

<b>JRPP No.</b>	<b>2009HCC002</b>
<b>DA No.</b>	<b>DA/1193/2009</b>
<b>Proposed Development</b>	<b>4 into 463 Lot Residential Subdivision</b>
<b>Address</b>	<b>Lot 103 DP 1000408, 11 Robertson Street, West Wallsend</b>  <b>Lot 105 DP 1000408, 103 Withers Street, West Wallsend</b>  <b>Lot 15 DP 849003, 115 Withers Street, West Wallsend</b>  <b>Lot E DP 938528, 17 Appletree Road, West Wallsend</b>
<b>Applicant</b>	<b>Hammersmith Management Pty Ltd</b>
<b>Report By:</b>	<b>Matt Brogan (Lake Macquarie City Council)</b>

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# **1 PRECIS**

The development application lodged by Hammersmith Management Pty Ltd is seeking development consent for a proposed 4 into 463 lot subdivision. The proposal comprises of 456 residential lots, 4 drainage reserves, 1 open space and 2 residue lots. The development is proposed to be undertaken in 9 stages.

The majority of the site is zoned 2(1) Residential under Lake Macquarie Local Environmental Plan 2004 (LM LEP 2004), with the remainder being zoned 6(1) Open Space Zone and Zone 5 Infrastructure. The proposed subdivision is a permissible use on the site, under LM LEP 2004.

The proposal is classified as Integrated Development and Threatened Species Development pursuant to the Environmental Planning and Assessment Regulation 2000.

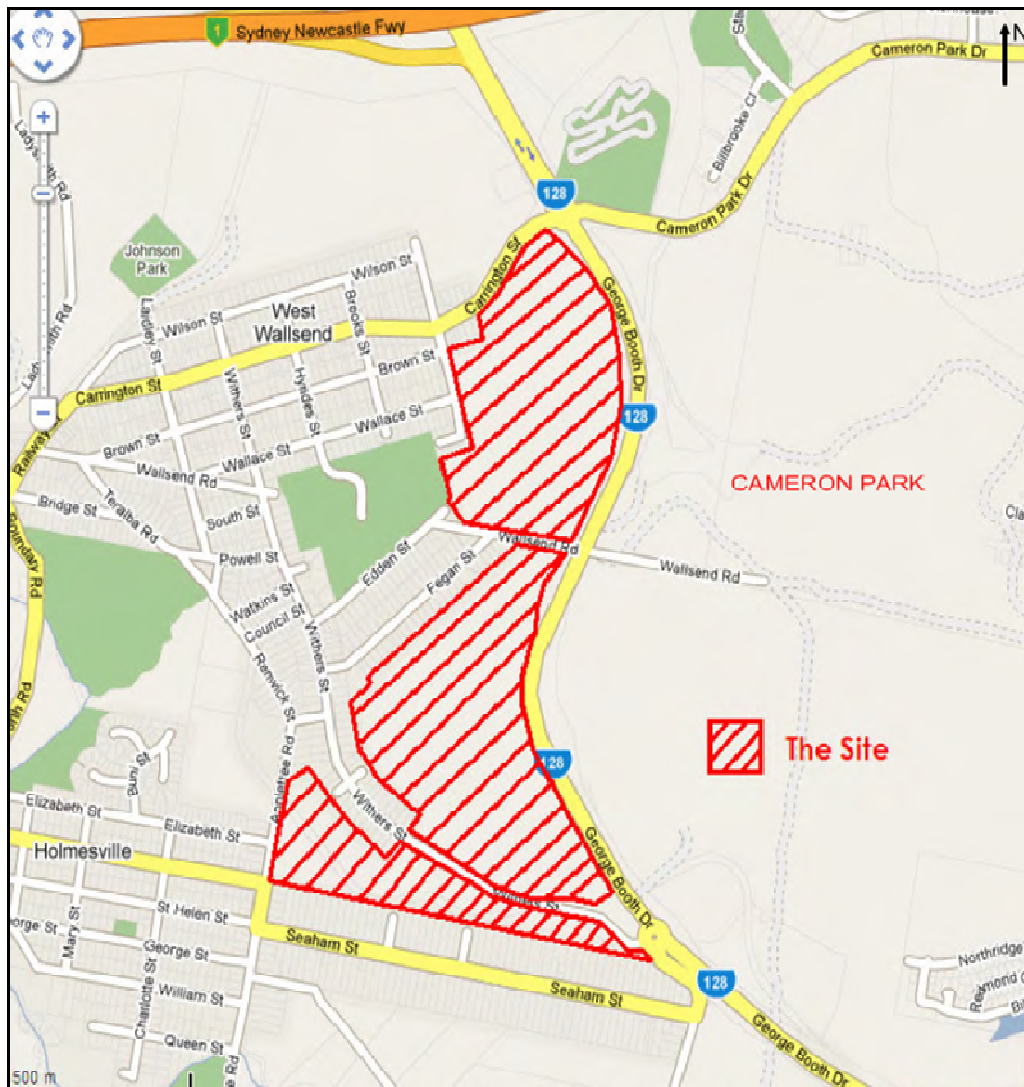
The majority of the site is covered with native vegetation, the vegetation community of greatest significance is the Lower Hunter Spotted Gum Iron Bark Forest which is classified as an Endangered Ecological Community and is located in two distinct formations, immediately to north of Withers Street and either side of unformed Notley Way.

The site terrain is moderate to steep, with grades generally ranging between 5% and 25%, with undevelopable areas of steeper grade at existing gullies and adjacent to George Booth Drive.

## **2 PROJECT DESCRIPTION**

### **2.1 Location**

The proposed development site is located directly to the west of the suburb of Cameron Park, and is bounded by George Booth Drive to the east and the existing West Wallsend township to the west. Refer to Figure 1 Locality Plan for details.



**Figure 1 – Locality Plan**

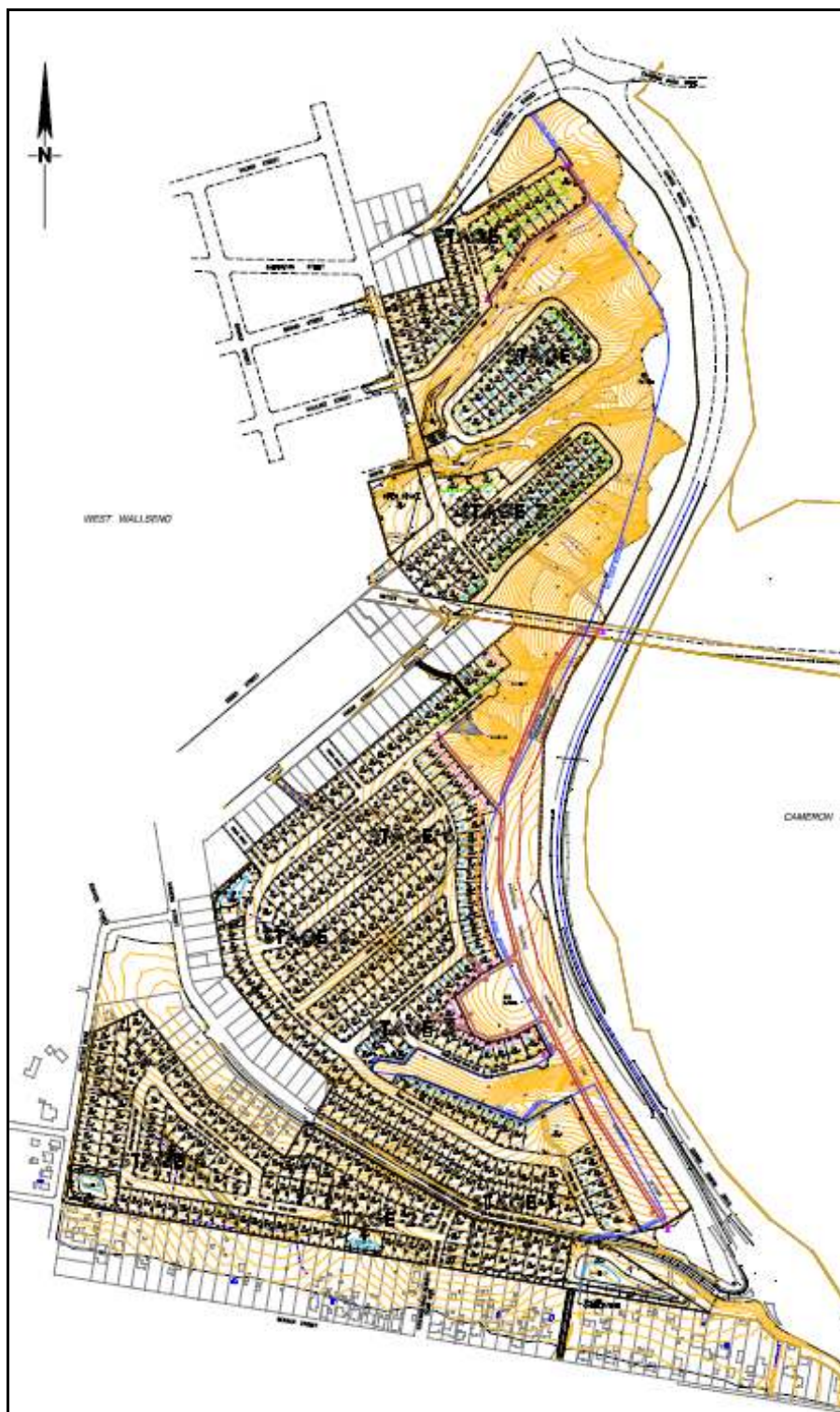
## **2.2 Surrounding Development**

To the east of the site, and on the opposite side of George Booth Drive are two approved major urban release areas.

Northlakes Estate was approved in 2001 and Pambulong Forest in 2005. The existing developments are of similar layout to that proposed in the application in question, with the exception that this application is in close proximity to the existing township of West Wallsend.

## **2.3 Subdivision Layout**

The subdivision layout proposed is quite irregular in nature. It is not particularly complimentary to the traditional grid network which exists for the majority of West Wallsend and surrounding suburbs. However it is acknowledged, the natural terrain and geometry of the allotments pose a major constraint on the subdivision pattern. Refer to Figure 2 Proposed Subdivision Layout for details.



**Figure 2 – Proposed Subdivision Layout**

### **3 SECTION 5A SIGNIFICANT EFFECT ON THREATENED SPECIES**

Given the significant impact upon threatened species detected on site, a Species Impact Statement has been prepared by Niche Environment and Heritage (May 2010), in accordance

with Section 5A and Section 78A (8)(b) of the EP&A Act. Section 5A considerations can be found in Section 8 of the SIS. In summary:

- The application proposes to remove 41 hectares of native vegetation and would indirectly impact the remaining 30% of the site by increasing edge impacts to the area;
- A number of threatened species were detected on the site including the koala (i.e.; in the form of scratch marks on three trees), squirrel glider, powerful owl, sooty owl, grey headed flying fox, scarlet robin, varied sittella, little-bentwing bat and *Tetratheca juncea*. A further 21 threatened species, were also considered to have potential to occur within the subject site. The Endangered Ecological Community (EEC) Lower Hunter Spotted Gum-Ironbark Forest (LHSGF) also occurs on the site, of which 8.37 hectares has been proposed to be removed;
- The impact, Clearing of Native Vegetation, Loss of Hollow-bearing Trees and Removal of Dead Wood and Dead Trees is a Key Threatening Process as listed to the Threatened Species Conservation Act and may contribute to others such as invasion of exotic grasses;
- The amended SIS has completed a number of additional flora and fauna surveys and assessments, made some layout amendments and included an offset package;
- The offset package proposed by the applicant includes:
  - approximately 14 hectares of native vegetation on site that would be protected by a planning agreement or be dedicated to Council;
  - approximately 34 hectares of native vegetation to the south within Lot 107 DP 1000408 that would also be protected by a planning agreement or be dedicated to Council. Within this proposed offset area the threatened species *Tetratheca juncea* (11 clumps), *Callistemon linearifolius* (2 clumps), squirrel glider, masked owl, large-eared pied bat, little bentwing bat, eastern bentwing bat, grey headed flying fox, grey headed flying fox, greater broad-nosed bat and eastern false pipistrelle have been detected on the site as well as 28.59 hectares of the EEC LHSGIF; and
  - approximately 123 hectares of native vegetation at Brimbin within the Taree LGA that would be dedicated to DECCW. The Brimbin parcel is identified within the DECCW regional corridor for that area. Threatened species powerful owl, squirrel glider, koala, grey headed flying fox, little bent-wing bat, masked owl, glossy black cockatoo, little lorikeet, square-tailed kite, brush-tailed phascogale, eastern bent-wing bat, yellow-bellied sheath-tailed bat, greater broad-nosed bat and eastern freetail-bat have been identified on the site as well as 0.18 hectares of the EEC Swamp Sclerophyll Forest on Coastal Floodplains and 19 hectares of the EEC Sup-tropical Coastal Floodplain Forest.

The Species Impact Statement was assessed for compliance with the DECCW Director Generals Requirements (DGRs) issued on the 20 May 2009. The Species Impact Statement provided was considered non-compliant with the DGRs due to the following:

- The application has not provided a formal Biobanking Statement pursuant to Section 5A of the EP&A Act rather they have elected to have the application assessed under SIS provisions of the Act. Under the elected process, impacts to threatened species and the EEC on site are required to be reasonably avoided first. The current proposal has not

reasonably avoided threatened species and EEC constraints detected on site first. The proposed offset package is considered to have been inappropriately applied in that it attempts to justify an unreasonable level of impact to threatened species and the EEC detected on site;

- After ecological impacts of the proposal have been reasonably avoided and mitigated on site the offsets can be considered. Deficiencies noted in the offset package to date, that would need to be addressed once a more reasonable development footprint has been agreed upon, are as follows:
  - The principle of offsetting is generally to achieve 'no net loss'. The proposed offset package does not result in a 'no net loss' outcome and is well below current offsetting standards such as biobanking and case law examples;
  - Offsets are to be preferably on site and if this is not possible, in the local vicinity. Reasonable justification is required if local offsets are not possible, justifications provided for offsets well outside the locality are inadequate;
  - Agreement with the DECCW would need to be reached and at this stage evidence of this has not been provided;
  - The offset would need to demonstrate that restoration of the values lost from clearing is achievable. Complete ecological assessment reports and a plan of management for the proposed offset areas are required with the application assessment documentation.

In summary, with regard to Section 5A and related provisions of Section 78A 8(b), 79B and 79C, the SIS, including offset package arrangements, are non compliant with the DECCW DGRs for the following reasons;

- The proposed development footprint and subdivision layout does not reasonably reflect threatened species and EEC constraints detected on the site; and
- The offset package arrangements have been provided prematurely in that:
  - significant impacts to threatened species and the EEC on site should be reasonably avoided first;
  - an in principle agreement with the DECCW reached; and
  - surveys and management provisions for the offset land provided in full.

