
NARROMINE SHIRE COUNCIL
EXTRAORDINARY MEETING BUSINESS PAPER – 23 OCTOBER 2024
REPORTS TO COUNCIL – COMMUNITY AND ECONOMIC DEVELOPMENT

1. MODIFICATION TO DEVELOPMENT APPLICATION 2022/58.2 USE OF EARTHWORKS AS A MOTORBIKE TRACK AT 151 OLD BACKWATER ROAD, NARROMINE

Author	Manager Planning
Responsible Officer	Director Community and Economic Development
Link to Strategic Plans	Narromine Local Environmental Plan 2011; Narromine Development Control Plan 2011; Narromine Shire Residential and Large Lot Residential (Land Use) Strategy (Reviewed 2021).

Executive Summary

Council has received a modification application to development consent (DA2022/58) (PAN-447796) pursuant to *S4.55(1A) - Modification involving minimal environmental impact, where the development will remain substantially the same as the development that was originally approved.*

The proposal does not involve any physical works or changes to earthworks approved for use as a private motorbike track. The application seeks to modify two conditions:

1. Delete condition 2 Time Limit to the Approval.
2. Amend condition 4 Limitations to Hours of Use, to allow use of the track on Sundays and public holidays.

The application was notified for the period 8 July 2024 to 5 August 2024; 9 submissions of objection were received. The main issues raised relate to the detrimental impact on amenity primarily through related noise and dust generation. These amenity issues highlight the land use conflict resulting in the locality.

The modification was supported by a Statement of Environmental Effects; however, the report did not provide any additional proposed controls for noise or dust and relied upon reference to the original application. The original application was recommended for refusal, however, was granted consent at the August meeting of Council 2023.

This report provides an assessment of the proposed modification and recommends that the conditions be modified to address the impacts of the modification sought. In determining the application to modify the consent, it should be clear that the conditioned time limit to the approval is not a 12 monthly 'review' process. The condition 2, applying a time limit to the approval, in essence will require the track to cease to operate, at the end of the 12-month period. A new development application would need to be submitted to continue use of the earthworks as a track.

It is concluded and recommended that a more reasonable period to limit the use would be 5 years, in the context of greater management of impacts on neighbourhood amenity in the interim. A continued time limited approval is warranted, as the strategic policy of Council and current zoning is to see the location providing future supply of R5 Large Lot Residential, and the track provides direct land use conflict. Support for a modification to Condition 2 does not change that the track is likely to cause long term land use conflict and be not compatible with the existing and desired future character of the locality. The recommended modification to the condition will recognise the impacts to amenity and not hinder future residential development in the longer term, as well as provide an extended period for the residents to also plan for a new development.

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The recommendation is to modify conditions, which in addition to providing an extension to the time limit to the approval for total of 5 years, also addresses the known impacts, requiring dust mitigation and landscaping to be better implemented, prior to entering a second year of operation.

Report

1. BACKGROUND

The DA when originally assessed was recommended to be refused by an independent consulting planner. The main reasons for refusal related to inconsistency with Council land use policy, inconsistency with the land use zone objectives, acoustic impact, inconsistency with DCP provisions, and erosion and sediment control. The acoustic impact of the proposal had been evaluated in the assessment in terms of not only the existing nearby development, but also Council's policy decision to intensify residential development in the area by rezoning adjacent and nearby land to R5 for large lot residential development.

Contrary to the assessing officer's recommendation of refusal, Council at its Ordinary Meeting held on 9 August 2023 resolved to grant consent to the development application 2022/58 subject to a further report being presented to Council with conditions set (2023/130). The conditions relating to the consent were resolved (2023/148) at the Ordinary Council Meeting held 13 September 2023. In compiling the minutes of the September Council meeting an error in the description of one of the conditions (as resolved) has been found. At the Extraordinary Council Meeting 25th September 2023 clarification to the wording of conditions was resolved. The Notice of Determination was issued to the applicant, with an operation date from 27th September 2023.

The applicant satisfactorily demonstrated compliance with conditions required 'prior to operation', with advice that the track could become operational issued by staff in correspondence dated 30 November 2023. The applicant was advised as per condition 2 Time Limit to the Approval, the period the track can be used is limited to 12 months from that date, i.e. operations to cease by 30 November 2024.

Since the track has been operational, Council has received 9 written complaints regarding the activity, with reference to 12 dates of activity. No complaints have specifically indicated that the times and numbers of riders has occurred outside the limitations of the approved conditions. The concerns related to the experience of unacceptable noise and excessive dust. The Manager Health, Building and Environmental Services has provided the landowner with one letter since operating, to advise that complaints had been made regarding these matters and to ensure adherence to the conditions of consent regarding the use of the bike track to minimise disturbance to neighbouring property owners (dated 30 May 2024).

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2. THE SITE AND LOCALITY

2.1 The Site

The motorcycle track is located at Lot 6 DP251750, otherwise known as 151 Old Backwater Road Narromine. The land is zoned RU1 Primary Production with active farming occurring on several nearby properties, although this is not the predominant current or planned future land use. Council has, as mentioned, recently enacted the Residential and Large Lot Residential Strategy and R5 Large Lot Residential zoned land is occurring adjacent to the west, and to the north of Old Backwater Road, though not yet developed. The subject site is earmarked to also be rezoned in the future within the Strategy.

The site at the northern road frontage, has been shaped to form a motorcycle "circuit" with falls and rises, and a lower area within the track to catch any rainwater. The landowner has also established a 'flat track' which is formed through repetitive riding and no specific earthworks are known to have occurred. The condition 6 Operation requirements states that "When the track is in operation, motorcycles are not to be ridden elsewhere on the subject site". The reason for this condition was to limit the noise impacts.

