

JRPP No	2011HCC009
DA Number	DA/113/2011
Local Government Area	Lake Macquarie City Council
Proposed Development	4 into 375 Lot Residential Subdivision
Street Address	Lot 103 DP 1000408, 11 Robertson Street, West Wallsend Lot 105 DP 1000408, 103 Withers Street, West Wallsend Lot 15 DP 849003, 115 Withers Street, West Wallsend Lot E DP 938528, 17 Appletree Road, West Wallsend
Applicant/Owner	Hammersmith Management Pty Ltd
Number of Submissions	134
Recommendation	Approval with Conditions - (Deferred Commencement)
Report by	Matt Brogan Development Engineer Lake Macquarie City Council

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1 PRÉCIS

The development application lodged by Hammersmith Management Pty Ltd is seeking development consent for a proposed 4 into 375 lot subdivision. The proposal comprises of 366 Residential Lots, 2 Residential Super Lots, 4 Drainage Reserves, 1 Open Space and 2 Residue Lots. The development is proposed to be undertaken over 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 contains 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 the north of Withers Street and either side of unformed Notley Way.

The site terrain is generally moderate to steep, with grades mostly 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 Background

Refusal of Previous Application

A previous application for a 4 into 465 lot residential subdivision was refused by the Joint Regional Planning Panel on 26 August 2010. A total of 17 reasons for refusal were specified in the determination. From these reasons for refusal, it is evident that the application fundamentally failed to satisfactorily address and respond to biodiversity and heritage constraints posed by the site and the surrounding townships. The current application has addressed the reasons for refusal given by the panel. Some of the more significant changes incorporated in the current proposal include:

- A reduced development footprint and lot yield
- The incorporation of perimeter roads

- A complete Species Impact Statement and biodiversity offsets package
- Heritage Design Guidelines, to control built outcomes
- Heritage Interpretation Strategy
- Inclusion of small lot housing

Detail in relation to how the subject application has specifically addressed previous reasons for refusal is contained within Appendix D of this report.

Proposal to Back zone Subject Land

At the Ordinary Council Meeting of 13 December 2010, council resolved to seek advice from the Department of Planning as to whether they would accept a rezoning proposal through the LEP Gateway for the subject land.

On 9 March 2011, council officers formally requested a Gateway Determination under Section 56 of the Environmental Planning and Assessment Act 1979, in respect of the planning proposal to amend the Lake Macquarie Local Environmental Plan 2004 (LM LEP 2004) to backzone the subject site from 2(1) Residential, 5 Infrastructure and 6(1) Open Space to 7(1) Conservation (Primary) under LM LEP 2004.

In correspondence dated 29 May 2011, the Department of Planning acknowledged that the subject land contains areas of ecological significance and conservation value. However, the department determined that the planning proposal should not proceed. It was concluded, that the proposed backzoning is inconsistent with the Lower Hunter Regional Strategy, as the site is identified as an existing urban area, is adjacent to land in the Western Corridor Planning Strategy that is identified for residential and employment investigation, and adjoins heavily vegetated land zoned for residential, and land that has been developed for residential use. Further, the department recommended that council should consider the ability of the land to accommodate residential development of a lesser intensity, and retain conservation, heritage and environmental value.

2.2 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.

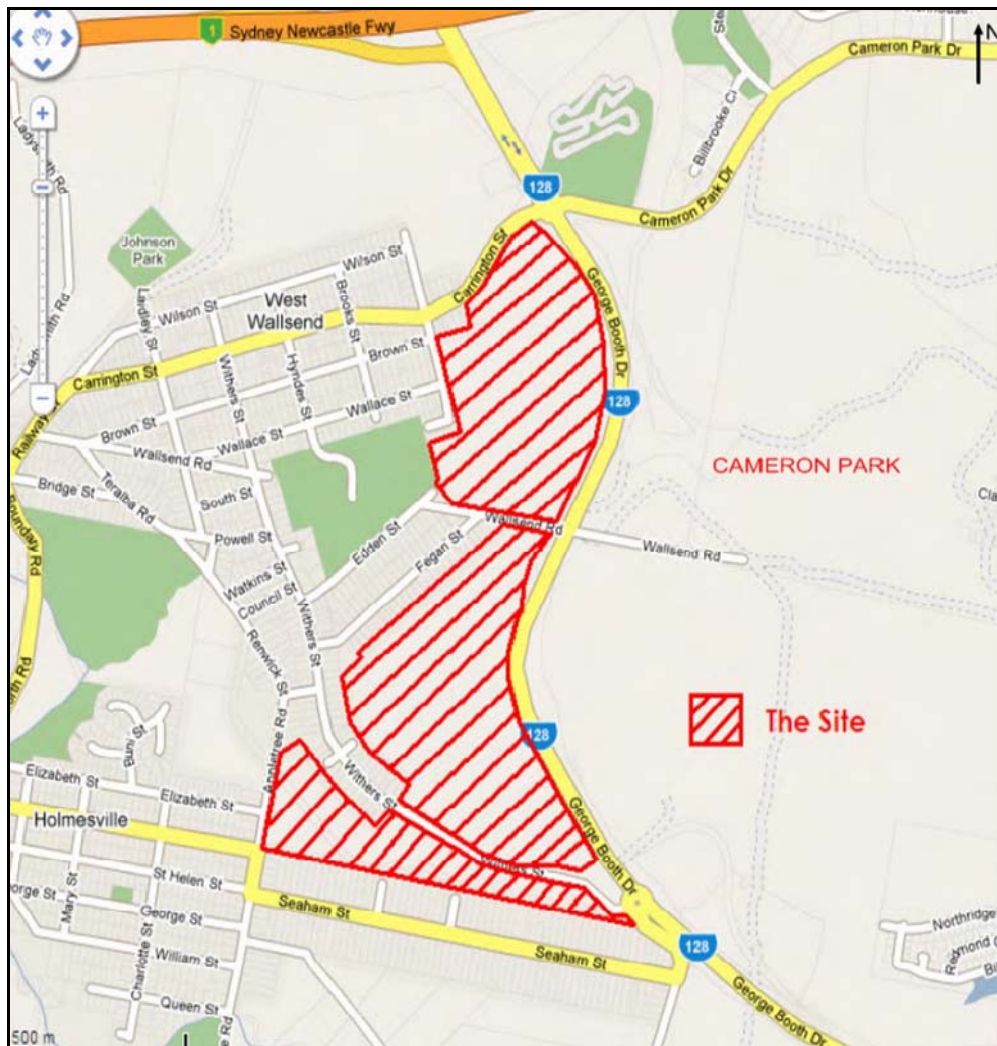


Figure 1 – Locality Plan

2.3 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.

2.4 Subdivision Layout

The subdivision layout proposed is quite irregular in nature. It is not particularly complimentary to the traditional grid network that exists for the majority of West Wallsend and surrounding

suburbs. However, it is acknowledged that the natural terrain and geometry of the parent lots pose a major constraint on the subdivision pattern. Refer to Figure 2 Proposed Subdivision Layout for details.

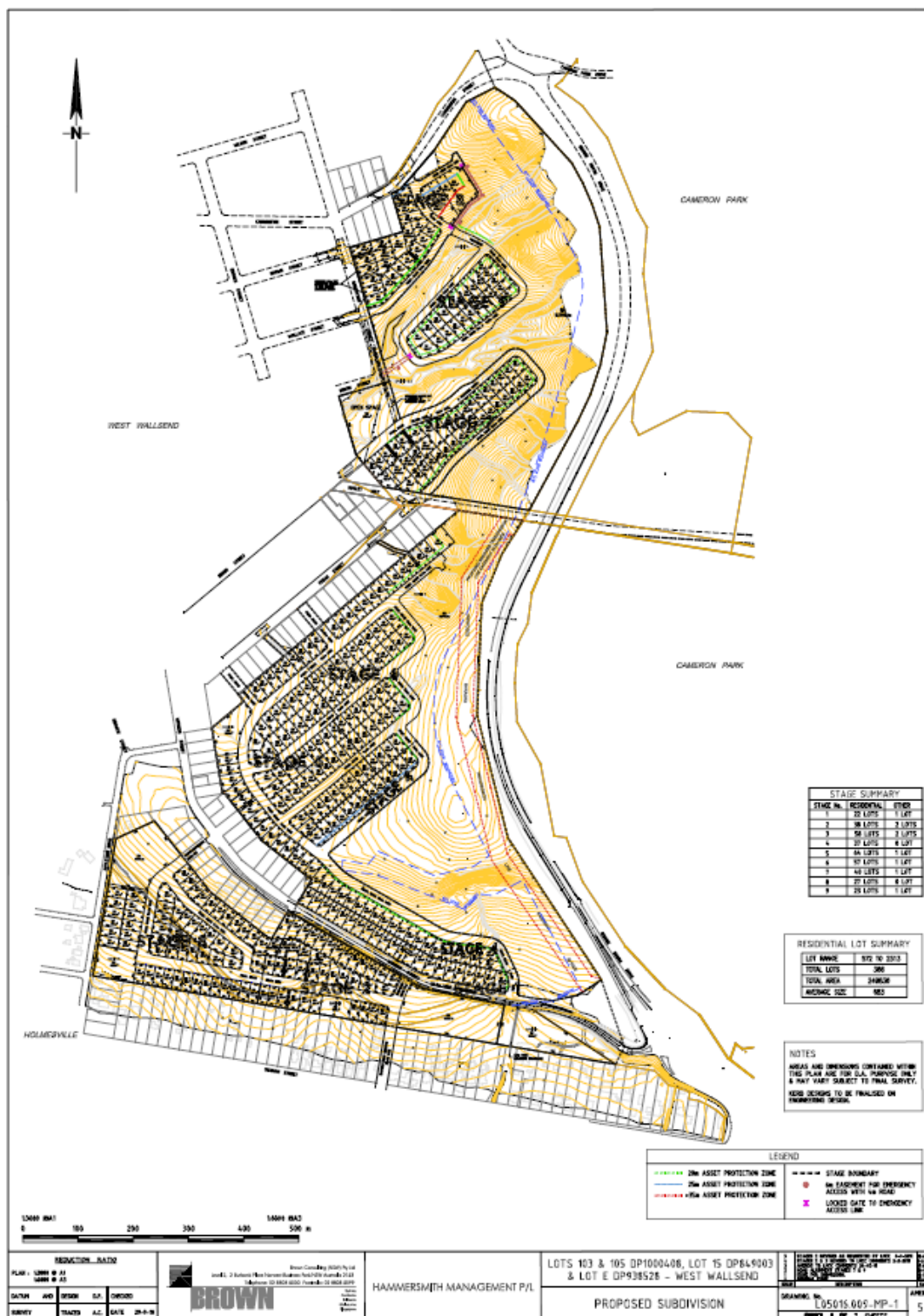


Figure 2 – Proposed Subdivision Layout

3 SECTION 5A SIGNIFICANT EFFECT ON THREATENED SPECIES

Given the significant impact upon threatened species detected on the site, a Species Impact Statement has been prepared by Niche Environment and Heritage (January 2011), 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 they are as follows;

- The application proposes to remove 33.1ha of native vegetation with a total of 27.9ha of vegetation being retained for conservation. A total of 2.7ha of land is already approved for vegetation clearing as part of an Electricity Transmission Easement.
- A number of threatened species were detected on the site including the squirrel glider, powerful owl, sooty owl, grey-headed flying fox, scarlet robin, varied sittella, little-bent wing 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 5.15ha has been proposed to be removed and 8.6ha to be retained.
- The proposed compensatory habitat offset package includes:
 - 27.9ha of land at Lots 103 and 105 (on-site conservation area);
 - 34.5ha of native vegetation to the south within Lot 107;
 - 178.1ha of land 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.
 - Threatened species recorded on-site:
 - ❖ A total of 74 clumps of *Tetratheca juncea* were identified within the Subject Site and all are contained within the proposed Conservation Area. An additional eight clumps will be conserved within the approved

transmission line easement. No clumps will be directly impacted by the current proposal.

- Threatened species with habitat likely to be impacted on-site (area in ha):
 - ❖ *Acacia bynoeana* 20.79
 - ❖ *Caladenia tessellata* 20.79
 - ❖ *Callistemon linearifolius* 20.79
 - ❖ *Cryptostylis hunteriana* 33.05
 - ❖ *Diuris praecox* 20.79
 - ❖ *Grevillea parviflora* subsp. *Parviflora* 33.05
 - ❖ *Melaleuca biconvexa* 12.26
 - ❖ *Rutidosia heterogama* 33.05
 - ❖ Powerful Owl - *Ninox strenua* 20.79
 - ❖ Sooty Owl - *Tyto tenebricosa* 20.79
 - ❖ Varied Sittella - *Daphoenositta chrysoptera* 20.79
 - ❖ Scarlet Robin - *Petroica boodang* Known 20.79
 - ❖ Squirrel Glider - *Petaurus norfolcensis* Known 20.79
 - ❖ Grey-headed Flying-fox - *Pteropus poliocephalus* Known 33.05
 - ❖ Little Bent-wing Bat - *Miniopterus australis* Known 33.05
 - ❖ Koala - *Phascolarctos cinereus* Known 20.79
 - ❖ Glossy Black-cockatoo - *Calyptorhynchus lathami* Potential 20.79
 - ❖ Little Lorikeet - *Glossopsitta pusilla* Potential 20.79
 - ❖ Masked Owl - *Tyto novaehollandiae* Potential 20.79
 - ❖ Gang-gang Cockatoo - *Callocephalon fimbriatum* Potential 20.79
 - ❖ Brown Tree-creeper - *Climacteris picumnus victoriae* Potential 20.79
 - ❖ Regent Honeyeater - *Xanthomyza Phrygia* Potential 5.16
 - ❖ Swift Parrot - *Lathamus discolor* Potential 5.16
 - ❖ Spotted-tailed Quoll - *Dasyurus maculatus* Potential 33.05
 - ❖ Yellow-bellied Sheath-tail Bat – *Saccolaimus flaviventris* Potential 33.05
 - ❖ Eastern Freetail Bat - *Micronomus norfolkensis* Potential 33.05
 - ❖ Large-eared Pied Bat - *Chalinolobus dwyeri* Potential 33.05
 - ❖ Eastern False Pipistrelle - *Falsistrellus tasmaniensis* Potential 33.05
 - ❖ Greater Broad-nosed Bat - *Scoteanax rueppellii* Potential 33.05
 - ❖ Pale-headed Snake - *Hoplocephalus bitorquatus* Potential 5.16
- Habitat features likely to be impacted:

- ❖ A total of 120 tree hollows will be removed by the proposal, which provide habitat for a range of animal species. This includes 10 hollows of less than 40 mm, 94 hollows of between 40 and 99 mm and 16 hollows 100 mm or greater. Other microhabitat features that will be removed by the proposal include fallen logs, leaf litter, soil and canopy foraging resources.
- 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 identified threatened species and EEC constraints on site and has proposed various measures (Compensatory offsets; Plan of Management) to ameliorate impacts to threatened species.
- The application has considered, addressed and achieved compliance with the thirteen DECCW Offsetting Principles (2009).
- The Director General's Requirements (DGR's) required a plan of management to be prepared. The Flora and Fauna Management Plan (SIS, Appendix E) addresses the following issues:
 - Weed management (both control and suppression) and monitoring
 - Management of retained native vegetation and habitat (including buffer zones);
 - Feral animal control;
 - Fire management (including Asset Protection Zones [APZ's]);
 - Public access (including increased traffic, and associated impacts, such as increased refuse and use of the site by pets);
 - Minimisation of edge effects and fragmentation;
 - Stormwater control and changes to hydrology (including stormwater/runoff control and sediment/erosion control measures);
 - Management of specific habitat enhancement measures (e.g. hollow/habitat trees, animal fencing to facilitate movement (e.g. Koala 'floppy-top fencing'), artificial hollows, and nest boxes etc.);
 - Fauna displacement and if appropriate translocation
 - Proposed surveys, such as pre-extraction baseline, pre-clearance and rehabilitation surveys;
 - Details of long-term monitoring (including proposed timing);

- Details of any rehabilitation program, including details of timing (including proposed staging details), rehabilitation measures (including details of proposed revegetation and species mix), and post-rehabilitation monitoring;
 - Measures to ensure conservation in perpetuity (e.g. Transfer to DECCW estate, conservation agreements or covenants), and
 - Funding details of long-term financial commitment to any proposed conservation measures, including any mechanisms to be implemented to achieve this.
- A Landscape Master Plan Report & Vegetation Management Plan have also been developed and provided to support the application (Appendix B – Statement of Environmental Effects).

The SIS has been prepared in accordance with the DECCW DGR's. This document has considered the likely impacts associated with the proposal on flora and fauna including threatened and endangered species, listed under the Threatened Species Conservation Act 1995, and their habitat. Under s5A of the Environmental Planning and Assessment Act 1979, it was concluded that there would be no significant impact on threatened species and their habitat. There will however, be some impacts on threatened species, such as loss of habitat, increased edge effects, loss of hollow bearing trees, potential foraging resources etc.

As some impacts cannot be mitigated, a number of mitigation measures have been proposed, including the following:

- retaining and protection of vegetation via on-site Conservation Area (27.9ha);
- staged removal of vegetation;
- proposed offset package;
- Flora and Fauna Plan of Management *(see details Appendix E) – which includes detailed on-ground measures and a monitoring protocol;
- Community education measures;

Given the above proposed mitigation measures, it is considered that the proposal is acceptable.

4 SECTION 79B CONSULTATION AND CONCURRENCE

4.1 Department of Environment, Climate Change & Water

Council's Flora & Fauna Planner reviewed the SIS prepared by Niche 2011 and determined that the document met the DGR's and subsequently recommended that Council seek concurrence from the former DECCW (now the Office of Environment and Heritage). Council formally requested concurrence on 7 March 2011.

The Office of Environment and Heritage granted concurrence subject to conditions on 29 June 2011.

4.2 Roads and Traffic Authority

The proposal has been identified by the Applicant 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 25 February 2011 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)

SEPP19 Bushland in Urban Areas

In determining an application where vegetation is to be removed from areas adjoining bushland zoned open space, the determining body must be satisfied, pursuant to Clause 9 Land adjoining land zoned or reserved for open space, that the application has appropriately addressed:

- 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) 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 proposal addresses SEPP 19 with the majority of the 6(1) land proposed to be conserved in the Conservation Area (this is exclusive of the already approved transmission line easement). Mitigation and amelioration measures have been proposed for the 6(1) zoned land in the Plan of Management.

SEPP 44 Koala Habitat Protection

In determining an application where Schedule 2 trees of SEPP 44 occur, the determining body 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 body 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.

Potential koala habitat (as defined by SEPP 44 Koala Habitat) does not occur within the Study Area, as none of the listed feed trees on Schedule 2 of the policy constitutes 15 % of the canopy. The Study Area is not believed to be core habitat for koalas as defined in the SEPP as there is no evidence of a resident population (such as breeding females or young).

Despite recent records for the koala in the region, (i.e. 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 evidence of potential breeding within the region.

Habitat adjoining the site appears restricted to the north by the F3 and development east and west of the site so any local individuals may have limited opportunity to breed within the local area. Moreover, there was only minor evidence of koalas identified present on the subject site with only three of the thousand trees surveyed were found to have koala scratch marks and no evidence of recent scats (the SIS predicted that the area was used for movement / dispersal rather than breeding (Section 5.2.2; Section 8 and Appendix G of the SIS)).

Council concurs with the SIS findings that the proposed development is unlikely to disrupt the life cycle of this species such that a viable local population would be placed at risk of extinction.

SEPP 55 Remediation of Land

The preliminary contamination assessment undertaken by Douglas Partners has found that the site has localised areas of contamination present, largely from illegal dumping. The contamination is capable of being remediated by offsite disposal to a licensed landfill after undertaking a waste classification. A Detailed Contamination Assessment & Remediation Action Plan will be required prior to construction.

SEPP Infrastructure

The application was referred to the RTA for concurrence, 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)

Applicable clauses of LM LEP 2004 have been considered, comments are as follows:

Part 2 Lifestyle 2020 Strategy – vision, values and aims

Clause 12 Vision, 13 Values, & 14 Aims

The application meets the applicable vision, values, and aims of Lifestyle 2020.

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. Long-term biodiversity will be enhanced by retaining and protecting vegetation on approximately half of the subject land and by the provision of compensatory habitat in the form of biodiversity offsets at Lot 107 to the South.

The Heritage Interpretation Strategy for the steam tram line and placement of building controls on lots adjacent to heritage items, adjacent to existing dwellings, along the 'gateway entry' and on elevated lots are considered to be adequate design and management measures to protect the heritage and character values of the area.

Part 3 General control for land within zones

Clause 15 General controls for land within zones

The proposal meets the applicable objectives of the zones in that it provides for a neighbourhood of low density housing, sustainable water cycle management, and respects the character of the surrounding development (West Wallsend Heritage Precinct), in regards to heritage and scenic matters, which are expanded upon in further detail within this report.

Part 4 Special provisions applying to all land

Clause 16 Development Consent – matters for consideration

The development has regard to the vision, values and aims of the Lifestyle 2020 Strategy and is consistent with the relevant objectives of the zones.

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 24 Subdivision

The proposed subdivision layout and associated lots comply with the requirements of Schedule 2 Subdivision.

Clause 25 Demolition

The application seeks consent for the demolition of an existing dwelling on the subject property. Appropriate conditions will be imposed on the development consent.