## **4 SECTION 79B CONSULTATION AND CONCURRENCE**

### **4.1 Department of Environment, Climate Change & Water**

Meetings with the DECCW, Council, Niche Environmental and Heritage Consultants and the applicant were held on the 11 February 2010 and 17 March 2010. On the 25 May 2010 Council forwarded a copy of the SIS (Niche Environmental and Heritage Consultants May 2010) to DECCW stating that Council were assessing the SIS for compliance with the DGRs prior to requesting concurrence. Council acknowledges that the application was not referred to DECCW within the 2 day legislative timeframe, due to a procedural error.

On review of the SIS, Council were of the opinion that concurrence should not be sought from the DECCW as the SIS was non-compliant with the DECCW DGRS. Council forwarded a letter

to this effect to the DECCW on the 21 June 2010 providing opportunity for the DECCW to comment. DECCW's advice in this regard was provided on the 7 July 2010 and states that:

*"DECCW has briefly reviewed the Species Impact Statement and generally concurs with and supports Council's opinion that it does not comply with the Director General Requirements (DGRs)."*

A full copy of DECCW's response is provided in Appendix B.

## **4.2 Roads and Traffic Authority**

The proposal has been identified as traffic generating development under SEPP Infrastructure. The proposal has been referred to the RTA for concurrence under Clause 104 & Schedule of SEPP Infrastructure. RTA correspondence dated 14 July 2010 provides concurrence, subject to conditions.

## **5 SECTION 79C EVALUATION**

### **5.1 79C(1)(a)(i) the provisions of any Environment Planning Instrument**

#### State Environmental Planning Policies (SEPP)

##### SEPP 1 Development Standards

A SEPP1 application has been provided by the applicant to allow flexibility in implementation of development standards contained within an environmental planning instrument (LM LEP 2004) in regards to the omission of 10% of lots for small lot housing, as required by Clause 24 and Schedule 2 of LM LEP 2004.

The general basis of the objection is that the applicant has previously had approved, a surplus of small lot housing on the development immediately to the east (DA/2433/2004), and the need to provide lot sizes consistent with the values of the West Wallsend Heritage Conservation Area.

Council is satisfied that the SEPP 1 application addresses matters referred to within the SEPP, the underlying objectives of the development standard and matters such as neighbourhood and local context, neighbourhood amenity and character.

##### SEPP19 Bushland in Urban Areas

In determining an application where vegetation is to be removed from areas adjoining bushland zoned for open space, the determining authority must be satisfied, pursuant to Clause 9 *Land adjoining land zoned or reserved for open space*, that it has taken into account:

- the need to retain any bushland on the land,
- the effect of the proposed development on bushland zoned or reserved for public open space purposes and, in particular, on the erosion of soils, the siltation of streams and waterways and the spread of weeds and exotic plants within the bushland, and
- any other matters which, in the opinion of the approving or consent authority, are relevant to the protection and preservation of bushland zoned or reserved for public open space purposes.

Vegetation within and adjoining the 6(1) zoned land is significant particularly given the occurrence of the Endangered Ecological Community, *Tetratheca juncea* population, squirrel



glider den trees and other threatened species detected on site. The proposed lot layout is not considered to appropriately address SEPP 19, in that setbacks from the 6(1) land, including a perimeter road along the entire length of the development have not been incorporated to a level that would mitigate additional edge effects (see Figure 17 of the SIS).

#### SEPP 44 Koala Habitat Protection

In determining an application where Schedule 2 trees of SEPP 44 occur, the determining authority must be satisfied, pursuant to Clause 7 of the SEPP that the land is not potential habitat. Potential koala habitat being defined as areas of native vegetation where Schedule 2 trees in the upper or lower stratum constitute at least 15% of the total number of trees. Where potential koala habitat is detected, the determining authority must be satisfied, pursuant to Clause 8 of the SEPP that the land is not core koala habitat. Core koala habitat being defined as an area of land with a resident population of koalas, evidence by attributes such as breeding females (that is, females with young) and recent sightings of and historical records of a population.

While Schedule 2 feed trees were not detected at a level of greater than 15% on site, it was requested that an AKF assessment be completed in accordance with Appendix 6 of Councils Flora and Fauna guideline, particularly given recent koala records in the area and also in that the Hunter Central / Rivers CMA list a range of eucalypt species that koalas known from the area are known to also forage on (see [http://www.threatenedspecies.environment.nsw.gov.au/tsprofile/profile\\_data.aspx?id=10616&ma=Hunter/Central+Rivers](http://www.threatenedspecies.environment.nsw.gov.au/tsprofile/profile_data.aspx?id=10616&ma=Hunter/Central+Rivers) ).

Evidence of koalas were identified on site however as only three of the thousand trees surveyed were found to have koala scratch marks the SIS predicted that the area was used for movement / dispersal rather than breeding (Section 4.3.1.2, Section 8 and Appendix G of the SIS). The SIS proposes dedication of approximately 34 hectares of similar koala habitat at Lot 107 and 123 hectares of koala habitat at Brimbin to offset the proposed removal of 27.2 hectares of koala habitat on site.

There are a number of issues with regard to this proposal as follows:

- Koalas are known to occur in this area. There was a record within the environmental assessment report for the Part 3A Minmi Edgeworth application for Coal and Allied. There is also another record at Cameron Park Drive where an injured Koala was taken into care and other unconfirmed reports in the Northlakes area as well as a more recent record along the F3 within proximity to West Wallsend in January this year. There is little discussion within the SIS about where the individual koalas are moving to and from and where breeding is expected to occur. Habitat adjoining the site appears restricted to the north by the F3 and development east and west of the site so it is possible the local population may have limited opportunity but to breed within the local area;
- The application proposes to remove an additional 27.2 hectares or ~70% of suitable habitat for this species from the proposed site and edge effects will impact on the rest. The local population, given recent subdivision applications in the area, is likely to be under significant threat. Section 7.0 of the DECCW DGRS notes that impacts must be avoided first. There is opportunity on site to retain a more reasonable proportion of habitat for this species in conjunction with addressing other issues raised in this report and as has been requested at previous meetings. The proposed offset is considered to be inappropriately applied, in that it attempts to justify an unacceptable impact to this and other threatened species on the site.

### SEPP 55 Remediation of Land

The preliminary contamination assessment prepared by Douglas Partners, reference 39794.01 dated July 2009, has identified areas of contamination and potential contamination, and activities that may have caused contamination on the site. Due to this fact, the applicant has been requested to provide a detailed contaminated land assessment and remediation action plan. To date, these documents have not been provided, thus the requirement of the SEPP has not been met.

### SEPP Infrastructure

The application has been referred for concurrence to the RTA under Clause 104 and Schedule 3 of SEPP Infrastructure. Concurrence, subject to conditions was received from the RTA in correspondence dated 14 July 2010.

### Lake Macquarie Local Environmental Plan 2004 (LM LEP 2004)

All the requirements of the LM LEP 2004 have been considered. Comments are provided on the following relevant clauses.

#### **Part 2 Lifestyle 2020 Strategy – vision, values and aims**

##### Clause 14 Aims

The application does not adequately address or justify how the vision, values and aims of Lifestyle 2020 are met.

The Lifestyle 2020 Strategies 'green system map' intends to 'enhance long term biodiversity, scenic amenity, and liveability of the city'. The green systems map has identified both 'remnant vegetation' and 'high value habitat' on the subject site. It is the intent of Lifestyle 2020 to ensure that 'these elements are valued, retained, and managed as part of an integrated system'. The application has not satisfied this aim.

The proposal does not provide adequate design and management measures to protect heritage and character values of the area. The documentation provided does not provide an adequate up to date comprehensive analysis and assessment of the cultural significance of the cultural landscape of the precinct and its components as a basis for providing adequate recommendations for opportunities and constraints for appropriate design responses.

The proposed development does not adequately justify departures from the intent of Lifestyle 2020, in relation to protecting West Wallsend's heritage and natural environment.

#### **Part 3 General control for land within zones**

##### **Clause 15** General controls for land within zones

The proposal meets the objectives of providing a neighbourhood of low density housing and sustainable water cycle management. However, the proposal does not adequately respect the character of the surrounding development (West Wallsend Heritage Precinct), in regards to heritage and scenic matters, which are expanded upon in detail within this report.

In addition to the above points, it is noted that the site was zoned for residential development under the 1984 Local Environmental Plan. This rezoning took place prior to the adoption of the conservation objectives of the lifestyle 2020 strategy, prior to legislation such as the *Threatened Species Conservation Act 1995* and *Environmental Protection and Biodiversity Conservation Act 1999*, prior to Council's Native Vegetation and Corridors Maps, and prior to Councils

Biodiversity Planning Policy and Guidelines for Local Environmental Plan Rezoning Proposals. The conservation values detected on the subject site during the assessment of the application are considered to be similar to land currently zoned environmental and conservation within the city. It is understood that at the time of the 2004 LEP rezoning, Council had insufficient resources to undertake ecological surveys necessary to facilitate any necessary assessment of a more appropriate zone for this site.

With regard to conflicting issues of the zone and native vegetation, it is also worth noting that in *Reeve v Hume CC* [2009] VCAT 65 the Tribunal said: *"the zoning of the land is not the starting point in considering the suitability of a subdivision proposal. The proposition that a residential zoning carries with it an overriding or automatic expectation that conventional subdivision can or should occur, with all its subsequent consequences for loss of native vegetation, is not accepted. What is called for on such land is innovation that enables the retention of significant native vegetation on the land"* (cited in HCCREMS and Bates, draft 2010).

Council is of the opinion that a similar approach to the ruling quoted above should be applied to the subject site.

#### **Part 4 Special provisions applying to all land**

##### **Clause 16** Development Consent – matters for consideration

The documentation provided with this application has not adequately demonstrated regard to the vision, values, and aims of the Lifestyle 2020 Strategy. In particular the aims stated in Clause 14 (g)(h)&(i) have not been met.

##### **Clause 17** Provision of essential infrastructure

Essential infrastructure including, the supply of water, provision of energy, provision of telecommunications and the disposal and management of sewer is capable of being provided.

##### **Clause 21** Development the subject of SEPP 1 application

A SEPP1 application has been provided by the applicant to allow flexibility in implementation of development standards contained within an environmental planning instrument (LM LEP 2004) in regards to the omission of 10% of lots for small lot housing, as required by Clause 24 and Schedule 2 of LM LEP 2004.

The general basis of the objection is that the applicant has previously had approved a surplus of small lot housing on the development immediately to the east, and the need to provide lot sizes consistent with the values of the West Wallsend Heritage Conservation Area.

Council is satisfied that the SEPP 1 application addresses matters referred to within the SEPP, the underlying objectives of the development standard and matters such as neighbourhood and local context, neighbourhood amenity and character.

##### **Clause 24** Subdivision

The proposed subdivision layout and associated lots comply with the requirements of Schedule 2 Subdivision Standards, noting the acceptance of the SEPP 1 application to omit the requirement for small lot housing.

##### **Clause 25** Demolition

The application seeks consent for the demolition of an existing dwelling on the subject property. Appropriate conditions are required to be imposed on any future development consent.

### **Clause 30 Control of Pollution**

Reasonable and practical methods can be implemented to control pollution likely to occur as a result of the development.

### **Clause 31 Erosion and sediment control**

The controls proposed in the Soil and Water Management Plan provided by the applicant, are considered to be practicable and reasonable, and capable of preventing or minimising the effects of erosion and sediment. If the application was to be approved, an appropriate condition of consent in relation to the control of erosion and sediment would be applicable.

### **Clause 33 Bushfire considerations**

The application has been referred to the NSW Rural Fire Service (RFS) requesting general terms of approval. The RFS in correspondence dated 28 June 2010 has stated that they are not in a position to properly assess the application on the basis of the information provided. Council has forwarded correspondence to the applicant requesting the additional information required. The information, at the time of reporting, is yet to be provided.

### **Clause 34 Trees and native vegetation**

The proposed development footprint is not sympathetic of the site constraints. The majority of the ecological endangered community (Lower Hunter Spotted Gum & Iron Bark Forest) located on the site is proposed to be removed. This will have detrimental effect on the scenic and environmental amenity of the area.

For further detail refer to comments under Section 5A, SEPP 19 and SEPP 44.

## **Part 6 Heritage Provisions**

### **Clause 43 Objective**

The proposed subdivision is considered to not meet the objectives of this clause. It also, fails to adequately protect archaeological sites and places of European cultural significance and fails to make adequate provisions to conserve remaining relics, settings and views and evidence of the cultural significance of the West Wallsend Steam Tram Line. It also fails to adequately consider the cultural landscape, which is as also discussed in Clause 14 above.

### **Clause 44 Protection of heritage items and heritage conservation areas**

Clause 44 is the mechanism within the LEP which allows, subject to the issue of a development consent, demolition or removal of a heritage item.

### **Clause 47 Assessment of heritage significance**

An assessment of heritage significance has only been carried out for the West Wallsend Steam Tram Line (RT-01).

An up to date comprehensive analysis and assessment of the cultural significance of the cultural landscape of the precinct and its components, which includes RT-01 has not been provided in line with NSW heritage assessment criteria.

This is a requirement in part under the LEP and/or the DCP1, and is highlighted as an inadequacy in *Clause 14* above.

The HIR does not adequately demonstrate that the impacts of the proposal will not adversely affect the significance of the Steam Tram Line, the West Wallsend Heritage Conservation Area, and the heritage precinct, its setting, including any landscape or cultural features, and affected heritage items.

This includes the demarcation between the historic subdivision pattern of West Wallsend and Holmesville and related tramway alignment.

Inadequate measures are proposed to conserve the heritage significance of the place and its setting.

**Clause 50** Development affecting places or sites of known or potential Aboriginal heritage significance

DECCW finds no impediment to the proposed development proceeding and subsequently has confirmed that General Terms of Approval for ACH (Aboriginal Cultural Heritage) values are not required. Council is advised to include conditions relating to actions during construction relating to finding unidentified Aboriginal cultural material.

**Clause 51** Development affecting known or potential archaeological sites or relics of European heritage significance

The removal of the West Wallsend Steam Tram Line (RT-01) adversely impacts on an archaeological site of known and potential relics.

Council's LEP 2004 and DCP1 require that any demolition of a heritage item or parts thereof to be fully justified. This has not been demonstrated. For further detail refer to Part 2.4.1 of Section 5.3 of this report.

**Clause 52** Development in vicinity of a heritage item

The integrity of historic edge and curtilage of the place are compromised and adversely impacted. The proposal adversely impacts on the setting of the place. Inadequate measures are proposed to protect its curtilage and to ameliorate the impact of new built form.

## **Part 7 Administrative provisions**

**Clause 60(1)** Development on Land adjoining Zone 5

The proposed development adjoins Zone 5 land. The development does not affect the efficient operation of the existing or potential infrastructure on the site.