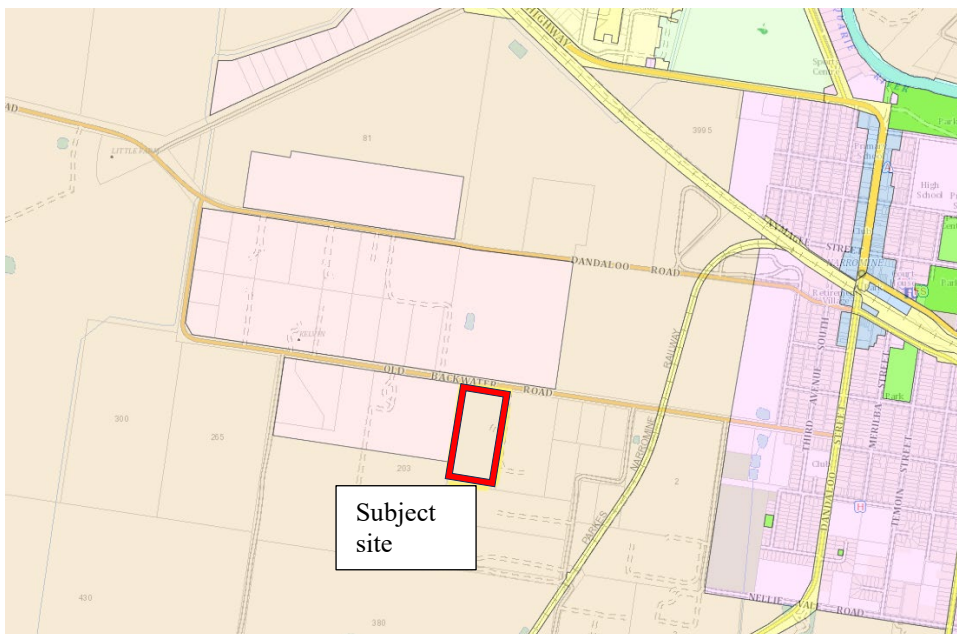


Figure 1: Site Location

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Figure 2: Aerial view of site (from Google Earth imagery dated 27 Sept 2023)

3. PROPOSED MODIFICATION DA2022/58.2

The application has sought to modify two separate conditions.

2	<p>Time Limit to Approval</p> <p>The period the track can be used is limited to 12 months from the date of compliance with all relevant conditions required prior to commencement and confirmed by Narromine Shire Council.</p> <p>NOTE: Provided the track is operated satisfactorily for that period, a consent that is not time limited could be granted by Council by way of an application for modification of this consent under Section 4.55 of the Environmental Planning and Assessment Act</p> <p>Condition Reason: To ensure the track is operating in a satisfactory manner consistent with the conditions of consent.</p>
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Proposed Modification sought:

The application seeks to delete this condition.

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Comments:

This condition limits the period the track can be used until the 30 November 2024. Condition 20 would require the final site rehabilitation to occur after this date. The modification application has been lodged with Council prior to the expiration of the time limit to the approval and can be considered.

4	Limitations to Hours of Use			
	The ongoing use and operation of the track is limited to four (4) sessions per week of a maximum 2 hours each session , but no more than a cumulative total of 6 hours of sessions per week .			
	Within the above constraints, riding is to be undertaken only during the following hours:			
	From	To	Limit to Hours	
	Monday	3pm	6pm	Max. 2hrs
	Tuesday	3pm	6pm	Max. 2hrs
	Wednesday	3pm	6pm	Max. 2hrs
	Thursday	3pm	6pm	Max. 2hrs
	Friday	3pm	6pm	Max. 2hrs
	Saturday	10am	5pm	Max. 2hrs
	School Holidays (Mon to Fri)	10am	6pm	Max. 2hrs
	No riding on public holidays			
	Condition Reason: To limit noise impacts.			

Proposed Modification sought:

The application seeks to amend the condition to allow for the use of the track on Sundays and Public Holidays between 10am and 5pm.

Comments:

The DA originally had been proposed with use on Sundays and public holidays but was not supported by Council when approved. The Statement of Environmental Effects does not provide any further assessment of noise and indicates on page 26 noise considerations were dealt with at the DA stage. It is noted that the DA originally included an acoustic assessment which has formed part of the approval documents referenced in condition 1, based on 3 motorbikes. The Council applied condition 4 with the reason to limit noise impacts. (It is noted however that condition 5 also provided the proponent an additional 4th motorcycle).

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4. STATUTORY CONSIDERATIONS

Section 4.55 of the *Environmental Planning and Assessment Act 1979* ('EP&A Act') provides for the modification of consents; the legislation is referenced below.

(1A) Modifications involving minimal environmental impact 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 proposed modification is of minimal environmental impact, and

Comments: The application has been made by Alex Baass. The applicant is acting for the landowner and has been supported by confirmation of owner's consent to the application.

The modification to the development has been accepted as of minimal environmental impact as the physical aspects of the development are not altered.

(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and

Comments: When compared to the DA, the proposed modification, is essentially or materially the same because the substance of the development remains unchanged and physically the track is unaltered by the modification sought.

(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 any period prescribed by the regulations or provided by the development control plan, as the case may be.

Comments: The application has been notified in accordance with the Regulations and in reference to the requirements of the NSC Community Participation Plan. The submissions received have been considered and addressed further in this report.

(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.

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Comments: The matters referred to in section 4.15(1) are the matters which a consent authority must take into consideration in determining a development application. These matters are further considered below and include the following:

- (a) the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations
- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,
- (c) the suitability of the site for the development,
- (d) any submissions made in accordance with this Act or the regulations,
- (e) the public interest.

The reasons given by the consent authority (i.e. Council) for the grant of the consent that is sought to be modified are to be further taken into consideration. In this case, the reasons for approval stated are subject to the conditions and it follows the reasons for conditions are to be duly considered.

4.1 Section 4.15(1)(a)(i) - Provisions of Environmental Planning Instruments

State Environmental Planning Policies (SEPP)

The following SEPPs potentially apply to the land:

- State Environmental Planning Policy (Biodiversity and Conservation) 2021: Not relevant. No vegetation is proposed for removal.
- State Environmental Planning Policy (Building Sustainability Index: BASIX): Not relevant. - no buildings are proposed.
- State Environmental Planning Policy (Exempt and Complying Development Codes) 2008: Not relevant. The proposal is not exempt or complying development.
- State Environmental Planning Policy (Housing) 2021: Not relevant. The proposal does not involve or affect the housing matters in the SEPP.
- State Environmental Planning Policy (Industry and Employment) 2021: Not relevant. The proposal does not impact on matters relevant to the SEPP.
- State Environmental Planning Policy (Planning Systems) 2021: Not relevant. The proposal does not involve matters relevant to the SEPP.
- State Environmental Planning Policy (Primary Production) 2021: Not relevant. The proposal does not impact on matters relevant to the SEPP.