Clause 30 Control of Pollution

Reasonable and practical methods can be implemented to control pollution likely to occur due to the development.

Clause 31 Erosion and sediment control

The controls proposed in the Soil and Water Management Plan provided by the applicant, are considered practicable and reasonable, and capable of minimising the effects of erosion and sediment. Appropriate conditions will be imposed on the development consent.

Clause 33 Bushfire considerations

The subject property is classified as bushfire prone land, and thus the application was referred to the NSW Rural Fire Service (RFS) requesting general terms of approval. The RFS in correspondence dated 5 August 2011 have issued a Bushfire Safety Authority with conditions under Section 100B of the Rural Fires Act 1997. The RFS is satisfied that adequate measures are proposed to avoid and mitigate the threat from bush fire.

Clause 34 Trees and native vegetation

Clearing of trees and native vegetation is considered acceptable given the compensatory habitat biodiversity offsets proposed. The Statement of Environmental Effects and SIS contained within, adequately justify the clearing proposed and address the issue of soil stability, water quality and amenity.

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 meet the objectives of this clause. It adequately protects archaeological sites (subject to removal of lots impacting on GBD-RS-1) and places of European and Indigenous cultural significance and makes adequate provisions to conserve

remaining relics, settings and views and evidence of the cultural significance of the West Wallsend Steam Tram Line.

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.

The proposed partial demolition of remnant fabric of the West Wallsend Steam Tram Line in Lot 105 is considered to be an acceptable impact provided the Interpretation Strategy is implemented and adequately addresses all of the relevant historic themes of West Wallsend and the Steam Tram Line.

The Heritage & Urban Design Guidelines provide building controls on lots which may impact heritage or landscape significance and are considered to be adequate design measures to ensure the protection of the West Wallsend character, landscape and heritage significance.

Clause 47 Assessment of heritage significance

An assessment of heritage significance and the heritage impact statement has been undertaken for the site, which adequately addresses the heritage significance of the site and the proposed impacts of the development. The assessment of significance identified limited remnant physical fabric of the Steam Tram Line, although the alignment the Steam Tram Line is still considered to have unique heritage status.

The Heritage Impact Statement adequately demonstrates that the impacts on the remnants of the Steam Tram Line are mitigated through interpretation strategies to identify the tram alignment and the construction of an interpretation park within the development site that will encompass the heritage significance of West Wallsend and the Steam Tram Line.

Adequate measures are proposed to conserve the heritage significance of the place and its setting in the form of Heritage & Urban Design Guidelines to provide controls over lots impacting the existing West Wallsend subdivision.

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

The development is unlikely to have an impact on a relic or place of aboriginal heritage significance, providing that Stage 7 lots adjacent to the rock pad known as the “butterfly caves” are removed from the application. An appropriate condition of consent has been included.

Council has consulted with the Awabakal Local Aboriginal Land Council (LALC) in relation to the application. The land council have advised that they do not have any concerns with the application, providing the following actions are included in the approval:

- The removal of 12 lots adjacent to the rock pad known as the "butterfly caves" to protect their integrity.
- Inclusion of the 6 recommendations in the archaeological report by Mills.
- The incorporation of some aboriginal themes in the heritage interpretation park at the Withers Street entry of the development

Council has included consent conditions as requested by the Awabakal LALC.

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

The removal of a section of the West Wallsend Steam Tram Line (RT-01) adversely affects 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. The Archaeological report identified minimal physical remnants in the subject lots in the form of a 50 metre section of raised embankment which was assessed as having limited technical and aesthetic significance.

It should be noted that on adjacent lots in Pambulong Forest (outside the subject site), a 500m intact section of the West Wallsend Steam Tram Line, including a timber bridge, is being retained and will form the basis of an interpretation strategy on the significance of the West Wallsend Steam Tram Line. The proposed interpretation strategy for the subject site should link and reinforce the Pambulong Forest interpretation of the West Wallsend Steam Tram Line.

Clause 52 Development in vicinity of a heritage item

The integrity of historic edge, curtilage and setting of the place are to be safeguarded through the implementation of Heritage and Urban Design Guidelines which protect the heritage and setting values of the area through building controls on lots adjacent to heritage items, adjacent to existing dwellings, along the 'gateway entry' and on elevated lots.

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 and Regulations. 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 have been discussed above under Section 5A, SEPP 19, and SEPP 44. Legislative requirements have been addressed and acceptable ameliorative measures are proposed.

Part 2.1.2 Ecological Corridors

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

Part 2.1.3 Scenic Values

The Visual Impact Assessment prepared by Moir Landscape Architecture, reference 0676 dated 27/01/2011 provides a comprehensive analysis of the visual impact of the proposed development in accordance with LMCC Scenic Quality Guidelines. The report has identified and considered 22 viewpoints of significance and produced 4 photomontages.

The report has concluded that residential development of the existing bush land area will have an adverse visual impact. However, with the incorporation of proposed mitigation measures such as ridgeline protection, street trees, setbacks, and controls on building materials the resultant visual impact is considered low and acceptable for the context and the underlying zoning.

Part 2.1.4 Tree Preservation and Management

The Landscape Master Plan Report and Vegetation Management Plan prepared by Moir Landscape Architects provides adequate detail of measures to manage/recover the existing vegetation in the natural bushland areas, including riparian corridors, open space zones, revegetation areas, and APZs.

Approximately 50% of the site will remain in its current vegetated state, with an additional offset of 240ha of vegetation at a ratio of 7.3:1. Given the zoning of the land, the proposed retention of native vegetation is considered acceptable.

Part 2.1.5 Bushfire Risk

The subject property is classified as bushfire prone land, and thus the application was referred to the NSW Rural Fire Service (RFS) requesting general terms of approval. The RFS in correspondence dated 5 August 2011 have issued a Bushfire Safety Authority with conditions under Section 100B of the Rural Fires Act 1997. The RFS is satisfied that adequate measures are proposed to avoid and mitigate the threat from bush fire.

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 Stormwater Management Plan prepared by Brown Consulting, reference L05016.009-01 dated June 2011. 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

The Stormwater Management Plan prepared by Brown Consulting, reference L05016.009-01 dated June 2011 adequately demonstrates that properties downstream and adjacent to the site are not adversely affected by flooding because of the development. Modelling identifies increased flooding extents to the north of Eden Street and a minor localised increase of approx 0.05m upstream of an existing culvert conveying water under Fegan Street. Adjacent properties are unaffected by increased flood extents, and in the majority of cases benefit from reduced flood levels and flood extents.

Part 2.1.8 Development on Flood Prone Land at Dora Creek

Not Applicable.

Part 2.1.9 Sloping Land and Soils

The Preliminary Geotechnical Assessment prepared by Douglas Partners, reference 39794 dated July 2007 confirms that the land proposed to be developed has a low risk or low to medium risk of slope instability, with the exception of the following isolated areas:

- An isolated area of high risk of slope instability affects 9 proposed lots and a length of Road 1 near the Withers Street intersection. A further report prepared by Douglas Partners, reference 39794.04 dated June 2011 provides detail of the remedial works required to minimise the risk to an acceptable level. The remedial measures involve the removal and replacement of all slide debris in the area designated as having a high risk of instability, and the incorporation of trench drains (subsoil drains) from the base of the head scarp south to the subdivision drainage system. The measures proposed are acceptable to council and sufficiently minimise the risk of slope instability.
- The potential exists for boulder dislodgement on steep slopes at the eastern edge of Lot 103. The risk can be managed by either removing any loose boulders or by providing catch drains or fencing upslope of property boundaries. Further geotechnical advice will be sought at the Construction Certificate stages.
- There is an unacceptable risk of instability adjacent to steep gully banks at the rock overhang known as the “butterfly caves.” It is proposed that the overhang be remediated by backfilling or by removal. Clearly both of these options are considered unacceptable, given the heritage significance of the “butterfly caves.” On that basis, council strongly recommends the omission of Stage 7 lots adjacent to the overhang.

The land proposed to be developed is suitable from a slope stability perspective, providing appropriate remedial measures are undertaken, with the exception of the north eastern portion of Stage 7 adjacent to the “butterfly caves.”

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 practicable and reasonable, and capable of minimising the effects of erosion and sedimentation.

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 subject to conditions on 17 February 2011.

Part 2.1.13 Contaminated Land

The preliminary contamination assessment undertaken by Douglas Partners has found that the site has localised areas of contamination present, largely from illegal dumping. The contamination is capable of being remediated by offsite disposal to a licensed landfill after undertaking a waste classification. A Detailed Contamination Assessment & Remediation Action Plan will be required prior to construction.

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 Assessment prepared by Vipac Engineers & Scientists Ltd, reference 29N-11-0075-TRP-470930-1 dated 15 July 2011 identifies 43 lots to the north of Withers Street in stages 1 & 4 and 7 lots to the south of Carrington Street in stage 8 that are likely to be subject to noise levels in excess of the residential amenity criteria.

The report recommends that elevated noise levels can be adequately attenuated by installing suitable facade treatments in accordance with AS2107:2000 Recommended Sound Level and Reverberation Times for Building Interiors and AS3671:1989 Road Traffic Noise Intrusion Building Siting and Construction. The lots identified will be subject to a covenant requiring that the dwellings be constructed to an appropriate level of construction to achieve noise amenity. The requirement for a covenant to be detailed in an 88B Instrument will be conditioned in the consent.

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 will be required prior to demolition commencing. A condition of consent requires the preparation of this plan.

Part 2.2 – Social Impact

Part 2.2.1 Social Impact Statement

The Social Impact Assessment prepared by Key Insights June 2011 has identified a number of potential positive and potential negative social impacts associated with the proposed developments.

Potential positive social impacts include:

- The development supports the creation of additional housing in line with the Lower Hunter Regional Strategy
- Creates affordable housing
- Economic benefits of employment during construction and an additional customer base for local retail businesses

Potential negative social impacts include:

- Stress on existing residents in opposition to the development
- Loss of natural habitat and visual amenity
- Increased local traffic

Council's Coordinator Social and Community Planning has reviewed the Social impact Assessment and acknowledges that the development 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, believes that the development will result in a net negative social impact on the basis that the development may:

- Result in the gentrification of the area, with many of the existing residents being displaced;
- 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.

However, given the subjective nature of social impact, I consider that on balance, that the development is likely to create a net positive benefit to the community. The Heritage Interpretation Strategy and Housing Design Guidelines are considered appropriate measures to ameliorate the potential loss of the heritage character of the existing township. The incorporation of small lot housing assists in providing affordable housing options to the market and ultimately 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. The development will be subject to section 94 Contributions to assist in the funding of community facilities.

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 demonstrates how it adequately meets the intent of Council's heritage requirements by interpreting the remnant fabric of the West Wallsend Steam Tram Line (RT-01) and by 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.

The proposed Heritage & Urban Design Guidelines protect the 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.

The proposed subdivision pattern provides adequate insitu interpretation of the West Wallsend Tram Line alignment as well as an Interpretation Park, which will reinforce the interpretation of intact sections of the tram line in adjacent sites. This is considered acceptable as the geometry of the tramway route does not compliment a realistic functional lot layout.

Part 2.4.2 Catherine Hill Bay Heritage Conservation Area

Not applicable.

Part 2.4.3 Aboriginal heritage Items and Sites

The applicant has sought General Terms of Approval for consent under Section 90 of the National Parks and Wildlife Act 1974. General Terms of Approval, subject to conditions were granted by Department of Environment, Climate Change & Water on 11 March 2011.

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 L05016.009-01 dated June 2011 adequately addresses stormwater quality and quantity within the proposed subdivision to a level appropriate for the DA stage.

However, the strategy for Stage 2 relies upon the creation of a drainage easement from the outlet of Basin 6 to Seaham Street. To date, written agreement from these owners has not been forthcoming.

In the absence of the agreement, any approval should be for a deferred commencement approval.

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 subject to BASIX requirements.

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 road and pedestrian network is acceptable.

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 25 February 2011.

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.

External to the site, the proposal utilises existing streets. Fegan Street is narrow and in poor condition and currently services few residences. The proposal would significantly increase the traffic volumes on the street, and upgrade of the street will be a condition of consent.

Part 2.6.4 Pedestrian and Cycle Paths

The pedestrian and cycle paths proposed within the development are considered 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 form a condition of consent.

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 provided longitudinal sections along fire trails to demonstrate that the gradings are trafficable by fire vehicles. The NSW Rural Fire Service issued a Bushfire Safety Authority on 5 August 2011 in support of the bushfire mitigation measures proposed.

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 submitted Heritage & Urban Design Guidelines for lots adjacent to heritage items, adjacent to existing dwellings, along the 'gateway entry' and on elevated lots. The guidelines are considered to provide adequate design and management measures to protect the heritage and character values of the area. The Heritage & Urban Design Guidelines provide standard and site specific controls relating to site coverage, setbacks, colours and materials,

building height, architectural form and massing, garages, roof forms and colours. Design Guidelines will be enforced via a Public Positive Covenant, as a condition of consent, to be included on 88B Instruments applicable to the development.

Part 2.7.2 Landscape

The proposal is classified as a Category 3 landscape development. A Landscape Site Analysis, Landscape Masterplan and Vegetation Management Plan prepared by Moir Landscape Architecture have been provided in support of the application. The documentation provided is in accordance with councils Landscape Design Guidelines. Landscaping proposed within both the public and private domain are considered appropriate to the nature and scale of the development and provide adequate amenity.

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

The Visual Impact Assessment prepared by Moir Landscape Architecture, reference 0676 dated 27/01/2011 provides a comprehensive analysis of the visual impact of the proposed development in accordance with LMCC Scenic Quality Guidelines. The report has identified and considered 22 viewpoints of significance and produced 4 photomontages.

The report has concluded that residential development of the existing bush land area will have an adverse visual impact. However, with the incorporation of proposed mitigation measures such as ridgeline protection, street trees, setbacks, and controls on building materials the resultant visual impact is considered low and acceptable for the context and the underlying zoning.

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 concerning safety and security.

Part 3.1 - Lake, Waterway and Coastline Development

Not Applicable.

Part 3.2 – SubdivisionPart 3.2.1 Neighbourhood Design

The applicant has undertaken a site survey, site analysis and produced a constraints plan. This information has been utilised to inform the road and drainage design and the lot layout. The subdivision layout proposed is quite irregular in nature, but responds to the constraints posed by the site. It is not particularly complimentary to the traditional grid network that exists for the majority of West Wallsend and surrounding suburbs. However, it is acknowledged that the natural terrain and geometry of the parent lots pose a major constraint on the subdivision pattern. The proposed layout is considered acceptable with the exception of Lots 651 – 657 and Lots 717 – 728.

Lots 651 – 657 are considered unacceptable as approximately 4m of fill is proposed to be placed in the existing natural gully and ephemeral watercourse. Filling of natural watercourses contravenes council's Protection of Watercourses and Drainage Channels Policy. The entirety of the lots contain the EEC Lower Spotted Gum and Iron Bark Forest, which would be desirable to protect.

Similarly, Lots 717 – 728 are considered unacceptable as approximately 4m of fill is proposed to be placed in the existing natural gully and ephemeral watercourse. An overland flow path for major flows has been omitted from the design. The road adjacent to Lots 717 – 722 has the potential to be affected by slope instability. Proposed remedial measures to stabilise the adjacent rock overhang (butterfly caves) include removal or filling. Both measures are considered unacceptable solutions, given the heritage significance of the caves. It is strongly recommended that Lots 717 – 728 be omitted from the design.

Part 3.2.2 Lot Size and Layout

Lots within the proposed subdivision comply with the requirements of Schedule 2 of LMLEP 2004.

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

The proposal adequately meets the intent of Council's heritage requirements by ensuring that the development within the area maintains and ameliorates impacts on identified significant characteristics.

The proposed development makes adequate provisions to address the character, setting and subdivision edge of West Wallsend/Holmesville and proposes design guideline provisions for controlling development that will have an impact on heritage or landscape significance.

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 area of the site proposed to be developed is appropriately zoned 2(1) Residential which allows subdivision as a permissible use. The application has recognised both the ecological

value of the site and the heritage significance of the surrounding township, and has incorporated ameliorative measures such as a biodiversity offsets package, Heritage Interpretation Strategy, and Housing Design Guidelines to support the development of the land. The proposed subdivision, with exception of some lots within Stages 6 & 7, have considered the constraints posed. On balance, the site is considered suitable for the development proposed.

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

Public Submissions

A total of 127 submissions were received within the public exhibition period. Each submission objected to the proposal. Various grounds for objection were detailed within the submissions received, with the main points of objection being detailed below:

- 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 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).
- Increased instances of flooding because of development of the existing bushland on the subject site.
- 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 overall density of the proposal is considered too high and the average lot sizes are considered too small in comparison to the existing lot sizes within the area. The inclusion of small lot housing, and in particular its location in close vicinity to existing properties was a concern.
- Existing services and facilities are unable to cater for the increased demand, which will result from the development.

The issues raised have been adequately addressed in the documentation provided with the application and are discussed in detail throughout this report.

Submissions from Public Authorities

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

- Mine Subsidence Board granted General Terms of Approval on 8 June 2010.
- NSW Rural Fire Service issued a Bushfire Safety Authority subject to conditions on 5 August 2011.
- Department of Environment, Climate Change and Water (National Parks & Wildlife) granted General Terms of Approval, subject to conditions on 11 March 2011.
- The NSW Office of Water granted General Terms of Approval subject to conditions on 18 July 2011.
- Roads & Traffic Authority provided concurrence in relation to the requirements of SEPP Infrastructure on 25 February 2011.
- The Office of Environment and Heritage assessed the Species Impact Statement and granted concurrence subject to conditions on 29 June 2011.
- 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.

Submission from LMCC Councillors

Lake Macquarie Council resolved to submit a formal objection at its Extraordinary Meeting held on 26 September 2011. A copy of the submission is contained within Appendix C.

The applicant was invited to respond to the issues raised by the Councillors. A copy of the applicant's response is contained within Appendix E.

Council officers have considered the issues raised in the councillor submission and believe that the application and applicants response comprehensively address the issues raised. The fundamental points of objection raised are addressed below.

- *The development does not include the owner's consent for land through which stormwater infrastructure are proposed.*

Owners consent to the creation of a drainage easement over private land has been included as a deferred commencement condition. Council Officers sought advice from council's City Solicitor in relation to this matter. The advice received was that deferred commencement is appropriate in this case. Council Officers are satisfied that an easement is obtainable.

- *The failure of the proposal to address the physical and cultural constraints of the site and locality;*

Refer to the following two dot points for comment on physical and cultural constraints.

- *The significant impact of the proposal on the site's flora & fauna and inadequate/inappropriate mitigative measures to address/offset the impacts;*

Approximately 50% of the vegetated area of the subject land is to be protected for conservation purposes. A significant compensatory habitat package is proposed to offset biodiversity losses on the site. Council's Flora & Fauna Planner and the Office of Environment & Heritage are satisfied that the proposal has addressed the Director General's Requirements (DGR's), and measures to mitigate the impacts of the proposal on threatened species is appropriate and acceptable.

- *The significant impact of the 375 Lot Subdivision on the cultural significance of West Wallsend/Holmesville;*

(i) Cultural Landscape Assessment, Visual Analysis & Statement of Significance

The Statement of Heritage Impact by EJE Heritage provides a brief history of West Wallsend and a Statement of Significance for the place as well as identification of significant landscapes and historic subdivision patterns within West Wallsend. The heritage impacts of the proposed development are addressed in the Heritage Impact Statement, including recommended mitigation of impacts. A further detailed history of West Wallsend is provided in the Interpretation Strategy by EJE Heritage, which also addresses future interpretation of the West Wallsend Steam Tram Line, which is proposed to be partially demolished.

The Heritage & Urban Design Guidelines by EJE Heritage provides adequate controls to address the curtilage of the existing West Wallsend building stock and

provides suitable design guidelines for future development within the proposed subdivision.

(ii) The Burra Charter

Whilst the submitted information by the applicant does not specifically address The Burra Charter, the proposed development conforms to the principles of the document.

Burra Charter Article 7: USE - A place should have a compatible use

Due to the cessation of the West Wallsend Steam Tram Line in 1930, there has not been any use of the site (over 80 years). As a result, a majority of the Tram Line fabric has been lost overtime and it is considered a viable use for this section of the tramway to retain its original transportation use is unlikely to occur. Furthermore, a 500m intact section of the West Wallsend Steam Tram Line is being preserved on a neighbouring lot (Pambulong Forest), where it is undergoing adaptation to retain its transportation links as a cycleway and walkway.

Burra Charter Article 25: INTERPRETATION - The cultural significance of many places is not readily apparent, and should be explained by interpretation. Interpretation should enhance understanding and enjoyment, and be culturally appropriate.

The cultural significance of the West Wallsend Steam Tram Line is currently not apparent due to the minimal surviving fabric within the subject site. The Interpretation Strategy by EJE Heritage and Interpretation Reserve will provide an understanding and appreciation of the West Wallsend Steam Tram Line and the settlement of West Wallsend.

(iii) Lifestyle 2020 Strategy

The Heritage Interpretation Strategy for the West Wallsend Steam Tram Line and placement of building controls on lots adjacent to heritage items, adjacent to existing dwellings, along the 'gateway entry' and on elevated lots are considered to be adequate design and management measures to protect the heritage and character values of the area.

(iv) Interpretation of the existing Cultural Landscape

The applicant has provided a building envelope for Lot 822 which directly adjoins existing lots on the Carrington Street entry to the proposed subdivision. The building envelope provides a setback from Carrington Street to create a buffer to the entrance to the existing lots of West Wallsend.