### **5.2 79C(1)(a)(ii) the provisions of any draft EPI**

Not applicable.

### **5.3 79C(1)(a)(iii) the provisions of any Development Control Plan (DCP)**

*Lake Macquarie City Council Development Control Plan No. 1 – Principles of Development*

#### **Part 1.9 – Development Notification Requirements**

This clause is not applicable to this application as the development is classified as Integrated Development and Threatened Species Development. Notification, exhibition and advertising have been completed in accordance with The Environmental Planning and Assessment Act 1979. Submissions are addressed under Section 79C(1)(d) contained within this report.

## Part 2.1 – Environmental Responsibility and Land Capability

### Part 2.1.1 Ecological Values

Provisions of P2.1.1 has been discussed above under Section 5A, SEPP 19 and SEPP 44.

### Part 2.1.2 Ecological Corridors

Provisions of P2.1.2 has been discussed above under Section 5A, SEPP 19 and SEPP 44.

### Part 2.1.3 Scenic Values

The Visual Impact Assessment Report prepared by Andrews Neil, reference 07169 dated June 2009 and the Heritage Impact Review prepared by EJE Heritage are considered inadequate. They fail to provide a comprehensive analysis of potential visual impacts from George Booth Drive, Withers Street and view points from the West Wallsend village. Due to lack of supporting evidence, conclusions made are considered unjustified. In particular, the documentation provided fails to adequately address the following:

- The visual dominance of the northern areas of the site, Stages 7, 8 & 9, has been dismissed, without sufficient justification. The existing natural surface level, of some of the proposed lots in this area, are in excess of 30m higher than adjoining residences, and are expected to create an adverse visual impact.
- The Heritage Impact Review claims that the built form envelope constraint on the first lot (Lot 932) opposite Brown Street will appropriately provide a visual landscape termination when viewing from Brown Street. This visual landscape termination is not considered credible. The site area east to Brown Street contains undulating land with the highest point located near the corner of George Booth Drive and Carrington Street. When viewing along Brown Street, the most dominant impact will be development closer to the ridgeline, including Lots 901- 907, which are located up to 30 metres higher than the eastern end of Brown Street. Regardless of the envelope constraints placed on Lot 932, future houses on the hill will be visible.
- The built form and design style of these future dwellings will be very sensitive to the surrounding environment. The potential for negative visual impacts are considered to be high, and significant to the existing village. A detailed design control or a concept design for the houses, on highly visible lots needs to be provided and assessed prior to any future approval. Otherwise, it is recommended that Lots 901-907 and Road No. 22 be removed and remain as natural bushland.
- The potential for adverse visual impact resulting from excessive earthworks and retaining, throughout the development, and particularly in Stages 7, 8 & 9. has not been adequately addressed.
- The subdivision layout proposed for Stages 4, 5 & 6 generally follows the existing surrounding street layout, i.e. Eden St, Fegan St. However, this area is located significantly higher than the existing neighbourhood to the north. The potential impacts to the surrounding environment will be most affected by the future built form, design style and landscape treatments of the future dwellings. The visual assessment has failed to acknowledge and address this potential impact.

In summary, the proposal fails to adequately demonstrate how it is designed to compliment the cultural landscape, how it makes adequate provisions for protecting the landscape buffers of the historic edge and its gateway edges, and how it makes provisions for future built form. Due to

the lack of consideration and justification of visual impacts at many key locations, Council is unable to concur with the findings of the Visual Impact Assessment Report or the Heritage Impact Review, and considers that the proposal will have an adverse impact on the existing township.

#### Part 2.1.4 Tree Preservation and Management

The applicant has provided a Vegetation Management Plan which lists a number of strategies and measures to manage/recover the existing vegetation in the natural bushland areas, including riparian corridors, open space zones, revegetation areas, and APZs.

The Plan briefly explains the existing conditions of each area and the potential impact of the development. However, it fails to provide site specific solutions and landscape treatments to respond to these impacts. More detailed and integrated landscape concept designs including a treatment plan, landscape work schedule, typical cross sections and planting models are required to justify the proposal.

For example, in Section 5.2 Riparian Zones, it is suggested that “removed weeds will be replaced with trees, shrubs and groundcovers to stabilise loose ground and provide a fully structured canopy and understorey”. Other than this principle, the Plan does not provide any further details on where, how and what to plant. Each recommended revegetation method needs to be addressed to particular areas and location, along with plant species, stock size and spacing.

The landscape document has provided insufficient information for the boundary treatment in and along the private lots that are adjacent to the remaining bushland or APZ. Suitable landscape concept and guidelines for the areas are required prior to any future approval of the application.

#### Part 2.1.5 Bushfire Risk

The application has been referred to the NSW Rural Fire Service (RFS) requesting general terms of approval. The RFS in correspondence dated 28 June 2010 has stated that they are not in a position to properly assess the application on the basis of the information provided. Council has forward correspondence to the applicant requesting the additional information required. The information, at the time of reporting, is yet to be provided.

#### Part 2.1.6 Water Bodies, Waterways and Wetlands

The quality of downstream receiving waters are adequately protected by the incorporation of appropriate storm water treatment measures, as detailed within the Storm Water Management Plan prepared by Brown Consulting, reference L05016.004-01C dated March 2010. The natural runoff regime has been sufficiently matched by the attenuation of flows in the various detention basins proposed within the development.

#### Part 2.1.7 Flood Management

Not Applicable.

#### Part 2.1.8 Development on Flood Prone Land at Dora Creek

Not Applicable.

#### Part 2.1.9 Sloping Land and Soils

The proposed development involves significant cuts and fills in various locations, resulting in significant retaining walls and 1 in 2 cut batters in a number of locations throughout the site,

which are unacceptable. The proposed building envelopes on Lots 901 – 906 are in excess of 25% in grade. Table 2 – Slope Class, Terrain, Potential Hazard and Development Suitability Table recommends that no form of disturbance is appropriate on slopes over 25%. Therefore these lots are considered unsuitable for development.

#### Part 2.1.10 Acid Sulfate Soils

Not Applicable.

#### Part 2.1.11 Erosion Prevention and Sediment Control

The controls proposed in the Soil and Water Management Plan provided by the applicant, are considered to be practicable and reasonable, and capable of preventing or minimising the effects of erosion and sedimentation. If the application was to be approved, an appropriate condition of consent in relation to the control of erosion and sediment would be applicable.

#### Part 2.1.12 Mine Subsidence

The applicant has sought General Terms of Approval under Section 15 of the Mine Subsidence Act 1961. The Mine Subsidence Board issued general terms of approval on 8 June 2010, subject to conditions.

#### Part 2.1.13 Contaminated Land

The preliminary contamination assessment prepared by Douglas Partners, reference 39794.01 dated July 2009, has identified areas of contamination and potential contamination, and activities that may have caused contamination on the site. Due to this fact, the applicant has been requested to provide a detailed contaminated land assessment and remediation action plan. To date, these documents have not been provided, thus the intent of the control has not been met.

#### Part 2.1.14 Energy Efficiency

Any future dwellings proposed on the site will be subject to BASIX requirements. The solar access for proposed lots is considered adequate.

#### Part 2.1.15 Noise and Vibration

The Noise Impact Statement prepared by Vipac Engineers & Scientists Ltd, reference 29N-0079-TRP-214577-1 dated April 2008 concludes that vehicular traffic has the potential to cause elevated noise levels in excess of the residential amenity criteria, at a number of the proposed lots. The report recommends that elevated noise levels can be adequately attenuated by installing suitable facade treatments. On the basis proposed, future approval would be subject to a condition of consent requiring that any dwelling constructed on the lot is required to meet the requirements of AS2107:2000 and AS3671:1989.

The method proposed to attenuate noise is considered unsatisfactory in this instance, as the report does not clearly identify the adverse affect of increased noise on existing properties, as a result of the proposal, and attenuation measures rely upon façade treatments to future dwellings, which are potentially able to be assessed as Complying Developments under SEPP Exempt and Complying Development Codes 2008, and may be problematic.

A more appropriate action would be to minimise the number of lots subject to noise exposure in excess of residential amenity criteria.

#### Part 2.1.16 Air Quality



The proposed development will have minimal impact on the air quality of the surrounds.

#### Part 2.1.17 Building Waste Management- Demolition and Construction

Demolition of an existing dwelling is proposed as part of the application. A Waste Management Plan is not required in this instance, appropriate conditions of consent will be placed on any future approval.

### Part 2.2 – Social Impact

#### Part 2.2.1 Social Impact Statement

The proposal will result in some social benefits for the area, however the SIA prepared by Key Insights Pty Ltd has understated the potential negative social impacts.

The proposal will result in an additional 456 residential lots, which will support and help to address the anticipated long-term regional population growth and associated housing needs, as outlined in the LMCC Lifestyle 2020 and the Lower Hunter Regional Strategy.

However, the proposal will result in a net negative social loss, as it will:

- Result in the loss of the unique community / character of the West Wallsend / Holmesville area, including its high level of social cohesiveness and heritage;
- Reduce the amount of affordable housing in Lake Macquarie; and
- Place additional strain on the limited community facilities in the area including child care and health care facilities.

If the proposed development is to be approved, then additional measures need to be identified that will directly address the negative social impacts identified. Specific actions and strategies, rather than just promises to communicate/discuss/consult with other parties are required.

### Part 2.3 – Economic Impact

#### Part 2.3.1 Economic Impact assessment

It is expected that the proposed development will have a positive economic impact on the locality.

### Part 2.4 – Heritage

#### Part 2.4.1 European Heritage Items

The proposal fails to provide an up to date assessment of the cultural landscape and its significance in line with NSW Heritage Branch guidelines as a basis for assessing opportunities and constraints and assessing heritage impact.

The proposal does not demonstrate how it adequately meets the intent of Council's heritage requirements by not adequately safeguarding the West Wallsend Steam Tram Line (RT-01) and by not adequately ensuring that the development surrounding the following items does not detract from their heritage value:

- The West Wallsend Conservation Area WW-00
- WW-02 West Wallsend (No 1) Colliery in the direct vicinity.

- WW-03 set of cottages at the Carrington Street entry into town, No 6 & 8 & 10 Carrington Street in the direct vicinity.

Proposed demolition of the West Wallsend Tramway RT-01 corridor and the design of the proposed subdivision do not adequately demonstrate conformance with the Burra Charter process, particularly in relation to the following articles of relevance:

- Article 2. Conservation and Management
- Article 3. Cautious Approach
- Article 5. Values
- Article 6. The Burra Charter Process
- Article 8. Setting
- as well as Articles 15, 22, 26 & 27

The proposal adversely affects culturally significant elements of the place, including its setting of semi-rural bushland and its visual separation from expanding suburban areas, the Withers Street Gateway, its internal and external views, its historic relationship and separation between West Wallsend and Holmesville subdivision pattern. Even though amendments significantly lessen the previous impact on the Carrington Street gateway, this entry is still compromised by the proposed road intersection.

The proposal does not retain the former WW Tram rail corridor through the site by proposing full demolition, which will adversely impact on its significance.

The integrity of historic edge and curtilage of the place are compromised and adversely impacted. Inadequate measures are proposed to protect its curtilage and to ameliorate the impact of new built form.

Council's LEP 2004 and DCP1 require that any demolition of a heritage item or parts thereof to be fully justified. This has not been demonstrated.

The archaeological assessment and statement of significance prepared by Mills' in 2007 indicates that the preferred outcome in heritage terms clearly recommends the retention of the original alignment as stated below.

Recommendation 1:

*.....'that where possible the current West Wallsend Tramway alignment through Lot 105 (south of Withers Street) be retained. This management Strategy will provide public access along the tramway alignment through Lot 105 from Withers Street to Appletree Drive and enable this section of tramway to be incorporated into any expansion of the tramway route to the east and west.' ... this will ensure the protection of the "unique" heritage status ...'*

Insufficient justification has been provided in the documentation, to why the entire alignment of the West Wallsend Tramway and any remaining tangible remnants through the site requires removal. There is no evidence that alternate options have been investigated for incorporating the full or parts of the existing alignment into a public access way. Removal of the entire original alignment is considered the option of last resort.

#### Part 2.4.2 Catherine Hill Bay Heritage Conservation Area

Not applicable.

#### Part 2.4.3 Aboriginal heritage Items and Sites

The applicant has adequately demonstrated that items identified as potential scar trees, are in fact not. DECCW finds no impediment to the proposed development proceeding and subsequently has confirmed that General Terms of Approval for ACH (Aboriginal Cultural Heritage) values are not required. Council is advised to include conditions relating to actions during construction relating to finding unidentified Aboriginal cultural material in any future approval.

#### Part 2.4.4 Natural Heritage Items

Not Applicable.

### Part 2.5 – Stormwater Management, Infrastructure and On-site Services

#### Part 2.5.1 Essential Infrastructure

Essential infrastructure including the supply of water, electricity, communication and sewage are available to the site.

#### Part 2.5.2 On-Site Wastewater Treatment

Not applicable.

#### Part 2.5.3 Stormwater Management

The proposed stormwater strategy is acceptable. The stormwater management plan prepared by Brown Consulting, reference L05016.004-01C dated March 2010 adequately addresses stormwater quality and quantity within the proposed subdivision to a level appropriate for the DA stage.

However, the strategy relies upon owners consent from the owners of 46 Fegan Street and 63 Seaham Street, to provide drainage easements. To date, written agreement from these owners has not been provided to Council.

#### Part 2.5.4 On-Site Stormwater Harvesting

Stormwater harvesting tanks are proposed as part of the quality treatment process for the development. Any future dwellings constructed on the site will be required to install a minimum 5kL rain water tank. A public positive covenant will be placed on any newly created lot, to this effect.

#### Part 2.5.5 Waste Management for Multi-Unit Dwellings

Not applicable.

### Part 2.6 – Transport, Parking, Access and Servicing

#### Part 2.6.1 Movement System

The road system provides a clear distinction between each road type. Given the topographical and geometrical restraints of the site, it is difficult to replicate the existing traditional grid pattern of the area. The pattern proposed is generally acceptable, with the exception that connectivity from Withers Street to proposed Road 1 is inadequate. The applicant has chosen to omit a road linkage from the existing road adjacent to 85 Withers Street to Road 1, in response to Council's concerns in relation to site distance at the existing intersection. This response is considered unacceptable. Secondly, the applicant has failed to locate a road at the rear of the existing

Seaham Street properties, which limits the opportunity for orderly development of the existing lots.

#### Part 2.6.2 Traffic Generating Development

The proposal has been identified as traffic generating development under SEPP Infrastructure. The proposal has been referred to the RTA for concurrence under Clause 104 & Schedule 3 of SEPP Infrastructure. Concurrence subject to conditions was received on 14 July 2010.

#### Part 2.6.3 Road – Design

The road design within the proposed subdivision is generally acceptable in relation to geometric design and vertical geometry. The network facilitates pedestrian, cyclist and vehicular movement. The road types and dimensions comply with Table 1 of DCP 1. However, connectivity to Withers Street is inadequate, with street blocks lengths well in excess of 170m, as discussed in Part 2.6.1 above.