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- State Environmental Planning Policy (Resources and Energy) 2021: Not relevant. The proposal does not impact on matters relevant to the SEPP.
- State Environmental Planning Policy (Transport and Infrastructure) 2021: Not relevant. The proposal does not impact on matters relevant to the SEPP.
- State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development: Not relevant. The proposal does not impact on matters relevant to the SEPP.
- State Environmental Planning Policy (Resilience and Hazards) 2021

Clause 4.6 of the SEPP requires a consent authority to consider the contamination status of the land when a development application is being assessed. The land is not on Narromine Shire Council's contaminated land register or affected by issues raised in relation to environmental protection licence. The land has been used for rural purposes for some time, and no soil was imported onto the site for the track. The modification does not propose any additional earthworks on site. As a result, land contamination is not an issue in relation to the proposed development.

However, during the assessment of this application, the landowner has received multiple loads of earth to the site and on the 13th August 2024 has requested to "have the track builder to go to site to do some maintenance on the track to fix up some holes in track and erosion". This matter will be dealt with separately, to the modification application. The source of soil material will need to be documented, and evidence of clean fill provided or the land will be flagged on the Narromine Shire Council's Potentially Contaminated Land Register.

Narromine Local Environmental Plan 2011

The Narromine Local Environmental Plan 2011 (LEP) applies to the land.

The land is zoned RU1 Primary Production. It is also adjacent and adjoining to the R5 Large Lot Residential zone. The RU1 Zone has the following objectives:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*
- *To encourage diversity in primary industry enterprises and systems appropriate for the area.*
- *To minimise the fragmentation and alienation of resource lands.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*

The development has been shown to cause land use conflict because of acoustic and dust impacts. The potential for land use conflict will increase as development intensifies on the R5 zoned land as a result of additional dwellings on the R5 zoned land, and this must be considered in the context of removal of the time limit to the approval.

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General Controls and Development Standards (Part 2, 4, 5 and 6)

The LEP also contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal were considered in the original assessment, and the modification has not changed assessment of those matters.

The development continues to be contrary to one of the RU1 zone objectives and is neutral in relation to others; it is assessed that overall it is generally consistent with the other LEP local provisions.

4.2 Section 4.15 (1)(a)(ii) - Provisions of any Proposed Instruments

Nil

4.3 Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan

The following Development Control Plan is relevant to this application:

- *Narromine Development Control Plan 2011 ('the DCP')*.

The departures from the DCP were assessed with the original assessment. No physical changes to the track are proposed with the modification. Key controls are noted below.

Table 1: Consideration of the DCP Controls – Chapter 5C Rural Development

Control	Proposal	Comply
<p>Setbacks (all structures) (50 metres from any local road; 40 metres from any side or rear property boundary).</p>	<p>Northern boundary – Old Backwater Road – approx. 5m min at the northwestern corner. – 90% variation proposed. Western Boundary – approx. 5-6 m – 85-90% variation proposed. Eastern boundary – approx. 20m – 50% variation proposed.</p> <p>While the proposal it is not a building per se, it is reasonable to regard the objectives of the setbacks as ensuring a buffer to surrounding uses, and importantly to protect visual amenity from the public realm (front setback). In this case, the significant "buffer" issue with surrounding development is acoustic impact, and the setback distances would have little impact. In terms of visual impact, effective screening vegetation along the front boundary and any other boundaries where the development is visible would achieve the assumed objectives of the setbacks if sufficient landscaping can be accommodated.</p>	<p>No (if a structure). However, one of the objectives of this control is to protect visual amenity and provide acoustic buffers. Landscaping would be required to protect visual amenity. Separation from neighbours would allow for stormwater, dust and noise to be better managed.</p>

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Control	Proposal	Comply
<p style="text-align: center;">Buffers</p> <p>Buffers between rural activities and dwellings (including dwellings on the same site) are important to ensure adverse impacts on the amenity of the dwelling are protected.</p>	<p>The nearest dwellings outside Lot 6, are separated by approx. 200-300m. (No suggested separation distance is provided for specifically motorbike tracks/recreation areas in the DCP).</p> <p>The stated objective in this case is for buffers to protect dwellings from adverse amenity impacts.</p> <p>In this case, the significant “buffer” issue with surrounding development is acoustic impact.</p>	<p>Protection of acoustic amenity- has been raised as an issue (see below).</p> <p>Non – compliance known – the earthworks were constructed without approval and the use of such was permitted with the DA2022/58. Adequate buffer not achieved.</p>

Narromine Shire Council Section 7.12 Development Contributions Plan 2019.

The modification does not attract contributions. No s7.12 contributions were payable for the original development application for use only (earthworks were carried out without approval).

4.4 Section 4.15(1)(a)(iiia) – Planning agreements under Section 7.4 of the EP&A Act

There have been no planning agreements entered into and there are no draft planning agreements being proposed for the site.

4.5 Section 4.15(1)(a)(iv) - Provisions of Regulations

Clause 61 of the Regulation contains matters that must be taken into consideration by a consent authority in determining a development application, comprising the following:

- If demolition of a building proposed - provisions of AS 2601; - (N/A)
- If on land subject to subdivision order under Schedule 7, provisions of that order and any development plan; - (N/A)
- Dark Sky Planning Guideline if applicable; - (N/A)
- *Low Rise Housing Diversity Design Guide for Development Applications* (July 2020) if for manor house or multi dwelling housing (terraces); - (N/A).

These provisions had been considered (where necessary) in the original assessment and the modification does not affect the findings.

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4.6 Section 4.15(1)(b) - Likely Impacts of Development

The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered. In this regard, potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls outlined above and discussed below.

The consideration of impacts on the natural and built environments includes the following:

- Context and setting – The motorcycle track was identified originally likely to cause long term land use conflict and be not compatible with the existing and desired future character of the locality. The Council has shown a clear policy intent for residential development in the area to intensify in the form of R5 Large Lot Residential development. While the visual external impacts of the track can potentially be managed by vegetative screening, the acoustic impacts are more problematic, as identified in the original assessment of the DA. The subject land - Lot 6 - and neighbouring Lot 7 are also identified to be rezoned to R5 in the Narromine Shire Residential and Large Lot Residential (Land Use) Strategy 2018.