Lots proposed along Withers Street are designated as Category 1 in the Heritage & Urban Design Guidelines and will require a 7m front setback and the planting of a minimum of 3 small to medium indigenous native trees within the first 3m adjacent the street frontage. This proposed setback and landscaping will maintain the bushland entry to West Wallsend.

Furthermore, the existing lots directly adjoining the proposed Withers Street lots are part of a c.1970 subdivision and provide little contribution to the heritage significance of the area. Any evidence of the former tramline is no longer apparent and unlike Carrington Street the early subdivision pattern no longer defines the 'gateway entry'.

- *The potential for significant social impacts on the existing West Wallsend / Holmesville community.*

The proposed development, like many others, will create both positive and negative impacts. However, on balance, the development is likely to create a net positive benefit to the community. The Heritage Interpretation Strategy and Housing Design Guidelines are considered appropriate measures to ameliorate the potential loss of the heritage character of the existing township. The incorporation of small lot housing assists in providing affordable housing options to the market and ultimately 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. The development will be subject to section 94 Contributions to assist in the funding of community facilities.

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

Although a significant number of submissions have been received, on balance the proposed development is considered to be in the public interest. Significant issues raised within submissions have been considered, addressed, and justified within the application.

3 SECTION 91 INTEGRATED DEVELOPMENT

The proposed development is defined as Integrated Development under Section 91 of the Environmental Planning and Assessment Act 1979. 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 17 February 2011.

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. The NSW Rural Fire Service granted General Terms of Approval, subject to conditions on 5 August 2011.

3.3 National Parks & Wildlife Act 1974

The applicant has sought General Terms of Approval for consent under Section 90 of the National Parks and Wildlife Act 1974. General Terms of Approval, subject to conditions were granted by Department of Environment, Climate Change & Water on 11 March 2011.

3.4 Water Management Act 2000

The applicant has sought General Terms of Approval for an approval under Section 91 of the Water Management Act 2000. The NSW Office of Water granted General Terms of Approval, subject to conditions on 18 July 2011.

4 SECTION 94 CONTRIBUTIONS

The proposed development is 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 have been calculated based on Contribution Plan No. 1 City Wide – 2004.

5 COMMONWEALTH LEGISLATION

5.1 Commonwealth Environmental Protection & Biodiversity Conservation Act 1999 (EPBC Act)

Niche Environment and Heritage have undertaken an assessment of significance for commonwealth threatened species, and reported its findings within correspondence dated 15 August 2011. It was found that Matters of National Environmental Significance (MNES) are unlikely to be significantly impacted by the proposal. A referral to the Commonwealth Minister of Department of Sustainability, Environment, Water, population and Communities is not required. Council concurs with the report findings.

6 CONCLUSION & RECOMMENDATION

The assessment of this application has required council officers to consider many complex and competing issues. It is acknowledged that the subject site and surrounds contain areas of high ecological and cultural value. The proposal has also attracted significant objection from many local residents.

Notwithstanding the above, the site is strategically located and appropriately zoned to support residential development. The Department of Planning & Infrastructure has determined that the zoning of the subject site is appropriate. The basis for the department's determination is that the Lower Hunter Strategy identifies the site as an urban area and that the site is located adjacent to other lands identified as suitable for development similar to that proposed.

The application has adequately addressed all applicable legislative requirements, and has given due consideration and regard to the majority of constraints on the site. Notwithstanding, council officers consider that proposed filling of the two major gullies in Stages 6 & 7 is excessive and inappropriate. On this basis it is recommended that Lots 651 – 657 and 712 – 722 be deleted from the approved lot layout.

On balance, the proposed development is considered to be suitable for the locality, and in the public interest. It is therefore recommended that the application be approved as a Deferred Commencement Consent, subject to the conditions 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 – CONDITIONS OF DEFERRED COMMENCEMENT APPROVAL

PART A – DEFERRED COMMENCEMENT CONDITION

Pursuant to Section 80(3) of the Environmental Planning and Assessment Act 1979 (as amended), this is a deferred commencement condition. The consent is not to operate until the Applicant satisfies the Council that:

Registration of Drainage Easement

The Applicant shall acquire and create a drainage easement, from Basin 6 to Seaham Street. The easement shall have a minimum width of 3.0 metres. The easement shall benefit Lake Macquarie City Council, and Council shall be identified as the party empowered to release vary or modify the easement. The Applicant shall provide Council with evidence that the easement has been registered with Land and Property Information NSW.

The Applicant shall satisfy the deferred commencement condition listed in Part A, within 12 months from the date of issue of the deferred commencement consent. The consent will lapse if the condition is not satisfied within this period.

PART B - CONDITIONS OF CONSENT APPLICABLE AFTER SATISFACTION OF DEFERRED COMMENCEMENT CONDITION

SECTION 1 – ADMINISTRATIVE CONDITIONS

Unless noted otherwise, conditions of consent shall apply to each stage of the development.

1A. Reason for the Imposition of Conditions

The reason for the imposition of the following conditions is to ensure, to Council's satisfaction, the objects of the Environmental Planning and Assessment Act 1979 (as amended) are achieved:

- (a) To encourage:

- (i) The proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forest, minerals, water, cities, towns, and villages for the purpose of promoting the social and economic welfare of the community and a better environment,
- (ii) The promotion and co-ordination of the orderly and economic use of development of land,
- (iii) The protection, provision, and co-ordination of communication and utility services,
- (iv) The provision of land for public purposes,
- (v) The provision and co-ordination of community services and facilities, and
- (vi) The protection of the environment, including the protection and conservation of native animals and plants including threatened species, populations, and ecological communities and their habitats, and
- (vii) Ecologically Sustainable Development, and
- (viii) The provision and maintenance of affordable housing,
- (b) To promote the sharing of the responsibility for environmental planning between the different levels of government in the State, and
- (c) To provide increased opportunity for public involvement and participation in environmental planning and assessment.

1B. Compliance with Conditions

The approval comprises the application, the plans, and the documents set out in the paragraph below and the conditions of consent. The proposed development may only proceed in accordance with these documents.

The development shall be carried out in accordance with the conditions of consent and the following documents (as may be varied by the conditions of consent):-

1) Plans Reference

- (a) Subdivision Lot Layout Plans prepared by Brown Consulting Pty Ltd, reference L05016.009 sheets 1 – 7 Issue 5.
- (b) Road, Drainage and Site Works Plans prepared by brown Consulting Pty Ltd, reference L05016.009 Drawings 000 – 003, 101 – 105, 301 – 311, 401 – 422 & 501 – 542.
- (c) Noise Level Exceedance Plan prepared by Vipac.
- (d) Building Envelope Plan Lot 822 prepared by ADW Johnson, reference 37548.
- (e) Proposed Shared Footpath Plan prepared by ADW Johnson, reference 37548.

2) Document / Report Reference

- (a) Statement of Environmental Effects prepared by ADW Johnson, reference 37548 dated December 2010.
- (b) Landscape Master Plan Report & Vegetation Management Plan prepared by Moir Landscape Architecture, reference 0609 Issue F dated 27 January 2011.
- (c) Indigenous and Non Indigenous Heritage Assessment prepared by Mills Archaeological and Heritage Services Pty Ltd dated January 2011.
- (d) Statement of Heritage Impact prepared by EJE Heritage, reference 8527-HA-001 dated 27 January 2011.
- (f) Traffic Report prepared by Brown Consulting Pty Ltd, reference L05016.009-r01 dated January 2011.
- (g) Noise Impact Assessment prepared by Vipac Engineers & Scientists Ltd, reference 29N-11-0075-TRP-470930-1 dated 15 July 2011.
- (h) Stormwater Concept Plan prepared by Brown Consulting, reference L05016.009-01 dated June 2011.
- (i) Slope Stability Investigation prepared by Douglas Partners, reference 39794.04 dated June 2011 and Addendum Letter dated 24 June 2011.
- (j) Preliminary Geotechnical Assessment prepared by Douglas Partners, reference 39794.04 December 2010.

- (k) Species Impact Statement prepared by Niche Environment and Heritage, reference 10-020 dated January 2011.
- (l) Water and Waste Water Strategy prepared by Hunter Water Australia, reference 2962 dated 5 January 2009.
- (m) Bushfire Protection Assessment prepared by Australian Bushfire Protection planners Pty Ltd, reference B101414-1 dated 3 December 2010.
- (n) Visual Impact Assessment prepared by Moir Landscape Architecture, reference 0676 Issue C dated 27 January 2011.
- (o) Assessment of Significance for Commonwealth Threatened Species Matters prepared by Niche Environment and Heritage dated 15 August 2011.
- (p) Heritage Interpretation Strategy prepared by EJE Heritage, reference 8527-IS-001 dated August 2011.
- (q) Heritage and Urban Design Guidelines prepared by EJE Heritage, reference 8527-HUDG-004 dated August 2011.
- (r) Watercourses – Additional Information prepared by ADWJohnson dated May 2011.
- (s) Social Impact Assessment prepared by Key Insights Pty Ltd, dated June 2011.
- (t) Acquisition Letter prepared by Hammersmith Pty Ltd, dated 19 September 2011.

It is the responsibility of the Applicant to meet all expenses incurred in undertaking the development including expenses incurred in complying with conditions imposed by this consent.

It is the Applicant's responsibility to provide all Compliance Certificates, documentation and other evidence to verify that the conditions and requirements imposed by this consent have been complied with.

1C. General Terms of Approval

The applicant shall comply with general terms of approval granted by the following bodies:

- Mine Subsidence Board

- NSW Rural Fire Service
- Department of Environment, Climate Change & Water – (Aboriginal Cultural Heritage)
- NSW Office of Water

1D. Office of Environment & Heritage Concurrence

The applicant shall comply with the requirements and conditions of approval detailed in Attachment A of the Office of Environment & Heritage correspondence reference Doc11/268381; Fil06/922-07 dated 29 June 2011, and attached to this consent.

1E. Controlled Activity Approval

The Applicant shall comply with the Controlled Activity Approval granted by the NSW Office of Water for this development. A copy of the Department's approval, under the Water Management Act 2000, is attached to this consent.

1F. Mines Subsidence Board Concurrence

The Applicant shall comply with the approval granted by the Mines Subsidence Board for this development. A copy of the Board's approval is attached to this consent.

1G. Bushfire Safety Authority from RFS

The Applicant shall comply with the requirements of the Bushfire Safety Authority from Rural Fire Service attached to these conditions of consent.

1H. Amendments to Subdivision Plan

The subdivision plan shall be amended prior to the issue of a Construction Certificate, to the satisfaction of council and as follows:

Lots 651 – 657, Basin 3, and Road 1 (Chainage 1125 – end) shall be deleted.

The width of Lot 650 shall be increased to accommodate an appropriate asset protection zone as determined by a qualified bushfire consultant, and approved by the NSW Rural Fire Service.

Lots 717 – 728 shall be deleted. Road 10 shall be modified to accommodate the change.

11. Application Fees for Required Certificates

The Applicant shall obtain any certificates as required to satisfy the conditions of this Consent.

For Council to process applications for these certificates the following fees would be payable:

Stage 1

Construction Certificate	\$ 9068	Plus \$50 Archival Fee	(inc GST)
Compliance Certificate	\$ 12720	Plus \$50 Archival Fee	(inc GST)
Subdivision Certificate	\$ 2530	Plus \$50 Archival Fee	(inc GST)

Stage 2

Construction Certificate	\$ 5917	Plus \$50 Archival Fee	(inc GST)
Compliance Certificate	\$ 8199	Plus \$50 Archival Fee	(inc GST)
Subdivision Certificate	\$ 4290	Plus \$50 Archival Fee	(inc GST)

Stage 3

Construction Certificate	\$ 9493	Plus \$50 Archival Fee	(inc GST)
Compliance Certificate	\$ 13331	Plus \$50 Archival Fee	(inc GST)
Subdivision Certificate	\$ 6600	Plus \$50 Archival Fee	(inc GST)

Stage 4

Construction Certificate	\$ 8683	Plus \$50 Archival Fee	(inc GST)
Compliance Certificate	\$ 12458	Plus \$50 Archival Fee	(inc GST)
Subdivision Certificate	\$ 4070	Plus \$50 Archival Fee	(inc GST)

Stage 5

Construction Certificate	\$ 11043	Plus \$50 Archival Fee	(inc GST)
Compliance Certificate	\$ 15545	Plus \$50 Archival Fee	(inc GST)
Subdivision Certificate	\$ 7150	Plus \$50 Archival Fee	(inc GST)

Stage 6

Construction Certificate	\$ 11770	Plus \$50 Archival Fee	(inc GST)
Compliance Certificate	\$ 16670	Plus \$50 Archival Fee	(inc GST)
Subdivision Certificate	\$ 5500	Plus \$50 Archival Fee	(inc GST)

Stage 7

Construction Certificate	\$ 10005	Plus \$50 Archival Fee	(inc GST)
Compliance Certificate	\$ 14355	Plus \$50 Archival Fee	(inc GST)
Subdivision Certificate	\$ 3080	Plus \$50 Archival Fee	(inc GST)

Stage 8

Construction Certificate	\$ 7290	Plus \$50 Archival Fee	(inc GST)
Compliance Certificate	\$ 10440	Plus \$50 Archival Fee	(inc GST)
Subdivision Certificate	\$ 2970	Plus \$50 Archival Fee	(inc GST)

Stage 9

Construction Certificate	\$ 9143	Plus \$50 Archival Fee	(inc GST)
Compliance Certificate	\$ 12645	Plus \$50 Archival Fee	(inc GST)
Subdivision Certificate	\$ 2530	Plus \$50 Archival Fee	(inc GST)

Applications for these certificates should be lodged on the approved application form and accompanied by the appropriate fee.

Where the development includes construction works valued at \$25,000.00 or more, the applicant must pay the Long Service Levy, as detailed in the Building and Construction Industry Long Service Payments Scheme. The Levy must be paid prior to the issue of the Construction Certificate. The Levy may be paid directly to the Long Service Payments Corporation or to Council as agent for the Corporation. The Levy rate is 0.35% of the cost of building and construction works.

The above application fees are subject to change each financial year without notice and confirmation should be obtained from Council prior to the lodgement of any application.

SECTION 2 – PRIOR TO COMMENCEMENT OF WORKS

2A. Details Required Prior to Commencement

Construction works in accordance with this development consent shall not commence until:-

- (a) detailed engineering plans and specifications (including a Design Certification Report and Checklists in accordance with the Lake Macquarie City Council Engineering Guidelines) relating to the work have been endorsed with a Construction Certificate by :-
 - (i) Council, or
 - (ii) an appropriately Accredited certifier accredited in accordance with the Building Professionals Board Accreditation Scheme, and

An Application For A Construction Certificate Can Only Be Made To Lake Macquarie City Council For All Works On Existing Public Roads (In Accordance With Council's Authority Under The Roads Act).

- (b) the person having the benefit of the development consent:-
 - (i) has appointed a Principal Certifying Authority, and
 - (ii) has notified the consent authority and the Council (if the Council is not the consent authority) of the appointment, and
- (c) the person having the benefit of the development consent has given at least two (2) days notice to Council of the intention to commence works.

2B. Roadways and Drainage Works Standards

The Applicant shall arrange for all relevant works to be designed and constructed in accordance with the following publications (as amended or updated), as applicable:-

- a) Australian Rainfall and Runoff, 1987.

- b) AUSTROADS Guide To Traffic Engineering Practice.
- c) DCP 1 (Volumes 1 and 2) and supporting guidelines.
- d) Roads and Traffic Authority Road Design Guide.
- e) Roads and Traffic Authority Interim Guide To Signs and Markings.
- f) Managing Urban Stormwater documents (2004).by Landcom.
- g) The Constructed Wetlands Manual - Department of Land and Water Conservation, 1998.
- h) Subdivision Code
- i) Australian Standards including, but not limited to:-
 - AS1428 - Design for Access and Mobility, Part 1 General Requirements for Access and Part 4 Tactile Indicators,
 - AS2890 - Off Street Parking

Where any inconsistency exists between these documents the Applicant shall verify in writing with Council, the relevant standard to be adopted.

2C. Aboriginal Cultural Heritage Management Plan

Prior to the issue of a Construction Certificate, the applicant shall provide council with an Aboriginal Cultural Heritage Management Plan in accordance with the requirements detailed within point 5 of Attachment A of the General Terms of Approval granted by Department of Environment Climate Change & Water, reference DOC11/8225; FIL 10/519.

2D. Heritage Interpretation Strategy

Prior to the issue of a Construction Certificate, the applicant shall provide detailed design documentation in accordance with the concepts proposed within the Heritage Interpretation Strategy prepared by EJE Heritage. The documentation shall be endorsed by a suitably qualified Heritage Architect prior to submission to council for approval.

2E. Erosion Controls

A Soil and Water Management Plan (SWMP) shall be submitted to council as part of the Construction Certificate Application. The SWMP shall comply with the provisions of DCP No. 1 Section 2.1.11 Erosion Prevention and Sediment Control.

The approved SWMP showing detailed runoff and erosion control measures (both temporary and permanent) shall be implemented on the subject site prior to the construction of the approved development. The SWMP shall be implemented to the satisfaction of Council or the Private Certifying Authority prior to the commencement of works, and during constructions.

The plan must incorporate (without being limited to):-

- the provisions of DCP No. 1 Section 2.1.11 Erosion Prevention and Sediment Control;
- minimise disturbance of existing stabilised land or areas of vegetation outside of the limits of the development,
- upslope interception of uncontaminated stormwater run-off with diversion drains/ bunds around disturbed areas;
- appropriate sediment interception measures (catch drains, contour banks, detention basins, settling ponds, straw bale or gabion barriers, sediment traps, sediment fences etc), sufficient to prevent sediments, contaminants, and other debris leaving the site or entering downstream drainage lines;
- procedures for the operation and maintenance of pollution control equipment/works must be noted;
- regular maintenance of erosion control works and sediment control measures;
- satisfactory disposal of intercepted sediments and other contaminants; and
- long-term stabilisation procedures, including proposed vehicle accessways/parking areas, which can be incorporated in a landscape rehabilitation plan if appropriate.

The applicant shall also submit with the SWMP, a Statement of Compliance, stating that:

- The Plan has been developed by an appropriately qualified professional in erosion and sediment control, or similar;
- The plan complies with the requirements of a SWMP as set out in LMCC's DCP No. 1;
- The plan and associated documents, calculations and drawings, have been prepared to a standard which, if properly implemented, will achieve the water release criteria of 50mg/L of Total Suspended Solids (TSS) as identified in LMCC DCP No.1 and Managing Urban Stormwater – Soils and Construction. Landcom, 2004; and
- All erosion and sediment control measures are in accordance with the latest version of Managing Urban Stormwater – Soils and Construction. Landcom, 2004.

Please note: The *Protection of the Environment Operations Act 1997* makes it an offence to allow sediments to enter, or be placed, into any waters or drain used to receive or pass rainwater. Severe penalties exist for offences against the Act, including on-the-spot fines of up to \$1,500 for individuals and \$3,000 for Corporations. Non-compliance with the conditions of Development Consent is a breach of the *Environmental Planning and Assessment Act 1979* and may attract fines.

2F. Dilapidation Survey

Prior to the commencement of works (including demolition) on the land, a dilapidation survey report prepared by a suitably qualified practising engineer, of properties and existing public infrastructure potentially affected by the proposed development, shall be lodged with Council and submitted to the Principal Certifying Authority. The dilapidation survey report shall locate the area within which the damage may be potentially caused to nearby and neighbouring properties as a result of the carrying out of demolition or construction works pursuant to this consent. The report is to include a description of the location and nature of any existing observable defects to the properties and existing public infrastructure, including a photographic record.

2G. Landscaping Works

The Applicant shall undertake landscaping works in accordance with the plans prepared by Moir Landscape Architecture.

The plans shall be prepared by a consultant that meets the requirements of the LMCC Development Control Plan No. 1 Section 2.7.2 – Landscape - Categories of Development – Category 3.

No planting shall take place prior to the approval of the final landscaping plan by a Construction Certificate.

Please note that any street trees to be planted shall be at least of a 75 – 100 litre pot size.

2H. Street Tree Planting

The street tree planting shall comply with Council's standard drawing *LSD-PLA-004-V01 - Subdivision Street Tree Planting in turf with Footpath* in Lake Macquarie Landscape Design Guidelines. Details of street tree planting shall be included in the Construction Certificate documentation.

2I. Gross Pollutant Trap

The Applicant shall design and construct a permanent Gross Pollutant Trap and Trash Rack. The design shall be in accordance with the requirements of DCP 1 (Volume 2 – Engineering Guidelines Part 3). Provision shall be made for maintenance access roads and maintenance vehicle parking.

All Gross Pollutant Traps shall be designed to have a pollutant storage volume in excess of the 6 months pollutant loading from the catchment in its developed state (i.e. require routine maintenance at an interval of greater than 6 months).

Satisfactory plans and calculations for such Gross Pollutant Trap and Trash Rack shall be submitted prior to the issue of a Construction Certificate.

The applicant shall include a "Maintenance Plan" with the Construction Certificate documentation, in accordance with Council's "Stormwater Treatment Framework & Stormwater Quality Improvement Device Guidelines".

2J. Water Quality Control Facilities

The Applicant shall design and construct permanent Stormwater Quality Facilities generally in accordance with the design and plans prepared by Brown Consulting.