External to the site, the proposal utilises adjoining Robertson, Fegan and Edden Streets. These streets are narrow and in poor condition. These roads currently service few residences, however, the proposal would significantly increase the traffic volumes on the streets. Upgrade of these streets will be required to be conditioned as part of any future approval.

#### Part 2.6.4 Pedestrian and Cycle Paths

The pedestrian and cycle paths proposed within the development are adequate.

#### Part 2.6.5 Public Transport

Bus route 265 and 267 travel through West Wallsend on Appletree Road, Withers and Carrington Streets, which would adequately service the proposed development. Upgrade of existing bus stops at Carrington Street near Robertson Street, Withers Street near Edden Street and Appletree Road north of Elizabeth Street will be required to be conditioned as part of any future approval.

#### Part 2.6.6 Vehicle Parking Provision

The proposal provides adequate car parking opportunities.

#### Part 2.6.7 Car Parking Areas and Structures

Not applicable.

#### Part 2.6.8 Vehicle Access

Not applicable.

#### Part 2.6.9 Access to Bushfire Risk Areas

The applicant has failed to provide longitudinal sections along fire trails to demonstrate that the grading is appropriate for fire vehicles, or provide vehicle turning templates to confirm that the horizontal geometry is satisfactory.

#### Part 2.6.10 Servicing Areas

Not applicable.

#### Part 2.6.11 On-Site Bicycle Facilities

Not applicable.

#### Part 2.6.12 Non-Discriminatory Access and Use

The proposal provides opportunity for equitable access for all members of the community.

### Part 2.7 – Streetscape and the Public Realm

#### Part 2.7.1 Streetscape and Local Character

The applicant has failed to give due consideration to the 'Historic Gateway' entry to West Wallsend via Withers Street, and argues that it has previously been significantly diminished and redefined through the introduction of ribbon subdivision patterns and modern building elements from the 1960s & 70s.

However council considers that the bushland entry provides a landscape transition buffer from George Booth Drive to the existing residential area. Further, the existing residential development contains generous front setbacks and open front yards which are compatible with the surrounding open semi rural outlook, and are consistent with the streetscape characteristic in the heritage village.

The proposed development will adversely affect the visual amenity of the entry road, with the proposed subdivision pattern being much denser. The lot sizes are much smaller in width and depth than existing lots, which is likely to result in minimal front and side setbacks, in order to fit the typical contemporary slab on ground housing on the lot. This compounded in some instances with retaining walls, will create very dominant housing which is incompatible with the surrounding environment.

#### Part 2.7.2 Landscape

The Landscape Master Plan provided fails to include sufficient specific detail for areas of significance, including Lot 744 (proposed as open space) and in particular the public domain.

Proposed Lot 744 is currently largely covered by native vegetation. Tree removal and retention has not been defined, nor have basic public facilities, which may include a playground, BBQ, picnic table(s), bubblers, seating and bike racks etc.

The applicant has also failed to provide design guidelines for future dwellings adjoining existing dwellings and the Open Space land Zoned 6(1) to the east, or to provide a transition between the development and existing natural and built environments.

#### Part 2.7.3 Public Open Space

A Section 94 Contribution is proposed to be made for the provision of public open space.

#### Part 2.7.4 Pedestrian Networks and Places

Adequate pedestrian networks are proposed within the development.

#### Part 2.7.5 Light, Glare and Reflection

Not applicable.

#### Part 2.7.6 Views

A comprehensive and vigorous Visual Impact Assessment with additional view points has not been provided as requested. The Heritage Impact Report (HIR) only provides a visual impact analysis of the topography of the development as seen from the Carrington Street entry.

The visual Impact assessment in the HIR of the three pockets of development on Lot 103 however is inadequate. It does not thoroughly assess the visual effect of the topography, the impact of the required excessive cutting of contours, the potential resulting height of the built form and landscaping options as seen from critical view points from lower parts in the town.

Development particularly on lots 901 to 907 including Road no 22 are highlighted as particularly impacting and are recommended for removal. The visual impact of the proposed extensive cutting of contours, cut and fill, required retaining structures and resulting built form of stages 7, 8 and 9 are inadequately considered and requires further information to allow a comprehensive assessment.

#### Part 2.7.7 Signs

Not applicable.

#### Part 2.7.8 Fences

Not applicable.

#### Part 2.7.9 Safety and Security

The subdivision layout is satisfactory in regard to safety and security.

### Part 3.1 - Lake, Waterway and Coastline Development

Not Applicable.

### Part 3.2 – Subdivision

#### Part 3.2.1 Neighbourhood Design

The application does not contain sufficient information to show whether the subdivision pattern is complementary to the existing grid pattern existing in West Wallsend. The HIR response lacks analysis of the significance of the layout. Further analysis is required to include (but not be limited to), the definition between the historic subdivision pattern and its semi-rural setting, the separation and demarcation between the distinctly different patterns of Holmesville and West Wallsend with their defined rural edges.

The HIR does not assess the impact of development abutting the existing pattern, e.g. along the street frontages of Robertson Street, the entry of Carrington Street, Appletree Road, Withers Street and at the existing edges against heritage significance criteria.

Proposed Stages 7, 8 & 9 contain significant retaining walls, which suggests that the terrain and site capability have not been properly considered. Lots 901 – 906 have building envelopes in excess of 25%, and are therefore unsuitable for development.

#### Part 3.2.2 Lot Size and Layout

Lots within the proposed subdivision comply with the requirements of Schedule 2 of LMLEP 2004. A SEPP 1 Application has been provided, and accepted, to justify the omission of small lot housing within the subdivision.

#### Part 3.2.3 Subdivision in the Conservation, Environmental and Rural Zones

Not applicable.

#### Part 3.2.4 Community Title Subdivision

Not Applicable.

#### Part 3.2.5 Boundary Realignment

Not applicable.

#### Part 3.3 – Urban Centre Development

Not Applicable.

#### Part 3.4 – Building Siting, Form and Design

Not Applicable.

#### Part 3.5 – Housing – Specific Housing Types

Not Applicable.

#### Part 3.6 – Industrial, Bulky Goods and Utility Installation Development

Not Applicable.

#### Part 3.7 Specific Land Uses

Not applicable.

#### Part 4 – Area Plans

##### Part 4.5 West Wallsend/Holmesville Area Plan – Heritage Precinct

As highlighted in Section 2.4.1 a full assessment of the cultural landscape and its significance has not been provided.

The amended proposal does not demonstrate how it makes adequate provision to meet the intent of Council's heritage requirements by ensuring that the development within the area maintains and enhances identified significant characteristics.

The defined edges of the town and its defined interface with its semi-rural /environmental setting contribute to its cultural significance. There is a clear definition of the historic edge between the separate historic development between West Wallsend and Holmesville.

The development does not demonstrate how it adequately identifies and incorporates dominant cultural and natural elements of the area's landscape and streetscape.

The development makes inadequate provisions to address the character, setting and edge of West Wallsend/Holmesville and only proposes minimal provisions through landscaping for separating or screening some of the new development out of view. The assessment by Council's Landscape Architect shows measures to be inadequate.

The proposal impacts on the overall setting and does not demonstrate how it has been integrated in a sympathetic and non-intrusive manner.

The proposal fails to demonstrate how the subdivision design (including lot layout, lot size, cut & fill affecting local topography and requirements for built form outcome) will adequately ensure that the future built form will maintain and enhance the identified significant characteristics of the precinct.

## **2.1 79C(1)(a)(iia) any planning agreement that has been entered into**

No planning agreements have been entered into.

## **2.2 79C(1)(a)(iv) any matters prescribed by the regulations**

Any future demolition of the existing Mine Subsidence test dwelling will be conditioned to comply with AS 2601 1991; the Demolition of Structures.

## **2.3 79C(1)(b) the likely impacts of the development**

The following matters were considered and, where applicable, have been addressed under 79C(1)(a)(i) & (iii).

Context & Setting	Waste
Access, transport & traffic	Energy
Public domain	Noise & vibration
Utilities	Natural hazards
Heritage	Technological hazards
Other land resources	Safety, security & crime prevention
Water	Social impact on the locality
Soils	Economic impact on the locality
Air & microclimate	Site design & internal design
Flora & fauna	Construction
Cumulative Impacts	

## **2.4 79C(1)(c) the suitability of the site for development**

The majority of the site is appropriately zoned 2(1) Residential which allows subdivision as a permissible use. However, the applicant has failed to give reasonable consideration to the constraints within and surrounding the site, as discussed in detail throughout this report. Of particular importance, the application has failed to identify and or justify the following:

- the heritage significance of the site and the surrounding suburb
- the constraints posed by the terrain,
- has not made allowance for the orderly development of existing properties on the northern side of Seaham Street,
- the visual impact on the surrounding suburb, and
- the lack of justification for offsetting bushland, including the ecological endangered community, in lieu of protecting it on the site.

Based on the above shortfalls and non conformance with relevant planning controls, as identified within this report, it is considered that proposal does not fit the locality and the site attributes are not conducive for the proposed development.



## **2.5 79C(1)(d) any submissions made in accordance with this Act or the Regulations**

### Public Submissions

The application was placed upon exhibition on two occasions. A total of 365 submissions and 4 petitions, totaling 741 names have been received. With the exception of 1 submission of support, each submission objected to the proposal. In the first exhibition period 235 submissions and 3 petitions were received, whilst 129 submissions and 1 petition were received in the second exhibition period. Various grounds for objection were detailed within the submissions received. However, the main points of objection are detailed below:

- The overall density of the proposal is considered to be too high and the average lot sizes are considered to be too small in comparison to the existing lot sizes within the area.
- Increased instances of flooding as a result of development of the existing bushland on the subject site.
- The removal of significant amounts of bushland is a concern on various grounds, including loss and displacement of native flora and fauna, increased noise, increased dust, visual impact and the destruction of the Ecological Endangered Community (Lower Hunter Spotted Gum & Iron Bark Forest).
- The proposed development will detract from the strong heritage culture of the existing area. The building over the tramline remnants within the corridor, the lack of control or restriction over future dwelling designs and potential for damage to the “butterfly caves”.
- The proposed layout does not allow for a road at the rear of the existing properties on the northern side of Seaham Street. Many of the residents have enjoyed rear access to their properties in the past and would like that to remain, whilst others would like a buffer to the proposal or the opportunity to subdivide their property in the future.
- Existing services and facilities are unable to cater for the increased demand.
- Increased noise and traffic congestion resulting from increased traffic volumes produced from the development and increased exposure to George Booth Drive due to removal of bushland. Increased traffic volume on existing streets, which are narrow and in poor condition is also a concern.

The issues raised, with the exception of increased flooding, are considered relevant to the application and have been considered and commented upon within various sections of this report.

### Submissions From Public Authorities

The following public authorities were notified of the application, responses received are noted:

- Mine Subsidence Board advised general terms of approval on 8 June 2010.
- NSW Rural Fire Service, to date is yet to provide its general terms of approval.
- Department of Industry and Investment (I&I) advised on 7 June 2010 that the site does not contain significant fish habitat, and as such has no objection to the proposal on fisheries grounds. A subsequent submission was received on 1 July 2010, that raised concerns in relation to future mining in the area, and referred to the “rezoning”. Council

responded to I&I advising the application was for a subdivision not a rezoning, and that general terms of approval had been sought and gained from the Mine Subsidence Board. No response in relation to this matter has been received to date.

- Department of Environment, Climate Change and Water (National Parks & Wildlife) advised in correspondence dated 21 January 2010 that General Terms of Approval are not required in this instance in relation to Section 90 of the National Parks and Wildlife Act 1974. Items identified in initial studies to have potential significance, have been proven to be otherwise to the satisfaction of DECCW.
- Department of Environment, Climate Change and Water (Office of Water), to date is yet to provide general terms of approval.
- Roads & Traffic Authority provided concurrence in relation to the requirements of SEPP Infrastructure on 14 July 2010.
- Department of Environment, Climate Change and Water comments in relation to the Species Impact Statement (SIS) are contained within Appendix A. Council is of the opinion that the SIS is deficient and does not comply with the Director Generals Requirements (DGR's), therefore the application was referred only for comment, not concurrence. DECCW's comments confirm agreement to Council's position on this matter. Refer to Appendix B for correspondence.
- Department of Education & Training advised in correspondence dated 20 November 2010, that local public schools in the area have capacity for the likely increase in child numbers.
- Hunter Water Corporation advised that they have no objection to the proposal in correspondence dated 4 June 2010.
- Lake Macquarie Council resolved to submit a formal objection at its Extraordinary Meeting held on 25 June 2010. A copy of the submission is contained within Appendix C. The main points of objection raised, were as follows:
  - *The failure of the proposal to address the physical and cultural constraints of the site and locality;*
  - *The significant impact of the proposal on the site's flora & fauna and inadequate/inappropriate mitigative measures to address/offset the impacts;*
  - *The significant impact of the 463 Lot Subdivision on the cultural significance of West Wallsend/Holmesville; and*
  - *The potential for significant social impacts on the existing West Wallsend / Holmesville community.*

## **2.6 79C(1)(e) the public interest**

The proposed development is not considered to be in the public interest. A significant number of objections, namely 364 in total have been received. Many of the points raised within the submission are considered to be both valid and founded.

### **3 SECTION 91 INTEGRATED DEVELOPMENT**

The proposed development is defined as Integrated Development under Section 91 of the Environmental Planning and Assessment Act 1979, as the applicant has sought General Terms of Approval under the various acts listed below.

#### **3.1 Mine Subsidence Compensation Act 1961**

The applicant has sought General Terms of Approval under Section 15 of the Mine Subsidence Act 1961. General Terms of Approval, subject to conditions were granted by the Mine Subsidence Board on 8 June 2010.

#### **3.2 Rural Fires Act 1997**

The applicant has sought General Terms of Approval for a Bushfire Safety Authority under Section 100B of the Rural Fires Act 1997. On 28 June 2010, the NSW Rural Fire Service advised that based on the information provided they were not in a position to issue a Bushfire Safety Authority. Subsequently, the applicant has been requested to provide additional and amended documentation, for reassessment.

#### **3.3 Fisheries Management Act 1994**

The applicant has sought General Terms of Approval for a Permit under Section 219 of the Fisheries Management Act 1994. The Department of Industry and Investment (I&I) advised on 7 June 2010 that the site does not contain significant fish habitat, and as such has no objection to the proposal on fisheries grounds. Therefore, General Terms of Approval are not required.

#### **3.4 National Parks & Wildlife Act 1974**

The applicant has sought General Terms of Approval for a consent under Section 90 of the National Parks and Wildlife Act 1974. Correspondence received from the Department of Environment, Climate Change and Water, on 21 January 2010 indicates that General Terms of Approval are not required in this instance. Items identified in initial studies to have potential significance, have been proven to be otherwise to the satisfaction of DECCW.