Lots 6 and 7 were excluded in the LEP Amendment no. 11 due to owner objection to the proposed rezoning. Council did not progress LEP amendments for land where the owners objected to the change. However, a significant area of adjacent and other land has now been rezoned to R5 Large Lot Residential. The conflict arising from impacts to amenity through noise and dust produced when the track is in operation requires further consideration in regard to the conditions sought to be modified.

- Water/air/soils impacts – A stormwater management plan was approved, which outlines erosion and sediment control measures. These measures and ongoing diligence in the suppression of dust on the track surface are critical to minimising the potential for impact. The track has shown evidence of erosion and rilling. The sides of jumps have not adequately stabilised and repair and maintenance of the track will be required if the time limit to the approval is extended.

- Noise and vibration – The operational noise from the track was focus of an acoustic assessment for the applicant by Muller Acoustic Consulting (MAC). The condition 19 Intrusiveness noise levels, requires:

“Intrusiveness noise levels at any external receiver are not to exceed those predicted in the submitted Noise Assessment.

(Note: The applicant should be aware that motorbike noise at any time of the day can potentially be intrusive and affect amenity of neighbours. Riders should be made aware that noise can travel long distances, particularly when a bike is within sight of a neighbours' residence. It is the resident's responsibility to avoid offensive noise emissions.)

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Condition Reason:

To ensure the track operates within the parameters of the approved acoustic study."

No additional evidence has been provided to support the modification and to demonstrate compliance with the condition. No additional noise monitoring has been carried out to demonstrate the compliance with this condition. Submissions raise ongoing concern regarding experienced noise issues and concern regarding exacerbating the noise impacts.

- Social impact – The original assessment noted: "The proposal will have a positive impact on the residents, who have a common interest in motorcycle riding. Operation of the track may have a negative social impact on the local community should adverse acoustic impacts be experienced". The track has now been in operation for a period over 7 months. The social impacts of the development can be further considered with the additional knowledge obtained through the submissions received since operational and the submissions received in response to this application for modification. The assumptions at the original assessment have stood up. Key social impacts have been loss of amenity (dust and noise impacts) and neighbourhood dispute over this loss. There has been an overall negative social impact in the locality.
- Broader impacts – Acoustic impacts of the development may adversely affect the success of Council's strategy to intensify development in the recently expanded R5 Large Lot Residential zoned area located adjacent and nearby due to land use conflict. These impacts may mean that some nearby housing could be deferred until the track ceases operation, or require specific acoustic measures to ensure a satisfactory level of noise (acoustic) amenity inside the dwellings.

4.7 Section 4.15(1)(c) - Suitability of the site

The suitability of the site for the proposed use is highly dependent on its acoustic impact. This is a critical issue because of the zone objectives to minimise land use conflict, and Council's actions to provide the conditions for the intensification of development in the expanded R5 land use zone.

The time limit to the approval was conditioned "to ensure the track is operating in a satisfactory manner consistent with the conditions of consent". The time limit serves a purpose to provide a limit to the land use conflict arising and should be further considered in terms of suitability of the site for an amended time to the approval.

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4.8 Section 4.15(1)(d) - Public Submissions

The issues raised in submissions are considered in Section 5 of this report. Copies of submissions were provided to Council under separate cover.

4.9 Section 4.15(1)(e) - Public interest

The proposal provides minimal social, economic and environmental benefits to the wider community. It is a private facility conditioned to be ancillary to residential occupation of the site. With a determination of unacceptable acoustic impact, it would not be in the public interest to proceed with an intensification of use – no Sundays and public holiday use, and no additional hours of riding.

5. REFERRALS AND SUBMISSIONS

5.1 Agency Referrals and Concurrence

The application for modification has not been required to be referred to external agencies for comment/concurrence as required by the EP&A Act.

5.2 Council referrals (internal)

The development application has been referred internally for technical review as outlined **Table 5**.

Table 2: Consideration of Council Referrals

Officer	Comments
Manager Health, Building and Environmental Services	<ul style="list-style-type: none"> • Complaints from neighbouring properties indicate that current dust suppression methods have not met expectations of adjoining property holders. A more permanent or fixed Irrigation sprayer system along the track would be ideal to help control dust levels. • Landscaping around property (Screening Trees) appear to have withered in some locations since Council's last inspection – Ongoing care and maintenance is required. Replacement of dead trees may also be required. • Further ground vegetation such as grasses around the track would be ideal to combat erosion and dust issues. • Due to the nature of the development and its possible impacts on amenity it is strongly recommended that Sundays and Public Holidays be No ride days for the track as to stay consistent with other development controls with the Narromine Shire Local Government Area. • It is important that the track owners adhere to the conditions to mitigate dust and amenity issues caused by the track operation.

The outstanding issues raised by Council officers are considered in the Key Issues section of this report.

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5.3 Community Consultation

The proposed modification was notified in accordance with statutory requirements and Council policy for a period 8 July 2024 to 5 August 2024. The notification included the following:

- Notification letters sent to adjoining and adjacent properties
- Notification letters to all submitters with address details of the original application.

The Council received a total of **9** unique submissions. The issues raised in these submissions are considered in **Table 6**. Copies of submissions have been provided to the Councillors under separate cover.

Table 3: Issues raised in Community Submissions

Issue	Detail of Issue Raised	Assessment Comment
Noise	<p>Raised in 9 submissions.</p> <ul style="list-style-type: none"> • Far reaching – affects land well outside the radius expected. • Respite from days with noise is required. • Affects wildlife and stock. • No monitoring in place to ensure or demonstrate that compliance is achieved. 	<p>Acoustic amenity issues have been raised as a key issue. One of the previous original reasons behind the recommendation for refusal was that the application had not demonstrated that acoustic impacts can be satisfactorily managed. The Council now has months of operations to gauge the impact of noise. The conditions of approval limiting the number of bikes and times of use are the mechanisms employed to address this impact. The response from neighbours shows noise is detrimentally affecting amenity.</p>

