

12 December 2018

His Worship the Mayor & Councillors

**Notice of Extraordinary Meeting of Bathurst Regional Council -  
Wednesday, 19 December 2018**

I have to advise that an **Extraordinary Meeting** of Bathurst Regional Council will be held in the Council Chambers on Wednesday 19 December 2018 commencing at 6 pm to consider

DEVELOPMENT APPLICATION 2015/196 MODIFICATION – RECREATION FACILITY (GO KART TRACK) AT MCPHILLAMY PARK, BROCKS SKYLINE, MOUNT PANORAMA.  
APPLICANT AND OWNER: BATHURST REGIONAL COUNCIL (DA2015/196).

From 6.00 pm to 6.15 pm there will be an opportunity for members of the public to raise matters with Council and staff.



D J Sherley  
**GENERAL MANAGER**

## **BUSINESS AGENDA**

### **EXTRAORDINARY MEETING OF BATHURST REGIONAL COUNCIL**

**TO BE HELD ON WEDNESDAY, 19 DECEMBER 2018**

- 1. 6:00 PM - MEETING COMMENCES**
- 2. PUBLIC FORUM**
- 3. APOLOGIES**
- 4. DECLARATION OF INTEREST**  
To assist the Councillors and committee members in their correct consideration of business before them at the meeting, please give consideration to Section 451 of the Local Government Act, in relation to Declaration of Interest at meetings.
- 5. RECEIVE AND DEAL WITH GENERAL MANAGER'S AND DIRECTORS' REPORTS**  
\* DIRECTOR ENVIRONMENTAL PLANNING & BUILDING SERVICES' REPORT
- 6. MEETING CLOSE**

**DIRECTOR ENVIRONMENTAL PLANNING & BUILDING SERVICES'  
REPORT**

EXTRAORDINARY MEETING OF BATHURST REGIONAL COUNCIL

19 DECEMBER 2018

**1 DEVELOPMENT APPLICATION 2015/196 MODIFICATION – RECREATION FACILITY (GO KART TRACK) AT MCPHILLAMY PARK, BROCKS SKYLINE, MOUNT PANORAMA. APPLICANT AND OWNER: BATHURST REGIONAL COUNCIL (DA2015/196)**

**Recommendation:** That Council:

(a) as the consent authority, modify the existing consent pursuant to Section 4.55(2) of the Environmental Planning and Assessment Act 1979, subject to the following conditions:

(i) The development shall be undertaken in accordance with the Statement of Environmental Effects and stamped approved plans detailed as follows except where modified by any of the following conditions:

Title/Plan: Preliminary Site Layout Plan  
Drawing/Sheet No: EN1697/2  
Dated: 18/10/2018  
Revision: A

Title/Plan: Preliminary Track Layout Layout Plan  
Drawing/Sheet No: EN1697/1  
Dated: 18/10/2018  
Revision: A

(ii) In the event of any Aboriginal archaeological material being discovered during earthmoving/construction works, all work in that area shall cease immediately and the Office of Environment and Heritage (OEH) notified of the discovery as soon as practicable. Work shall only recommence upon the authorisation of the OEH.

(iii) Prior to the release of any Construction Certificate or the commencement of any works the applicant shall prepare and submit a Construction Environmental Management Plan (CEMP) to Council for assessment and approval. The CEMP shall detail acceptable methods for the adequate control and management of the following:

- Habitat Management measures – Detailing the implementation of habitat management measures to minimise the potential for adverse impacts on adjoining habitats, in accordance with the Flora and Fauna Assessment dated 3 December 2018 was prepared by The Environmental Factor.
- Dust Suppression and Mitigation – Detailing dust suppression and mitigation measures to be employed during works on the site to ensure dust is not emitted from the site at all times including when no activities are taking place on the site.
- Erosion and Sedimentation Control Plan – Detailing the methods to be employed to ensure the adequate management of the surface and stormwater associated with subdivision activities.
- Waste Management Plan – Detailing the reuse or relocation of spoil and disposal of solid and liquid wastes.
- Noise impacts – Detailing the implementation of noise mitigation measures to minimise noise and to limit the impact on adjoining development, in accordance with the Acoustic Assessment dated February 2018 and prepared by PKA Acoustic Consulting.