#### **3.5 Water Management Act 2000**

The applicant has sought General Terms of Approval for an approval under Section 91 of the Water Management Act 2000. To date, General Terms of Approval have not been received from the Department of Environment, Climate Change and Water.

### **4 SECTION 94 CONTRIBUTIONS**

The proposed development, if approved, would be subject to contributions, as it would ultimately result in an increase in demand for public amenities and services including public open space, community facilities, road works, footpath works or the like.

In accordance with council's policy, Section 94 contribution fees would be calculated based on Contribution Plan No. 1 City Wide – 2004.

### **5 CONCLUSION & RECOMMENDATION**

Based on the above assessment, it is considered that the proposed development would have a significant and unacceptable impact on the environment.

It is therefore recommended, that the application be refused, subject to the reasons contained in Appendix A of this report.

Matt Brogan

**Development Engineer**

**Lake Macquarie City Council**

I have reviewed the above planning assessment report and concur with the recommendation.

Greg Field

**Chief Subdivision Engineer**

**Lake Macquarie City Council**

## **APPENDIX A – REASONS FOR REFUSAL**

1. The proposed development footprint fails to consider constraints posed by threatened species and the ecological endangered communities located on the site. An offsets package has been prematurely provided, in lieu of avoiding and protecting areas of high significance. (Section 5A of the Environmental Planning and Assessment Act 1979).
2. The Species Impact Statement does not comply with the Director General Requirements. DECCW Concurrence has not been requested, thus not issued. (Section 79B of the Environmental Planning and Assessment Act 1979).
3. The proposal is contrary to Clauses 43, 47 & 52 of LMLEP 2004. The applicant has failed to provide a comprehensive analysis and assessment of the Cultural Significance of the Cultural Landscape of the affected heritage values of Wallsend and Holmesville. Inadequate justification has been provided to demonstrate that the design has considered constraints, opportunities and recommended guidelines. Further, the proposed demolition of the West Wallsend Tramway RT-01, through the site is inadequately justified and does not demonstrate compliance with the Burra Charter process. There is insufficient evidence of consideration of alternative options, or that the proposed demolition is a required measure of last resort. (Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979).
4. The proposal inhibits the orderly future development of existing properties on the northern side of Seaham Street, by failing to include a road at the rear of the properties on the northern side of Seaham Street. (Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979).
5. Owners consent for drainage works and the creation of associated easements have not been granted by the owners of 46 Fegan Street and 63 Seaham Street.
6. The NSW Rural Fire Service has not issued General Terms of Approval for a Bushfire Safety Authority for the proposal, under Section 100B of the Rural Fires Act 1997. (Section 91 of the Environmental Planning and Assessment Act 1979).
7. The Department of Environment, Climate Change and Water has not issued General Terms of Approval for a Controlled Activity Statement for the proposal, under Section 91 of the Water Management Act 2000. (Section 91 of the Environmental Planning and Assessment Act 1979).
8. The proposal is contrary to the provisions of SEPP 19 Bushland in Urban Areas. (Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979).
9. The proposal is contrary to the provisions of SEPP 44 Koala Habitat Protection. (Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979).
10. The proposal is contrary to the provisions of SEPP 55 Remediation of Land. (Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979).
11. The proposal is not considered to be in the public interest. (Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979).
12. The cumulative impact of points (a) to (e) below, are considered unacceptable. (Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979).

- (a) Lots 901 – 906 are considered unsuitable for development, with grades exceeding 25%, contrary to the requirements of LMCC Development Control Plan No. 1 Part 2.1.9 Sloping Land and Soils. (Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979).
- (b) Failure to justify compliance with LMCC DCP No. 1 Parts 2.1.3 Scenic Values & 2.7.6 Views. Insufficient documentation is provided by the applicant to determine the visual impact that the proposal will have upon the surrounding existing residential development. (Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979).
- (c) Failure to justify compliance with LMCC DCP No. 1 Part 2.1.15 Noise and Vibration. Insufficient information is provided to determine the noise impact on existing properties. (Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979).
- (d) Failure to provide measures or solutions to address negative social impact resulting from the proposal, contrary to the requirements of LMCC DCP No. 1 Part 2.2.1 Social Impact Statement. (Section 79C(1)(a)(iii) & 79C(1)(e) of the Environmental Planning and Assessment Act 1979)
- (e) Inadequate road connectivity from proposed Road 1 to Withers Street, with a street block length well in excess of 170m, as stipulated in LMCC DCP No. 1 Part 2.6.3 Road – Design. (Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979).



**Environment,  
Climate Change  
& Water**

Your reference:

Our reference:

Contact:

Part 4, 222 Conc.  
DCC/1000000  
File No. F100/15000-01  
Steve Lewis  
(02) 4608 0014

Sarah Warner  
Development Assessment and Compliance  
Lake Macquarie City Council  
Box 1908  
HUNTER REGION MAIL CENTRE NSW 2310.

Dear Ms. Warner

**DA/1193/2008 - Hammersmith Management Pty. Ltd - Proposed Residential  
Subdivision, Lot 103 and 105 DP1000408, West Wallsend - Species Impact Statement**

Reference is made to your letter dated 21 June 2010 requesting that the Department of Environment, Climate Change and Water (DECCW) provide comment on the adequacy of the Species Impact Statement with respect to the Department's Director General requirements (issued on 20 May 2009 to Hammersmith Management Pty. Ltd.) for a proposed residential subdivision (DA/1193/2008) on Lot 103 and 105 in Deposited Plan (DP) 1000408 located at West Wallsend in the Lake Macquarie Local Government Area. DECCW notes that it has provided previous correspondence on this matter on 21 October 2009, which related to the first version / draft of the Species Impact Statement.

DECCW reiterates that it is the determining authority's (Lake Macquarie City Council ["Council"]) responsibility to ensure that a draft or final SIS complies with the requirements issued by the Director-General, prior to forwarding it to DECCW for concurrence. We note that at this stage Council is not requesting the Department's concurrence to the proposal. Typically, DECCW has no regulatory or statutory role to review SISs unless they are accompanied by or are requested as part of a concurrence application under the EP&A Act 1979 (or a licence application under the *Threatened Species Conservation (TSC) Act 1995*). Nevertheless, given the nature of Council's request, the scale and size of the development, and that overall the development is to be determined by the Joint Regional Planning Panel, DECCW believes that it should provide comment on what we believe is a significant development with respect to potential adverse impacts to threatened species, populations, ecological communities and their habitats. DECCW notes that the following threatened species and EEC has been recorded on site: - Grey-headed Flying Fox, Koala, Little Bent-wing Bat, Powerful Owl, Scarlet Robin, Sooty Owl, Squirrel Glider, Varied Sittella, *Tetratheca juncea* and the Lower Hunter Spotted Gum-ironbark Forest (LHSGIF) EEC. Additionally, a further 21 threatened species, were also considered to have potential to occur within the subject site.

DECCW has briefly reviewed the Species Impact Statement and generally concurs with and supports Council's opinion that it does not comply with the Director General Requirements (DGRs). We provide the following advice based on Council's main points:

PO Box 4800 Newcastle NSW 2300  
117 Bull Street, Newcastle West NSW 2300  
Tel: (02) 4908 6800 Fax: (02) 4908 6810  
ANZ 20 241 387 273  
[www.environment.nsw.gov.au](http://www.environment.nsw.gov.au)

(i) Council has stated The proposed development footprint and subdivision layout does not reasonably reflect threatened species and Endangered Ecological Community (EEC) constraints detected on the site;

- DECCW generally concurs with Council that the proposed residential development footprint does not reasonably reflect the threatened species and EEC constraints on site, in particular:

- **Lower Hunter Spotted Gum – Ironbark Forest EEC** - the proposal will remove approximately 80% of LHSIGIF EEC on site (i.e. ~8.4 ha out of a total 15.8 ha) and contribute to a cumulative loss of this EEC in the local area to approximately 37% of its existing areal extent (based on figures presented in the SIS). DECCW notes the proposed offset package for this EEC will conserve approximately 36 ha (both on site and at Lot 107 to the south of the proposal), which equates to a slighter greater than 4:1 ratio of conserved verses cleared. Under Section 90(A) of the *Threatened Species Conservation (TSC) Act 1997* states that a Threatened Species Priorities Action Statement (also called a Priorities Action Statement) is a statement that 'sets out the strategies (recovery and threat abatement strategies) to be adopted for promoting the recovery of each threatened species, population and ecological community to a position of viability in nature'. The Department's 'priority action statement' for this community lists the following as a high recovery action: 'Protect habitat by minimising further clearing of the community. This requires recognition of the values of all remnants in the land use planning process, particularly development consents, reasonings and regional planning'. As such it is not unreasonable to expect that a greater portion of this EEC could be retained within conservation areas.
- DECCW also notes that the 'Ball Honey Myrtle (*Metaleuca nodosa*) Low Closed Forest', of which 13.2 ha will be cleared for the proposal, is potentially identified as a variant of the LHSIGIF EEC in Bell (2008). Bell (2008) notes that the Hinterland Red Ironbark (*Eucalyptus fibrosa*) – Paperbark (*Metaleuca nodosa*) Forest, which is described as Depression Paperbark Forest in Bell (2008) for the Edgeworth LES study, is considered a localised variant of the LHSIGIF EEC. Based on a roadside site inspection (by DECCW) and the general description of the 'Ball Honey Myrtle Low Closed Forest' in the current SIS and the previous SIS (Andrews,Neil 2007) the vegetation would appear to have some affinity to the communities described in Bell (2008, 2009). DECCW further notes however that in aligning 'like for like' matches for the Brimbin offset site, the SIS aligns this community to Swamp Sclerophyll Forest on coastal floodplains EEC, which might suggest it is not LHSIGIF EEC. As such DECCW believes that further clarification is required to determine whether or not this community represents an EEC.
- ***Tetrathaea juncea* (Black-eyed Susan)**: - DECCW is of the view that the layout should be amended to ensure that a 20 m protective buffer be established around at least 75-80% of the *Tetrathaea juncea* population on site and incorporated into the 'conservation area'. DECCW notes that we have previously requested this and concurs with Council that such a buffer zone should be incorporated in the 'conservation zone' and not within 'asset protection zones (APZs)'. The Department does not consider APZs provide adequate conservation measure or a suitable buffer between the development and the 'conservation zone'. DECCW also supports Council's view that connection links via conservation lands should be much better maintained to the northern sub-populations to preserve genetic links and mitigate against further urban encroachment.
- **Large Forest owls**: - DECCW is of the view that all trees with hollows and/or entrances greater than 200 mm should be inspected for owl activity, and the lack of this assessment is inconsistent with DECCW assessment guidelines and the DGRs. Furthermore, additional consideration should be given to retain greater



roosting habitat, given the *in situ* records of the Powerful and Sooty Owls, and the close proximity of known Masked Owl roosting sites.

- o **Habitat Corridors:** - DECCW notes amendments in the northern part of the proposed development area which better maintains connective links to the north-west of the site. The width of lands set aside for conservation purposes in this area needs further discussion with a view to appropriate maintenance of this potentially important regional connective link.
- o **Koala, Squirmel Glider and other threatened species:** - based on the possible amendments to the development footprint suggested above, DECCW concurs with Council that further consideration could be given to retention of habitat on site with respect to known threatened fauna. DECCW also agrees with Council's view that further investigation / assessment should have been given to Koala utilisation, with respect to movements on and off the site, and within the immediate surrounds, given previous reports of this species in the Cameron Park and Northlakes area.

Notwithstanding the above comments DECCW does however note that the land is mostly zoned Residential 2 (1) and is in an area identified as accommodating part of the Lower Hunters future housing needs. A carefully considered offset package is needed that balances the regions housing needs and adequate conservation outcomes.

- (ii) Council has stated "The offset package arrangements have been provided prematurely in that: (a) significant impacts to threatened species and EEC on site should be reasonably avoided first, (b) an in principle agreement with the DECCW reached, and (c) surveys and management provisions for the offset land provided in full":

- DECCW concurs with Council that significant impacts to threatened species and EEC should be avoided first, and that there appears to be scope on site for further habitat and EEC to be retained based on footprint amendments, however, in instances where impacts can not be avoided or mitigated against, then appropriate offsets which compensate for the clearing of the habitat must be provided.
- DECCW acknowledges that the proponent is offering an offset package which conserves threatened species, habitat and EEC vegetation (including the retention of 'ecological communities' and other threatened species not recorded on the site), as well as supporting regional corridors and government conservation reserves outside of the Lake Macquarie local government area. This package includes the retention of some on-site vegetation, approximately 34 ha of predominantly LHSGIF EEC on Lot 107 in Edgeworth and about 120 hectares of intact forested lands at Brimbin (adjacent to Brimbin Nature Reserve, north of Taree). However, this package only represents a 4:1 offset with respect to area conserved verses area to be cleared / impacted upon, and in general does not offer 'like for like' with respect to the vegetation communities affected nor is it within the local area. DECCW acknowledges under the 'BioBanking Assessment Methodology' (DECC 2008) that such offsets can be matched to like communities outside of the impact area. However, the Department is of the belief that although the proposal utilises parts of this methodology, it is not consistent with it, nor with the 'principle based approach' (DECC 2007), namely with respect to the size of the offset being offered with respect to the impacts at the development site. Ultimately, the Department believes a ratio of slightly greater than 4:1 is poor in relation to the area of vegetation and known habitat proposed for removal. DECCW believes that the current offset package is not adequate, and is not necessarily based on scientific merit or quantitative analysis of the likely biodiversity losses. As such DECCW believes it is inconsistent with the 'maintain or improve' requirements of the Part 4 process and therefore not consistent with our DGRs and offsetting principles (DECC 2007, 2009).
- The proponent has used a combination of the 'principle based approach' (DECC 2007) and parts of the BioBanking Assessment Methodology (DECC 2009) to determine their offset package. However, in combining the two processes DECCW has concerns that the proponent has selected specific aspects from each method to best suit their development goal, rather than providing an adequate offset based on scientific rigor and a quantitative

assessment. As such the Department has conducted biobanking assessments of both the proposed development site and biobank site. These assessments were undertaken by 'accredited assessors' (both DECCW and Council) using the DECCW Biobanking Credit Calculator to determine 'ecosystem credit' requirements, with respect to the Brimbin offset package. These assessments were conducted on the forested / wooded communities and did not include the LHSGIF, as the LHSGIF assessment was done in accordance with the principles based approach. More detailed information on our biobanking assessment is shown at Attachment A to this letter.

