some minor corrections/updates that the Panel should be aware of in regards to the Council Supplementary Report and the Recommended Conditions of Consent, since the documents were forwarded through to the Panel on 16 April 2019, as follows:

- On page 7 of the Supplementary Report 16 April 2019, the number of submissions has not been updated to reflect the number received at the time of finalisation of the report, which should read 32 (instead of 25), as stated on Page 1 and Page 17 of the same report.
- Condition 9 - Hours of Operation and Facility Capacity** of *Attachment A: Recommended Conditions of Consent*, requires that the Track Circuit and Skid Pan be closed on Good Friday, Easter Sunday, Christmas Day, Boxing Day or Anzac Day.

The condition should read "and" Anzac Day, which has been amended in an updated version provided to the Panel members with this memo.

Summary of Further Submissions

The table below sets out a summary of issues raised in submissions that have been received since finalisation of the Council Supplementary Report and should be read in conjunction with *Attachment H: Summary of Submissions*.

Copies of the additional submissions are included with this memo provided to Panel members.

Issue	Comment
The survey and report by MJD Environmental identified 3 large clumps of <i>T.juncea</i> and two isolated plants on the property. State government mapping identifies considerable sightings outside the border. There is a surprising absence within the sites lower eastern boundary under the DA documentation, given the high numbers immediately outside the boundary. There will be isolated clumps without the required 20m (30m under commonwealth guidelines) buffer to development. No evidence of these matters being considered.	Ecological assessment under the <i>NSW Threatened Species Conservation Act 1995</i> (now repealed) and the <i>Federal Environmental Protection Biodiversity Conservation Act 1999</i> has been carried out by MJD Environmental. At the conclusion of the surveys undertaken 5 October 2012 and 12 October 2017, and the final design of the track, it was assessed that no <i>Tetratheca juncea</i> clumps would be directly impacted by the proposal, with a provided buffer of 30-50m. The development is located within areas mapped by DoEE as important habitat for <i>Tetratheca juncea</i>, however it was assessed that much of the vegetation in the eastern section of the site is of low potential habitat as a result of past land use, clearing and works to extinguish the underground fire. Populations in the north-west of the study area are not considered important populations under DoEE guidelines. Council's Flora and Fauna Planner has reviewed the submitted flora and fauna information and raises no objection to the development subject to the nominated conditions of consent.
Selective wording from Council to RMS in relation to car parking, with advice that certain parks are for storage.	The breakdown in parking provision identified in Council's referral to RMS, dated 14 December 2018, was for clarification of the uses of the spaces proposed. The trigger for referral to the RMS for Traffic Generating Development under SEPP (Infrastructure) 2007, is "200 or more car parking spaces". Council's referral to the RMS advised there are a total of 185 parking spaces proposed on site as well as 128 spaces within Blackrock Village garaging and 32 vehicles able to be accommodated in the parking building and 50 vehicles in the pit lane pavilion. The total of the "open air" parking of 185 spaces, plus the spaces within the Blackrock Village total 323 spaces which would constitute Traffic Generating Development, regardless of inclusion of any of the additional capacity within the storage building and pit lane pavilion. The vehicle accommodation to be provided in the "parking building" (for Blackrock motor park vehicles) and "pit lane pavilion" would constitute a storage function and are not publicly

	accessible car parking. The RMS in response raises no objection to, or requirements for, the development as proposed. The question on Council's development application form regarding the Liquor Act 2007 asks "Is the proposed development on a premise that has a current/proposed liquor licence (as per the Liquor Act 2007)?" The applicant has answered "no" to this question. It would be reasonable to assume that a facility that includes a function centre and restaurant/bar facilities would be seeking a liquor licence prior to commencement of operations. The applicant, for premises with development consent in place, can seek an application for a liquor licence to the Independent Liquor and Gaming Authority NSW.
The original DA noted that a liquor licence was not being applied for now or in the future. If Council considers the current application a separate application could be lodged immediately before opening, then stakeholders need to be aware or a condition imposed that excludes application for a liquor licence for at least 10 years.	The hours of operation proposed for the track circuit and skid pan (noise generating activities) are restricted by Condition 9 to 8:00am to 6:00pm (AEDT) and 8:00am to 5:00pm (AEST) 7 days per week. These hours are considered acceptable for the proposed use subject to compliance with acoustic restrictions. The controls in DCP 2014 are subject to merit based assessment having regard to the particular development proposal and circumstances of the case.
DCP 2014, Part 2 Section 4.7(6) restricts noise generating and outdoor operations in rural zones to between 7am and 6pm Monday to Saturday.	The Landscape Site Masterplan (Moir Landscape Architecture 16 July 2018) shows around 18 trees within the carpark area providing for shade and amenity. Given the carpark is not visible from the public domain (street) further visual screening through tree provision is not warranted.
Part 7, Section 3.7(1) of the DCP requires 1 advanced broad canopy tree per 6 car spaces to be planted in the carpark, equating to 24 trees that are not currently included in the plan.	The car parking rates table in DCP 2014 provides limited examples of recreation facilities and on-site parking requirements. These examples in no way inform the definitions for development types within LMLEP 2014.
Under DCP 2014, parking rates for "Outdoor" recreational facilities has requirements for football, lawn bowls, swimming and tennis centres listed. The development being classified as "Outdoor" instead of "Major" is illogical.	The decision of the NSW Court of Appeal in Cheetham V Goulburn Motorcycle Club Inc [2017] has been cite in the applicant's legal advice (McCullough Robertson, 23 March 2018) as it considered what constitutes a 'Recreation Facility (Major)' as opposed to a 'Recreation Facility