- proposed tree plantings should be done using box-gum woodland species and densities to form a habitat linkage and amenity buffer around the site. This should extend along the western, southern and eastern development boundaries at least 20m wide. This should be permanently protected and maintained (fenced, watered, mulched, weeded etc) for at least 5 years or until the plants establish if greater than 5 years.
- All trees with hollows should be retained as standing habitat and placed in the new environmental buffer.
- Other felled timber is to be retained and placed as ground habitat. Foliage and smaller branches can be mulched and reused on the site.
- The mitigation measures should be overseen/conducted by a suitably qualified ecologist or similar and a report provided to Council prior to Occupation Certificate.
- Tree removal should be done in accordance with the RMS Biodiversity Guidelines.

The CEMP shall be approved by Council prior to any works being commenced and shall be implemented at all times during the operation of this consent.

- (iv) No work should be undertaken until 2 of the sites (those assessed and determined not to be Aboriginal sites) have been delisted on the AHIMS Registrar.

(b) notify those that made submissions of its decision; and

(c) call a division.

**Report:** Council has received a request to modify an existing development consent for a proposed Go Kart track on land at Mount Panorama.

#### The site

The site of the proposal is Council owned land at the top of Mount Panorama, described as:

- Lot 9 DP1047248
- Lot 40 DP1056379
- Lot 1 DP700629
- Lot 1 DP634401
- Lot 2 DP634401

A location plan is provided at **attachment 1**.

Existing improvements on the site include a dwelling (known as 310 Brocks Skyline), the "blue stone" cottage, picnic shelters, water tanks and amenities buildings. Part of the site is currently used for camping during major events.

All land is owned by Bathurst Regional Council.

#### The original proposal

The original Development Application was lodged by Bathurst Kart Club. The proposal involved the construction of a 950m long track with associated facilities including pit complex. The proposal also involved the use of parts of Sulman and McPhillamy Parks for ancillary infrastructure such as parking provided in an informal setting.

The current approved plans are provided at **attachment 2**.

The current development consent is provided at **attachment 3**.

The original proposal was considered and approved by Council at its meeting held 16 September 2015. The Notice of Determination was issued on 28 September 2015.

A copy of the assessment report provided to Council as part of its consideration is provided at **attachment 4**. The assessment report includes copies of the original specialist reports including the Statement of Environmental Effects, Acoustic Assessment, Vegetation Assessment and public submissions.

#### The modified proposal

Council has now taken carriage of the application and has lodged an application to modify the development consent.

The modification was originally lodged in June 2016 however it was subject to a request for further information in relation to noise, biodiversity and aboriginal cultural heritage issues. That information has since been submitted and the application has proceeded to public consultation and assessment.

During the assessment process, certain elements of the proposal have been updated and clarified. These include:

- Removal of the proposed Clubhouse building as it was not part of the original proposal.
- Confirmation as to the scale of the facility as an “international” venue. The circuit has been designed to comply with the CIK/FIA Circuit Guidelines in terms of track length and layout. That said, the facility itself would require additional facilities and works in order for it to attract licensing by CIK/FIA (referred to as homologation). Those additional facilities are beyond the scope of this application. References to the facility being an “international” facility have been removed from the SEE documents to reflect this distinction.
- Updates to the submitted Flora and Fauna Assessment.

The current modification proposal involves:

- Redesign and reconfiguration of the track layout to accommodate a track length of 1100m.
- Relocation of the Pit complex.
- Use of part of McPhillamy and Sulman Park areas for parking and staging.
- Demolition of existing structures within the footprint of the proposal inclusive of the existing dwelling at 310 Brocks Skyline (note that this is not the building commonly referred to as the ‘blue stone cottage’) and communications structures.
- Earthworks associated with the development inclusive of retaining walls.

The submitted plans are provided at **attachment 5**.

The submitted Statement of Environmental Effects is provided at **attachment 6**.

The submitted Acoustic Assessment is provided at **attachment 7**.

The final submitted Flora and Fauna Assessment is provided at **attachment 8**.

#### Procedures for Modification Applications

Applications for modifications to development consent are dealt with pursuant to Section 4.55 (formerly Section 96) of the Environmental Planning and Assessment Act 1979.