Plans and calculations for such Stormwater Quality Control Facilities shall be submitted for approval prior to the issue of a Construction Certificate. The plan shall also include details of the extent and location of fencing (Council shall be contacted for a copy of the standard detail of the fencing. NB this standard detail may be updated from time to time), provide details of maintenance access and details of landscaping and species for the facility and their surrounds.

The plans for the facility shall detail the construction stages. i the plans shall detail the design of the facility as a sediment basin and the plans shall detail the design of the facility in its final form.

The applicant shall include a "Maintenance Plan" with the Construction Certificate documentation, in accordance with Council's "Stormwater Treatment Framework & Stormwater Quality Improvement Device Guidelines".

Construction Sequencing shall be as follows:-

- Phase 1 - The facility shall be constructed to operate as a sediment basin initially. All final inlet and outlet structures shall be installed at this stage (unless alternate arrangements have been made prior with Council agreement). The facility shall be maintained as a sediment basin until the catchment draining to it has been substantially developed (eg 90% of the lots have had housing constructed on them and their respective landscaping and lawn areas are established).
- Phase 2 - To enable release of the final plan of subdivision, that contains the facility, a bank guarantee shall be established. The bank guarantee shall be to the value of 1.5 times the value of the capital works & landscaping and 2 years maintenance (the value of bank guarantee to be agreed in consultation with Council Officers).
- Phase 3 – Once the catchment has been substantially developed, the sediment basin shall be decommissioned and the final approved facility constructed and landscaped.

- Stage 4 – The bank guarantee shall be released not less than 2 years after the completion of the facility and establishment of landscaping to the satisfaction of Council.

2K. Show Lots Clear of 100 Year Flood Level

The Applicant shall show by calculations and plans that all lots are clear of the 1:100 year flood level. This condition shall also apply to lots which would be affected by substantial overland flow, which may necessitate the carrying out of works to ensure properly drained and flood free conditions.

The Applicant shall supply the above calculations and plans showing the limit of the 1:100 year flood prior to the issue of a Construction Certificate.

Note: Lots that are not 500mm clear of the 1:100 year flood level will be subject to floor height control.

2L. Stormwater Detention Required

The Applicant shall show that the development does not increase the peak stormwater discharge or limits of upstream and downstream flooding for floods over the range of 1:1 years to 1:100 years by the inclusion of stormwater detention controls. Designs shall incorporate maintenance access roads and fencing in accordance with Council's standard requirements.

Plans and calculations for such stormwater controls shall be submitted prior to the issue of a Construction Certificate and the works shall be completed as part of the initial construction work in the first stage of the development which has a catchment contributing to the basin.

2M. Disposal to Watercourse or Council Easement

The Applicant shall make arrangements for stormwater to be disposed of to either an existing Council drainage system or natural watercourse. Where applicable, the Applicant shall obtain for lodgement with Council written authority from affected owners agreeing to the discharge of stormwater across their properties prior to the issue of a Construction Certificate.

The Applicant shall subsequently create easements for drainage in favour of Council over those properties, prior to, or at the time of registration of the Final Plan of Subdivision.

2N. Interallotment Drainage Pipelines

The Applicant, shall identify any lots that do not drain directly to Council's stormwater drainage systems. For these lots the Registered Proprietor of the land shall arrange for the provision of interallotment drainage pipelines. All stormwater shall be disposed of to either an existing formed Council drainage system or a natural watercourse. Where applicable, the Applicant shall obtain for lodgement with Council written authority from affected owners agreeing to the discharge of stormwater across their properties prior to the issue of a Construction Certificate for the works.

2O. Construction of Kerb and Gutter and Associated Works

The Applicant shall construct kerb and gutter and associated road pavement, road shoulders, drainage and adjustment to existing constructions, in accordance with the provisions of the publications and standards identified in this consent, to the following locations:

- The entire length of the southern side of Fegan Street (to be constructed as part of Stage 5)
- The eastern side of Robertson Street between Carrington Street and Wallace Street (to be constructed as part of Stage 8)
- As identified in “West Wallsend Road Drainage & Site Works” plans prepared by Brown Consulting

No works shall commence on site prior to the issue of a Construction Certificate and works shall be complete prior to the issue of the Subdivision Certificate

2P. Linemarking and Signposting

The applicant shall arrange for the provision of linemarking and sign posting as follows:-

1. Any signposting and linemarking associated with the two required Pedestrian Refuges, in accordance with Australian Standards or RTA Guidelines;
2. Any regulatory signposting required as part of the Shared Pathway around the site.

3. Any other signposting relating to regulatory signposting or linemarking associated with the proposal.

All regulatory linemarking and sign posting on Public roads shall be submitted to Council's Traffic Facilities & Road Safety Committee. The works shall not commence until approved by the Committee.

2Q. Pavement Standards

Residential road pavements shall be designed in accordance with "A Guide To The Design Of New Pavements For Light Traffic" - AUSTROADS 1998. Main and Industrial road pavements are to be designed in accordance with "Pavement Design, A Guide to the Structural Design of Road Pavements" - AUSTROADS 1992. Designs for road pavements shall be submitted to and approved by the Council or a Private Certifier prior to road pavements being constructed. Where work is to be undertaken within a classified Main Road the pavement design shall also be submitted to the Roads and Traffic Authority for its approval prior to the commencement of works.

2R. Battleaxe - Residential (passing)

The Applicant shall construct the access corridor/s to all battleaxe allotments, with a 25mm thick hot-mix bitumen sealed gravel pavement (minimum 150mm gravel thickness), or a concrete drive (minimum 125mm thickness reinforced with F72 mesh), 2.7 metres wide (passing laneways {5.5 metres wide by 15 metres total length} to be provided every 50 metres with conduits under the widening for services), for full length from kerb and gutter, or constructed road carriageway, and the remaining sections of the corridor shall be top dressed with 50mm of topsoil and grass sodded; all the work to be adequately drained and completed, with any necessary retaining walls.

Where the development site falls to the street (front) a drainage line shall be constructed from the existing kerb and gutter (or table drain) to the top end of the battle axe drive to facilitate drainage connection for a dwelling on the battle axe lot. A drainage pit shall be constructed at this top end. The drainage line shall be 150 mm diam for the full length of the driveway. At the front boundary (and within the lot) a pit shall be constructed and twin 90 mm diam pipes laid from the pit to the kerb/table drain.

All works are to be in accordance with Council's DCP 1, Engineering Guidelines and the Department of Housing Construction Specification. Separate application shall be made to

Council's Customer and Technical Services Section, in writing, for footpath levels to construct the driveway across the footpath.

2S. Submit Road Names for Approval

Proposed new road names shall be submitted to Council and approved prior to the issue of a Construction Certificate.

Note that Council cannot release the Subdivision Certificate unless the proposed public roads have been named in accordance with clause 162 of the Roads Act 1993. The Roads Act requires that the Geographical Names Board be given at least one month's notice of the proposed name(s).

2T. Land Stability - Geotechnical Report

The Applicant shall comply with the recommendations of the Preliminary Geotechnical Assessment prepared by Douglas Partners, reference 39794.04 dated December 2010 and the Slope Stability Assessment prepared by Douglas Partners, reference 39794.04 dated June 2011. Any works proposed to be undertaken in relation to the application shall embody all the relevant recommendations of the Geotechnical Consultants.

All engineering plans shall be endorsed by and carry the original signatures of the Geotechnical Consultants (ie not photocopies). The endorsement shall state that the proposed works are in accordance with the recommendations of the Geotechnical Report, prior to the issue of a Construction Certificate.

2U. Shared Pedestrian Pathway to Portland Street

The applicant shall design and construct a 3m wide reinforced concrete shared pedestrian pathway from Withers Street to the intersection of Portland Street and George Booth Drive. The route for the shared pathway is to be generally in accordance with the Proposed Shared Pathway Plan prepared by ADW Johnson, reference 37548. The cycleway shall include controlled pedestrian and cyclist facilities across George Booth Drive. These facilities shall be either grade separated or directed to the proposed traffic signals at the George Booth Drive/Portland Street intersection. The applicant shall obtain approval from the NSW Roads and Traffic Authority (RTA) prior to the issue of the Construction Certificate. The works are required to be completed to the satisfaction of

council and the RTA and council prior to the issue of the Subdivision Certificate which results in the creation of 100 cumulative lots for the development.

2V. Stabilisation of Loose Boulders

The applicant shall comply with the recommendations of the Slope Stability Assessment prepared by Douglas Partners, reference 39794.04 dated June 2011. Construction Certificate documentation shall identify any loose boulders and include remedial measures to minimise the likelihood of dislodgement and/or measures to protect down slope properties.

Any works proposed to be undertaken shall embody all the relevant recommendations of the Geotechnical Consultants. All engineering plans shall be endorsed by and carry the original signatures of the Geotechnical Consultants (i.e. not photocopies) prior to the issue of the subdivision certificate.

2W. Dial Before You Dig

It is highly recommended that prior to commencement of work that you contact the free national community service “Dial before you Dig” on 1100 or by fax on 1200 652 077 regarding the location of underground services in order to prevent injury, personal liability and even death. Inquiries should provide the property details and the nearest cross street/road.



2X. Detailed Contaminated Land Investigation

Prior to the issue of the Construction Certificate the applicant shall provide a Detailed Contaminated Land Investigation and Remedial Action Plan (RAP) prepared by a qualified contaminated land consultant. The consultant shall certify that the site, after remediation, will be suitable for the intended use of residential development.

2Y. Bus Shelters

Six Bus Shelters shall be provided for the subject development at the cost of the proponents. The Bus Shelters shall be installed prior to the release of the Subdivision Certificate for the nominated Stage, set out below.

The bus shelters shall be located at the following sites and be finished in the nominated colour in accordance with Council's standard bus shelter documentation (location to be determined by Infrastructure Planning, colour to be determined by City Design prior to issue of the Construction Certificate)

Shelter 1: Appletree Road, West Wallsend on east side, to be completed Stage 3

Shelter 2: Appletree Road, West Wallsend on west side, to be completed Stage 3

Shelter 3: Withers Street, West Wallsend on east side, to be completed Stage 5 .

Shelter 4: Withers Street, West Wallsend on west side, to be completed Stage 5

Shelter 5: Carrington Street, West Wallsend on south side, to be completed Stage 8

Shelter 6: Carrington Street, West Wallsend on north side, to be completed Stage 8

Bus shelter installation is to conform with the Disability Discrimination Act guidelines, and include the supply and installation of a seat within the shelter, Tactile Ground Surface Indicators (TGSIs) in accordance with AS 1428.4:2002 and a concrete slab extending from the shelter to the kerb. Details of the location (as in distance from kerb, J-pole, etc.) and construction (as in the shape of the slab, cross falls, retaining walls) of the bus shelter slab shall be forwarded to Council's Transportation Planning Section for approval prior to the lodgement of any Construction Certificate for that stage of development.

The bus shelter structure shall be manufactured and installed in accordance with Council's standard bus shelter documentation. Any proposed amendments to the manufacture of the bus shelter shall be forwarded to Council's City Design Section for approval prior to the lodgement of any Construction Certificate for the installation of the bus shelters.

22. Roadways, Accessways And Footways

The Applicant shall construct pedestrian refuges at the following locations:-

On Appletree Road, West Wallsend, between the proposed Stage 3 and the West Wallsend High School. This Pedestrian Refuge shall be constructed prior to the release of the Subdivision Certificate for Stage 3.

On Withers Street, West Wallsend in the vicinity of H/No. 72 / 83 Withers Street. This shall be designed and constructed with the intersection adjacent to H/No.72 Withers Street, prior to the release of the Subdivision Certificate for Stage 3.

All works shall be designed and constructed in accordance with relevant Australian Standards and RTA guidelines, with plans submitted to Council's Traffic Facilities and Road Safety Committee for assessment. No works shall commence on site prior to the issue of a Construction Certificate.

2AA. Service of Public Utilities

The Applicant shall service all lots in the subdivision with water, sewer, underground electricity and underground telephone facilities to the requirements of and by arrangements with the relevant supply authorities and company. The applicant shall liaise with AGL in relation to the future reticulation of gas in the subdivision.

Where required by the Commonwealth Government's *Fibre in New Development's Policy*, the applicant shall arrange for the installation of optical fibre cabling in accordance with the NBN Co. Limited's specification.

SECTION 3 – DURING CONSTRUCTION

3A. Application for Compliance Certificate for Works

If Council is the certifying authority for the works then prior to commencement of works the Applicant shall complete and submit a Compliance Certificate application (and payment of associated fees) to Council.

3B. Notice of Commencement of Works

Construction works shall not commence until a meeting between the contractor and a representative of the Principal Certifying Authority (PCA) has taken place on site.

The PCA may require up to seven days notice in writing prior to such meeting taking place.

The notice shall also include the names of the contractor undertaking construction and the developer's supervising officer.

3C. Notification to Neighbours

Written notification shall be given by the Applicant to landowners and residents who live adjacent to the proposed development or who may be affected by the proposed works.

The notification should include the expected date of commencement of works and a brief description of the works.

3D. Haulage Routes

The Applicant shall submit to Council, in writing, details of the proposed haulage routes to be used during construction works. These details must be submitted a minimum of seven days before the commencement of haulage operations. No haulage operations shall take place prior to the approval of the routes by Council. The haulage routes shall not be varied without the approval of Council.

The Applicant shall maintain and restore the haulage route roads, as near as possible, to their original condition.

3E. Erosion Controls (Large Sites)

Erosion and Sediment Control Works shall be undertaken in accordance with the approved Soil and Water Management Plan. No more than 2.5 hectares of the site shall be exposed to erosion at any time.

The applicant shall arrange for a detailed record of the erosion and sediment controls on the site to be maintained during construction works. The record shall be updated on a daily basis and shall contain details on the conditions of the controls and all maintenance and cleaning undertaken.

The record must be available for inspection by the Principal Certifying Authority during normal working hours.

The works shall be completed as part of the initial construction work in the first stage of the development. Minor additional works may be approved by the Principal Certifying Authority during construction works.

3F. Erosion Control Sign

The Applicant shall supply and erect Council's standard Erosion Control Sign as detailed in Standard Drawing No. 3403/1. The sign shall be erected in a prominent location near the entrance to the development prior to the commencement of earthworks.

3G. Discovery of Historical Relics

Should any historical relics be unexpectedly discovered then all excavations or disturbance to the area are to stop immediately and the Heritage Council of NSW shall be informed in accordance with Section 146 of the Heritage Act, 1977.

The applicant is advised that depending on the possible significance of the relics, an archaeological assessment and an excavation permit under the Heritage Act, 1977 may be required before any further work can be recommenced in that area of the site.

3H. Compliance with Remedial Action Plan

All siteworks shall be carried out in accordance with the terms and recommendations of the Remedial Action Plan, including but not limited to handling and disposal of materials, environmental monitoring and controls, material testing, and waste classification.

3I. Noise Control

All possible steps shall be taken to silence construction equipment and the operating noise level of plant and equipment shall not give rise to "offensive noise" as defined by the Protection of the Environment Operations Act 1997.

The operating noise level of machinery, plant and equipment during construction site operations shall comply with Chapter 171 of the NSW EPA's Noise Control Manual.

Construction operations shall be confined between the hours of 7.00am to 6.00pm Monday to Friday and 8.00am to 1.00pm Saturday. If construction operations are inaudible within occupied residential properties then the work period may be extended on Saturdays to 7.00am to 1.00pm. No construction work shall take place on Sundays or Public Holidays.

Should it be necessary to use mechanical rock breakers or conduct blasting then these operations shall be confined between the hours of 9.00am and 3.30pm Monday to Friday (excluding any Public Holiday).

Noise Level Restrictions

- (i) Construction period of 4 weeks and under:-

The L10 level measured over a period of not less than 15 minutes when the construction site is in operation must not exceed the background level by more than 20dB(A).

- (ii) Construction period greater than 4 weeks:-

The L10 level measured over a period of not less than 15 minutes when the construction site is in operation must not exceed the background level by more than 10dB(A).

3J. Retention of Trees Native Vegetation

Trees and other vegetation may only be removed from the site of road, drainage, bushfire mitigation and regrading works as approved in the Construction Certificate. An application shall be made to Council in accordance with Clause 34 of Council's LMLEP 2004 for the removal of any other trees. This includes application for the removal of any understorey vegetation or the stripping of ground cover vegetation that is outside those areas approved for construction.

All reasonable measures shall be undertaken to protect all other native vegetation on the site and on adjoining lands from damage during construction. Such measures shall include but not be limited to:

- Clearing in accordance with Section 3.5 Tree Clearing Protocol of Appendix E of the SIS (Coast Ecology 2010);
- installing exclusion fencing (eg; No Go tape, helicopter tape or orange mesh) around vegetation that adjoins the construction area to minimise damage to vegetation that is to be retained. Exclusion fencing is to be installed prior to commencement of works and maintained in good working order for the duration of works;
- prohibiting compaction and the placement of fill within 5 metres of trees and native vegetation that are to be retained;
- keeping all vehicles, construction materials and refuse within areas approved for buildings, structures, access ways and car parks;
- limiting the number of access points;
- Salvaging useable trees and shrubs which are felled for re-use, either in log form, or as woodchip mulch for erosion control and/or site rehabilitation. Non-salvageable material such as roots and stumps may only be disposed of at an approved site;
- Notifying all contractors, sub-contractors, and personnel of vegetation protection requirements of this condition.

3K. Hollow Bearing Tree Removal & Glider Pole Installation

The applicant shall engage a qualified ecologist or wildlife carer to supervise installation of nest boxes and removal of any hollow bearing trees to ensure mitigation against any native animal welfare issues.

Nest Boxes recommended in *Appendix E Flora and Fauna Plan of Management (FFPoM)* of the SIS are to be installed. This includes relocation of hollow bearing limbs and installation of nest boxes at a ratio of >1:1. Nest boxes are to be of a design suitable for species that may be residing in trees marked for removal and are also to include 12 owl roosting trees and 28 bat roost boxes. Nest boxes are to be of a design consistent with

'Nest Boxes for Wildlife - A Practical Guide (Franks, 2006)' and of durable material (ie; marine ply or equivalent). All nest boxes shall be installed at least one month prior to vegetation clearance on the site so that fauna residing in habitat trees marked for removal have alternate refuge available. Nest boxes shall be monitored to determine their usage and repairs or replacement (as required) carried out on an annual basis for a minimum period of two (2) years following installation. The qualified ecologist or wildlife carer shall provide Council's Development Planner Flora and Fauna with a written report of the species detected and the condition of nest boxes following completion of the following stages:

- Removal of hollow bearing trees; and
- Annual monitoring/maintenance of nest boxes.

Removal of trees with habitat hollows shall be undertaken in either March, April, September or October, to minimise impact to threatened species that could breed and or hibernate within hollows on site. Any hollow-bearing trees shall be felled in one (1) to two (2) metre sections, beginning at the top of the crown. Lengths cut from the tree(s) shall be in a manner that will preserve the hollow(s) with each section inspected and appropriately treated to minimise impact to fauna.

Glider poles as per Section 3.8.1 of the FF PoM are to be installed within 12 months of issue of the Construction Certificate.

3L. Flora Fauna Plan of Management Implementation

The applicant shall engage a person qualified in natural vegetation management, ecology or bush regeneration to implement the Flora Fauna Plan of Management of Appendix E of the SIS.

Implementation of the VMP shall commence immediately upon approval of the Construction Certificate and shall be carried out in accordance with the VMP approved schedule of works. Annual Monitoring statements shall be provided to Council's Development Planner Flora and Fauna verifying compliance with the VMP. Implementation of the VMP may cease once outcomes of the VMP have been met, the

works schedule completed and approval for the completion of works has been obtained from Council's Development Planner Flora and Fauna.

As per SIS concurrence conditions, funding is to then be provided to the owner of the West Wallsend lands to maintain the condition of this vegetation (ie; that has been achieved as a result of implementing the VMP), in perpetuity.

3M. Grassing

The Applicant shall grass areas of the site disturbed by works so as to prevent erosion. All disturbed areas shall be revegetated as soon as practical, and no later than the times specified in Landcom's – Managing Urban Stormwater documents (2004).

Kikuyu grass shall not be used in areas adjoining native bushland or in drainage lines or channels.

3N. Landscape Construction

All landscape works shall be carried out by members of the Landscape Contractors Association of Australia and implemented under the full supervision of the appropriately qualified landscape consultant until the Landscape Compliance Report is received by the Principal Certifying Authority.

3O. Traffic Control Standards

For the duration of work being carried out as part of this development, the Applicant shall ensure that traffic control is undertaken in accordance with the requirements of Australian Standards AS 1742 - Manual Uniform Traffic Control Services – Parts 1, 2 and 3.

3P. Installation of Service Pipes

The Applicant shall ensure that all public utility service pipes, mains and conduits are laid and/or installed in all new roads and existing roads, where work is required in existing roads, as part of the construction and drainage works associated with the Subdivision.

The Applicant shall also install conduits to cater for the installation of natural gas services to each proposed lot in conjunction with road and drainage works.

3Q. Street Lighting

The Applicant shall provide street lighting for the development to the satisfaction of Energy Australia and in accordance with the road classification. The road classification shall be determined by Council and Energy Australia.

The street lighting provided shall include any necessary upgrading of the lighting of the intersection of any new roads with existing roads.

3R. Erection of Street Signs

The Applicant shall supply and erect new street name signs in accordance with the requirements of Council's standard design requirements. Note that all Private Roads shall be clearly signposted to indicate that they are Private roads and not Public roads.

