

DATE OF DETERMINATION	Wednesday, 1 May 2019
PANEL MEMBERS	Michael Leavey (Chair), Kara Krason, Julie Savet Ward and Jason Pauling
APOLOGIES	Clare Brown, Jason Perica
DECLARATIONS OF INTEREST	Justin Hamilton declared a conflict of interest as he is the Architect for the project. Scott Anson declared a potential perceived conflict of interest as his current role involves coordination with coal and mineral mining companies operating within NSW, and the current owner of the subject land is a mining company.

Public meeting held at Lake Macquarie City Council – 126-138 Main Road, Speers Point on 1 May 2019, opened at 4.00pm and closed at 7.33pm.

MATTER DETERMINED

2018HCC010 – Lake Macquarie City Council – DA/1556/2017 at 236-288 Rhondda Road Wakefield and 102 Miller Road Wakefield (as described in Schedule 1)

PANEL CONSIDERATION AND DECISION

The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

The Panel adjourned during the meeting to deliberate on the matter and formulate a resolution.

The Panel determined to support the clause 4.6 variation to building heights and to approve the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was 3:1 in favour, and against the decision was Kara Krason.

REASONS FOR THE DECISION

In relation to the contravention by the development of the maximum building height development standards imposed by clause 4.3 of Lake Macquarie Local Environmental Plan 2014 (“LMLEP 2014”), the Panel is satisfied that:

- (i) the applicant’s written request has adequately addressed the matters required to be demonstrated by clause 4.6 of LMLEP 2014, and
- (ii) the proposed development will be consistent with the objectives of the standard and the objectives for development within the relevant zones under LMLEP 2014.

The Panel generally agreed with the assessment of environmental impacts, conclusions and recommendations within the Council staff reports, and is of the view:

- The site is appropriate for the proposed use and development, being a former coal mine site;
- The layout and design of the proposal is appropriate for the site and its setting, particularly as it principally uses existing cleared areas and existing tracks and incorporates comprehensive landscape treatment;
- The proposal is a permitted use of the land, having regard to the definition of the use as a recreation facility (outdoor) and ancillary uses, and having regard to the provisions of clause

5.10(10) of LMLEP 2014. The Panel had regard to the Council's adoption of a Conservation Management Plan for the site on 29 April 2019 and was satisfied the proposal meets the requirements of clause 5.10(10) of LMLEP 2014. In particular, the Panel was satisfied that based on the assessments undertaken and proposed conditions of consent relating to ongoing use and operation, that the proposed development would not have a significant adverse effect on the amenity of the surrounding area.

- The Conservation Management Plan adopted for the site and supporting documents address previous comments of the Panel relating to conservation commitments, and implementation of the Plan is required through conditions of consent;
- The additional information provided and the Council's supplementary assessment report address the matters raised in the Panel's deferral of the matter on 6 December 2019;
- The proposal has been the subject of detailed acoustic assessment, which has been reviewed by Council technical staff, and the applicant has provided a Noise Management Plan and Operational Management Plan. While the Panel is satisfied that the Management Plans establish operational measures and requirements (to be implemented through conditions of consent) to manage acoustic impacts on nearby properties, the Panel was of the view that the Plans could be further strengthened, and this should occur by way of deferred commencement requirements;
- The ecological impacts of the proposal have been considered and addressed, and the layout of the proposal has been amended to reduce ecological impacts and a biodiversity offset is provided along with other conditions of consent relating to biodiversity outcomes;
- The traffic impacts of the proposal have been considered and addressed, and appropriate requirements have been included as conditions of consent. The Panel noted the proposal has been considered by Roads and Maritime Services NSW, who have not raised any objection to the development;
- The supplementary Council assessment has considered the implications of the development on a future Lower Hunter Freight Corridor (LHFC). The Panel notes the LHFC is at a preliminary investigation stage to assess options, the site is within a broad area under investigation and consultation is yet to occur with the community and local councils on possible corridor route options. The Panel is satisfied that the LHFC is not at a stage where there is any certainty about possible route locations and that approval of the development would not in itself preclude future options for a corridor in proximity to the site;
- The proposal has general terms of approval from the Rural Fire Service, NSW Water and Subsidence Advisory NSW, and appropriate conditions of consent have been included;
- The proposal and Council's assessments have considered relevant State Environmental Planning Policies, Lake Macquarie Local Environmental Plan 2014 and Lake Macquarie Development Control Plan 2014, and variations where required are warranted; and
- Community views have been considered, and appropriate conditions of consent are imposed relating to the ongoing use and operation of the development.