In this case the relevant provisions governing the modification are as follows:

(2) *Other modifications*

*A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:*

- (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- (c) it has notified the application in accordance with:
  - (i) the regulations, if the regulations so require, or*
  - (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and**
- (d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

*Subsections (1) and (1A) do not apply to such a modification.*

- (3) *In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.*

The modification application only impacts upon the existing development consent to the extent of the proposed modification, that is, any modification would have the effect of altering the consent including the plans and any conditions as outlined in the modification. It does not involve re-consideration of the original proposal.

In the event that approval to the modification is given, it would have the effect of changing the physical track layout, however, the underlying operational parameters remain unaffected. The modified approval would be the consent moving forward.

In the event that the modification is refused, the existing development consent remains in place and may be acted upon by the proponents (be that Council or the Bathurst Go Kart Club) with the owners agreement (being Council in this case). It can equally be said that it is open for Council to pursue other options or sites notwithstanding the approval or otherwise of this application. The latter is not a planning decision but rather a decision that Council must take having regard to factors which are necessarily outside the planning system.

### Current operating parameters

The existing development consent contains a number of conditions which govern the hours of operation, noise monitoring, the number of go karts that may use the circuit, noise levels, operations during other major events and frequency of use. These conditions (15-20) are repeated below:

15. *The facility must only operate between the hours of 9.00am and 5.00pm on any day (practice days and race event days).*
16. *Within three months of the facility becoming operational, noise measurements are to be taken on a race day at the nearest affected residences and the results submitted to Council.*
17. *The number of go-karts on the track at the same time is not to exceed 5 on a practice day and 32 on a race event day.*
18. *Noise levels from the operation of the go-kart track are to comply with the following noise criteria:*

(a) *The maximum noise levels during race event days are to be as follows:*

<b>Address</b>	<b>Maximum dBA (<math>L_{Aeq,1hr}</math>)</b>
404 Conrod Straight	39
402 Conrod Straight	38
428 Conrod Straight	37
280 Hen & Chicken Lane	35
All other residential properties	36

(b) *The maximum noise levels at all other times (i.e. practice days) are to be as follows:*

<b>Address</b>	<b>Maximum dBA (<math>L_{Aeq,11hr}</math>)</b>
All residential properties	36
280 Hen & Chicken Lane	35

19. *The facility must not be operated during full track closure motor racing events on the Mount Panorama Racing Circuit, when the Motor Cross track is in use or when there are partial track closures for motor sport events on the Mount Panorama Racing Circuit.*
20. *No more than 18 individual race days are to be held in a calendar year.*

The proposed modification does not propose any alterations to these operating parameters.

### Assessment of the application

Council is the authority empowered to determine the application under the Environmental Planning and Assessment Act.

As Council is the owner of the land and the applicant for the modification it engaged the services of Dubbo Regional Council to undertake an independent assessment of the application as lodged.

### Public Consultation



Chapter 2 of Council's DCP provides for public consultation for modification applications.

Consistent with the DCP, notice of the modification was forwarded to the private residents at Mount Panorama, the adjoining landowners and those persons who lodged submissions to the original proposal. Notice of the modification was also sent to the Registered Aboriginal Parties who were involved in the Aboriginal Cultural Heritage Assessment (ACHA) process.

In response to notification, Council received 4 submissions during the exhibition period. Following exhibition a number of further submissions were received. The latter submissions included a petition against the proposal.

A copy of all submissions are provided at **attachment 9**.

Issues raised in opposition to the proposal include:

- Proposal is located on a known aboriginal site relating to women's lore and ceremony.
- Proximity to registered aboriginal sites.
- The site is currently being considered by OEH for gazettal as an "Aboriginal Place".
- The site is a place of deep spiritual significance.
- Historic land uses have resulted in destruction of tangible cultural assets.
- Support for an Indigenous Land Use Agreement (ILUA).
- Alienation of publically available land.
- Further exacerbation of noise issues associated with increased usage of the precinct.

Issues raised in support of the proposal include:

- Proposal would bring benefits to the community including low cost activities, driving skills and provide opportunities for young drivers.
- Further establish Bathurst as a motorsport mecca.
- Highlight the need for proper liaison and ongoing engagement with community and indigenous groups.

### Assessment

A copy of the assessment report prepared by Dubbo Regional Council is provided at **attachment 10** and will not be repeated here.