3S. Earthworks

The Applicant shall arrange for all fill to be placed in accordance with the standards specified in Table 5.1 of AS 3798 - 2007 "Guidelines on Earthworks for Commercial and Residential Developments".

The inspection and testing of fill shall be at the responsibility level set out below, as defined in Appendix B of AS 3798-2007.

Fill Area	Responsibility Level
Water retaining embankments	1
Road embankments (greater than 2m high)	1
Road embankments (less than 2m high)	2*
Residential allotments	1
Industrial/Commercial allotments	1

* Level 1 may be used if desired by the applicant.

3T. Fix Damage Caused by Construction Work

The Applicant shall make good any damage or injury caused to a public road or associated structures including drains and kerb and gutter, caused as a consequence of the works.

3U. Demolition

Demolition work shall be carried out only between the hours of 7.00am to 5.00pm Mondays to Fridays and 8.00am to 5.00pm Saturdays. No work is to be carried out on Sundays or public holidays.

Council's road and footpath is not to be damaged or obstructed at any time.

No trees shall be removed from the site, unless approved by Council and shown on the approved plans.

Erosion and sediment control measures shall be installed and maintained in accordance with Council's Development Control Plan No. 1, a copy of which is available from Council's Administrative Offices.

The site is to be grassed and otherwise rendered erosion resistant immediately upon completion of demolition.

Temporary toilet facilities shall be provided during the course of demolition in accordance with Council's requirements ie. chemical closet or temporary sewer connection. Separate application shall be made to council where a chemical closet is proposed.

All demolition work shall be carried out strictly in accordance with Australian Standard AS 2601—1991: The Demolition of Structures, published by Standards Australia, and as in force at 1 July 1993.

Demolition work, as defined within Chapter 10 of the Occupational Health and Safety Regulation 2001, must be undertaken by a licensed contractor.

3V. Construction Site Safety Fencing

Construction site safety fencing shall be provided around areas of building demolition to prevent unauthorised access to the construction site.

3W. Site Amenities

Throughout the course of building operations on the land, toilet facilities are to be provided, at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.

Each toilet provided must be installed as follows:

- (i) in a sewerred area, connect the temporary builder's service to the Hunter Water Corporation's sewerage system in accordance with such authority's requirements prior to commencing building operations.
- (ii) Where the connection of the builder's toilet to the Hunter Water Corporation's sewer is impractical, an application to approve the use of a chemical closet is to be made to Council accompanied with the appropriate fee for approval.

3X. Asbestos

If asbestos is encountered during construction or demolition work, measures must be in place in accordance with WorkCover NSW guidelines. Work must not commence until all the necessary safeguards required by WorkCover NSW are fully in place.

You must be licensed to remove and handle asbestos, if asbestos greater than 10m² is proposed to be removed. Failure to comply with this can result in fines being issued.

Contractors who are licensed for asbestos disposal by WorkCover NSW must only carry out the removal and disposal of asbestos from demolition and construction sites.

Prior to commencing work on demolition sites where buildings containing asbestos are to be demolished, a commercially manufactured sign containing the words "DANGER ASBESTOS REMOVAL IN PROGRESS" measuring 400mm x 300mm (see below) is to be erected in a prominent visible position on the site in accordance with AS1319 "Safety Signs for the Occupational Environment".



The applicant shall notify adjoining residents in writing five (5) working days prior to the demolition of asbestos buildings.

Asbestos waste must only be disposed of at a landfill authorised to receive such waste. Council's Awaba Waste Management Facility can accept asbestos, for a fee, which must be safely secured in accordance with the relevant guidelines. At least 24 hours prior

notice must be given to allow an area to be prepared for disposal. The Awaba Waste Management Facility can be contacted on (02) 4959 3337.

3Y. Removal, Management And Transportation Of Fill

The excavated fill material is to be removed and shall only be distributed to:

- (i) A NSW Environment Protection Authority licensed waste disposal facility. A copy of the receipts from the waste disposal facility shall be kept and must be provided to the Principal Certifying Authority or authorised officer upon request; or
- (ii) A site which has a current development consent for the importation of fill material. A copy of the current development consent for the proposed site to which the material is to be distributed must be provided to the Principal Certifying Authority or authorised officer upon request.

All excavated material is to be removed, transported and disposed of in accordance with the NSW Environment Protection Authority guidelines.

3Z. Dust Suppression

During the extraction, removal, and transportation of material associated with the works, the applicant shall ensure that airborne dust is contained within the work site or transport vehicles, and does not impact on the amenity of the surrounding environment.

Effective environmental controls and practices must be implemented and maintained to the satisfaction of Council or the Principal Certifying Authority.

3AA. Noise - Construction Sites

The operating noise level of construction site operations , including machinery, plant and equipment when measured at any affected premises, shall be evaluated and comply with the requirements of the NSW Environment Protection Authority publication “Interim Construction Noise Guideline” July 2009.

Time Restrictions

Monday to Friday, 7.00am to 6.00pm.

Saturday, 7.00am to 1.00pm if inaudible on residential premises, otherwise: 8.00am to 1.00pm.

No construction work to take place on Sundays or Public holidays.

Silencing

All possible steps should be taken to silence construction site equipment. It is particularly important that silenced equipment should be used on road or rail works where 24 hour operations is necessary.

If the construction period is in excess of 26 weeks, the applicant is to provide Council with a Site Management Plan prepared with the assistance of a recognised acoustic consultant, indicating whether the use of machinery, plant and equipment during those operations can be completed without causing offensive noise to neighbourhood.

Operational times may be further restricted or relaxed with the written advice of Council's General Manager or their delegate.

3BB. Construction Site Vibration

Vibration from construction site operations on surrounding land shall comply with the NSW Environment Protection Authority publication "Assessing Vibration: a technical guideline" February 2006.

SECTION 4 – PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

4A. Final Plan Submission

The Applicant shall submit an application for a Subdivision Certificate accompanied by an original copy of the Final Plan of Subdivision and four (4) copies. The location of all buildings and/or other permanent improvements shall be indicated on one (1) full-size print. When all conditions of the Development Consent relating to this subdivision have been satisfactorily complied with the Subdivision Certificate will be issued.

4B. 88B Instrument

The Registered Proprietor of the land shall provide an instrument under Section 88B of the Conveyancing Act setting out terms of easements and/or restrictions as to user as may be required by conditions of this consent. Council is to be the party empowered to release, vary or modify those (and only those) easements and/or restrictions required by conditions of this development consent.

4C. Building Design Guidelines

The applicant shall provide an instrument under Section 88B of the Conveyancing Act, setting the terms of a Public Positive Covenant on the lots identified within the “Heritage and Urban Design Guidelines – Proposed Subdivision at West Wallsend and Holmesville Lots 103 & 105 DP 1000408 Lots 15 DP 849003 Lot E DP 938528” prepared by EJE Heritage, prior to the issue of the Subdivision Certificate. The restriction shall be worded as follows:

i) Any future building shall be designed and constructed in accordance with the guidelines contained within the “Heritage and Urban Design Guidelines – Proposed Subdivision at West Wallsend and Holmesville Lots 103 & 105 DP 1000408 Lots 15 DP 849003 Lot E DP 938528” prepared by EJE Heritage dated August 2011.

4D. Heritage Interpretation Strategy Compliance

Prior to the issue of a Subdivision Certificate, interpretation works as approved in the Construction Certificate shall be completed to the satisfaction of council.

4E. Building Envelope Lot 822

Prior to the issue of the Subdivision Certificate for Stage 8, the applicant shall include a "Restriction as to User" on Lot 822 to define the building envelope detailed on Lot 822 Building Envelope plan prepared by ADW Johnson dated 8 June 2011. The terms of the restriction shall be set out in an instrument under Section 88B of the Conveyancing Act.

4F. Compliance Certificate for Works

The Applicant shall obtain and submit a Compliance Certificate/s to certify that all construction works and associated development have been constructed in accordance with this Development Consent, the Construction Certificate and all other standards specified in this consent.

4G. Landscape Compliance

Prior to the issue of the Subdivision Certificate, the landscape consultant who prepared the Landscape Construction Documentation shall submit to the Principal Certifying Authority a Landscape Compliance Report that certifies the satisfactory completion of the landscaping works approved by this consent. The report shall also detail any minor defects and any specific landscape maintenance requirements during the maintenance period.

The Applicant shall lodge a cash bond or Bank Guarantee with the Council for the sum of \$94.50/street tree. The monies will be released 12 months after planting, providing Council is satisfied that the landscaping has established.

4H. Dedication of Lots as Drainage Reserve

The Applicant shall dedicate Lots 123, 240, 360 & 565 to Council as drainage reserve at no cost to Council. The dedication shall take place at the time of registration of the Final Plan for the associated stage.

The Applicant shall clear all rubbish, noxious plants, weeds, exotic plants and hazardous trees from the area to be dedicated as drainage reserve and undertake landscaping works to the satisfaction of Council prior to the dedication of the lot/s.

4I. Works as Executed Plan

An electronic copy of the Works as Executed Plans, certified by the Consulting Civil Engineer supervising the works or the Registered Surveyor in charge and certified by the Principal Certifying Authority, shall be supplied to the Council. Where applicable a Registered Surveyor's Certificate certifying that all pipes have been laid within the easements shown on the Final Plan of Subdivision shall also be submitted. The Works as Executed Plan shall, in addition to construction details, show limits and depths of filling, locations of service conduits and street names.

Note that a works as executed plan plotted on film will only be accepted where the original engineering design was hand drawn and not drafted using CAD software.

4J. Public Utilities Compliance

A letter of compliance from each service authority and service company shall be submitted to Council prior to the issue of a Subdivision Certificate.

4K. Utilities Layout

The Applicant shall submit to the Principal Certifying Authority a utilities layout plan showing the location of mains, associated installations and service conduits prior to the issue of a Subdivision Certificate.

4L. Council Stormwater Easements

The Applicant shall create easements for drainage in favour of Council over those properties that will contain pipes and / or overland flow paths (minimum 3 metres wide or the width of the 100 year flow path, whichever is greater), that will convey public stormwater. The easements shall be created prior to, or at the time of registration of the Final Plan of Subdivision.

4M. Interallotment Drainage Easements

Where interallotment drainage pipelines have been provided, associated easements to drain water 2 metres wide burdening the affected lots and benefitting the allotments served shall be created prior to, or at the time of registration of the Final Plan of Subdivision. Council is to be the party empowered to release, vary or modify the easement.

Any existing dwellings shall be connected to the interallotment drainage system to the satisfaction of the PCA.

4N. Dedication of Roads

The Applicant shall arrange, at the time of registration of the Final Plan of Subdivision, for the dedication of the proposed new roads to the public at no cost to Council.

All public roads that are to be dedicated shall be fully constructed in accordance with the standards identified in this consent.

4O. Right of Access – Easement for Services

In accordance with the Conveyancing Act 1919 (as amended), the Applicant shall arrange for Rights of Access and Easements for Services to be created over the access corridors serving battleaxe lots in favour of the lots serviced thereby.

4P. Easement for Support

The Applicant shall arrange for the creation of an "easement for support" on the Final Plan of Subdivision submitted to cover all fill embankments that extend into lots if the side slopes are steeper than one (1) in three (3) and such embankments are in excess of six hundred (600)mm in height.

4Q. Survey Control Marks Interference

The Applicant shall submit a statement from a Registered Surveyor verifying that the works did not interfere with any survey control marks OR the Applicant shall submit verification that the Survey Control Branch of the Department of Lands has been advised of any marks which will be destroyed and an undertaking that the requirements of the Survey Control Branch will be complied with.

4R. Geotechnical Report on Filling

Prior to the issue of the Subdivision Certificate, the Applicant shall submit a report from a suitably experienced Geotechnical Testing Authority confirming that all filling complies with AS 3798 - 2007 "Guidelines on Earthworks for Commercial and Residential Developments".

The report shall contain a plan showing the location, depth and classification of all filling in relation to the proposed new lot boundaries.

4S. Site Classification of Lots

The Application shall arrange for a suitably experienced Geotechnical Consultant to determine the site classification of each proposed lot in accordance with AS 2870-2011 (as revised). The site classifications shall be provided to Council prior to the issue of the Subdivision Certificate.

4T. Final Dilapidation Report

A final Dilapidation Survey Report shall be prepared by a suitably qualified practising engineer at the completion of the works to ascertain if any structural or cosmetic damage has occurred to the properties specified in the earlier report. A copy of the report shall be submitted to Council, the Principal Certifying Authority and owners of potentially affected properties and public infrastructure prior to the issue of the Final Subdivision Certificate.

4U. Demolition or Relocation of Structure

The existing mines residence and associated structures shall be demolished or relocated prior to the issue of the Subdivision Certificate for Stage 1.

Demolition work, as defined within Chapter 10 of the Occupational Health and Safety Regulation 2001, must be undertaken by a licensed contractor.

4V. Noise Attenuation to future dwellings

Prior to the issue of the Subdivision Certificate a "Restriction As To User", under Section 88B of the Conveyancing Act 1919, shall be placed on Lots 101 – 122, 201 – 213 and 820 - 826, to the effect that any dwelling on the lot shall have suitable façade treatments designed and installed to achieve acceptable residential noise levels in accordance with AS2107:2000 Recommended Sound Level and Reverberation Times for Building Interiors and AS3671:1989 Road traffic Noise Intrusion Building Siting and Construction.

Lake Macquarie City Council shall be identified as the party empowered to release, vary or modify the restriction.

4W. Building Setback Restriction for Lots in Vicinity of Animal Structures

Prior to the issue of the Subdivision Certificate a “Restriction As To User”, under Section 88B of the Conveyancing Act 1919, shall be placed on each lot located within 9m of any existing horse stable, cattery or other similar animal type structure. The restriction shall be to the effect that “No dwelling shall be constructed within 9m of the rear boundary of the subject lot”

Lake Macquarie City Council shall be identified as the party empowered to release, vary or modify the restriction.

4X. Land Contamination Compliance

Prior to the issue of a Subdivision Certificate. A recognised contaminated land consultant shall certify that the land has been remediated in accordance with the approved Remedial Action Plan (RAP) and that the site is suitable for the intended use of residential development.

4Y. Section 50 Certificate

Prior to the issue of a Subdivision Certificate, a certificate of compliance under Section 50 of the Hunter Water Act 1991 for this development shall be submitted to the Principal Certifying Authority.

Advice: Council does not forward notification of the subdivision approval to the Hunter Water Corporation. It is the Applicants responsibility to make all pertinent arrangements with the Hunter Water Corporation.

4Z. Contribution To Provision Of Services (Sec. 94)

- (a) In accordance with the provisions of Section 94 of the Environmental Planning and Assessment Act 1979 and the Lake Macquarie Contributions Plan No. 1 – City Wide (2004), the monetary contributions in the attached Contributions Schedule shall be paid to Council for the purposes identified in that Schedule.
- (b) From the date this determination is made until payment, the amounts of the contributions payable under the preceding clause will be indexed and adjusted on:

- 15 August,
- 15 November,
- 15 February, and
- 15 May

in each year in accordance with the Consumer Price Index published by the Australian Bureau of Statistics and the provisions of the Lake Macquarie Contributions Plan No. 1 – City Wide (2004).

The first date for indexation and adjustment shall be date above which is closest to but follows the date on which the Notice of Determination becomes effective.

- (c) The contributions payable will be the amounts last indexed and adjusted in accordance with Clause (b) above. However, if no amount has been indexed and adjusted because the first date for indexation and adjustment has not arrived, the contributions payable shall be those in clause (a) above.
- (d) The contributions shall be paid to Council prior to the release of any construction certificate.

or

The contributions shall be paid to Council prior to the endorsement of the subdivision certificate.

or

The contributions shall be paid to Council within ninety days of issues of the Notice of Determination.

Consumer Price Index details are available from Council's Environmental Planning Department and the Australian Bureau of Statistics.

A copy of the Lake Macquarie Contributions Plan No. 1 – City Wide (2004) is available for inspection at the Council's Administrative Building during Council's ordinary office hours.

CONTRIBUTION FEE SCHEDULE

DESCRIPTION

FEE AMOUNT

Stage 1

Glendale Catchment - OSA Land	\$164,934.00
Glendale Catchment - RF Capital	\$123,606.00
Glendale Catchment - CF - North Lake - Capital	\$49,035.00
Glendale Catchment - CF - North Lake - Land	\$17,010.00
Glendale Catchment - Management	\$3,738.00

Stage 2

Glendale Catchment - OSA Land	\$306,306.00
Glendale Catchment - RF Capital	\$229,554.00
Glendale Catchment - CF - North Lake - Capital	\$91,065.00
Glendale Catchment - CF - North Lake - Land	\$31,590.00
Glendale Catchment - Management	\$6,942.00

Stage 3

Glendale Catchment - OSA Land	\$463,386.00
Glendale Catchment - RF Capital	\$347,274.00
Glendale Catchment - CF - North Lake - Capital	\$137,765.00
Glendale Catchment - CF - North Lake - Land	\$47,790.00
Glendale Catchment - Management	\$10,502.00

Stage 4

Glendale Catchment - OSA Land	\$290,598.00
Glendale Catchment - RF Capital	\$217,782.00
Glendale Catchment - CF - North Lake - Capital	\$86,395.00

Glendale Catchment - CF - North Lake - Land	\$29,970.00
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Glendale Catchment - Management	\$6,586.00
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Stage 5

Glendale Catchment - OSA Land	\$502,656.00
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Glendale Catchment - RF Capital	\$376,704.00
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Glendale Catchment - CF - North Lake - Capital	\$149,440.00
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Glendale Catchment - CF - North Lake - Land	\$51,840.00
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Glendale Catchment - Management	\$11,392.00
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Stage 6

Glendale Catchment - OSA Land	\$392,700.00
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Glendale Catchment - RF Capital	\$294,300.00
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Glendale Catchment - CF - North Lake - Capital	\$116,750.00
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Glendale Catchment - CF - North Lake - Land	\$40,500.00
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Glendale Catchment - Management	\$8,900.00
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Stage 7

Glendale Catchment - OSA Land	\$212,058.00
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Glendale Catchment - RF Capital	\$158,922.00
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Glendale Catchment - CF - North Lake - Capital	\$63,045.00
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Glendale Catchment - CF - North Lake - Land	\$21,870.00
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Glendale Catchment - Management	\$4,806.00
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Stage 8

Glendale Catchment - OSA Land	\$212,058.00
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Glendale Catchment - RF Capital	\$158,922.00
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Glendale Catchment - CF - North Lake - Capital	\$63,045.00
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Glendale Catchment - CF - North Lake - Land	\$21,870.00
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Glendale Catchment - Management	\$4,806.00
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Stage 9

Glendale Catchment - OSA Land	\$180,642.00
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Glendale Catchment - RF Capital	\$135,378.00
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Glendale Catchment - CF - North Lake - Capital	\$53,705.00
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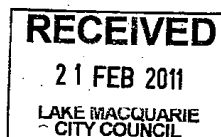
Glendale Catchment - CF - North Lake - Land	\$18,630.00
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Glendale Catchment - Management	\$4,094.00
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TOTAL \$5,920,861.00

APPENDIX B – GENERAL TERMS OF APPROVAL & CONCURRENCE CORRESPONDENCE

In reply please send to: Newcastle District Office
 Our reference: FN90-02036L0 PA
 Your reference: DA/113/2011
 Contact: Phil Alexander (02) 4908 4352



LAKE MACQUARIE CITY COUNCIL
 BOX 1906
 HRMC NSW 2310
 NSW 2310

17 February 2011

Dear Sir or Madam

SUBDIVISION APPLICATION NO. TENQ11-06663NLI
LOT 103 DP 1000408, LOT 105 DP 1000408, LOT 15 DP 849003 &
LOT E DP 938528 WEST WALLSEND
CREATING: 4 INTO 375 LOT SUBDIVISION

The Mine Subsidence Board has granted its approval for this subdivision, subject to:

- (a) the number, size and boundaries of lots being substantially as shown on the approved plan, and
- (b) notification being made to the Board of any changes to lot numbering and of the registered DP number.
- (c) notification to the Board of all street names to the proposed subdivision.

The Mine Subsidence Board's approval is required for the erection of all improvements.

As a guide to persons intending to erect improvements on this property, the Board has adopted the following surface development guidelines and will consider applications for:

1. Single or two storey timber or steel framed improvements clad with weatherboards or other similar materials, erected on reinforced concrete footings and/or slabs to comply with AS 2870. These improvements are limited to a maximum length of 30 metres.
2. Single storey brick veneer improvements erected on reinforced concrete footings and/or slabs to comply with AS 2870.
 - a) Improvements erected on strip footings or waffle raft slabs are limited to a maximum length of 30 metres.