Kara Krason disagreed with the majority decision for the following reasons:

- Was unable to be satisfied that the requirements of Clause 5.10(10) – Conservation Incentives of LMEP 2014 had been met, in particular in relation to subclause (a) *the conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent*, and subclause (e) *the proposed development would not have any significant adverse effect on the amenity of the area*. Accordingly, Ms Krason considered the proposal, which relied on this Clause for permissibility, to not be permissible on this land.
- Ms Krason considered that the acoustic information submitted with the application did not satisfactorily demonstrate that the noise levels associated with the development would not have significant adverse effects on the amenity of the surrounding Wakefield Community.
- The proposal is inconsistent with the applicable zone objectives for land zoned RU2 Rural Landscape, SP1 Special Activities (Mine) and E2 Environmental Conservation.

CONDITIONS

The development application was approved as a “deferred commencement” consent, under section 4.16(3) of the *Environmental Planning and Assessment Act 1979*, subject to the conditions in the Council supplementary assessment report with amendments as detailed below.

Deferred Commencement conditions (to be complied with within 12 months)

1. Submission of a revised Noise Management Plan, prepared in consultation with the NSW Environment Protection Authority (NSW EPA) and to be approved by Council’s Head of Development and Planning, that:
 - a) Includes additional permanent noise monitoring locations which respond to nearby sensitive receptors, including Wakefield School;
 - b) Identifies procedures for noise monitoring to be undertaken on a complainant’s property in the event of any ongoing acoustic impact complaints (as referred to on page 21 of the Council’s supplementary assessment report); and
 - c) Addresses any additional recommendations and requirements of the NSW EPA, following consultation, which will assist in reducing and managing noise in this rural and bushland environment as it relates to this specific land use.
2. Submission of a revised Operational Management Plan, to be approved by Council’s Head of Development and Planning, that:
 - a) Specifies the ‘short term stay’ requirement for accommodation (maximum nights per year and maximum stay at any one time); and
 - b) Details operational and management requirements for the function centre.

Reason: to strengthen the management and operational requirements for the ongoing use of the development and to minimise impacts on the amenity of surrounding land.

Amendments to Conditions

- Upon satisfaction of the deferred commencement conditions, and in the issue of any operative consent, amend Condition 2(c) to refer to the revised Noise Management Plan and Operational Management Plan documents.
- Amend Condition 3 to add the following at the end of the first sentence *“This consent specifically excludes any competitive motor racing on the site.”*
- Amend Condition 9 to change the word “or” between “Boxing Day” and “Anzac Day” to “and”.
- Replace Condition 10 with the following new condition:

“The ongoing operation of the facility shall be carried out strictly in accordance with the Operational Management Plan, as referenced as an approved document for the development. Any breaches of the Management Plan may be a breach of the development consent and may result in the Council:

 - *Issuing Penalty Infringement Notices (On-the-spot-fines);*
 - *Issuing notices and orders under the Environmental Planning and Assessment Act 1979;*
 - *Prosecuting any person responsible for breaching this consent; or*
 - *Seeking injunctions/orders before the court to remedy any breach.*

Any changes to the approved Operational Management Plan are to be carried out as a modification to the development consent.”
 - Replace Condition 11 with the following new condition:

“The ongoing operation of the facility shall be carried out strictly in accordance with the Noise Management Plan, as referenced as an approved document for the development. Any breaches of the Management Plan may be a breach of the development consent and may result in the Council:

- Issuing Penalty Infringement Notices (On-the-spot-fines);*
- Issuing notices and orders under the Environmental Planning and Assessment Act 1979;*
- Prosecuting any person responsible for breaching this consent; or*
- Seeking injunctions/orders before the court to remedy any breach.*

Any changes to the approved Noise Management Plan are to be carried out as a modification to the development consent.”

- Amend Condition 12 to insert the words “*and operation*” after the word “*construction*” in the first paragraph.
- Amend Condition 15 to add the following additional paragraph at the end:
“Amended plans addressing the requirements of this condition are to be submitted for the approval of Council’s Head of Development and Planning prior to the issue of any Construction Certificate relating to “BlackRock Village.”
- Amend the first paragraph of Condition 16 to add the following words at the end of the first sentence:
“, in accordance with the approved Operational Management Plan.”
- Amend the first paragraph of Condition 18 to add the following words at the end of the first sentence:
“, and in accordance with the approved Operational Management Plan.”
- Replace the first paragraph of Condition 45 with the following:
“Landscape works shall be constructed in accordance with the approved landscape plans as scheduled in these Conditions of Consent, and as specified in the landscape construction drawings and specifications to be issued to Council for approval prior to the issue of any Construction Certificate.”