The assessment report concludes that the modification application is capable of being approved subject to the inclusion of a number of additional conditions as follows:

*(1A) The development shall be undertaken in accordance with the Statement of Environmental Effects and stamped approved plans detailed as follows except where modified by any of the following conditions:*

*Title/Plan: Preliminary Site Layout Plan  
Drawing/Sheet No: EN1697/2  
Dated: 18/10/2018  
Revision: A*

*Title/Plan: Preliminary Track Layout Layout Plan  
Drawing/Sheet No: EN1697/1  
Dated: 18/10/2018  
Revision: A*

Condition (29) added with DA2015/196(2) to read as follows:

- (29) *In the event of any Aboriginal archaeological material being discovered during earthmoving/construction works, all work in that area shall cease immediately and the Office of Environment and Heritage (OEH) notified of the discovery as soon as practicable. Work shall only recommence upon the authorisation of the OEH.*

Condition (30) added with DA2015/196(2) to read as follows:

- (30) *Prior to the release of any Construction Certificate or the commencement of any works the applicant shall prepare and submit a Construction Environmental Management Plan (CEMP) to Council for assessment and approval. The CEMP shall detail acceptable methods for the adequate control and management of the following:*

- *Habitat Management measures – Detailing the implementation of habitat management measures to minimise the potential for adverse impacts on adjoining habitats, in accordance with the Flora and Fauna Assessment dated 3 December 2018 which was prepared by The Environmental Factor.*
- *Dust Suppression and Mitigation – Detailing dust suppression and mitigation measures to be employed during works on the site to ensure dust is not emitted from the site at all times including when no activities are taking place on the site.*
- *Erosion and Sedimentation Control Plan – Detailing the methods to be employed to ensure the adequate management of the surface and stormwater associated with subdivision activities.*
- *Waste Management Plan – Detailing the reuse or relocation of spoil and disposal of solid and liquid wastes.*
- *Noise impacts – Detailing the implementation of noise mitigation measures to minimise noise and to limit the impact on adjoining development, in accordance with the Acoustic Assessment dated February 2018 and prepared by PKA Acoustic Consulting.*

*The CEMP shall be approved by Council prior to any works being commenced and shall be implemented at all times during the operation of this consent.*

In addition to the assessment provided by Dubbo Regional Council the following comments provide further background and consideration to the assessment having regard to the major issues under consideration.

### Biodiversity Issues

The current proposal provides for a larger development footprint than the original proposal. The ecological impacts of the proposal are summarised in the Flora and Fauna Assessment as follows:

- The permanent removal of 0.79ha across the study area of White Box, Yellow Box, Blakely's listed under the Biodiversity Conservation/Threatened Species Conservation Act. This area also includes habitat for koala (listed as a vulnerable species under the Biodiversity Conservation Act/Threatened Species Conservation Act) and includes removal of 2 Ribbon Gum trees which are listed as primary feed trees.
- Removal of 3.57ha of exotic and planted vegetation including Hawthorn and Pine trees.
- Removal of 3 hollow bearing trees containing approximately 8 hollows, and 2 dead trees providing habitat for hollow dependent fauna.
- Indirect impacts on 2.95 ha of White Box Yellow Box Blakely's listed under the Biodiversity Conservation/Threatened Species Conservation Act.
- Potential injury or mortality of small, terrestrial fauna within the proposal footprint.

The Flora and Fauna Assessment concludes that the proposal is unlikely to have a significant negative effect on the local populations of Box Gum Woodland, koala or threatened microbats or woodland birds within the locality.

The Flora and Fauna Assessment does however recommend specific mitigation measures to minimise the potential indirect impacts of the proposal on the environment outside the proposed footprint during construction and operation. This includes the preparation and implementation of a Construction Environmental Management Plan (CEMP), including erosion, sediment, and fauna habitat management and weed control. The CEMP is to include those matters outlined in Part 7.2 of the Flora and Fauna Assessment as follows:

- Clearly delineate vegetation to be removed with the assistance of an ecologist, or similarly qualified professional, and induct all site personnel as to the approved extent of clearing. No unmarked trees should be removed/trimmed or otherwise damaged as part of the proposed works.
- Locate stockpile sites away from drainage lines and native vegetation. Ensure these are appropriately stabilized.
- Appropriate sediment reduction measures should be in place in accordance with the 'Blue Book' (Landcom 2004).
- Heavy vehicles are not to be parked under tree drip lines/ leaf canopy of trees to be retained within the study area to avoid compaction of soil.
- Where additional vegetation clearing is proposed this must first be assessed to consider the cumulative impacts and if appropriate supervised by a qualified ecologist and Council's Environmental Officer.
- All machinery and vehicles are to be clean and inspected prior to arriving on-site to reduce the spread of weeds and disease (*Phytophthora cinnamomic*) to the site.
- Declared noxious weed Blackberry is to be managed according to requirements under the Biodiversity Security Act 2015. It is recommended that this Weed of National Significance should be managed to ensure it does not spread.
- Prior to tree lopping / clearing, care should be taken to identify nests and / or roosting sites. If fauna habitat is present (nests or potential tree hollows) the Council or Council's appointed contractor would contact the project ecologist for further advice prior to clearing.
- To avoid nest abandonment, injury or death to native fauna it is recommended to time the works to occur following the fledging of active nests / roosts.
- Prior to clearing, a preclearance survey should be undertaken including inspection of hollows and nests to confirm occupation by fauna.
- Where trees to be removed contain hollows, nests or are inhabited by fauna, a staged clearing approach must be undertaken where hollow limbs are removed carefully and incrementally by a qualified tree surgeon / arborist. Care should be taken to inspect limbs for fauna prior to their removal.
- Where the two (2) stags and three (3) trees containing eight (8) hollows are removed, habitat supplementation is recommended through the installation of nestboxes or prepared hollow logs (3:1 ratio) to maintain habitat availability in adjacent woodland vegetation. Consult project ecologist to determine appropriate size and number and location to be erected.
- Place felled trees strategically and in proximity to the work site to provide refuge and potential habitat in the understorey.
- Undertake revegetation activities to offset the removal of the mature Eucalypts on site at a ratio of at least five tubestock per each tree removed (5:1). These should be planted across a 3.74ha area to replace Box Gum Woodland impacted as a result of the proposal. In addition to this, a variety of species that complements the current community should be planted adjacent to existing remnant mature trees to supplement the habitat this woodland provides in the area.

The recommendations made in the Flora and Fauna Assessment are generally supported. It is however considered that they should be further supplemented by the following to provide further rigour to the process.

- proposed tree plantings should be done using box-gum woodland species and densities to form a habitat linkage and amenity buffer around the site. This should extend along the western, southern and eastern development boundaries at least 20m wide. This should be permanently protected and maintained (fenced, watered, mulched, weeded etc) for at least 5 years or until the plants establish if greater than 5 years.
- All trees with hollows should be retained as standing habitat and placed in the new environmental buffer.
- Other felled timber is to be retained and placed as ground habitat. Foliage and smaller branches can be mulched and reused on the site.
- The mitigation measures should be overseen/conducted by a suitably qualified ecologist or similar and a report provided to Council prior to Occupation Certificate.
- Tree removal should be done in accordance with the RMS Biodiversity Guidelines.

This recommendation can be added as a new condition of consent consistent with Dubbo Council's conclusions.

### Noise Issues

The Acoustic Assessment has been updated to reflect the modifications to track layout.

The current consent conditions outline the maximum noise levels during race events and practice days (condition 18).

The comparison between the predicted noise levels of the revised layout and those contained in the development consent are provided below.

#### *Maximum noise levels during race events*

<b>Address</b>	<b>Maximum dBA (<math>L_{Aeq(1hr)}</math>) under existing consent</b>	<b>Proposed maximum dBA (<math>L_{Aeq(1hr)}</math>) under modified consent</b>
404 Conrod Straight	39	39
402 Conrod Straight	38	38
428 Conrod Straight	37	33
280 Hen and Chicken Lane	35	33
All other residential properties	36	36

#### *Maximum noise levels during practice days*

<b>Address</b>	<b>Maximum dBA (<math>L_{Aeq(1hr)}</math>) under existing consent</b>	<b>Proposed maximum dBA (<math>L_{Aeq(1hr)}</math>) under modified consent</b>
All residential properties	36	30
280 Hen and Chicken Lane	35	24

The revised modelling demonstrates that the development will still operate within the noise parameters established in the existing consent.