- Our biobanking assessment found a total of 3,625 'ecosystem credits' (matching the same or similar vegetation types) would be required to be retired in a suitable offset package to adequately compensate the clearing impacts of the proposal. In contrast the biobank assessment of the offset site generated 805 'ecosystem credits' and as such only represents approximately a quarter of the overall 'ecosystem credit' requirements. Although DECCW recognises that it is unlikely to enforce an exact credit match given the voluntary nature of the methodology, it does highlight the biodiversity value of the site and significant importance of threatened species habitat present. Furthermore it clearly indicates via a quantitative assessment that the proposed offset package is inadequate with respect to area and quality.
- Regardless of which methodology the proponent uses to determine the type, scale and size of an offset package, DECCW believes that the outcomes should be fairly consistent regardless of which method is used, and DECCW has shown that a slightly greater than 4:1 offset ratio under the 'principles-based' approach is not consistent with that determined from the 'biobanking assessment methodology' approach. As such DECCW is of the opinion that the current proposal should be enhanced with further offset area(s) to appropriately match the biodiversity values which will be lost on the development site.
- Council has raised concern that an 'in-principle' agreement has not been reached with DECCW with regard to an offset package prior to the submission of the SIS. We advise that although an 'in principle agreement' has not yet been reached, the Department acknowledges the good will of the proponent to meet and negotiate over this matter. DECCW notes that this co-operative approach is still being sought by the proponent and the Department would prefer such an arrangement. In this regard DECCW has agreed to further meet with the proponent in a bid to discuss an appropriate offset package and we would welcome Council's involvement at this meeting. DECCW will keep Council informed of any outcome from these further negotiations and will recommend the proponent include such changes in any future revised SIS.
- DECCW agrees with Council that appropriate surveys in accordance with DECCW guidelines (DEC 2004) should be conducted over all offset sites to determine their biodiversity value and adequacy with respect to similar threatened species habitats etc being conserved. Additionally all offset areas must be underpinned by an appropriate management plan which ensures conservation in perpetuity.

In light of the above concerns DECCW recommends to Council that the SIS is deficient in a number of areas and is not consistent with the DGRs. As such these would need to be addressed before the Department can consider concurrence.

Additionally, with respect to public submissions, DECCW is aware of one submission (by Mr Matthew Allam of West Wallsend) which highlights a number of threatened species concerns. A number of the species raised have been included in the current SIS, but it appears this person has allegedly identified additional records and species not detected on the site during the surveys associated with the SIS. These include: (i) *Callistemon linearifolius*, (ii) *Cryptostylis hunteriana*, (iii) *Rhizanthella slateri* and (iv) an undescribed species of *Hibbertia* (to which he alludes maybe a threatened species, such as *H. procumbens*). If these species are present DECCW considers that these records may be significant and as such need to be verified, likely through site inspections. Additionally it would be useful to know specific locations (given that they are not on DECCW 'Atlas of NSW Wildlife' database) and whether or not photographs of the species were taken. With respect to *Rhizanthella slateri* (Eastern Underground Orchid) DECCW has only 3 records of this species on the database, of which the closest known record is in the Buladelah area. As such any additional new localities for this extremely cryptic orchid would represent a significant record, which needs to be verified. With respect to the '*Cymbidium canaliculatum* in the Hunter Catchment – endangered population', DECCW does

not consider the records on site to represent this population as the West Wallsend does not fall within the boundaries of the Hunter Catchment, as defined 'Australia's River Basins' (Geoscience Australia 1997) (as per Paragraph 4 of the final determination (NSW Scientific Committee 2006)).

If you wish to discuss this advice further please contact Steve Lower on 4908 6814.

Yours sincerely

 7-7-10

**Peter Jamieson**  
**Head Regional Operations Unit Coastal**  
**North East Branch**  
**Environment Protection and Regulation**

#### References

Andrews, Neil (2007). *Species Impact Statement, Lots 103 and 105 DP 1000408 George Booth Drive West Wallsend*. Report for HammarSmith Management Pty Limited, Andrews Neil Pty Ltd. July 2007.

Bell, S.A.J. (2008) *Vegetation assessment Lot 88 DP700282 & Lot 107 DP100048, George Booth Drive, Edgeworth, Lake Macquarie LGA*. Unpublished Draft Report to GeoLINK & Lake Macquarie City Council. Eastcoast Flora Survey. November 2008.

Bell, S.A.J. (2009) *Lower Hunter Spotted Gum – Ironbark Forest: Distribution and composition in Lake Macquarie LGA*. Report to Lake Macquarie City Council. Eastcoast Flora Survey. September 2009.

DEC (2004) *Threatened Biodiversity Survey and Assessment: Guidelines for Developments and Activities*. Working Draft. November 2004. Department of Environment and Conservation (NSW).

DECC (2007) *Biodiversity Certification of Environmental Planning Instruments: Working Draft*. April 2007. Department of Environment and Climate Change (NSW).

DECC (2008) *BioBanking Assessment Methodology*. Department of Environment and Climate Change, Sydney, NSW.

DECC (2009) *BioBanking Assessment Methodology and Credit Calculator Operational Manual*. Department of Environment and Climate Change NSW, Sydney.

Geoscience Australia (1997) *Australia's River Basins*. <http://www.ga.gov.au/maps/ANZCW0703005-627.html>

NSW Scientific Committee (2006) *Cymbidium canaliculatum* R. Br. in the Hunter Catchment – endangered population listing: NSW Scientific Committee – final determination. Department of Environment, Climate Change and Water, Hunterville, NSW.

# ATTACHMENT A: FURTHER INFORMATION ON DECCW'S BIOBANKING ASSESSMENT

- In conducting the Biobanking assessments, DECCW has made the following assumptions:
  - the 100 ha assessment circles for both the development and biobank site were placed over the area of likely greatest change (i.e. area of greatest clearing for the development site and area of likely highest increase in biodiversity values for the biobank site).
  - in assigning a vegetation condition code, DECCW assumed all communities were 'moderate-good' condition based on the SIS (including the previous SIS [Andrews.Neil 2007]) descriptions and the requirements in DECC (2009). These were assessed as 'within benchmark', given that the SIS did not provide quadrat specific information for the vegetation types.
  - with respect to connectivity, DECCW assumed the clearing resulted in the fragmentation and loss of the corridor link in the south, but a 30-100 m link was to be retained at the northern part of the subject site.
  - for the adjacent remnant with the biobank site, DECCW noted that the proposed offset adjoined a large patch of native vegetation which was part of a >500 ha area of remnant vegetation; similarly, in its uncleared state the vegetation on the development site was linked to a >500 ha remnant.
  - patch condition for both assessments was considered similar to the adjacent remnants and as such was assessed within benchmark.
  - in determining the 'Threatened Species Sub Zones' and the appropriate vegetation types DECCW used the vegetation descriptions in the SIS, previous SIS [Andrews.Neil 2007] and the NSW Vegetation Types Database.
  - in absence of 'site-specific' floristic quadrat information, survey data was entered at benchmark.
  - Site value scores were not changed and the defaults accepted in both scenarios (i.e. for the biobank site the appropriate increase in site values was accepted given that the proponent would likely implement a variety of management actions based on the proposed management plan).
- The development assessment conducted under biobanking methodology indicated the following 'ecosystem credits' would be required to offset the clearing of forested vegetation communities / types on the subject site:

## Development Site – Biobanking Assessment

Ecosystem Credits			
Vegetation Type	Area (ha)	Credits Required	Red Flag
Smooth-barked Apple - Red Bloodwood open forest on coastal plains on the Central Coast, Sydney Basin [HU621]	34.4	1,628	Yes
Smooth-barked Apple - Red Bloodwood open forest on coastal plains on the Central Coast, Sydney Basin [HU621]	1.7	105	Yes
Spotted Gum - Broad-leaved Ironbark grassy open forest of dry hills of the lower Hunter Valley, Sydney Basin [HU629]	15.8	805	Yes
Spotted Gum - Broad-leaved Ironbark grassy open forest of dry hills of the lower Hunter Valley, Sydney Basin [HU629]	14.2	1,087	Yes

\*NOTE: the 'area (ha)' figures for the communities listed above include the total area for each community on the development site. However, the credit calculator differentiates the different management regimes applied to each community (i.e. under the 'management zone' section, and as such only the areas to be cleared are used in generating the credit requirements. For example only 8.4 ha out of the 15.8 of the 'Spotted Gum - Broad Leaved Ironbark Grassy Forest of

Dry Hills of the Lower Hunter Valley, Sydney Basin will be cleared, the remaining was recognised as retained within on-site conservation areas. The repetition of the communities on site with respect to assigning 'vegetation zones' is due to them aligning to similar communities within NSW Vegetation Types Database. Within the credit tool an auxiliary code is used to separate them, which is not shown in the output table (e.g. metaleuca to indicate the Sall Honey-myrtle community).

- Under DECCW biobanking methodology, a total of 3,625 'ecosystem credits' (matching the same or similar vegetation types) would be required to be retired in a suitable offset package to adequately compensate the clearing impacts of the proposal. One of the reasons why the assessment of the development site resulted in a high number of credits, is that the proposal will result in the removal of a larger remnant which represents significant threatened species habitat, in an already highly fragmented landscape. This has had a negative impact on the landscape score, which along with the threatened species habitat potential / predictability of vegetation types, drives the tool. All the vegetation types are 'red flag areas' on the basis they represent highly cleared vegetation types (i.e. a highly cleared vegetation type is a vegetation type whose distribution in the CMA area is 10% or less than its estimated distribution in the CMA area before 1750 [i.e. 90% or more in the CMA area has been cleared, as defined by the Vegetation Types Database]), is considered an EEC (i.e. DECCW is of the opinion that the Sall Honey Myrtle Low Closed Forest may represent an EEC), and the vegetation is not in low condition. This further enhances their biodiversity value and importance in maintaining ecosystem / landscape function.
- In comparison the biobank assessment of the proposed offset site generated the following 'ecosystem credits':

**Biobank Site (offset package) – Biobanking Assessment**

<b>Ecosystem Credits</b>		
<b>Vegetation Type</b>	<b>Area (ha)</b>	<b>Credits created</b>
Flooded Gum - Tallowwood - Brush Box moist open forest of the coastal ranges of the North Coast	3	19
Forest Red Gum - Pink Bloodwood open forest of the foothills and ranges of the North Coast	19	127
Grey gum - stringybark open forest of the gorges of the North Coast and New England Tablelands	21	141
Paperbark swamp forest of the coastal lowlands of the North Coast and Sydney Basin	8	54
Spotted Gum - Grey Ironbark forest dry open forest of the lower foothills of the Barrington Tops, North Coast	72	464

- The biobank site assessment of the offset site generated 805 'ecosystem credits' and as such only represents approximately a quarter of the overall 'ecosystem credit' requirements (i.e. 805 is approx. 1/4 of 3625) for an adequate offset package to compensate the proposed clearing.
- Although DECCW recognises that it is unlikely to enforce an exact credit match given the voluntary nature of the methodology, it does highlight the biodiversity value of the site and significant importance of threatened species habitat present. Furthermore it clearly indicates via a quantitative assessment that the proposed offset package is inadequate with respect to area and quality.

## References

Andrews-Nell (2007). *Species Impact Statement, Lots 100 and 105 DP 1000428 George Booth Drive West Wyaland* Report for Hammermith Management Pty Limited, Andrews Nell Pty Ltd. July 2007.

DECC (2008). *BioBanking Assessment Methodology and Credit Calculator Operational Manual*. Department of Environment and Climate Change NSW, Sydney.

Glossary (as per 'BioBanking Assessment Methodology' (DECCW July 2008) as defined under Section 127B of the TSC Act 1989)

**BioBank site:** Land designated by a biobanking agreement to be a biobank site.

**Biodiversity credits:** Ecosystem or species credits required to offset the loss of biodiversity values on development sites or created on biobank sites from management actions that improve biodiversity values.

**Credit Calculator:** A computer program that applies the methodology and calculates the number and classes of credits required at a development site or created at a biobank site.

**Development site:** An area of land that is subject to a proposed development for which a biobanking statement is sought or obtained.

**Ecosystem credits:** The class of biodiversity credits created or required for the impact on general biodiversity values and some threatened species, i.e. for biodiversity values except threatened species or populations that require species credit. Species that require ecosystem credits are listed in the Threatened Species Profile Database.

**Management zone:** Where the extent of development impact or improvement through management varies over a vegetation zone, a management zone is used for the purpose of calculating the change in Site Value for that vegetation zone.

**Red flag area:** An area of land (part of a development site) with high biodiversity conservation values. The impact of the development on the biodiversity values of a red flag area cannot be offset by the retirement of biodiversity credits unless the Director General of DECCW determines that strict avoidance of the red flag area is unnecessary in the circumstances.

**Site Value:** A quantitative measure of structural, compositional and functional condition of native vegetation, measured by site attributes.

**Vegetation type:** The finest level of classification of native vegetation used in the methodology. Vegetation types are assigned to vegetation classes, which in turn are assigned to vegetation formations. There are approximately 1600 vegetation types within NSW.

**Vegetation Types Database:** A database which contains the information on each vegetation type used in the methodology and comprises a description of each vegetation type, its class and formation, the CMA area within which the vegetation type occurs, the percent cleared value of the vegetation type, and the source of the information.

**Vegetation zone (zone):** A relatively homogeneous area in a proposal area (development or biobank site) that is of the same vegetation type and broad condition. A single zone must not contain a mix of vegetation in low condition and not in low condition. Zones with the same vegetation type and in moderate to good condition (that is, not in low condition) can be combined within one ecosystem credit profile (as a sub-zone). A zone may comprise one or more discontinuous areas.

## APPENDIX C – LAKE MACQUARIE CITY COUNCIL SUBMISSION

Submission by Lake Macquarie City Council to DA/1193/2009 – Four into 463 Lot Subdivision 11 Robertson Street, West Wallsend

Adopted by Council at its Extraordinary Meeting of 25 June 2010

### Flora & Fauna

- The application proposes to remove 41 hectares of native vegetation and would indirectly impact the remaining 30% of the site by increasing edge impacts to the area;
- A number of threatened species were detected on the site including the koala (ie; in the form of scratch marks on three trees), squirrel glider, powerful owl, sooty owl, grey headed flying fox, scarlet robin, varied sittella, little-bentwing bat and *Tetratheca juncea*. A further 21 threatened species, were also considered to have potential to occur within the subject site. The Endangered Ecological Community (EEC) Lower Hunter Spotted Gum-Ironbark Forest (LHSGF) also occurs on the site, of which 8.37 hectares has been proposed to be removed.