and operates infrequently. Within 1km radius of the Goulburn Speedway there only the Hume Freeway, local tip and cemetery, within 1km of the proposed development there are 20 family homes and a school. Council assessment report cites correspondence from McCullough Robertson Lawyers that the facility won't attract hundreds of people per day (to constitute a "Major" facility). The updated Operational Management Plan states that there will be a maximum capacity of 500 people, which is hundreds of people.	(Outdoor): For the development to be classified as a 'Major' facility, under the definition in LMLEP 2014 it would need to be 'large scale' and attended by 'large numbers of people'. The legal advice, in regards to the proposed development identifies that it will not attract hundreds or thousands of people as would be expected to attend <i>theme parks, sports stadiums, showgrounds, racecourses or motor racing tracks</i> (the examples in the definition) on any given occasion. The development does not propose to hold motor racing events as a spectator sport at the site such that would attract large numbers of people, in the context of the other development cited as examples. The legal advice does note that characterisation of the proposed development is a question of fact and degree and should it be attended by significantly larger numbers of people (eg, upwards of 1000 people) then it may be more appropriately characterised as a major facility. Documentation has been provided by the applicant that the <u>maximum</u> number of people expected to be on site at any one time (including staff, members and public) is 500 people, which is reflected in a recommended condition of consent.
The application does not give due attention to LMCC's Squirrel Glider Planning and Management Guidelines, with a buffer of 20-30m to retained habitat trees occupied or used by squirrel gliders. There are about 52 habitat trees that are not provided with this required buffer.	The Ecological Review submitted for the proposed development has been carried out with regard to LMCC's <i>Squirrel Glider Planning Management Guidelines</i>, as has Councils Flora and Fauna Officer's review of the proposal. Advice from Council's Flora and Fauna Officer is that whilst some habitat trees proposed to be retained do not have the 20-30m buffer, these trees are considered to be above the % retention thresholds and there is some benefit in attempting to retain these trees even with reduced buffers than completely removing them.
Micro-bats roosting inside the Pit Pony Stables building, with this roosting site denied with transformation into a café, the roosting site has not been acknowledged or included in ecological impact assessments.	Ecological assessment and reporting undertaken for the proposed development have not included assessment of the internal areas of existing buildings on site, with the Pit Pony Stables building currently utilised as a site office. Council's Flora and Fauna Planner has not raised any issue in regard this aspect.
The amended plans have been withheld from	The amended plans were uploaded to Council's website and have not been withheld from local

local Aboriginal land councils, with the amended plans showing encroachment into Aboriginal Archaeological Sensitive Areas, promised to be conserved as ecological buffers as identified in the Due Diligence Report.	Aboriginal land councils. Council notified four local Aboriginal groups of the development proposal 13 September 2017 in accordance with the <i>Lake Macquarie Aboriginal Heritage Management Strategy</i>. The amended plans (July 2018) were not re-referred as this is usually not undertaken by Council unless there is substantial change to a development proposal and associated Due Diligence report and/or if previous submission had been received from the Aboriginal bodies raising concerns with the development, which was not the case.
There is a known Aboriginal cemetery within the boundary of the site.	Confirmation has been provided from the CEO of the Biraban Local Aboriginal Land Council (BLALC) that the cemetery is actually believed to be located off the site, near the north eastern boundary.
Biraban Local Aboriginal Land Council (BLALC) object to the development based on insufficient Aboriginal Archaeological Assessment having been carried out by RPS. BLALC have not been requested to participate in any onsite field inspections which has resulted in incorrect and or incomplete information being included in the due diligence report	Consultation with the Aboriginal communities has been undertaken in accordance with the recognised legislative requirements. In meeting with the CEO of BLALC, the CEO stated consultation met legislative requirements however they would have liked further consultation with the Aboriginal community including knowledge holders.
A significant period of time from initial consultation in 2017 with the Aboriginal community and the final report in 2019, the report should have been generated immediately	Initial consultation was undertaken by RPS in preparing the Aboriginal Due Diligence in 2017. The application was lodged on 25 August 2017 with a Conservation Management Plan (CMP) including Aboriginal cultural assessment dated 10 August 2019. As the application progressed, changes were made to the CMP to have as separate documents the CMP to the Statement of Heritage Impact and Aboriginal Due Diligence. The content of the Aboriginal due diligence has not altered from that submitted in 2017 rather the format of the documentation has been updated.
A further Cultural and Heritage Assessment should be undertaken in full consultation with the local Aboriginal knowledge holders	The CEO of BLALC has advised they are happy with the schedule of commitments proposed in the Conservation Management Plan (CMP) and the commitment to these under the development application; in particular the requirement for further consultation with the Aboriginal communities prior to works commencing on site. The further consultation will involve an Aboriginal assessment including a site walk with members of the Land Council and knowledge holders prior to works commencing on site and ongoing consultation in accordance with the schedule of

	commitments under the CMP and development application. The CEO of BLALC advised the original letter of objection was only in relation to the consultation which was carried out and that they do not oppose the development but would like to encourage further discussion with the Aboriginal community.
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Adoption of Conservation Management Plan

The Conservation Management Plan was reported to the Ordinary meeting of Council on 29 April 2019, and adopted by Council as the approved heritage management document for the former Rhondda Colliery site.

Fiona Stewart
Development Planner
Development Assessment & Certification