### Alienation of public land

The facility is to be located on Council owned land. The use involves the physical construction of the Go Kart track and facility but also the informal usage of parts of

McPhillamy and Sulman Parks for parking and staging areas.

That land is “operational” land under the Local Government Act. Part of the land is generally accessible to members of the public at most times. In addition, part of the land is utilised by promoters of events such as V8 Supercars.

A large section of the site containing the dwelling at 310 Brocks Skyline was, until Council’s acquisition of the land in 2000, privately owned and has never been publically accessible.

The Go Kart complex will restrict public access to part of the site. Further there will be restrictions on the availability of the area when the facility is in use.

Whether Council, as the landowner, considers the restrictions and limitations that the facility will impose are appropriate is beyond the ambit of the modification application. It is a development that is not inconsistent with the planning provisions governing the use of the land.

### Cultural Heritage issues

Council has engaged Extent Heritage Advisers to prepare an Aboriginal Cultural Heritage Assessment (ACHA) to accompany the modification application.

It is to be noted that the ACHA does not form part of the publically available information as it includes culturally sensitive information. A full copy of the ACHAR will be provided to Councillors under separate cover but will not be provided as an attachment to the public report.

The significant recommendations of the ACHA are summarised as follows (note that references to individual identified sites have been removed):

- The anthropological study found that the study area has intangible cultural heritage values to the local Aboriginal community. As part of Mt Panorama Wahluu, it is associated with the creation story of Wahluu and Gaahna Bulla “the two brothers”, which connects Mt Panorama with Mt Canobolas. Mt Panorama Wahluu is also associated with other important topographic features such as Mount Stewart and Evans Crown.
- Mt Panorama Wahluu was likely a place of mythological and spiritual importance to Wiradjuri people prior to contact, as with other similar prominent topographic features across Wiradjuri country. It has contemporary cultural values to the local Aboriginal community due to these traditional associations, and also as part of a movement of cultural revitalisation and reconnection currently underway across Wiradjuri country.
- The identified cultural values may be represented in part in the stones in the construction of the former Caretaker’s Cottage and fence. Some members of the Aboriginal community are of the belief, and assert, that the stones were taken from burbung/bora rings which were present in the area. However, there is currently no physical or documentary evidence to indicate that they are Aboriginal Objects as defined by the National Parks and Wildlife Act 1974. Council records indicate that a 1939 costing provided to the State Government for construction of the cottage includes a line item for “excavation stone”. This suggests, but does not prove, that the stone was likely obtained from a quarried source. Furthermore whilst there are beliefs that stones from previously existing Aboriginal stone arrangements were used in the construction of the caretakers cottage, other information indicates the stones were brought from one or more local quarries.
- The identified contemporary cultural values may be represented in part in trees and stones, which are present in the study area. Following the investigations of these features during archaeological survey, these items are not Aboriginal Objects according

to the definition used in the National Parks and Wildlife Act 1974. However, they are thought by some of the Aboriginal community representatives to be physical manifestations of the spiritual values of the location.

- The study area contains 5 registered Aboriginal sites. None of the five registered sites were found to contain Aboriginal Objects as defined by the National Parks and Wildlife Act 1974.
  - Three of these sites relate to Aboriginal Ceremony and Dreaming are considered by the Aboriginal groups to have intangible cultural values
  - Further investigation into scarred trees recorded in the AHIMS database reveal they are not Aboriginal in origin.
  - Two further sites identified in the AHIMS database reveal they are not Aboriginal sites.
  - Two further sites have been assessed and are considered to be the same site, situated on the same landform.
- It is concluded that the study area has a nil-low potential to contain buried sub-surface archaeological deposits.
- The study area is within an area that has been nominated by some members of the local Aboriginal community as an Aboriginal Place, but is not currently gazetted as such. If the Minister were to declare Mt Panorama Wahluu an Aboriginal Place, the Place would be provided statutory protection under the National Parks and Wildlife Act. The protection would apply to those heritage values and significant items for which the Place is listed.
- The Aboriginal community consultation process has indicated that different views are held by the Registered Aboriginal Parties (RAP) regarding potential impacts to intangible cultural heritage values as a result of the proposed works. Given the level of previous disturbance within the study area, one of the local RAP's considers that intangible cultural heritage values will not be impacted whilst other local RAP's suggest the proposed development will cause further impact. No comments were provided from non-Bathurst RAP's in regard to intangible cultural heritage values of Mt Panorama Wahluu.