S 7 (Auto) Apr 2008

NEWCASTLE
 Ground Floor
 NSW Government Offices
 117 Bull Street
 Newcastle West 2302
 PO Box 488G Newcastle 2300
 Telephone: (02) 4908 4300
 Facsimile: (02) 4929 1032
 DX 4322 Newcastle West

PICTON
 100 Argyle Street
 Picton 2571
 PO Box 40 Picton 2571
 Telephone: (02) 4677 1967
 Facsimile: (02) 4677 2040
 DX 26053 Picton

SINGLETON
 The Central Business Centre
 Unit 6, 1 Pitt Street
 Singleton 2330
 PO Box 524 Singleton 2330
 Telephone: (02) 6572 4344
 Facsimile: (02) 6572 4504

WYONG
 Suite 3 Feldwin Court
 30 Hely Street
 Wyong 2259
 PO Box 157 Wyong 2259
 Telephone: (02) 4352 1646
 Facsimile: (02) 4352 1757
 DX 7317 Wyong

HEAD OFFICE
 PO Box 488G
 Newcastle 2300
 Telephone: (02) 4908 4395
 Facsimile: (02) 4929 1032



Email
 mail@minesub.nsw.gov.au

Web
 www.minesub.nsw.gov.au

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 Emergency Service**
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PUTTING SERVICE AND THE NEEDS OF PEOPLE FIRST

2

- b) Improvements erected on stiffened raft slabs are limited to a maximum length of 24 metres.
- 3. Two storey brick veneer improvements erected on reinforced concrete footings and/or slabs to comply with AS 2870.
 - a) Improvements erected on strip footings are limited to a maximum length of 24 metres.
 - b) Improvements erected on stiffened/waffle raft slabs are limited to a maximum length of 21 metres.
- 4. Full masonry and other types of improvements will be considered for this property under the Board's 'Graduated Guidelines for Residential Construction'. The improvements will be subject to length restriction and may require engineering design. Details of the requirements may be obtained from the Board's technical staff.

Architectural plans submitted to the Mine Subsidence Board for approval must show the location and detailing of articulation/control joints in brickwork to comply with the requirements of the Building Code of Australia and best building practices.

This approval is valid for two (2) years from this letter.

During planning and design of proposed improvements, applicants should consult with our staff.

Yours faithfully



Phil Alexander
District Manager

S 7 (Auto) Apr 2008

All communications to be addressed to:

Headquarters
15 Carter Street
Lidcombe NSW 2141

Headquarters
Locked Bag 17
Granville NSW 2142

Telephone: 8741 5175

Facsimile: 8741 5433

e-mail: development.assessment@rfs.nsw.gov.au

RECEIVED

11 AUG 2011

LAKE MACQUARIE
CITY COUNCIL

The General Manager
Lake Macquarie City Council
Box 1906
Hunter Reg Mail Ctr NSW 2310

Your Ref: DA/113/2011
Our Ref: D11/0195
DA11021476201 GB

ATTENTION: Advertising Officer

5 August 2011

Dear Development Assessment & Compliance Department

Integrated Development for 11 Robertson Street, 103 & 115 Withers Street & 17 Appletree Road West Wallsend

I refer to your letter dated 7 February 2011 seeking general terms of approval for the above Integrated Development in accordance with Section 91 of the 'Environmental Planning and Assessment Act 1979'.

This response is to be deemed a bush fire safety authority as required under section 100B of the 'Rural Fires Act 1997' and is issued subject to the following numbered conditions:

Asset Protection Zones

The intent of measures is to provide sufficient space and maintain reduced fuel loads so as to ensure radiant heat levels of buildings are below critical limits and to prevent direct flame contact with a building. To achieve this, the following conditions shall apply:

1. When each individual Stage is developed, the adjoining Stage yet to be developed shall be managed at least to the standard of an outer protection area as outlined in Appendices 2 & 5 of 'Planning for Bush Fire Protection'.
2. The entire road reserve forms part of the APZ for future dwellings and are required to be managed accordingly.

Water and Utilities

The intent of measures is to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building. To achieve this, the following conditions shall apply:

ID:76201/70300/5

Page 1 of 2

3. Water, electricity and gas are to comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.

Access

The intent of measures for public roads is to provide safe operational access to structures and water supply for emergency services, while residents are seeking to evacuate from an area. To achieve this, the following conditions shall apply:

4. Public road access shall comply with section 4.1.3 (1) of 'Planning for Bush Fire Protection 2006'.

The intent of measures for fire trails is to provide suitable access for fire management purposes and maintenance of APZs. To achieve this, the following conditions shall apply:

5. Fire trails shall comply with section 4.1.3 (3) of 'Planning for Bush Fire Protection 2006'.

General Advice – consent authority to note

Any future development application lodged within this subdivision under section 79BA of the 'Environmental Planning & Assessment Act 1979' will be subject to requirements as set out in 'Planning for Bush Fire Protection 2006'.

For any queries regarding this correspondence please contact Garth Bladwell on 8741 5175.

Yours sincerely



Nika Fomin
Team Leader, Development Assessment

The RFS has made getting information easier. For general information on 'Planning for Bush Fire Protection, 2006', visit the RFS web page at www.rfs.nsw.gov.au and search under 'Planning for Bush Fire Protection, 2006'.



Environment,
Climate Change
& Water

RECEIVED

15 MAR 2011

LAKE MACQUARIE
CITY COUNCIL

Your reference: DA/113/2011
Our reference: DOC11/8225; FIL10/519
Contact: Nick Pulver, 6659 8225

Mr Brian Bell
General Manager
Lake Macquarie City Council
PO Box 1906
HUNTER REGION MAIL CENTRE NSW 2310

Attention: Development Assessment and Compliance Department

Dear Mr Bell

RE: DA/113/2011 - PROPOSED 4 INTO 375 LOT SUBDIVISION WITH ROADS - LOT 103 DP 1000408, LOT 105 DP 1000408, LOT 15 DP 849003 & LOT E DP 938528, WEST WALLSEND

I refer to your correspondence dated 7 February 2011 seeking General Terms of Approval from the Department of Environment, Climate Change and Water (DECCW) for consent under Section 90 of the *National Parks and Wildlife Act 1974* (NPW Act) regarding the above proposed development.

DECCW understands that Development Application (DA) No. 113/2011 was lodged with Council under the provisions of Part 4 of the *Environmental Planning and Assessment Act 1979* (EP&A Act). DECCW notes that the DA proposes to subdivide Lot 103 DP 1000408, Lot 105 DP 1000408, Lot 15 DP 849003 and Lot E DP 938528 located at 11 Robertson Street, 103 Withers Street, 115 Withers Street and 17 Appletree Road, West Wallsend, NSW, into 366 residential lots; 2 large lots for small lot housing and 7 residual lots for open space, stormwater detention and conservation purposes.

Aboriginal Cultural Heritage Assessment

The importance of protecting Aboriginal cultural heritage is reflected in the provisions of the NPW Act. The NPW Act clearly establishes that Aboriginal objects and places are protected and may not be harmed, disturbed or desecrated without appropriate authorisation. Importantly, approvals under Part 4 of the EP&A Act do not absolve the applicant of their obligations under the NPW Act.

DECCW has accordingly reviewed the documentation provided including: 'Statement of Environmental Effects - Property: Lot 103 & 105 DP 1000408, Lot 15 DP 849003, Lot E DP 938528, West Wallsend - Applicant: Hammersmith Management Pty Ltd' (dated December 2010) and 'An Indigenous and Non-indigenous Heritage Assessment of a proposed residential development at Lot 103 and Lot 105 George Booth Drive Estelville near Newcastle' (dated January 2011), to assess the potential impacts of the proposed development on Aboriginal cultural heritage in accordance with the requirements of the NPW Act. We provide the following advice to Council and the applicant following this review.

Locked Bag 914, Coffs Harbour NSW 2450
Federation House, Level 7, 24 Moonee Street
Coffs Harbour NSW
Tel: (02) 6651 5946 Fax: (02) 6651 6187
ABN 30 841 387 271
www.environment.nsw.gov.au

Aboriginal Cultural Heritage Values

DECCW acknowledges the results of previous field assessments of the project area which identified three (3) Aboriginal sites located within the project area, identified as 'GBD-ST-1', a culturally modified tree, 'GBD-RS-1', a rock shelter and associated potential archaeological deposit (PAD) and 'GBD-IF-1', an isolated Aboriginal object. We note that the development is unlikely to impact or cause harm to these Aboriginal sites.

DECCW acknowledges that the project area contains landforms which have yielded a significant volume of evidence of Aboriginal occupation in the immediate local area, including ridges, gullies, slopes and water courses. We also note that approximately 10 per cent of the project area was unsurveyed and visibility was restricted by dense vegetation cover. Accordingly, we acknowledge that there is a likelihood of finding further evidence of Aboriginal occupation of the project area if the development proceeds.

If Aboriginal objects are uncovered due to the development activities, Council's approval must require that all works halt in the immediate area to prevent any further impacts to the objects. The applicant will be required to manage the site(s) in accordance with the requirements of the NPW Act. A suitably qualified archaeologist and local Aboriginal community representatives must be contacted to determine the significance of the object(s). Any new sites must also be registered in DECCW's Aboriginal Heritage Information Management System (AHIMS) and details of proposed management these sites be provided to DECCW in the information submitted to AHIMS. The attached General Terms of Approval (Appendix A) target this matter.

Aboriginal Cultural Heritage Management Plan

DECCW acknowledges and supports the applicant's commitment to developing and implementing an Aboriginal Cultural Heritage Management Plan (ACHMP) to assist in managing the Aboriginal site 'GBD-RS-1' and the associated PAD located within the project area. The ACHMP must clearly demonstrate that effective community consultation with local Aboriginal communities has been undertaken in the development and implementation of the plan. Accordingly, DECCW encourages the applicant to maintain continuous consultation processes with the community for the life of the project for all Aboriginal cultural heritage matters associated with the project area. Evidence of consultation and the views of the community for the ACHMP should be included in its final iteration.

DECCW also recommends the ACHMP includes procedures for ongoing Aboriginal consultation and involvement, details of proposed mitigation, protection and conservation management strategies for the Aboriginal site, the responsibilities of all stakeholders, procedures for the identification and management of previously unrecorded sites (excluding human remains), details of an Aboriginal cultural heritage education program for all contractors and personnel associated with construction activities and compliance procedures in the unlikely event that non-compliance with the ACHMP is identified. The attached General Terms of Approval (Appendix A) target this matter.

Legislative Requirements

The applicant should be reminded that the requirements of the NPW Act have recently been amended and to ensure they are familiar with the new requirements during the development and any subsequent assessment processes. Further advice regarding Aboriginal cultural heritage can be found on DECCW's web-site at: www.environment.nsw.gov.au/cultureandheritage.htm.

Conclusion

Subject to the resolution of the above issues, it is recommended that the General Terms of Approval for Aboriginal cultural heritage values provided in Appendix A are reflected in any approval conditions for the project.

Page 3

If you have any additional questions regarding any of the above Aboriginal heritage matters, please contact Mr Nick Pulver, on 6659 8225.

Yours sincerely



11 MAR 2011

RICHARD BATH
Acting Manager Planning and Aboriginal Heritage Section
Environment Protection and Regulation

Enclosure - Attachment A: General Terms of Approval for Aboriginal cultural heritage values

ATTACHMENT A

General Terms of Approval for Aboriginal Cultural Heritage Values for Development
Application No. 113/2011 - Proposed Subdivision of Lot 103 DP 1000408, Lot 105 DP 1000408,
Lot 15 DP 849003 and Lot E DP 938528 located at 11 Robertson Street, 103 Withers Street, 115
Withers Street and 17 Appletree Road, West Wallsend, NSW,

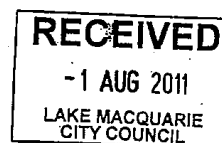
1. The applicant must comply with the *National Parks and Wildlife Act 1974* (NPW Act) as amended, prior to commencing any ground disturbance or development works which is the subject of the development application.
2. In the event that surface disturbance identifies a new Aboriginal site, all works must halt in the immediate area to prevent any further impacts to the object(s). A suitably qualified archaeologist and Aboriginal community representatives must be contacted to determine the significance of the object(s). The site is to be registered in the AHIMS (managed by DECCW) and the management outcome for the site included in the information provided to the AHIMS. The proponent will consult with the registered local Aboriginal stakeholders, the archaeologist and DECCW to develop and implement management strategies for all objects/sites.
3. An application for an AHIMS Care and Control Permit is to be lodged in conjunction with investigation or salvage works conducted in accordance with Part 6 of the NPW Act. The applicant must provide evidence of the support or otherwise of all registered Aboriginal stakeholder groups with any application for a care and control agreement.
4. If human remains are located in the event that surface disturbance occurs, all works must halt in the immediate area to prevent any further impacts to the remains. The NSW Police are contacted immediately. No action is to be undertaken until NSW Police provide written notification to the applicant. If the skeletal remains are identified as Aboriginal, the proponent must contact DECCW Enviroline 131555 and no works are to continue here until DECCW provide written notification to the applicant.
5. The applicant shall develop an Aboriginal Cultural Heritage Management Plan (ACHMP) for Aboriginal site 'GBD-RS-1' and the associated potential archaeological deposit located within the project area. The ACHMP must be developed and implemented in consultation with the registered local Aboriginal stakeholders. The plan must include procedures for ongoing Aboriginal consultation and involvement, details of the responsibilities of all stakeholders, details of proposed mitigation, protection and conservation management strategies for the site, procedures for the identification and management of previously unrecorded sites (excluding human remains) and compliance procedures in the unlikely event that the requirements of the ACHMP have not been followed.
6. The applicant must continue to consult with the registered local Aboriginal stakeholders for the project, in the ongoing management of the Aboriginal cultural heritage sites and values. Evidence of this consultation must be collated and provided to the consent authority and DECCW upon request.
7. An Aboriginal Cultural Education Program must be developed by the applicant for the induction of personnel involved in the construction activities in the project area. The program must be developed and implemented in collaboration with the registered local Aboriginal stakeholders.

**Office
of Water**

The General Manager
Lake Macquarie City Council
Box 1906
Hunter Reg Mail Ctr NSW 2310

Contact: Anthony Bryson
Phone: 02 4904 2515
Fax: 02 4904 2503
Email: anthony.bryson@water.nsw.gov.au

Our ref: 20 ERM2011/0135
Your ref: 113/2011



Attention: Mr Matthew Brogan

18 July 2011

Dear Matthew

**Re: Integrated Development Referral – General Terms of Approval
DA/113/2011 - 4 Into 375 Lot Subdivision.
11 Robertson St, 103 & 115 Withers St & 17 Appletree Road, West Wallsend.
Lots 103 & 105 DP 1000408 Lot 15 DP 849003 & Lot E DP 938528.**

I refer to your recent letter regarding an Integrated Development Application (DA) proposal for the subject property. Attached, please find the NSW Office of Water's General Terms of Approval (GTA) for 'works' requiring a Controlled Activity Approval under the *Water Management Act 2000* (WMA), as detailed in the subject DA.

Please note Council's statutory obligations under section 91A(3) of the *Environmental Planning and Assessment Act, 1979* (EPAA) which requires a consent, granted by a consent authority, to be consistent with the GTA proposed to be granted by the approval body.

If the proposed development is approved by Council, the NSW Office of Water requests that these GTA be included (in their entirety) in Council's development consent. Please also note the following:

- The NSW Office of Water should be notified if any plans or documents are amended and these amendments significantly change the proposed development or result in additional 'works' on waterfront land (ie in or within 40 metres from top of highest bank of a watercourse, foreshore, or lake). Once notified, the NSW Office of Water will ascertain if the amended plans require review or variation/s to the GTA. This requirement applies even if the proposed 'works' are part of Council's proposed consent conditions and the 'works' do not appear in the original documentation.
- The NSW Office of Water should be notified if Council receives an application to modify the consent conditions. **Failure to notify may render the consent invalid.**
- The NSW Office of Water requests notification of any legal challenge to the consent.

Under Section 91A(6) of the EPAA, Council must provide the NSW Office of Water with a copy of any determination/s including refusals.

As a controlled activity (ie the 'works') cannot commence before the applicant applies for and obtains a Controlled Activity Approval, the NSW Office of Water recommends that the following condition be included in the development consent:

www.water.nsw.gov.au

Level 3, 26 Honeysuckle Drive Newcastle, 2300, PO Box 2213 DANGAR NSW 2309 Australia | e information@water.nsw.gov.au | ABN 47 661 556 763

"The Construction Certificate will not be issued over any part of the site requiring a Controlled Activity Approval until a copy of the Approval has been provided to Council".

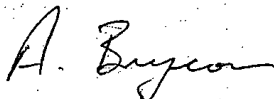
The attached GTA are not the Controlled Activity Approval. The applicant must apply (to the NSW Office of Water) for a Controlled Activity Approval **after consent** has been issued by Council **and before** the commencement of any 'works' on waterfront land.

Finalisation of a Controlled Activity Approval can take up to 12 weeks from the date the NSW Office of Water receives all documentation (to its satisfaction). Applicants must complete and submit (to the undersigned) an application form together with any required plans, documents, the appropriate fee and security (ie bond, if applicable) and proof of Council's development consent.

Application forms for the Controlled Activity Approval are available from the undersigned or from the NSW Office of Water's website
<http://www.water.nsw.gov.au/Water-Licensing/Approvals/Controlled-activities/default.aspx>

The NSW Office of Water requests that Council provide a copy of this letter to the applicant.

Yours Sincerely



Anthony Bryson
Licensing Officer
NSW Office of Water
Licensing North



**Office
of Water**

General Terms of Approval – for works requiring a Controlled Activity Approval under the Water Management Act 2000

Our Reference	20 ERM2011/0135
Site Address	11 Robertson Street, 103 & 115 Withers Street & 17 Appletree Road West Wallsend. Lots 103 & 105 DP 1000408, Lot 15 DP 849003 & Lot E DP 938528.
DA Number	DA/113/2011
LGA	Lake Macquarie City Council
Number	Condition
Plans, standards and guidelines	
1	<p>These General Terms of Approval (GTA) only apply to the controlled activities described in the plans and associated documentation relating to 113/2011 and provided by Council as listed below:</p> <p>(i) Statement of Environmental Effects for Proposed 375 Lot Subdivision at Lots 103 & 105 DP 1000408, Lot 15 DP 849003 & Lot E DP 938528 West Wallsend. Prepared by ADW Johnson Pty Ltd. Reference No. 37548 dated December 2010.</p> <p>(ii) Watercourses – Additional Information for Proposed 375 Lot Subdivision at Lots 103 - 105 DP 1000408 West Wallsend. Prepared by ADW Johnson Pty Ltd. Reference No. 37548 dated May 2011.</p> <p>Any amendments or modifications to the proposed controlled activities may render these GTA invalid. If the proposed controlled activities are amended or modified the NSW Office of Water must be notified to determine if any variations to these GTA will be required.</p>
2	Prior to the commencement of any controlled activity (works) on waterfront land, the consent holder must obtain a Controlled Activity Approval (CAA) under the Water Management Act from the NSW Office of Water. Waterfront land for the purposes of this DA is land and material in or within 40 metres of the top of the bank of the watercourses.
3	<p>The consent holder must prepare or commission the preparation of:</p> <p>(i) Vegetation Management Plan</p> <p>(ii) Works Schedule</p> <p>(iii) Erosion and Sediment Control Plan</p> <p>(iv) Soil and Water Management Plan</p>
4	<p>All plans must be prepared by a suitably qualified person and submitted to the NSW Office of Water for approval prior to any controlled activity commencing. The following plans must be prepared in accordance with the NSW Office of Water's guidelines located at www.water.nsw.gov.au/Water-Licensing/Approvals/default.aspx</p> <p>(i) Vegetation Management Plans</p> <p>(ii) Laying pipes and cables in watercourses</p> <p>(iii) Riparian Corridors</p>

www.water.nsw.gov.au

Level 3, 26 Honeysuckle Drive Newcastle, 2300, PO Box 2213 DANGAR NSW 2309 Australia | e: information@water.nsw.gov.au | ABN 47 661 556 763

Our Reference	20 ERM2011/0135
Site Address	11 Robertson Street, 103 & 115 Withers Street & 17 Appletree Road West Wallsend. Lots 103 & 105 DP 1000408, Lot 15 DP 849003 & Lot E DP 938528.
DA Number	DA/113/2011
LGA	Lake Macquarie City Council
Number	Condition
	(iv) In-stream works (v) Outlet structures (vi) Watercourse crossings
5	The consent holder must (i) carry out any controlled activity in accordance with approved plans and (ii) construct and/or implement any controlled activity by or under the direct supervision of a suitably qualified professional and (iii) when required, provide a certificate of completion to the NSW Office of Water.
Rehabilitation and maintenance	
6	The consent holder must carry out a maintenance period of two (2) years after practical completion of all controlled activities, rehabilitation and vegetation management in accordance with a plan approved by the NSW Office of Water.
7	The consent holder must reinstate waterfront land affected by the carrying out of any controlled activity in accordance with a plan or design approved by the NSW Office of Water.
Reporting requirements	
8	The consent holder must use a suitably qualified person to monitor the progress, completion, performance of works, rehabilitation and maintenance and report to the NSW Office of Water as required.
Access-ways	
9	The consent holder must not locate ramps, stairs, access ways, cycle paths, pedestrian paths or any other non-vehicular form of access way in a riparian corridor other than in accordance with a plan approved by the NSW Office of Water.
Bridge, causeway, culverts, and crossing	
10	The consent holder must ensure that the construction of any bridge, causeway, culvert or crossing does not result in erosion, obstruction of flow, destabilisation or damage to the bed or banks of the river or waterfront land, other than in accordance with a plan approved by the NSW Office of Water.
Disposal	
11	The consent holder must ensure that no materials or cleared vegetation that may (i) obstruct flow, (ii) wash into the water body, or (iii) cause damage to river banks; are left on waterfront land other than in accordance with a plan approved by the NSW Office of Water.
Drainage and Stormwater	
12	The consent holder is to ensure that all drainage works (i) capture and convey runoffs, discharges and flood flows to low flow water level in accordance with a plan approved by the NSW Office of Water; and (ii) do not obstruct the flow of water other than in accordance with a plan approved by the NSW Office of Water.
13	The consent holder must stabilise drain discharge points to prevent erosion in accordance with a plan approved by the NSW Office of Water.
Erosion control	

Our Reference	20 ERM2011/0135		
Site Address	11 Robertson Street, 103 & 115 Withers Street & 17 Appletree Road West Wallsend. Lots 103 & 105 DP 1000408, Lot 15 DP 849003 & Lot E DP 938528.		
DA Number	DA/113/2011		
LGA	Lake Macquarie City Council		
Number	Condition		
14	The consent holder must establish all erosion and sediment control works and water diversion structures in accordance with a plan approved by the NSW Office of Water. These works and structures must be inspected and maintained throughout the working period and must not be removed until the site has been fully stabilised.		
Excavation			
15	The consent holder must ensure that no excavation is undertaken on waterfront land other than in accordance with a plan approved by the NSW Office of Water.		
16	The consent holder must ensure that any excavation does not result in (i) diversion of any river (ii) bed or bank instability or (iii) damage to native vegetation within the area where a controlled activity has been authorised, other than in accordance with a plan approved by the NSW Office of Water.		
River bed and bank protection			
17	The consent holder must clearly mark (with stakes using a GPS or peg out survey), protect and maintain a riparian corridor for the length of the site directly affected by the controlled activity in accordance with a plan approved by the NSW Office of Water.		
END OF CONDITIONS			

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10/953
AT



General Manager
Lake Macquarie City Council
DX 7869
NEWCASTLE

COPY

Attention: Mr Matthew Brogan

GEORGE BOOTH DRIVE (MR527) - 4 LOT SUBDIVISION INTO 463 LOTS AT 11 ROBERTSON STREET, 103 WITHERS STREET, 115 WITHERS STREET AND 17 APPLETREE ROAD, WEST WALLSEND

Dear Mr Brogan,

I refer to your letter dated 19 May 2010 (Your reference: DA/1193/2009) regarding the subject development application, which was forwarded to the Roads and Traffic Authority (RTA) for comment.