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Issue	Detail of Issue Raised	Assessment Comment
Dust	Raised in 9 submissions. <ul style="list-style-type: none"> • Ineffective management of dust. • Watering system inadequate. • Affects health. • Impacts on ability to carry out tasks such as washing clothes. • Dust is worse during riding but also occurs due to bare surface at other times. • Buffer is not adequate. Planting ineffective to reduce dust. 	Raised dust when bikes are on the track has been experienced as an ongoing issue. The improvement to the management of this impact is imperative if the track is to continue operation.
Impact on amenity and social impact	Raised in 9 submissions. <ul style="list-style-type: none"> • Restricts activity of neighbours e.g.: stay indoors due to noise/dust. • Land use conflict is highlighted due to the nature of the impacts. 	The impact to amenity highlights the Land Use Conflict between the track and R5 Large Lot Residential occupied and future occupation of such land for residential purpose.
Compliance matters	Raised in 9 submissions. <ul style="list-style-type: none"> • Concern conditions cannot be monitored without robust systems in place. 	Council has received complaints and acted in accordance with Council Policy. Valid concern where the dust has been reported as causing nuisance to neighbouring residents in contravention of condition 17 'Dust management'. The applicant would be able to demonstrate compliance with condition 19 'Intrusive noise levels', with noise logging to occur.
Hours of Use	Raised in 8 submissions. Oppose any extension to impact days of rest and period of respite from noise and dust especially.	Valid concern as the reasoning in the previous acoustic assessments for the original DA cited, though noise levels would exceed criteria the period the unacceptable noise is experienced is limited and neighbours are afforded periods of respite. Any extension to times/days of riding will detrimentally affect these periods of relief from amenity deterioration.

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Issue	Detail of Issue Raised	Assessment Comment
Health and Wellbeing	<p>Raised in 5 submissions.</p> <ul style="list-style-type: none"> • Impact of dust and noise related. • Amenity impacts detrimentally impact wellbeing of neighbours. <p>Community relationships breakdown - Raised in 4 submissions.</p> <ul style="list-style-type: none"> • Ongoing detriment to amenity has eroded relationships. • Instances of bullying, intimidation, and strain on neighbourly relationships has been relayed in submissions. 	<p>The time limit to the consent and operational conditions are in place to address impacts.</p> <p>The land use benefits one family as ancillary to the residential occupation, and negative impacts have detrimentally affected the social wellbeing of those not directly benefited.</p>

6. DISCUSSION

Compliance history is called into discussion in relation to the proposed modification. The approval was issued as a conditional consent. The time limit to the approval established in condition 2, was applied to provide an end date to the consent after 12 months. This was a decision of Council which provided an operational limit, in effect ensuring that a further approval process would be required to permit riding after this period. The condition sought to ensure compliance and satisfactory operation in accordance with the consent conditions. Most other consent conditions are based on limiting the impacts of the development.

An assessment of whether the track was satisfactory operated is required to be made by Council.

Condition 2

2	<p>Time Limit to Approval</p> <p>The period the track can be used is limited to 12 months from the date of compliance with all relevant conditions required prior to commencement and confirmed by Narromine Shire Council.</p> <p>NOTE: Provided the track is operated satisfactorily for that period, a consent that is not time limited could be granted by Council by way of an application for modification of this consent under Section 4.55 of the Environmental Planning and Assessment Act</p> <p>Condition Reason: To ensure the track is operating in a satisfactory manner consistent with the conditions of consent.</p>
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Proposed Modification sought:

The application seeks to delete this condition.

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1. MODIFICATION TO DEVELOPMENT APPLICATION 2022/58.2 USE OF EARTHWORKS AS A MOTORBIKE TRACK AT 151 OLD BACKWATER ROAD, NARROMINE (Cont'd)

Options:

Option	Outcome
Do not support the deletion of this condition.	Condition remains and the track has an end of life 30 November 2024. <i>The applicant would need to lodge a new DA to continue use of the earthworks as a bike track.</i>
Support the deletion of this condition.	The approval is no longer time limited. The consent will remain with the land as ancillary development to the residential occupation.
Reword the condition.	The time limit to the approval can be changed to revise the period the track can be used.

Recommendation:

It is advised that retaining a time limit to the approval is appropriate. The condition reason states the condition was "to ensure the track is operating in a satisfactory manner consistent with the conditions of consent". The condition could be reworded to provide additional clarity in this regard. Further, limiting the period the track can be used provides a mechanism for addressing the land use conflict that has been identified. The future development in accordance with the land use zoning of adjacent and adjoining land as R5 Large Lot Residential lots is hindered by the non-compatible bike track use. Rewording condition 10 is for additional clarity on maintenance earthworks and for consistency in wording.

Reword condition 2 and condition 10:

2	<p>Time Limit to Approval</p> <p>The period the track can be used is limited to 5 years from the date of compliance with all relevant conditions required prior to commencement and confirmed by Narromine Shire Council. At the end of this operational period, the rehabilitation period is to commence.</p> <p>Prior to the use of the track extending into the second annual period the following is required:</p> <p>a) Landscaping is to be improved to the satisfaction of Council staff. A watering system is to be installed and the applicant is to replace any plants that have not survived the initial landscaping effort. Further inspection is required to ensure compliance with condition 14.</p> <p>b) Dust mitigation measures are to be improved. The dust suppression /track watering system is to be upgraded to ensure compliance with</p>
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	<p>condition 17. Dust is required to be suppressed with use of a water truck, parts of the track that cannot be accessed by water truck are to have sprinkler system installed to suppress dust. As per the approved Stormwater Management Plan, all disturbed areas not part of the riding line is to be revegetated with Kikuyu or similar to a minimum vegetation height of 50mm.</p> <p>c) Maintenance earthworks are required to repair erosion and improve track conditions for rider safety, in compliance with condition 10.</p> <p>d) Grass and vegetative ground cover are to be established to reduce exposed surfaces and control dust and erosion. As per the approved Statement of Environmental Effects, sowing of natural grasses around the track is required. To ensure compliance with condition 15, an irrigation/watering system is to be provided.</p> <p>NOTE 1: This condition was modified DA2022/58.2. NOTE 2: An inspection is to be requested by Council staff to confirm satisfactory implementation. NOTE 3: The first annual (operational) period ends 30 November 2024.</p>
	<p>Condition Reason: To ensure the track is operating in a satisfactory manner consistent with the conditions of consent. To ensure landscaping is maintained for the protection of the amenity of the area during the track operation. To minimise dust causing impact to amenity. To clarify the consent is a time limited approval to reduce the long-term land use conflict issues.</p>