The ACHA makes the following recommendations in relation to statutory requirements arising from the National Parks and Wildlife Act:

1. Copies of the draft report should be provided to the RAP's, for 28 day review and feedback period (note this action has already been completed).
2. The final report should be submitted to the NSW Office of Environment and Heritage for inclusion on the Aboriginal Heritage Information System (AHIMS) database (note that this action has been completed).
3. Council should request regular updates from OEH on the progress and status of the Aboriginal Place nomination.
4. The AHIMS site records for the 5 nominated sites should be updated.
5. No work should be undertaken until 2 of the sites (those assessed and determined not to be Aboriginal sites) have been delisted on the AHIMS Registrar.
6. No Aboriginal objects as identified by the National Parks and Wildlife Act 1974 have been identified within the proposed Go Kart track development area. The subject land does not currently form part of a gazetted Aboriginal Place. Therefore the proposed development does not currently require approval of an Aboriginal Heritage Impact Permit (AHIP) and development may proceed with caution.
7. In the event that a previously unidentified Aboriginal object is found during any future development work should cease in the vicinity and OEH, the RAPs, and a suitably qualified heritage consultant should be contacted for advice. It is an offence in NSW to disturb, damage or destroy an Aboriginal object without first obtaining an AHIP approval from OEH.
8. If human skeletal material is identified at any time during development works, all works in

the vicinity of the discovery should cease immediately and the NSW Police and NSW Coroner's Office should be contacted for advice on how to proceed.

9. Council should consider whether or not it is feasible to re-locate the proposed Go Kart track to an area that is less likely to result in harm to intangible cultural values. Extent recommends that Council consider negotiation with the local Aboriginal community to attempt to seek agreement on a suitable alternative location for the Go Kart track. It will be important that any agreement reached is in a form that ensures certainty for Council, OEH and the Aboriginal community stakeholders.
10. The former Caretakers Cottage (the 'stone cottage') in McPhillamy Park should be retained and conserved.

The decision before Council is whether it is appropriate to modify the existing development consent. The current ACHAR re-affirms the previous conclusions that the site has nil- low potential of archaeological sites to occur however it has cultural values to the Aboriginal community. This is generally in the form of intangible cultural assets.

It is beyond the scope of this assessment to consider the feasibility or otherwise of alternative sites. Whether or not Council considers it prudent to investigate alternate sites is a matter for the Council to consider separately.

#### Discussion Forum

A Discussion Forum was conducted on 5 December 2018. Minutes of the Discussion Forum are at **attachment 11**.

#### Conclusion

Council has received an application to modify an existing development consent for a Go Kart facility at Mount Panorama. The modification involves the extension of the track from 950 metres to 1100 in length.

The site is considered to hold cultural values to the Aboriginal community however it does have nil-low potential for archaeological objects to be found.

In terms of the legislative approach provided for under the Environmental Planning and Assessment Act the modification is capable of being approved subject to conditions.

Whether Council accepts the recommendations of Extent and investigates the feasibility of alternate sites is a matter for Council to pursue separately.

**Financial Implications:** Nil.

#### **Bathurst Community Strategic Plan - Objectives and Strategies**

- |  |                   |
|--|-------------------|
| ● Objective 1: Our sense of place and identity         | Strategy 1.1, 1.2 |
| ● Objective 4: Enabling sustainable growth             | Strategy 4.1, 4.3 |
| ● Objective 5: Community health, safety and well being | Strategy 5.5      |
| ● Objective 6: Community leadership and collaboration  | Strategy 6.4, 6.5 |

#### **Community Engagement**

- Inform

To provide the public with balanced and objective information to help them understand the problem, alternatives opportunities and/or solutions.

Yours faithfully

A handwritten signature in black ink, appearing to read 'N Southorn', with a long horizontal flourish extending to the right.

N Southorn  
**DIRECTOR**  
**ENVIRONMENTAL, PLANNING & BUILDING SERVICES**