The RTA's primary interests are in the road network, traffic and broader transport issues, particularly in relation to the efficiency and safety of the classified road network, the security of property assets and the integration of land use and transport.

In accordance with the *Roads Act 1993*, the RTA has powers in relation to road works, traffic control facilities, connections to roads and other works on the classified road network. George Booth Drive (MR527) is a classified (State) road. RTA's concurrence is required for connections to the road with Council consent, under section 138 of the Act. Council is the roads authority for this road and all other public roads in the area.

It is noted that the proposed development meets the requirements of Infrastructure State Environmental Planning Policy (Infrastructure) 2007 and has been previously considered by the Hunter regional Development Committee (HRDC) at its meeting on 18 September 2009. Advice from HRDC was provided to Council in its letter dated 15 October 2009. The following comments are provided in relation to this SEPP and the Roads Act.

The RTA would have no objections to the proposed development subject to following requirements being included Council's conditions of development consent:

- No direct vehicular access shall be provided to/from George Booth Drive. All vehicular access to the proposed development shall be via the local road network.

Comment: The RTA notes council's advice regarding the confirmation of traffic volumes in the original traffic study. It is also noted that the additional traffic generated by the proposed development can be accommodated without the need to upgrade the connection to the classified (State) road network. That is, the George Booth Drive / Withers Road and Carrington Street intersections.

Roads and Traffic Authority

54 Darby Street Newcastle NSW 1500
Locked Mail 30 Newcastle NSW 1500 DX7813
www.rta.nsw.gov.au

- Shared footpaths for pedestrians and cyclists shall be constructed and linked with the existing network of pathways and cycleways and to the Cameron Park / Pambulong residential estates.

Comment: RTA is concerned with the potential pedestrian and cyclist movements across George Booth Drive between the proposed subdivision and Cameron Park / Pambulong estates and associated safety issues. The RTA will not permit any uncontrolled pedestrian/cyclist facilities across George Booth Drive. These facilities shall either be grade separated or directed to the proposed traffic control signals at the George Booth Drive/Portland Street intersection where there are controlled pedestrian crossing facilities. Appropriate pedestrian fencing may also be required.

- The developer should take into account Section 117 (2) direction 3.4 (*Integrating Land Use Development and Transport*) under the *Environmental Planning and Assessment Act 1979*, in relation to the provision of adequate access to public transport, especially for the elderly and opportunities for pedestrians and cyclists connections to the surrounding area should be considered. Access to public transport has not been adequately addressed in this proposal.
- Council should ensure that the applicant is aware of the potential for road traffic noise to impact on future development of the site. In this regard, the applicant, not the RTA, is responsible for providing noise attenuation measures in accordance with the Environmental Protection Authority's *Environmental Criteria for Road Traffic Noise*.
- All works associated with the proposed development shall be completed to RTA/Council requirements and no cost to the RTA or Council and at full cost to the developer.

On Council's determination of this matter, it would be appreciated if a copy of the Notice of Determination is forwarded to the RTA for record purposes.

Please contact me on 4924 0240 should you require any further advice.

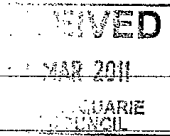
Yours sincerely,



Dave Young
Manager, Land Use Development
Hunter Operations & Services

14 July 2010

252DA217; I
11/193
MJ



General Manager
Lake Macquarie City Council
DX 7869
NEWCASTLE

Attention: Mr Matthew Brogan

GEORGE BOOTH DRIVE (MR527) - 4 LOT SUBDIVISION INTO 375 LOTS AT 11 ROBERTSON STREET, 103 WITHERS STREET, 115 WITHERS STREET AND 17 APPLETREE ROAD, WEST WALLSEND(DA/113/2011)

Dear Mr Brogan,

I refer to your letter dated 7 February 2011 (Your reference: DA/113/2011) regarding the subject development application, which was forwarded to the Roads and Traffic Authority (RTA) for consideration.

It is noted that there has been a significant reduction in the number of proposed residential lots from 463 with the previous application to 375 with the current application. As all other matters remain the same, the RTA's previous advice dated 14 July 2010 (copy attached) still applies.

On Council's determination of this matter, it would be appreciated if a copy of the Notice of Determination is forwarded to the RTA for record purposes.

Please contact me on 4924 0240 should you require any further advice.

Yours sincerely,

Dave Young
Manager, Land Use Development
Infrastructure Services
Hunter Region

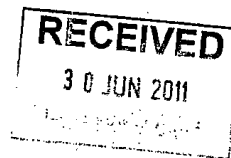
25 February 2011

Roads and Traffic Authority

59 Darby Street Newcastle NSW 2300
Locked Bag 30 Newcastle NSW 2300 DX7813 Newcastle
www.rta.nsw.gov.au | (02) 4924 0240

**Office of
Environment
& Heritage**

Your reference: DA/113/2011
Our reference: Doc11/268381; Fil06/922-07
Contact: Robert Gibson, (02) 4908 6851



The General Manager
Lake Macquarie City Council
Box 1906
HUNTER REGION MAIL CENTRE NSW 2284
Attention: Mr Matt Brogan

Dear Sir

**CONCURRENCE CONDITIONS – SUBDIVISION OF LOTS 103 & 105 DP 10000408, AND
LOT E DP 938528, WEST WALLSEND**

Reference is made to the letter from Lake Macquarie City Council ('Council') of 7 March 2011 to the Office of Environment and Heritage (OEH) which was received on 10 March 2011. In your letter Council formerly requested OEH's concurrence for the proposed subdivision of Lots 103 & 105 of Deposited Plan (DP) 1000408. Council had provided OEH with a copy of the updated Species Impact Statement (SIS) and the required \$250 concurrence fee with a letter dated 7 February 2011.

Once OEH considered that it was able to grant concurrence OEH assessed the SIS and a number of other documents, including public submissions, relevant recovery plans, and the report to Council on Lot 88 DP755262 & Lot 107 DP1000408.

OEH has completed assessing the request and grants concurrence subject to a number of conditions. A copy of OEH's concurrence conditions are provided in Attachment A.

If you require any further information regarding this matter please contact Robert Gibson in this office on (02) 4908 6851.

Yours sincerely

29 JUN 2011

MARK HARTWELL
Head Regional Operations Unit - Hunter
Environment Protection and Regulation
Office of Environment and Heritage
Department of Premier and Cabinet

Encl. Attachment A: Concurrence conditions for DA/113/2011 for Lots 103 & 105 DP 1000408 and LOT E DP 938528 George Booth Drive, West Wallsend, Lake Macquarie LGA.

The Department of Environment, Climate Change and Water is now known as the
Office of Environment and Heritage, Department of Premier and Cabinet

PO Box 488G, Newcastle NSW 2300
Ground Floor 117 Bull Street,
Newcastle West NSW 2302
Tel: (02) 4908 6800 Fax: (02) 4908 6810
ABN 30 841 387 271
www.environment.nsw.gov.au

Attachment A: Concurrence conditions for DA/113/2011 for Lots 103 & 105 DP 1000408 and LOT E DP 938528 George Booth Drive, West Wallsend, Lake Macquarie LGA.

1. The development must be undertaken in accordance with the SIS including but not limited to the ameliorative measures documented in Section 7 and Appendix E of the SIS.

Reason: To ensure that the proposal is undertaken as described in the SIS and incorporates amelioration measures for threatened species as agreed to by the Director General of the Department of Environment and Climate Change in this Concurrence Report.

2. The applicant must inform the Office of Environment and Heritage (OEH), prior to any clearing or construction, of any proposed variations in location or design of any structures or relative timing of clearing of the approved development that may impact on threatened species matters, which is not contained within the SIS and accompanying documentation or addressed by consent conditions. Any such proposed variations must be approved, in writing, by OEH's Manager Hunter Region before works associated with the variation commence. Requests for variations must be in writing and include an assessment of the potential impacts of the proposed variation on threatened species, endangered populations and endangered ecological communities (including their habitat).

Reason: To ensure that any proposed variations to the development do not increase adverse impacts on threatened species and their habitats, or lessen protection provided to threatened species and their habitats.

3. The provision of biodiversity offsets on parts of Lot 103, 105 & 107 of DP 1000408 and Lot 88 DP 755262, at West Wallsend, (**West Wallsend Offset Lands**): as shown in Figure 1 of Attachment A of this Concurrence Report and 178.44 ha of part of Lot 1 DP 78136 and Lot 13 DP 114564 at Brimbin (**Brimbin Offset Lands**) adjoining the Brimbin Nature Reserve as shown in Figure 2 of Attachment A of this Concurrence Report must be secured in perpetuity for conservation. The proponent must provide evidence of ownership to the consent authority prior to granting consent.
4. The Proponent must not sell or lease or offer for sale or lease the **West Wallsend Offset Lands** and/or that part of Lot 1 DP 78136 and Lot 13 DP 114564 at Brimbin (as per Figures 1 and 2 of Attachment A of this Concurrence Report) forming the biodiversity offsets.
5. The Proponent must not, whilst owner or occupier of the **West Wallsend Offset Lands** or the **Brimbin Offset Lands** conduct any works or activities on the **West Wallsend Offset lands** or the **Brimbin Offset Lands** without the written permission of OEH Regional Manager Hunter.
6. Within 12 months of consent being granted the proponent must secure the **West Wallsend Offset Lands** with a section 88E instrument under the *Conveyancing Act 1919*. The **West Wallsend Offset Lands** may be transferred at no cost to Lake Macquarie City Council provided agreement of Lake Macquarie City Council and OEH's Regional Manager Hunter is obtained. This transfer of land is conditional on the **West Wallsend Offset Lands** remaining secured in perpetuity under a section 88E instrument of the *Conveyancing Act 1919*.
7. The Proponent must provide funding to the owner of the **West Wallsend Offset Lands** as agreed by the proponent and owner to implement the Plan of Management provided in Appendix E of the SIS in perpetuity and meet OEH's biodiversity offsetting requirements. The Plan of Management may be reviewed every five years and amended by this review with the approval of OEH's Regional Manager Hunter. Should a dispute over the amount of funds provided occur OEH's Regional Manager Hunter may determine the amount required to fund the Plan of Management. Once the funding amount is

agreed or determined, no further payment other than as required by the Plan of Management will be required by the Proponent.

8. Within 12 months of consent being granted the Proponent must with agreement of the Minister administering the *National Parks and Wildlife Act 1974* transfer ownership of the **Brimbin Offset Lands** (Figure 2 of Attachment A) at no cost to the Minister for inclusion in National Parks Estate. The proponent must within 12 months of the Minister accepting the **Brimbin Offset Lands** develop a Plan of Management in consultation with OEH's Area Manager Manning. The Plan of Management must include the provision of funds for conservation management of the **Brimbin Offset Lands** in perpetuity. The Plan of Management must be approved by OEH's Regional Manager Hunter. The Plan of Management may be reviewed every five years in consultation with OEH's Area Manager Manning and may be varied with the approval of OEH's Regional Manager Hunter. Once the funding amount is agreed, no further payment other than as required by the Plan of Management will be required by the Proponent.
9. Funding for the Plan of Management as agreed within its provisions must be provided for five years initially and then as required or agreed within any Plan of Management. The first five years funding must be provided initially on transfer of the **Brimbin Offset Lands** and then as specified within the Plan of Management after its first review. The funds must be provided to the Chief Executive Officer, Office of Environment and Heritage or another delegated representative of the Chief Executive Officer. Once the funding amount is agreed, no further payment other than as required by the Plan of Management will be required by the Proponent.
10. If the remainder of Lot 1 DP 78136 and Lot 13 DP 11464 to the **Brimbin Offset Lands** have not been transferred to the Minister administering the *National Parks and Wildlife Act 1974* for inclusion in National Parks Estate within 12 months of this consent being granted then the **Brimbin Offset Lands** must be surveyed and Lot 1 DP 78136 and Lot 13 DP 11464 must be subdivided at the proponent's expense. Any survey for this condition must be done under the supervision and direction of OEH's Area Manager Manning or his delegated representative to ensure it is done with minimal vegetation clearing and soil disturbance.
11. Should the Minister administering the *National Parks and Wildlife Act 1974* decide not to accept ownership of the **Brimbin Offset Lands** as required by this concurrence then the lands must remain in the proponent's ownership and be secured in perpetuity for conservation under a section 88E instrument of the *Conveyancing Act 1919*. Should the **Brimbin Offset Lands** be secured by this condition the proponent must develop a Plan of Management within 12 months of securing the **Brimbin Offset Lands** to the satisfaction of OEH Regional Manager Hunter and implement, conduct and fund any actions in the Plan of Management in perpetuity.
12. Should the **Brimbin Offset Lands** remain in the proponent's ownership as detailed in condition 11, the Proponent with the written agreement of OEH Regional Manager Hunter may transfer ownership of the **Brimbin Offset Lands** to another party provided that they remain secured in perpetuity for conservation and funds are provided as agreed for implementation of the Plan of Management required by condition 11 of this Concurrence.

Note: Definitions

- a. For the purposes of this Concurrence references to OEH's Regional Manager Hunter means Regional Manager Hunter – Environment Protection and Regulation, Office Of Environment and Heritage, Department of Premiers and Cabinet.

- b. For the purposes of this Concurrence references to OEH's Area Manager Manning means the officer holding the position of Area Manager Manning, Parks and Wildlife Group, Office Of Environment and Heritage, Department of Premiers and Cabinet.

13. The offset land must be managed for conservation in perpetuity, as per OEH's offsetting principles (OEH 2001b).

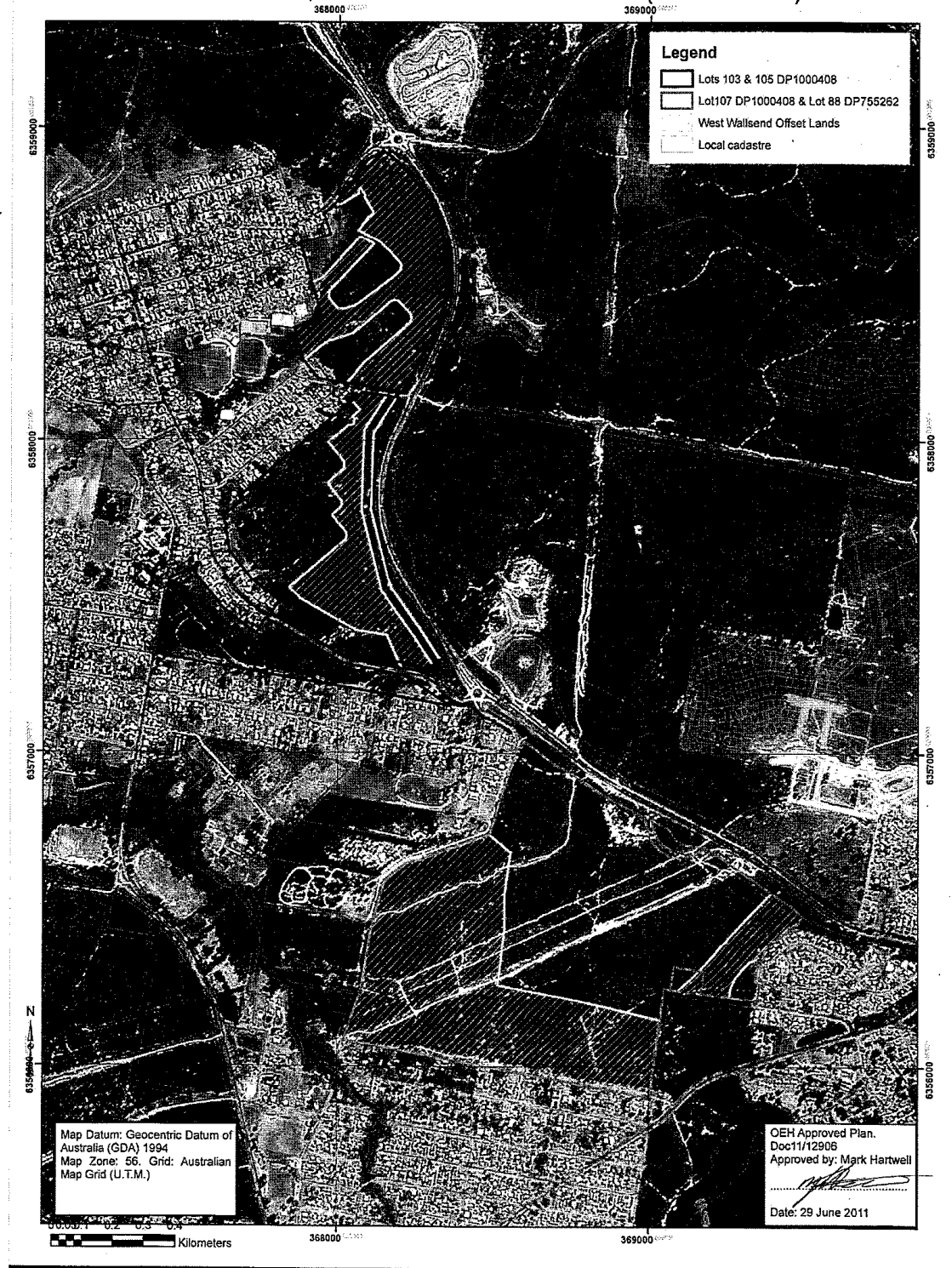
Reasons: To ensure that the proposal is undertaken as described in the SIS and incorporates amelioration measures for threatened species as agreed to by the Director General of the Department of Environment, Climate Change and Water in this Concurrence Report.

14. The measures stated in Section 7 of the SIS must be implemented and in addition to the following conditions:

- (a) A suitably qualified and experience ecologist must be engaged in the clearing stage and must identify and record any additional habitat features and relocate any displaced fauna, as required. They must record details of any and all displaced fauna, including such details as species, gender, age, reproductive status, and number of individuals and provide details (habitat description, Eastings and Northings in World Geodetic System (WGS) 84, Zone 56) of where they were collected and where they are translocated to. All of the above details must be presented in the first monitoring report prepared under the 'Flora & Fauna Plan of Management';
- (b) Vehicles and machinery used on site must be washed down prior to use on site; and
- (c) Surveys of the clumps of *Tetratheca juncea* clumps on the Subject Site must include a measure of seed set of the flowers produced in the preceding weeks (e.g. number and percent of flowers pollinated, ripe fruit and dehiscent fruit produced by plants sampled in several randomly located 1 square meter subplots). This information must be provided in the monitoring report for that survey period and provided to the consent authority and OEH within three (3) months of the completion of each annual reporting period.

Reasons: (a) To gain obtain additional information on the composition and density of native fauna in the Subject Site that may be used for adaptive management for the offset area; (b) in order to prevent the spread of weeds, exotic animals or pathogens to the Subject Site; (c) to gauge whether pollination and seed set of the local *Tetratheca juncea* has been adversely affected by local development.