10	<p>Future Earthworks</p> <p>Any earthworks intended for reconfiguration to cater for changes in rider ability are subject to separate approval. The track is required to be maintained in a safe and stable riding condition. Batters are to be maintained to prevent erosion and sedimentation.</p> <p>NOTE 1: This condition was modified DA2022/58.2.</p>
	<p>Condition Reason: To ensure permitted earthworks on the track are limited to maintenance for rider safety and erosion repair/prevention only.</p>

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Condition 4

4	<p>Limitations to Hours of Use</p> <p>The ongoing use and operation of the track is limited to four (4) sessions per week of a maximum 2 hours each session, but no more than a cumulative total of 6 hours of sessions per week.</p> <p>Within the above constraints, riding is to be undertaken only during the following hours:</p> <table border="1"> <thead> <tr> <th></th> <th>From</th> <th>To</th> <th>Limit to Hours</th> </tr> </thead> <tbody> <tr> <td>Monday</td> <td>3pm</td> <td>6pm</td> <td>Max. 2hrs</td> </tr> <tr> <td>Tuesday</td> <td>3pm</td> <td>6pm</td> <td>Max. 2hrs</td> </tr> <tr> <td>Wednesday</td> <td>3pm</td> <td>6pm</td> <td>Max. 2hrs</td> </tr> <tr> <td>Thursday</td> <td>3pm</td> <td>6pm</td> <td>Max. 2hrs</td> </tr> <tr> <td>Friday</td> <td>3pm</td> <td>6pm</td> <td>Max. 2hrs</td> </tr> <tr> <td>Saturday</td> <td>10am</td> <td>5pm</td> <td>Max. 2hrs</td> </tr> <tr> <td>School Holidays (Mon to Fri)</td> <td>10am</td> <td>6pm</td> <td>Max. 2hrs</td> </tr> <tr> <td colspan="4">No riding on public holidays</td> </tr> </tbody> </table> <p>Condition Reason: To limit noise impacts.</p>		From	To	Limit to Hours	Monday	3pm	6pm	Max. 2hrs	Tuesday	3pm	6pm	Max. 2hrs	Wednesday	3pm	6pm	Max. 2hrs	Thursday	3pm	6pm	Max. 2hrs	Friday	3pm	6pm	Max. 2hrs	Saturday	10am	5pm	Max. 2hrs	School Holidays (Mon to Fri)	10am	6pm	Max. 2hrs	No riding on public holidays			
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Proposed Modification sought:

The application seeks to amend the condition to allow for the use of the track on Sundays and Public Holidays between 10am and 5pm.

Options:

Option	Outcome
Do not support the extension of hours.	Condition remains as currently worded.
Support the extension of hours.	The condition is reworded to include riding on Sundays and public holidays between the hours of 10am to 5pm.
Do not support the extension of hours. Reword the condition.	The rewording will clarify the limits of the approved riding days and times (not including Sundays and public holidays).

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Recommendation:

It is advised that the condition be reworded to recognise the modification sought and clarify the days permitted for riding. The submissions and approved acoustic assessment recognise the amenity issue of noise generated by the riding on the track causes. There has been no evidence provided with the modification application to support exacerbating the noise impacts. Days of respite from noise are important to reducing the overall impact of the development.

Reword Condition 4:

4	Limitations to Hours of Use		
	The ongoing use and operation of the track is limited to four (4) sessions per week of a maximum 2 hours each session , but no more than a cumulative total of 6 hours of sessions per week .		
	Within the above constraints, riding is to be undertaken only during the following hours:		
	From	To	Limit to Hours
	Monday	3pm – 6pm	Max. 2hrs
	Tuesday	3pm – 6pm	Max. 2hrs
	Wednesday	3pm – 6pm	Max. 2hrs
	Thursday	3pm – 6pm	Max. 2hrs
	Friday	3pm – 6pm	Max. 2hrs
	Saturday	10am – 5pm	Max. 2hrs
	School Holidays (Mon to Fri)	10am – 6pm	Max. 2hrs
	No riding on public holidays / No riding on Sundays		
	NOTE: This condition was modified DA2022/58.2.		
	Condition Reason: To limit noise impacts and protect the amenity of neighbouring residents. To clarify the days and times riding may occur.		

7. CONCLUSION

The Proposal has been assessed consistent with Council's statutory responsibilities under the Environmental Planning Assessment Act, and related policies and plans, as well as accepted planning considerations. It is considered reasonable that the Modification to Development Application 2022/58.2 at 151 Old Backwater Road, Narromine be approved as recommended.

Legal and Regulatory Compliance

This assessment has been undertaken consistent with Council's obligations under the Environmental Planning and Assessment Act, 1979, as amended.

1. MODIFICATION TO DEVELOPMENT APPLICATION 2022/58.2 USE OF EARTHWORKS AS A MOTORBIKE TRACK AT 151 OLD BACKWATER ROAD, NARROMINE (Cont'd)

When determining a modification application, the consent authority (Council) can impose new conditions as well as amend existing conditions. The limits of the discretion to do so will be defined by the matters raised for consideration by the application. In particular, any new conditions or changes to existing conditions must relate to the specific subject-matter and nature of the modification(s) sought, that is, to 'the same planning matter'. Meaning Council can only modify or impose additional conditions that relate directly to the modification or its impacts (1643 Pittwater Road Pty Ltd v Pittwater Council [2004] NSWLEC 685 at [51]-[52]).

Request a review

The Environmental Planning and Assessment Act gives the applicant the ability to seek a review of a determination under section 8.3(1) of the Act. The application must be made to the consent authority within 28 days from the date that the applicant receives the notice of determination, provided that an appeal under section 8.9 of the EP&A Act has not been disposed of by the Court.

Rights to appeal

The applicant has a right under section 8.9 of the EP&A Act to appeal to the Court within 6 months after the date on which the determination appealed against is notified or registered on the NSW planning portal.

Risk Management Issues

Council will be the relevant authority to address any non-compliance with conditions of development consent, and to enforce any adopted management measures should Council wish to approve the modification to development.

The author declares, to the best of their knowledge that they have no interest, pecuniary or otherwise, in this application or persons associated with it and have provided an impartial assessment.

Internal/ External Consultation

The Narromine Shire Council Community Consultation Plan (CCP 2019) requires Modification of Development Application made under s4.55(2) or s4.56 of the EP&A Act to be notified as long as the original application was exhibited for in the same way. The CCP 2019 also includes that other types of applications could be neighbour notified or advertised depending on the assessing officer's initial view as to the potential impacts of the development.