Reasons: to clarify the ambit of approved uses under the consent, to strengthen the compliance and enforcement framework for Management Plans and to clarify matters to be addressed prior to the issue of a construction certificate.





CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the Panel considered written submissions made following public exhibitions and heard from all those wishing to address the Panel, at two separate public meetings. The Panel noted there are a number of areas of community concern including, but not limited to, acoustic impacts and impacts on the amenity and character of the surrounding area, methodologies for acoustic assessment, permissibility and definition of the use, impacts on the LHFC, heritage considerations and impacts, the scale of development and maximum use numbers, lack of a compliance/ penalty framework for non-compliance, ecological impacts, traffic impacts, referral to Aboriginal groups, potential for competitive motor racing and DA/ liquor licensing requirements.

The Panel considers that concerns raised by the community have been adequately addressed in the assessment report, additional information provided by the applicant (including Management Plans), the supplementary assessment report and Council’s memo of 29 April 2019 and that no new issues requiring further assessment were raised during the public meeting. The Panel notes that in addressing these issues the proposal has been the subject of extensive assessment, particularly relating to acoustic impacts and standards, which has been reviewed and is supported by Council technical staff.

The Panel considers that appropriate conditions of consent form part of the approval, including a strengthening of the Noise and Operational Management Plans through a deferred commencement requirement, and through conditions of consent relating to the ongoing use and operation of the development, including changes made to conditions by the Panel.

The Panel was of the opinion that the relevant issues raised by the community have been addressed through the information provided with the application; in the Council's assessment reports; through conditions of consent; and as addressed in the Panel's reasons above.

PANEL MEMBERS	
 Michael Leavey (Chair)	 Kara Krason
 Julie Savet Ward	 Jason Pauling

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	2017HCC030 – Lake Macquarie City Council – DA/1556/2017
2	PROPOSED DEVELOPMENT	Recreation Facility (Outdoor)
3	STREET ADDRESS	236-288 Rhondda Road Wakefield and 102 Miller Road Wakefield
4	APPLICANT/OWNER	Applicant: Elemenop Pty Ltd. C/ - Barr Property and Planning Owner: Mount Thorley Operations Pty Limited
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$20 million (DA lodged prior to 1 March 2018)
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <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 Draft environmental planning instrument: Nil Development control plan: Lake Macquarie DCP 2014 Planning agreements Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i> Coastal zone management plan The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality The suitability of the site for the development Submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> Council assessment report: 22 November 2018 Council supplementary report: 16 April 2019 Council Letter 24 April 2019 concerning a typographic error in the assessment report Council Memo 29 April 2019 concerning the number of public submissions and wording of condition 9, and details and comment on additional submissions received since completion of the supplementary assessment report. Written submissions during public exhibition: 99 Submissions After Notification of Additional Information: 32 Submissions Verbal submissions at the public meeting: <ul style="list-style-type: none"> In support – Nil In objection – Peter Quist, Christine Hocking (Margaret Gibbs speaking on her behalf), Margaret Gibbs, Anna Cusack (Elizabeth Moss on her behalf), Tim Cusack, Elizabeth Coughlan (Peter Coughlan speaking on her behalf), Peter Coughlan, Kim Grierson, Clark Greedy, Gareth Hawgood, Maclean Greedy, Wakefield Community Group, Rod Donnelly, Virginia Dewez, Wakefield Residents Amenity Partnership

		<ul style="list-style-type: none"> ○ Council assessment officer – Fiona Stewart ○ On behalf of the applicant – Stephen Barr, Tony Palmer, Matt Doherty and Greg Collins
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Site inspection and briefing: Thursday, 6 December 2018 • Final briefing to discuss council's recommendation, Wednesday, 1 May 2019, 3.15pm. Attendees: <ul style="list-style-type: none"> ○ <u>Panel members</u>: Michael Leavey (Chair), Kara Krason, Julie Savet Ward and Jason Pauling ○ <u>Council assessment staff</u>: Justin Day, Fiona Stewart, Elizabeth Lambert, Amber Murray, Kirra Williams, Amy Regardo
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the council assessment report