The impacts of Clearing of Native Vegetation, Loss of Hollow-bearing Trees and Removal of Dead Wood and Dead Trees are Key Threatening Processes as listed under the Threatened Species Conservation Act and may contribute to others such as invasion of exotic grasses;

- The proposed offset package is inappropriate as it attempts to justify an unacceptable impact to threatened species and the EEC. Impacts to threatened species and the EEC on site that could have been reasonably avoided have not been;
- The layout does not adequately reflect ecological constraints detected on site and would result in an unacceptable impact on biodiversity;
- The current offset package arrangements are not considered an acceptable basis to approve development in that the offset package arrangements are preliminary as Agreement with the Department of Environment, Climate Change and Water (DECCW) has not yet been reached and additional surveys and management requirements are outstanding.
- The proposal occurs within an area that has been identified by the Lower Hunter Regional Conservation Plan (2009) as being currently below regional reservation targets as contained on Map 1 of the Plan. The Plan includes provision of a number of conservation strategies that are applicable to the subject site particularly with regard to adequate habitat retention and offsetting.
- The Lifestyle 2020 Strategy 'green system map' intends to 'enhance long term biodiversity, scenic amenity, and liveability of the city'. The green systems map has identified both 'remnant vegetation' and 'high value habitat' on the subject site. It is the intent of Lifestyle 2020 to ensure that 'these elements are valued, retained, and managed as part of an integrated system' however the proposal fails to achieve this outcome. The proposal negatively impacts on both remnant vegetation and high value habitat and is therefore inconsistent with the green system map.
- The Species Impact Statement (SIS) identifies the site as providing habitat for a number of threatened species. The site was zoned for residential development under the Lake Macquarie Local Environmental Plan 1984 prior to conservation objectives of the Lifestyle

2020 Strategy, prior to legislation such as the *Threatened Species Conservation Act 1995* and *Environmental Protection and Biodiversity Conservation Act 1999*, prior to Council's Native Vegetation and Corridors Maps and prior to Council's Biodiversity Planning Policy and Guidelines for Local Environmental Plan Rezoning Proposals. The conservation value detected on the site as part of this application is considered worthy of protection.

The development should therefore be more considerate of the site's conservation values and the subdivision design should reflect these values.

- The application is considered deficient in regard to ecological assessment requirements of the DECCW Director General Requirements and the Lake Macquarie Flora and Fauna Assessment Guideline particularly with regard to the following:
  - Amelioration and assessment of *Tetratheca juncea*;
  - Amelioration and assessment of the Endangered Ecological Community Lower Hunter Spotted Gum – Ironbark Forest;
  - Amelioration and assessment of gully vegetation;
  - Amelioration and assessment of large forest owl roost, squirrel glider, koala, varied sittella (small song bird) as well as other threatened species detected and considered likely to occur on the site;
  - Assessment of cumulative impacts;
  - Assessment of feasible alternatives;
  - Amelioration, conservation offsetting; and
  - Information required for a Plan of Management for the offset of land including ownership agreements, security provisions, management and funding to a level that demonstrates a net ecological improvement as an outcome of the proposal.
- In determining an application in relation to SEPP 19 Bushland in Urban Areas, where vegetation is to be removed from areas adjoining bushland zoned open space, the consent authority must be satisfied that it has taken into account:
  - the need to retain any bushland on the land,
  - the effect of the proposed development on bushland zoned or reserved for public open space purposes and, in particular, on the erosion of soils, the siltation of streams and waterways and the spread of weeds and exotic plants within the bushland, and
  - any other matters which, in the opinion of the approving or consent authority, are relevant to the protection and preservation of bushland zoned or reserved for public open space purposes.

Vegetation within and adjoining the 6(1) Open Space Zone is significant particularly given the occurrence of the Endangered Ecological Community, *Tetratheca juncea* population, regionally significant gully line vegetation, squirrel glider den trees and other threatened species detected on site. The proposed lot layout is not considered to address SEPP 19 in that setbacks from the 6(1) land, including a perimeter road along the entire length of the development, have not been incorporated to a level that would mitigate additional edge effects.



- With regard to SEPP 44 Koala Habitat Protection, the SIS determined that the site did not qualify as core koala habitat. The SIS detailed evidence of koalas on site however only three of the thousand trees surveyed were found to have koala scratch marks and it was predicted that the area was used for movement / dispersal rather than breeding.

As an offset to the removal of 27.2 hectares of koala habitat on site the SIS proposes dedication of approximately 34 hectares of similar koala habitat at Lot 107 (Cameron Park) and 123 hectares of koala habitat at Brimbin, just north of Taree. A number of issues exist with this approach:

- Koalas are known to occur in this area. There is little discussion within the SIS about where the individual koalas are moving to and from, if they are not breeding in the local area. Habitat adjoining the site is restricted to the north by the F3 and development east and west of the site so it is possible the local population may have limited opportunity but to breed within the local area;
- The application proposes to remove an additional 27.2 hectares or approximately 70% of suitable habitat for this species from the proposed site and edge affect the remaining 30% of the site. The local population should be identified to establish whether the population is likely to be under significant threat.

Section 7.0 of the DECCW DGRS states that impacts must be avoided first. There is opportunity on site to retain a more reasonable proportion of habitat for this species; and

- The proposed offset is considered to be inappropriately applied in that it attempts to justify an unacceptable impact to this and other threatened species on the site.

In conclusion, the lack of consideration for significant ecological constraints detected on site is considered unacceptable. The application of the proposed offset package as a means to justify development that exceeds the site's capability is also inappropriate.

## **Heritage**

### **▪ Cultural Landscape Assessment , Visual Analysis and Statement of Significance**

Council's officers previously stated the Statement of Heritage Impact was not adequate as it did not include a comprehensive analysis and assessment of the cultural significance of the cultural landscape of the West Wallsend / Holmesville Heritage Precinct. The Statement did not adequately identify the components, the curtilage nor did it provide recommendations for appropriate design responses for new developments outside the existing pattern. Council's officers requested additional information that:

*'The design needs to demonstrate that it is based on a thorough up to date Heritage / Cultural Landscape Assessment and Visual Analysis by suitably qualified heritage consultants identifying constraints and opportunities for the site and recommendations of appropriate guidelines. This assessment is to be undertaken and form the basis for any proposal. To protect the heritage values, the significance of all elements need to be researched and clearly defined '.*

The Heritage Impact Review as a response is deficient in this regard. It does not provide an up to date assessment of the cultural landscape and its significance in line with NSW Heritage Branch guidelines as a basis for assessing impacts, asserting that the previous information had been sufficient and it considered the request as an unnecessary expense for the client.

Despite some changes particularly near the Carrington Street entry, the amended proposal and particularly the Heritage Impact Review remain deficient, as it still does not demonstrate how it addresses the LM LEP 2004.

- **The Burra Charter**

Proposed demolition of the West Wallsend Tramway RT-01 corridor and the design of the proposed subdivision do not adequately demonstrate that they conform to the BURRA CHARTER process.

- **Lifestyle 2020 Strategy**

The subdivision proposal is not supported as it does not adequately demonstrate how the Vision, Values and Aims of the Lifestyle 2020 are met for managing the West Wallsend's natural environment and protecting its heritage in a way that protects this resource and enhances its character.

- **Lake Macquarie Local Environmental Plan**

- The proposed subdivision is considered to not meet the heritage objectives under Clause 43 of the LM LEP 2004 as it fails to adequately protect archaeological sites and places of European cultural significance and by not making adequate provisions to conserve remaining relics, settings and views as evidenced by the loss of the West Wallsend Steam Tram Line and by failing to adequately consider the cultural landscape.
- The application's Assessment of Heritage Significance as required by Clause 47 of the LM LEP 2004 has only been carried out in relation to the West Wallsend Steam Tram Line (Heritage Item RT-01). The application has not provided a comprehensive analysis and assessment of the significance of the cultural landscape of the West Wallsend / Holmesville precinct and its components as well as the assessment of Heritage Item RT-01.

In addition, by the Statement of Heritage Impact and the Heritage Impact Review are contrary to the requirements of Clause 47 as they do not adequately demonstrate that the impacts of the proposal will not affect the significance of the Heritage Item RT-01 (Steam Tram Line).

- Clause 51 of the LM LEP 2004 requires development affecting known or potential archaeological sites or relics of European heritage significance to provide a Statement of Heritage Impact, one of which has been provided in relation to the removal of the West Wallsend Steam Tram Line (RT-01).

The development does not adequately assess the adverse impacts on the archaeology of the Heritage Item and of known and potential relics. This is evident in the design of the subdivision layout maximising the lot potential as opposed to addressing the heritage constraints. This is demonstrated by the archaeological assessment and statement of significance (Mills in 2007) indicating that the preferred outcome is the retention of the original alignment:

*'.....that where possible the current West Wallsend Tramway alignment through Lot 105 (south of Withers Street) be retained. This management Strategy will provide public access along the tramway alignment through Lot 105 from Withers Street to Appletree Drive and enable this section of tramway to be incorporated*

*into any expansion of the tramway route to the east and west.' ... this will ensure the protection of the "unique" heritage status ...'*

However the recommendation was not adopted and no justification provided in the documentation why the entire alignment of the West Wallsend Steam Tram Line and remaining tangible remnants require removal. There is no evidence that alternative options have been investigated for incorporating the full or parts of the existing alignment into a public access way. Removal of the entire original alignment should be the option of last resort.

Further, the advocacy of the Heritage Impact Review that replacing the Steam Tram Line with a Shared pathway in a location unrelated to the original line is a suitable outcome. This recommendation will destroy the integrity of the Heritage Item through creating a false interpretation of the track position, which goes against the fundamentals of interpreting an item of cultural significance.

- Clause 52 of the LM LEP 2004 requires development within the vicinity of a heritage item to provide a Statement of Heritage Impact to consider and address any likely impacts. Whilst a Statement of Heritage Impact and a Heritage Impact Review have been submitted, they not only fail to consider the numerous heritage items within the vicinity in accordance with the statutory requirements, but they also fail to adequately assess the collective cultural significance of the items being the West Wallsend / Holmesville Heritage Precinct.

This is particularly evident with the proponent's heritage consultants dismissing the request for an assessment of the impact on the significance of the cultural landscape and in the lack of ameliorative measures to minimise the impact, ie. no buffer to separate the developments and maintain the integrity of the historic edge and curtilage of the place, and the average proposed lot size being less than the existing average lot sizes.

#### ▪ **Development Control Plan No. 1 – Principles of Development**

The amended proposal does not demonstrate that it meets the intent of Council's heritage requirements under Section 2.4.1 European Heritage Items of Development Control Plan (DCP) No. 1. The intent of Council's requirements is to safeguard European Heritage Items and to ensure that development surrounding the items does not detract from their heritage value.

The West Wallsend / Holmesville area is identified as requiring specific development solutions to suit the existing local character and to address local issues. The DCP spells out specific issues relating to future development in the West Wallsend/Holmesville Heritage Precinct including:

- *The strong sense of social identity, resulting from the area's history*
- *Its physical boundaries including its semi-rural bushland setting and separation from expanding suburban areas*
- *Sensitive elements of the local topography and existing streetscapes*
- *Development that is compact and in scale with surroundings, including medium density development around West Wallsend and Holmesville, that is sensitive to the heritage characteristics of the locality*

- *The potential to create an industrial heritage precinct for Lake Macquarie,*
- *The significance of heritage items listed in the Lake Macquarie LEP 2004 and properties listed in the Lake Macquarie Heritage Study (1993), and*
- *Sensitive elements of the local topography and existing streetscapes*
- *Business growth that will be based on unique local character and this needs to complement growing competition from larger district and regional centres.*

For the West Wallsend / Holmesville Heritage Precinct DCP1 it is stated that “*The **INTENT** of Council’s requirements is to safeguard the heritage of West Wallsend / Holmesville ensuring that the development within the area maintains and enhances identified significant characteristics*”. It is also required for the West Wallsend / Holmesville Area Plan – Heritage Precinct that developments identify and incorporate the dominant cultural and natural elements of the area’s landscape and streetscape.

The West Wallsend / Holmesville Heritage Precinct and its related Heritage Guidelines have an emphasis on development within its existing subdivision pattern with guidance for developments affecting existing housing stock and new infill development. The scale and impact of the proposed 463 Lot subdivision however is beyond the scope of the DCP, hence the basis for requesting a cultural significance assessment of the cultural landscape which the applicant’s heritage consultant has dismissed. This therefore questions the credibility of the assessment and recommendations of both the Statement of Heritage Impact and the Heritage Impact Review.

Further, the ability to manage and control subsequent future housing is not assured as the current SEPP (Exempt & Complying Development Codes) allows some forms of residential development to be approved as Complying Development and potentially undermining the significance and integrity of the West Wallsend / Holmesville Heritage Precinct.

#### ▪ **Interpretation of the existing Cultural Landscape**

West Wallsend has a clearly defined entry and gateway at Carrington Street, which demarcates the start of the original subdivision against the rural / bush buffer. The proposal impacts on the historic entry and first impression of the town.

The Withers Street gateway entry is also characterised by its bush setting, which maintains a clear separation from other urban development. Currently a 700m long bushland entry road from the roundabout provides a landscaped transition buffer to the existing urban edge of West Wallsend, which provides a clear definition of the historic edge between the separate historic developments of West Wallsend and Holmesville and maintains the historic visual isolation of both villages from other development. This clear visual separation will be destroyed by the additional house lots proposed to face Withers Street, as well as being clearly visible from the George Booth Drive intersection.

#### ▪ **New Building Elements**

The Heritage Impact Review does not provide any controls or guidelines for future development as requested, instead it concludes that Council’s current development controls are adequate to ensure that future residential development can be complementary to the heritage values of the area. This is questioned as development of the proposed lots can occur as Complying Development, therefore without any regard to heritage requirements.

## **Landscape**

The Landscape Master Plan Report has insufficient supportive evidence to ensure the proposed strategies are suitable for the site features, especially the sensitive elements of the topography and existing cultural landscape features. The landscape proposal therefore fails to ameliorate the negative impacts of the development to the area.

### ▪ **Site Analysis**

Sensitive issues of the site's cultural landscape, existing streetscape features, and its local identity have not been addressed by the Site Analysis Plan. These requirements are identified in Section 4.5 – *West Wallsend Heritage Precinct* of DCP1.

As the Site Analysis Plan does not identify these issues, the proposed Landscape Plan fails to provide any concept or suitable treatment to respond to the existing features.

### ▪ **Visual Impact**

The Visual Impact Assessment Report as lodged with the application was deemed to be inadequate and questionable by Council's Landscape Architect. Council requested a more comprehensive and rigorous Visual Impact Assessment with additional view spots.

With the exception of the Heritage Impact Review in the additional information, no revised Visual Impact Statement was submitted by the applicant.