This application for modification to DA2022/58 was placed on a neighbour notification period consistent with the period for the original DA (period 8 July 2024 to 5 August 2024). The previous submitters to the original DA and neighbours were notified.

Internal consultation with Manager Health, Building and Environmental Services.

Attachments

Nil.

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As this is a planning decision made in the exercise of a function of a Council under the Environmental Planning and Assessment Act 1979, including a decision relating to a development application under that Act, a division is required to be called.

RECOMMENDATION

That Council resolve to maintain a time limited approval and modify conditions pursuant to s4.55(1A) in accordance with the modification summary below and subject to the conditions specified in Annexure A.

1. MODIFICATION SUMMARY

Condition 1 – updated to include the Statement of Environmental Effects prepared by Anthony Daintith Town Planning for the modification as an 'approved document'.
Condition 2 – Update wording to reflect an extension to the time limit of the approval (limited to 5 years) and condition to ensure satisfactory operations for this time period.
Condition 4 – Update wording to specifically refer to 'no riding on Sundays and Public Holidays'.

Condition 10 – Update wording to clarify earthworks are permitted to maintain the track in a safe riding condition and to address erosion and sedimentation control only.

2. ANNEXURE A

GENERAL CONDITIONS

Condition				
1	Approved Plans			
This consent relates to the use of existing earthworks as a motorbike track as illustrated on the plans, specifications and supporting documentation stamped with reference to this consent, except as modified by the following conditions. The development shall be carried out in accordance with this consent:				
	Name of Plan	Author	Issue	Date
	Statement of Environmental Effects	Anthony Daintith Town Planning	V 1.0	12/2022
	Engineering Plans L Harding Race Track	Duncan Priestley Civil Engineering	V1 – MP	15/05/2021
	Conceptual Stormwater Management Plan	Calare Civil	Amendment A/02/2022	05/12/2022
	Noise Assessment Motocross Track	Muller Acoustic Consulting	MAC211352-03RP1V1	25/01/2023
	Letter from Anthony Daintith		Ref: 2023-045	28 /04/2023
	Statement of Environmental Effects DA2022/58 (Modification)	Anthony Daintith Town Planning	Vers 4.0	2 /07/2024
NOTES: Any alteration to the plans and/or documentation shall be submitted for the approval of Council. Such alterations may require the lodgement of an application to amend the consent under s4.55 of the Act, or a fresh development application. No works, other than those approved under this consent, shall be carried out without the prior approval of Council.				

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Condition	
	<p>Where there is an inconsistency between the documents lodged with this application and the following conditions, the conditions shall prevail to the extent of that inconsistency.</p> <p>NOTE: This condition was modified DA2022/58.2.</p>
	<p>Condition Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.</p>
2	<p>Time Limit to Approval</p> <p>The period the track can be used is limited to 5 years from the date of compliance with all relevant conditions required prior to commencement and confirmed by Narromine Shire Council. At the end of this operational period, the rehabilitation period is to commence.</p> <p>Prior to the use of the track extending into the second annual period the following is required:</p> <ul style="list-style-type: none"> a) Landscaping is to be improved to the satisfaction of Council staff. A watering system is to be installed and the applicant is to replace any plants that have not survived the initial landscaping effort. Further inspection is required to ensure compliance with condition 14. b) Dust mitigation measures are to be improved. The dust suppression /track watering system is to be upgraded to ensure compliance with condition 17. Dust is required to be suppressed with use of a water truck, parts of the track that cannot be accessed by water truck are to have sprinkler system installed to suppress dust. As per the approved Stormwater Management Plan, all disturbed areas not part of the riding line is to be revegetated with Kikuyu or similar to a minimum vegetation height of 50mm. c) Grass and vegetative ground cover are to be established to reduce exposed surfaces and control dust and erosion. As per the approved Statement of Environmental Effects, sowing of natural grasses around the track is required. To ensure compliance with condition 15, an irrigation/watering system is to be provided. <p>NOTE 1: This condition was modified DA2022/58.2. NOTE 2: An inspection is to be requested by Council staff to confirm satisfactory implementation. NOTE 3: The first annual (operational) period ends 30 November 2024.</p>
	<p>Condition Reason: To ensure the track is operating in a satisfactory manner consistent with the conditions of consent. To ensure landscaping is maintained for the protection of the amenity of the area during the track operation. To minimise dust causing impact to amenity. To clarify the consent is a time limited approval to reduce the long-term land use conflict issues.</p>
3	<p>Ancillary to Residential Use</p>

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Condition			
<p>The use and operation of the track are an ancillary use to the residential occupation of the land. The use of the track is to reflect this ancillary nature, and users are limited to residents, family, and the resident's guests. There is to be no organised or publicised events, commercial or non profit activity, such as a training facility.</p>			
<p>Condition Reason: To limit the scale of use and ensure is ancillary to residential occupation of the land.</p>			
4 Limitations to Hours of Use			
<p>The ongoing use and operation of the track is limited to four (4) sessions per week of a maximum 2 hours each session, but no more than a cumulative total of 6 hours of sessions per week.</p> <p>Within the above constraints, riding is to be undertaken only during the following hours:</p>			
	From	To	Limit to Hours
Monday	3pm	6pm	Max. 2hrs
Tuesday	3pm	6pm	Max. 2hrs
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Saturday	10am	5pm	Max. 2hrs
School Holidays (Mon to Fri)	10am	6pm	Max. 2hrs
No riding on public holidays / No riding on Sundays			
<p>NOTE: This condition was modified DA2022/58.2.</p>			
<p>Condition Reason: To limit noise impacts and protect the amenity of neighbouring residents. To clarify the days and times riding may occur.</p>			
5 Limit to number of Riders			
<p>The typical ongoing use and operation of the track is limited to three (3) motorcycles at any one time. However, an additional fourth motorcycle, of a smaller engine capacity is permitted, to include a child rider (16 years and under) only.</p>			
<p>Condition Reason: To limit noise impacts and clarify the number of motorbikes permitted to ride at any one time.</p>			
6 Operation requirements			
<p>When the track is in operation, motorcycles are not to be ridden elsewhere on the subject site.</p>			
<p>Condition Reason: To limit noise impacts.</p>			