Therefore the Visual Impact of the proposal is not adequately addressed in the application noting:

- The Heritage Impact Review has assessed some additional view aspects from northern and southern road entries to the West Wallsend village and the site, as well as the views from the streets in the village. The analysis on these additional views from the village are not considered acceptable and it is recommended that further investigation be undertaken to confirm the impacts.
- The visual dominance of Stages 7, 8 and particularly 9, is dismissed by the Heritage Impact Review. The site area east to Brown Street is undulating with the natural ground level of some of the lots being 30 metres higher than the existing ground level of adjoining residential areas of West Wallsend.
- The proposed roads for Stages 7, 8 & 9 cut through the contours and will be constructed on extensive slopes. These road works will create considerable visual impacts to the surrounds.
- The design of the development has east-west roads (no.20, 22) that extend the existing street view corridors in the village, i.e. Edden Street, South Street, Wallace Street and Brown Street. These new road works will be highly visible from most areas in the village with the proposed streetscape being incapable of mitigating the impacts due to the limited landscaping capacity along the proposed roads.
- The 'visual buffer of natural vegetation' that is prescribed in the Heritage Impact Review is applied to neither Stage 9 nor Stage 8. The detention basins to the west of the Stage 8 cannot provide any short term visual buffer as the areas will be regraded and planted with new vegetation.
- Stages 4, 5 & 6 follow the existing surrounding street layout, however, they are more elevated than the existing adjoining residential development. These stages will have

a visual impact without consideration of the future built form, design style and landscape treatments.

- The Landscape Master Plan package does not provide any solutions to the interface between the existing built area and the new subdivision areas. At the least the site boundaries along Fegan Street, Withers Street and Seaham Road should be treated as visual buffer with built form transitioning between the new and existing built environment.

In general the built form and design style of the future dwellings will be very sensitive to the surrounding environment. The potential negative visual impacts are likely to be very dominant to the existing village.

Due to the absence of a number of critical analyses and investigations, the proposed development is an unpredictable and high-risk process that might generate profound and permanent undesirable visual and cultural changes to West Wallsend.

- **Vegetation Management**

The Vegetation Management Plan fails to provide site specific detail regarding landscape treatments responding to impacts by the proposed subdivision on the natural bushland areas, riparian corridors, open space zones, revegetation areas and Asset Protection Zones. In particular the documentation fails to provide adequate information for the landscape treatment of the interface between private lots and adjoining (retained) bushland.

- **Streetscape and Local Character**

The applicant argues that the 'Historic Gateway' entry to West Wallsend via Withers Street has been significantly diminished and redefined through the introduction of ribbon subdivision patterns and modern building elements from the 60s & 70s. It is considered however that the bushland entry provides a landscape transition buffer from George Booth Drive to the tranquil residential areas. Further, the 60s & 70s residential development have generous front setbacks and open front yards which are compatible with the surrounding open semi rural outlook. In fact most dwellings have large trees and cottage style landscaping within the front setback which is consistent with the streetscape characteristic in the heritage village.

The development will largely modify this aspect of the entry road with the proposed subdivision pattern being much denser. The lot sizes are much smaller and shorter, which means the front and side setbacks will be very tight to fit the typical contemporary home on each lot, which combined with retaining walls at the front to refine the grade, the presentation of the new developments to the street will be very dominant and incompatible with the surrounding environment.

Further the development has had no regard to the cultural landscape features of the existing streetscape in West Wallsend. This is evident in the (lack of) width of the streetscape sections, the proposed retaining walls to accommodate the roads (though details of which are absent from the Landscape documentation), and the incompatibility of the landscape road sections with the existing topography (Withers Street). In particular, the failure to address the large amount of retaining walls along the series of road works through streetscape treatment is very critical and the most sensitive part for the entire landscape concept.

## ▪ **Landscape**

The documentation fails to provide:

- a Landscape Concept Plan or Landscape Master Plan for the entire site. In particular, the documentation fails to provide specific detail for areas of significance such as the Open Space/Park and the public domains.
- design guidelines for future housing development having regard to those adjoining existing dwellings to the west in West Wallsend and the south in Holmesville, and those adjoining the Zone 6(1) to the east which require a transition between the development and existing natural and built environment. Such measures would also need to be enforceable though how this could be achieved at the subdivision stage is questionable noting the provisions of SEPP (Exempt & Complying Development Codes).

## ▪ **Views**

The current proposal fails to demonstrate it is compatible with the existing built form and that it will not dominate public views without requiring detailed information at the housing construction phase such as built setbacks, built form, roof style, building height and exterior finishes & colours, much of which cannot be controlled at the subdivision stage.

## **Public Submissions**

Lake Macquarie City Council received 240 submissions regarding the proposal during the initial advertising period. Of the 240 submissions received, all but one were opposed to the proposal. The main concerns raised included:

- Environmental concerns – loss of flora, fauna and the natural environment;
- Heritage – the negative impact on the character of area (such as the small blocks) as well as loss of the historic tramway;
- Community character/streetscape concerns – negative impact on character/atmosphere, and concerns regarding possible name of the area;
- Traffic impacts – noise and safety, and narrow roads proposed in new development;
- Services and facilities – existing services unable to cope with increased demand;
- Overdevelopment – density too high;
- Noise – due to additional traffic and loss of natural bushland buffer to George Booth Drive; and
- Culture – loss of village culture.
- Impacts on local services/economy.
- Increased criminal activity.
- Loss of privacy.

The amended proposal fails to address the public concerns as evidenced by consultant reports that advocate and justify rather than analyse the proposal. The applicant's lack of response to the concerns raised by the public and Council staff is demonstrated the negligible modifications made to the original proposal.

Therefore the proposal is considered not to be in the public interest.

### **Social Impact**

#### **▪ Adequacy of the Social Impact Assessment**

The Social Impact Assessment (SIA) understates the potential negative social impacts. In particular the SIA fails to adequately investigate a number of concerns including:

- The proposed average lot size is predominantly 650m<sup>2</sup>, being significantly below the existing average lot sizes of the West Wallsend / Holmesville Precinct;
- Capacity of the health services to cope with the incoming population, especially given the regional shortage of GPs;
- The demands on community infrastructure from the incoming population, eg child care, youth centres, community centres, sport and recreational facilities;
- The impacts of the proposal on the semi-rural community with its existing high level of cohesiveness and sense of place;
- The impacts of an almost 50% increase in the population is not adequately investigated; and
- With a considerable potential influx of relatively wealthy families, the evidence suggests that it will lead to a gentrification of the area. The likely effects of gentrification on the area would be increased land and housing prices, loss of affordable housing, loss of social cohesiveness and displacement of the existing population. This would exacerbate the relatively high levels of socioeconomic disadvantage of existing population of the Holmesville/West Wallsend.

#### **▪ Impact on Sense of Place and Community Cohesiveness**

The proposed development will have a significant impact on Community cohesiveness, sense of place and individual wellbeing. This is evident through the identified negative social impacts such as:

- Impacts on existing community services and facilities;
- Loss of heritage; and
- Community character concerns.

In particular, the likely outcomes of the development will create other social impacts, many of high significance. However, there is little comment or discussion with regard to these social impacts and the effects that they will have on the community, both in the short and long term. For example:

- Community Services and Facilities – the SIA identifies that a total of 43 places are available at the sole West Wallsend child care facility, but the proposal is likely to create an influx of an additional 148 children aged under 5 years. This will result in a shortage of child care places available, that will have flow-on effects such as restricting employment opportunities of residents, and impacting on their work-life balance.



- The SIA simply states that it will inform the facility of the anticipated population growth, as opposed to investigating ways of taking responsibility for assisting the facility to cope with the demand through financial contribution and/or works in kind.
- Loss of heritage - the SIA fails to adequately consider the impact of the proposed subdivision on the heritage character of West Wallsend and the subsequent impact on the sense of place. It is clearly evident the development will diminish the interpretability of the existing village through its layout and likely built forms/materials, which will reduce community pride and further erode the existing heritage character.
- Community Character – the SIA identifies that West Wallsend has a village character and atmosphere that the proposed development should aim to enhance. However, there is no discussion on how the proposal will emulate the existing character and atmosphere let alone assess whether it does achieve this goal. Further there is no consideration on the effect that the proposal will have on this village character and atmosphere, or how the proposed development will enhance the existing character.

#### ▪ **Population Growth and Related Impacts**

West Wallsend and Holmesville communities are characterised by their rural community atmosphere, consisting of predominantly older styled cottages and housing, quiet streets, limited cars, resulting in a 'sleepy and relaxed' village feel.

At the last census (2006), there were 3,148 residents in the combined West Wallsend/Holmesville area. The population was significantly younger than the rest of Lake Macquarie, and experienced higher levels of disadvantage.

The proposal is expected to result in an additional 1,459 residents at the completion of the development (duration of 10-15 years). This population is expected to mirror the characteristics of the newly developed neighbouring subdivision of Cameron Park, in that it will appeal predominately to young families. Therefore it is likely an influx of 148 children under 5 years, 185 children of primary school age, and 107 young people of high school age will occur.

In this regard, an increase of nearly half the current population raises the question of the capacity of existing Community Services and Facilities, and therefore questions the suitability of the development, noting:

- Transport – currently serviced by limited public transport options, with the bus service proposed to run less frequently. There is however, potential to increase bus services to the West Wallsend area if passenger numbers increase and a demand for services becomes evident, though a significant time lag is likely to occur, so those new residents in the meantime will be disadvantaged.
- Health Facilities – there is limited scope for the existing health services to accommodate the increased demand as evidenced by a region-wide shortage of GPs. This will place greater pressure on public hospital, noting that the nearest hospitals is John Hunter for access to the Emergency Department.
- Employment – employment hubs and opportunities exist in surrounding areas though access may be an issue (see transport above).
- Education – the NSW Department of Education reports that there is capacity within the existing primary and high schools to cater for the increased numbers. Funding

for the upgrade of facilities often lags behind student population growth, thus further disadvantaging existing residents and new residents.

- Housing – there is a lack of affordable housing in Lake Macquarie. It is noted that the proposal does not contain any small lot housing as required by Clause 24(1) of the LM LEP 2004 (10% of total number of lots to be for small lot housing).

#### ▪ **Lack of and Impact on Affordable Housing**

The assertion that the proposal will create attractive, affordable housing is false, as it is considered that the proposal will actually result in a loss of affordable housing. The influx of residents, who are likely to have higher levels of socio-economic advantage (as exhibited by the residents of the neighbouring Cameron Park development), will lead to an overall increase in land and property prices for the area thus reducing the stock of affordable housing. This is evident in the comparison of the median house prices of Cameron Park (\$420,000) compared to West Wallsend (\$245,000). Further there is no indication within the documentation that any of the lots will be dedicated or targeted as affordable housing.

#### ▪ **Impacts on Local Economy**

The assertion that the increase in local spend will enable local businesses to maintain and develop the unique heritage characteristics of the West Wallsend Village is also considered false. Whilst the increase in local spend will bring many economic benefits to the community and contribute towards the sustainability of these services, it will have a significant impact on the nature and characteristics of the community, including the unique heritage. This may result in a loss of the unique heritage as well as the “sleepy and relaxed” feel of the area.

It is also considered that a significant amount of the spend will be lost to Shopping Centres at Edgeworth and Glendale, and the proposed centre at Pambulong, ie. with access to these centres often being more convenient (returning from work) as opposed to driving into the shopping centre of West Wallsend.

#### ▪ **Potential Failure of Ameliorative Measures**

The SIA identifies a number of measures to maximise the positive social impacts and ameliorate the negative social impacts. It is considered these measures do not negate the social impacts and in fact may have their own impacts, ie. a poor or failed mitigation measure will add to the impact that it was supposed to address.

Further, the measures identified to maximise the positive social and ameliorate the negative impacts are only recommendations, and cannot be considered when assessing the social impacts of the proposal, ie. they are up to the applicant’s discretion as to whether they are implemented.

Many of the measures are simply promises to discuss with, consult or communicate with other parties, without any specific actions which will help to ameliorate the social impacts. For example, the recommendations to:

*“Communicate with Karrawong Kindy to inform them of the anticipated population growth” and “Inform West Wallsend Medical Centre...so that they can forward plan and obtain the required resources in preparation for any population increases”*

will not in themselves address the issue of the shortage of child care and health care needs that will arise from the proposed development, let alone assist in financial implications of approvals, construction and upgrades of such facilities. Rather the measures must be focussed on contributing towards the provision of additional child care and offering incentives to attract additional health and medical personnel to the area to cater for the increased demand.

It is concluded that the proposal will result in a net negative social loss, as it will:

- Result in the gentrification of the area, with many of the existing residents being displaced;
- Result in the loss of the unique community and character of West Wallsend / Holmesville, including its high level of social cohesiveness and heritage;
- Reduce the amount of affordable housing in Lake Macquarie; and
- Place additional strain on the limited community facilities in the area including child care and health care facilities.

## **Noise**

The Noise Impact Assessment Report by Vipac identifies George Booth Drive to the east of the development site as a significant noise source. The Report identifies some 100 lots (Withers Street, Carrington Street and other properties within 150m of George Booth Drive) as potentially being affected by noise at levels exceeding residential amenity criteria. The Report further identified attenuative measures such as erecting two metre high acoustic fences as noise barriers at the front of those affected properties in Withers Street and Carrington Street, though simultaneously recognised the barriers would not be fully effective due to the nature of the terrain. The Report therefore discounted the erection of the acoustic fences by recommending that satisfactory (as determined by the relevant Australian Standard) internal noise levels of the future dwellings be achieved through façade treatments.

The Statement of Environmental Effects endorses the recommendation that the future dwellings be treated through construction controls to attenuate against the noise impacts. It further concluded that use of the acoustic fences as being unsuitable due to maintaining the streetscape character.

Whilst the proposed acoustic fences are not proposed, there still remain issues with the design of the subdivision in relation to noise impacts.

Firstly, the exposure of up to 100 properties to noise impacts exceeding the residential amenity criteria questions the suitability of the land with the land constraints not having been analysed in the layout design. The proposed subdivision should have been designed to minimise the number of dwellings being exposed to noise impacts either through reduced density or removed from the zone of impact altogether, however it is apparent that maximising the lot potential has taken precedence.

Secondly, the development should be designed such that no noise attenuation measures are required at a later stage. In having the attenuation measures implemented at a later stage the potential exists for such measures to be applied inconsistently or missed altogether due to the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. With the Codes SEPP allowing housing development to be approved as Complying Development by both Council and Private Certifiers, there is a high likelihood that the attenuation measures will

not be identified through this process resulting in dwellings not complying with the residential amenity criteria or that attenuation measures required will be inconsistently applied.

### **Stormwater**

Owner's Consent for physical works associated with the piping of stormwater and related easements on adjoining land has not yet been provided. Without the owner's consent the proposed subdivision cannot be approved in its current form.

It is noted the applicant has had since 4 November 2009 to provide evidence of the owner's consent yet it remains outstanding.

### **Conclusion**

The Councillors of Lake Macquarie City Council submit the above reasons as the basis for an objection to Development Application No. 1193/2009, being a Four into 463 Lot Residential Subdivision at 11 Robertson Street West Wallsend. The main grounds for the objection are:

- The failure of the proposal to address the physical and cultural constraints of the site and locality;
- The significant impact of the proposal on the site's flora & fauna and inadequate/inappropriate mitigative measures to address/offset the impacts;
- The significant impact of the 463 Lot Subdivision on the cultural significance of West Wallsend/Holmesville; and
- The potential for significant social impacts on the existing West Wallsend / Holmesville community.