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PRIOR TO COMMENCING WORK

Condition	
7	<p>Stormwater Management Plan</p> <p>Track details will need to be redesigned to the satisfaction of Council in order to maintain the function of the landscaped visual screen and to ensure stormwater is managed consistent with the conceptual Stormwater Management Plan without impacting adjoining land or the effectiveness of the landscaped visual screen. These measures include a 3 metre wide grassed sediment control buffer, as described in the Stormwater Management Plan.</p> <p>Condition Reason: To ensure suitable stormwater management controls are in place and to ensure no substance other than rainwater enters the stormwater system and waterways.</p>
8	<p>Landscaping Plan</p> <p>A Landscaping Plan is to be submitted to Council and approved prior to commencing any works. Landscaping is to be provided along the eastern, northern and western sides of the track, consistent with a landscaping plan to the satisfaction of Council.</p> <p>The landscaping is to be a minimum of 3 metres wide and be comprised of a mix of ground covers, shrubs and trees, including trees with a minimum mature height of 4 metres. The landscaping scheme shall be designed to provide a visual screen from Old Backwater Road and adjacent properties. The species used shall be native endemic species chosen to complement the biodiversity values of the remnant bushland along Old Backwater Road. The Plan is to include a watering system and maintenance schedule for plants. All landscaping required by the Plan must be of varied specimen (size/age). Screening landscaping is to be provided with mulch (min 100mm depth).</p> <p>(Note: The provision of an effective landscaping screen may require the relocation of the track in locations adjacent to Old Backwater Road and the western property boundary).</p> <p>Condition Reason: To ensure a landscaping solution is implemented to address amenity, dust mitigation and sedimentation matters, with consideration to biodiversity.</p>

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PRIOR TO OPERATION

Condition	
9	<p>Track condition</p> <p>The track is to be groomed prior to its initial use for riding to provide safe riding condition.</p> <p>Condition reason: To define the extent of ongoing works to be undertaken on the track.</p>
10	<p>Future Earthworks</p> <p>Any earthworks intended for reconfiguration to cater for changes in rider ability are subject to separate approval. The track is required to be maintained in a safe and stable riding condition. Batters are to be maintained to prevent erosion and sedimentation.</p> <p>NOTE 1: This condition was modified DA2022/58.2.</p> <p>Condition Reason: To ensure permitted earthworks on the track are limited to maintenance for rider safety and erosion repair/prevention only.</p>
11	<p>Implementation of stormwater and erosion control measures</p> <p>Before the operation or use of the track Narromine Shire Council must be satisfied the stormwater/erosion and sediment control measures are in place and stable, in accordance with the approved Stormwater Management Plan.</p> <p>(Note: This should be confirmed through site inspection and written advice).</p> <p>Condition Reason: To ensure sediment laden runoff and site debris do not impact local stormwater systems and waterways.</p>
12	<p>Implementation of landscaping plan</p> <p>Prior the operation or use of the track the approved Landscaping Plan is required to be implemented to the satisfaction of Narromine Shire Council.</p> <p>(Note: This should be confirmed through site inspection and written advice from Council).</p> <p>Condition Reason: To ensure landscaping measures are implemented appropriately.</p>
13	<p>Signage</p> <p>A sign is to be placed at the frontage to the property as notification to deter unauthorised access or use of the track consistent to the conditions of consent. Signage is to indicate the track is not for public use or viewing purposes. The sign shall not be larger than one metre long and 300mm high.</p> <p>Condition Reason: To use signage as a deterrent for unauthorised use and access.</p>

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OCCUPATION & ONGOING USE

	Condition
14	<p>Landscaping</p> <p>The planting associated with the landscape screen outlined in the approved Landscape Plan must be maintained and watered. Replacement of plant stock shall occur when necessary to ensure the landscaping continues to act as an effective visual buffer. Following any maintenance activities causing ground disturbance, the occupant must restore the ground cover of the site as soon as practicable using suitable species.</p> <p>Condition reason: To protect the amenity of the surrounding area and ensure landscaping measures are maintained.</p>
15	<p>Erosion and Sediment Control</p> <p>Grass and/or other vegetative ground cover shall be provided to those parts of the facility not used as track by motorcycles, in accordance with the approved Stormwater Management Plan. The ground cover shall be sufficient to prevent erosion and assist in sediment control. Irrigation/water shall be provided so that the ground cover is effective year round.</p> <p>Condition reason: To minimise exposed ground surfaces and potential for erosion and sedimentation.</p>
16	<p>Sediment pond maintenance</p> <p>Sediment controls are to be implemented consistent with the submitted Stormwater Management Plan. Sediment shall be removed from the ponds within the facility at periodic intervals to ensure their function as a sedimentation basin and manager of peak stormwater flows is not diminished.</p> <p>Condition reason: To ensure function of the stormwater management measures are maintained.</p>
17	<p>Dust management</p> <p>The operation of the track is to be managed to reduce dust creation and emission causing nuisance to neighbouring residents. Management measures described in the Stormwater Management Plan are to be implemented to ensure watering of the track for dust mitigation.</p> <p>Condition reason: To minimise impacts to amenity from raised dust.</p>
18	<p>Motorcycle noise management</p> <p>All motorcycles are to comply with the standards of the Manual of Motorcycle Sport 2023 (or later) Appendix C Sound emissions for Motocross (Motorcycling Australia). Riders should, as far as practical, minimise the noise produced by their bikes by riding them in a reasonable manner and ensuring exhaust systems are properly maintained.</p> <p>Condition reason: To limit potential noise emissions from vehicles.</p>

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Condition	
19	<p>Intrusiveness noise levels</p> <p>Intrusiveness noise levels at any external receiver are not to exceed those predicted in the submitted Noise Assessment.</p> <p>(Note: The applicant should be aware that motorbike noise at any time of the day can potentially be intrusive and affect amenity of neighbours. Riders should be made aware that noise can travel long distances, particularly when a bike is within sight of a neighbours' residence. It is the resident's responsibility to avoid offensive noise emissions.)</p> <p>Condition reason: To ensure the track operates within the parameters of the approved acoustic study.</p>
20	<p>Final site rehabilitation</p> <p>At the cessation of use the land disturbed for the bike track is to be suitably rehabilitated and maintained in a safe and stable condition in a manner consistent with the surrounding landscape and zoning.</p> <p>Condition reason: To ensure the land is returned to suitable use after the track is no longer in use.</p>

Phil Johnston
Director Community and Economic Development