Attachment A: Figure 1 - Biodiversity Offset Map
for Lots 103, 105 & 107 DP1000408 & Lot 88
DP755262, West Wallsend Concurrency (DA/113/2011)



[illegible]

APPENDIX C – COUNCILLOR SUBMISSION



RE: SUBMISSION TO DEVELOPMENT APPLICATION NO. 113/2011 – FOUR INTO 375 LOT RESIDENTIAL SUBDIVISION, 11 ROBERTSON STREET, WEST WALLSEND

A submission by way of objection is made to Development Application no. 113/2011, being for a Four into 375 Lot Residential Subdivision. The basis of the objection is as follows:

Subdivision Layout/Design

The Subdivision Layout/Design is noted as having the following issues:

- Stages 1 to 7, and 9, all directly adjoin the existing lots within West Wallsend and Holmesville. The design of the development is poor in terms of:
 - No separation or buffer provided between the old and new lots.
 - The proposed subdivision layout is inconsistent with and has no regard to the existing subdivision pattern of West Wallsend and Holmesville.
 - No transition provided between the old and new estates to more clearly define the historic nature of the West Wallsend and Holmesville.
 - The proposed road pattern and design differ significantly to the traditional wide road reserves of the existing villages of West Wallsend and Holmesville.
- Stage 8 – the configuration of the lots adjoining the existing development is a poor outcome. The proposal will impact significantly on the amenity and privacy of existing lots through multiple allotments adjoining an existing lot, ie. existing Lot 10 Section Z DP 3809 will have five new lots abounding its eastern and southern boundaries.

Flora & Fauna

- The application proposes to remove 33.1 hectares of native vegetation and would indirectly impact the remainder 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*. Further threatened species are 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 5.16 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 and would result in an unacceptable impact on biodiversity.
- 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.

Heritage

- **Cultural Landscape Assessment , Visual Analysis and Statement of Significance**

The application does not include a comprehensive analysis and assessment of the cultural significance of the cultural landscape of the West Wallsend / Holmesville Heritage Precinct. The application has not adequately identified the components, the curtilage nor has it provided recommendations for appropriate design responses for new developments outside the existing pattern.

- **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, the Statement of Heritage Impact is contrary to the requirements of Clause 47 as it does not adequately demonstrate that the impacts of the proposal will not affect the significance of the Heritage Item RT-01 (Steam Tram Line).

- Clause 50 of the LM LEP 2004 requires that consent must not be granted for development affecting known or potential places or sites of Aboriginal Heritage Significance unless the consent authority has received a Heritage Impact Statement. It is noted that a Heritage Impact Statement was lodged with the development application.

Subclause (2) requires:

Except where the proposed development is integrated development, the consent authority must notify the local Aboriginal communities (in such a way as it thinks appropriate) of the development application and take into consideration any comment received in response within 21 days after the relevant notice is sent.

The development application form does not nominate the development as Integrated Development in relation to Section 90 of the *National Parks and Wildlife Act 1974*. Correspondence however from the Department of Environment, Climate Change & Water dated 11 March 2011 refers the issuing of General Terms of Approval. It remains unclear as to whether the application is Integrated Development in relation Section 90 of the *National Parks and Wildlife Act 1974*. If the application is not Integrated Development then Council, as the consent authority, must consult with the local Aboriginal Community prior to the granting of consent.

Subclause (4) requires:

In the instance of development in proximity to items or places identified in Schedule 6 or recorded or held by a local Aboriginal Land Council, consultation with the relevant local Aboriginal Land Council is required before consent may be granted. Consultation is sufficient for the purposes of this requirement if the consent authority has taken into consideration all comments received from the local Aboriginal Land Council within 21 days after a copy of the application and statement are sent to it by the consent authority.

The development is partially located within the Sensitive Aboriginal Cultural Landscape zone within the draft 'Lake Macquarie Aboriginal Heritage Management Strategy' and therefore requires Council as the consent authority to consult with the Local Aboriginal Land Council. It is noted that the development application has not been referred to the Awabakal Local Aboriginal Land Council.

- 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.

- 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 has been submitted, it not only fails to consider the numerous heritage items within the vicinity in accordance with the statutory requirements, but it also fails to adequately assess the collective cultural significance of the items being the West Wallsend / Holmesville Heritage Precinct.

▪ **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 ability to manage and control subsequent future housing is not assured as the State Environmental Planning Policy (Exempt & Complying Development Codes) 2008 allows residential development to be approved as Complying Development and hence undermining the significance and integrity of the West Wallsend / Holmesville Heritage Precinct.

▪ **Interpretation of the existing Cultural Landscape**

West Wallsend has a clearly defined entries and gateways which demarcate the start of the original subdivision against the rural / bush buffer. The proposal impacts on the historic entry and first impressions of the town.

The Withers Street gateway entry is particularly 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 each village from the other.

This clear visual separation will be destroyed by the additional house lots proposed to face Withers Street, and the lack of buffer between the existing and proposed subdivisions.

- **New Building Elements**

The 'Heritage And Urban Design Guidelines' makes recommendations to address setbacks, colour and materials, building height, form and massing, etc. within the new subdivision. These recommendations however will have limited impact due to the State Development Planning Policy (Exempt and Complying Codes) 2008 enabling developments as Complying Development, thus having no regard to the recommendations of the 'Heritage And Urban Design Guidelines' and impacting on the cultural landscape of West Wallsend/Holmesville.

- **Aboriginal Heritage**

The development is proposed on land identified as containing Aboriginal Significance, and in particular an Aboriginal place known as the 'Butterfly Caves' (refer to Appendix 1 for Photo images of the Caves). A number of public submissions have been received raising concerns with the potential for the proposed subdivision to impact on the significance of the 'Butterfly Caves'.

Whilst the development may not directly impact on the caves through the development footprint, there are concerns that the development will indirectly impact on the significance of the Caves, ie. slope stability, stormwater runoff, removal of protective vegetation, increased exposure to human interference.

It is noted that the Department of Environment, Climate Change and Water has issued what it terms General Terms of Approval for the development. Item 5 reads:

The applicant shall develop an Aboriginal Cultural Heritage Management Plan (ACHMP) for Aboriginal site 'GBD-RS-1' and the associated potential archaeological deposit

located within the project area. The ACHMP must be developed and implemented in consultation with the registered local Aboriginal stakeholders.; The plan must include procedures for ongoing Aboriginal consultation and involvement, details of the responsibilities of all stakeholders, details of proposed mitigation, protection and conservation management strategies for the site, procedures for the identification and management of previously unrecorded sites (excluding human remains) and compliance procedures in the unlikely event that the requirements of the ACHMP have not been followed.

It is considered that the significance of the 'Butterfly Caves' warrant the ACHMP being provided upfront, prior to determination. This is to ensure that any indirect impacts are appropriately considered and if necessary, the development modified, to protect the Caves.

Landscape

The landscape proposal fails to ameliorate the negative impacts of the development to the area as evidenced by:

▪ Visual Impact

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

- The visual dominance of Stages 7, 8 and particularly 9. 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.
- Stages 4, 5 & 6 are more elevated than the existing adjoining residential development. These stages have potential to impact on the existing village character through the incompatible and uncontrolled built form, design style and landscape treatments.

In general the built form and design of the future dwellings will be very insensitive to the surrounding environment and thus the negative visual impacts are likely to be dominant to the existing village. The outcome of the proposed development is an unpredictable and high-

risk which may generate profound and permanent undesirable visual and cultural changes to West Wallsend.

- **Streetscape and Local Character**

The existing bushland entry along Withers Street provides a landscape transition buffer from George Booth Drive to the tranquil residential areas, and a clear separation between West Wallsend and Holmesville. The existing residential development contain generous front setbacks and landscaped open front yards which are compatible with the surrounding open semi rural outlook and is consistent with the streetscape characteristic of the heritage character.

The development will 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 reduced width of the proposed streetscape sections, the proposed retaining walls to accommodate the roads, and the incompatibility of the landscape road sections with the existing topography.

- **Landscape**

The proposed housing development has no regard to those existing dwellings adjoining to the west in West Wallsend and the south in Holmesville which require a transition between the development and existing natural and built environment.

- **Views**

The proposal is not compatible with the existing built form and will promote significant visual impacts on the existing residential settlement, and adversely affect the visual amenity of the surrounding area. In particular, views east from the village will be distorted by the development, particularly Stages 7, 8 and 9.

Public Submissions

Lake Macquarie City Council received 136 submissions regarding the proposal during the initial advertising period. Of the 136 submissions received, all but one were opposed to the proposal.

The main concerns raised included:

- Environmental concerns such as loss of flora and fauna, impacts on the natural environment and poor outcome in terms offsets;
- Negative impact on the indigenous and non-indigenous heritage.
- Negative impact on character/atmosphere of the existing community.
- Lifestyle change through loss of village culture/sense of community.
- Traffic impacts such as noise, congestion and safety.
- Services and facilities unlikely to cope with increased demand.
- Overdevelopment through increased population and densities.
- Incompatibility of the old and new subdivisions.
- Impacts on local services/economy.
- Increased criminal activity.
- Loss of scenic values.
- Loss of privacy and amenity.
- Increased flooding/stormwater impacts.
- Suitability of the land, ie. slope stability.
- Inadequate consultation by the applicant.

The amended proposal fails to address the public concerns as evidenced by the applicant's lack of response to concerns raised by the public through the negligible modifications made to the proposal.

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 650m², 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 30% 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 118 children aged under 5 years. This will result in a

shortage of child care places, 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 hospital 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 and Training 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).

- **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. 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 Forest, 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 impact, 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 50 lots (Withers Street, Carrington Street and other properties within the vicinity of George Booth Drive) as having noise levels exceeding the residential amenity criteria.

The Report recommended 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. Further properties at the rear of those fronting Withers Street and Carrington Street will also require attenuation for the second storey.

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

Firstly, the exposure of properties within the subdivision to noise impacts exceeding the residential amenity criteria questions the suitability of the land and that the land constraints not having been analysed in the layout design. The subdivision should have been designed to minimise the number of dwellings 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.

Thirdly, whilst the internal amenity of the dwellings will be compliant, the external amenity will be at unacceptable levels. The climate around West Wallsend / Holmesville lends itself towards outdoor living and entertaining for a substantial part of the year, however the proposed noise levels will cause residents of the affected properties to reside more within the confines of the dwelling rather than externally.

In addition to the above, the application has failed to address its impacts through increased traffic noise on existing residential properties along Withers Street and Carrington Street.

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.

Should the application be determined by way of granting a deferred development consent on the basis of the applicant obtaining owner's consent for the required stormwater works, it is argued that this would be an invalid approval. The granting of deferred development consents should only occur where the applicant has direct control over the requirement, therefore it is clear that the applicant has no control over the granting of the owner's consent.

Slope Stability

The Geotechnical Report identifies part of the site area as being of 'High Risk of Slope Instability' to the north-east of Stage 4. The Report recommends remedial measures to prevent further slope instability in this location, however the remedial measures are not identified.

The area identified as 'High Risk of Slope Instability' incorporates part of the Lower Hunter Spotted Gum Ironbark Forest (Endangered Ecological Community). Whilst the SIS has considered the impacts of the development on the Lower Hunter Spotted Gum Ironbark Forest, it has not considered the impacts of the proposed remedial measures on the Endangered Ecological Community.

If the proposed remedial measures include clearing of vegetation and or modification of the land form, then a revised assessment of the EEC will be required. Such an assessment must be undertaken prior to determination, as it is a determining factor. Any revised assessment will also require consideration by the NSW Office of Environment and Heritage, in terms of it being a Concurrence Authority for the Species Impact Statement in relation to the Lower Hunter Spotted Gum Ironbark Forest.

Conclusion

The Councillors of Lake Macquarie City Council submit the above reasons as the basis for an objection to Development Application No. 113/2011, being a Four into 375 Lot Residential Subdivision at 11 Robertson Street West Wallsend. The main grounds for the objection are:

- The development does not include the owner's consent for land through which stormwater infrastructure are proposed.
- 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 375 Lot Subdivision on the cultural significance of West Wallsend/Holmesville; and

- The potential for significant social impacts on the existing West Wallsend / Holmesville community.

Appendix 1 – Photographs of the Butterfly Caves



Appendix 1 Continued



Appendix 1 Continued

APPENDIX D – CONSIDERATION OF PREVIOUS REASONS FOR REFUSAL OF DA/1193/2009

Reasons for Refusal and Comment

(Discussion of how the current application addresses previous reasons for refusal is given in blue text directly below the reason for refusal)

1. *The concurrence of the Director-General of the Department of Environment, Climate Change and Water has not been requested and thus not granted. (Section 79B of the Environmental Planning and Assessment Act 1979).*

Concurrence has been granted by the Office of Environment and Heritage.

2. *The Objection under SEPP 1 – Development Standards is inadequate; is not well founded; is not consistent with the aims in Clause 3 of the Policy.*

The current proposal is not subject to a SEPP1 Objection.

3. *The proposed subdivision footprint fails to adequately and sufficiently consider and deal with the high biodiversity value of the site and its constraints posed by threatened species and the ecological endangered communities located on it, resulting in an unacceptable impact on that biodiversity.*

The applicant has reduced the development footprint and lot yield in the current application. An acceptable biodiversity offsets package has been proposed by the applicant, and approved by OEH.

4. *The Species Impact Statement is deficient in a number of areas and does not adequately and sufficiently comply with the Director General's Requirements, such deficiencies being identified in the letter from the Department of Climate Change and Water to the Council officer dated 7 July 2010, and also in respect of the following:*

- a) *It does not provide an adequate and sufficient description of Feasible Alternatives (DGR 5.5).*

- b) *In respect of the Koala, the niche SIS informs:*

The proposed development would result in the removal of approximately 27.2ha of potential habitat for this species. This equates to 0.7% of similar habitat within

the locality (133 and 253). The loss of 0.7% of habitat within the locality is unlikely to have long-term negative impacts on the species' local occurrence, particularly given lack of evidence of a resident population within the Subject Site.(253). The niche SIS should identify the local population of Koala. It does not identify whether the site or locality is subject to cumulative loss and fragmentation (isolation) of the habitat from the study area (including development applications and those areas in the subject locality /study area already having development consent(s) or identified for development (DGR 5.4.2). Figure 2.2 showing the Study Area, adopts data from sources that appear outdated.

- c) In respect of the Koala, the niche SIS has inadequate discussion about the movements of Koalas within the Study Area and where breeding is expected to occur.*

The Species Impact Statement is considered adequate. Concurrence has been granted by the Office of Environment and Heritage.

5. *The Statement of Heritage Impact (Andrews Neil October 2007) and the Heritage Impact Review (EJE May 2010) do not provide an up-to-date comprehensive analysis and assessment of the significance of the cultural landscape of the affected heritage values of the West Wallsend and Holmesville precincts.*

The applicant has provided a Heritage Interpretation Strategy which comprehensively analyses the significance of the cultural landscape of West Wallsend & Holmesville. Heritage and Urban design Guidelines propose measures to integrate the existing township with the proposal, and are considered adequate.

- 5.1. *There is insufficient evidence provided of the consideration of alternative options for the proposed demolition of the heritage item West Wallsend Tramway RT-01.*

The proposed partial demolition of remnant fabric of the West Wallsend Steam Tram Line in Lot 105 is considered to be an acceptable impact provided the Interpretation Strategy is implemented to address all of the relevant historic themes of West Wallsend and the Steam Tram Line. The geometry of the tramway route does not compliment a realistic functional lot layout.

6. *The development does not comply with Council's Development Control Plan No. 1 in significant respects. The cumulative impact of points (a) to (f) below, is unacceptable.*

- 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.*

Lots are not included in current layout.

- b) *Failure to justify compliance with Parts 2.1.3 Scenic Values & 2.7.6 Views. Insufficient information has been provided by the applicant to determine the visual impact that the proposal will have upon the surrounding existing residential development.*

The Visual Impact Assessment prepared by Moir Landscape Architecture, reference 0676 dated 27/01/2011 provides a comprehensive analysis of the visual impact of the proposed development in accordance with LMCC Scenic Quality Guidelines. The report has identified and considered 22 viewpoints of significance and produced 4 photomontages.

The report has concluded that residential development of the existing bush land area will have an adverse visual impact. However, with the incorporation of proposed mitigation measures such as ridgeline protection, street trees, setbacks, and controls on building materials the resultant visual impact is considered low and acceptable for the context and the underlying zoning.

- c) *Failure to justify compliance with Part 2.1.15 Noise and Vibration. Insufficient information has been provided to determine the noise impact on existing properties.*

The Noise Impact Assessment prepared by Vipac Engineers & Scientists Ltd, reference 29N-11-0075-TRP-470930-1 dated 15 July 2011 identifies 43 lots to the north of Withers Street in stages 1 & 4 and 7 lots to the south of Carrington Street in stage 8 that are likely to be subject to noise levels in excess of the residential amenity criteria.

The report recommends that elevated noise levels can be adequately attenuated by installing suitable facade treatments in accordance with AS2107:2000 Recommended Sound Level and Reverberation Times for Building Interiors and

AS3671:1989 Road Traffic Noise Intrusion Building Siting and Construction. The lots identified will be subject to a covenant requiring that the dwellings be constructed to an appropriate level of construction to achieve noise amenity. The requirement for a covenant to be detailed in an 88B Instrument will be conditioned in the consent.

- d) *Failure to provide measures or solutions to address negative social impact resulting from the proposal, contrary to the requirements of Part 2.2.1 Social Impact Statement.*

The development is likely to create a net positive benefit to the community. The Heritage Interpretation Strategy and Housing Design Guidelines are considered appropriate measures to ameliorate the potential loss of the heritage character of the existing township. The incorporation of small lot housing assists in providing affordable housing options to the market and ultimately 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. The development will be subject to section 94 Contributions to assist in the funding of community facilities.

- e) *Proposed Stages 7, 8 & 9 contain significant retaining walls, which suggests that the terrain and site capability have not been properly considered – Part 2.1.3.*

Providing Lots 717 – 728 are deleted from the proposal, as per recommended conditions of consent, the proposed layout is considered satisfactory.

- f) *The applicant has not provided 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 2.6.9.*

Longitudinal sections of fire trails have been provided. The NSW RFS have granted a Bushfire Safety Authority.

7. *The proposed development will adversely affect the visual amenity of the surrounding area.*

Refer 6b above.

8. *Due to the absence of a number of critical analyses and investigations, the proposed development is likely to generate undesirable visual changes to West Wallsend, and in particular stages 7, 8 & 9.*

Refer 6b above.

9. *Stages 4, 5 & 6 follow the existing surrounding street layout, but 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.*

Refer 6b above.

10. *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 buffers with built form transitioning between the new and existing built environment.*

The Heritage and Urban Design Guidelines propose measures to integrate proposed and existing lots.

11. *The Vegetation Management Plan should, but 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.*

The Landscape Masterplan Report & Vegetation Management Plan prepared by Moir Landscape Architecture provides sufficient detail regarding landscape treatments.

12. *The proposal is not in the public interest.*

The proposal is considered to be in the public interest as significant changes have been made from the previous application. Changes include the following:

- *A reduced development footprint and lot yield*
- *The incorporation of perimeter roads*

- A complete Species Impact Statement and biodiversity offsets package
- Heritage Design Guidelines, to control built outcomes
- Heritage Interpretation Strategy
- Inclusion of small lot housing

13. *Insufficient information has been provided in relation to the likelihood of flooding and drainage impacts including any adverse impacts to existing residences downstream of the site.*

The Stormwater Management Plan prepared by Brown Consulting, reference L05016.009-01 dated June 2011 adequately demonstrates that properties downstream and adjacent to the site are not adversely affected by flooding because of the development. Modelling identifies increased flooding extents to the north of Eden Street and a minor localised increase of approx 0.05m upstream of an existing culvert conveying water under Fegan Street. Adjacent properties are unaffected by increased flood extents, and in the majority of cases benefit from reduced flood levels and flood extents.

14. *Insufficient information has been provided to demonstrate that the proposal satisfies objective 1(c) of the Zone 2(1) to ensure that housing development consequential upon any approval of the subdivision will meet this objective (cf. cls 15 and 16 LMLEP 2004).*

The inclusion of *Heritage and Urban Design Guidelines* will ensure that housing development respects the character of surrounding development and is of good quality design.

15. *The offset package provided by the applicant is inadequate for the reasons set out in the letter from the Department of Climate Change and Water to the Council's officer Sarah Warner dated 7 July 2010. The package has been submitted without any prior adequate and sufficient consideration of the avoidance of the impacts of the subdivision by the use of prevention and mitigation measures, in particular, by avoiding and protecting areas of high significance such as the Lower Hunter Spotted Gum Ironbark Forest EEC, given that the Species Impact Statement by niche Environment and Heritage (May 2010) identifies the subdivision as would be "likely to substantially and adversely modify the composition of the ecological community such that its local occurrence is likely to be placed at risk of extinction.(p286); that "it represents 18% of this EEC in the Study Area*

and is therefore considered significant in terms of the long-term survival of this EEC in the locality "(p286); and "in the long term however, the proposal may modify the composition of the ecological community such that its local occurrence is likely to be placed at risk of extinction" (p285).

The Species Impact Statement and accompanying biodiversity offsets package is considered adequate. Concurrence has been granted by the Office of Environment and Heritage.

16. *The potential contaminants affecting the site and likely to have an impact on the suitability of the site for its proposed use, identified in the Preliminary Contamination Assessment by Douglas Partners July 2009, have not been sampled and analysed to assess the degree of contamination and whether there is a need for a more detailed examination as specified in the Managing Land Contamination Guidelines.*

The preliminary contamination assessment undertaken by Douglas Partners has found that the site has localised areas of contamination present, largely from illegal dumping. The contamination is capable of being remediated by offsite disposal to a licensed landfill after undertaking a waste classification. A Detailed Contamination Assessment & Remediation Action Plan will be required prior to construction.

Council officers are satisfied that the site can be remediated to a suitable level for its intended use.

17. *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 (cl 16(a) LMLEP 2004).*

The Species Impact Statement and accompanying biodiversity offsets package is considered adequate. Concurrence has been granted by the Office of Environment and Heritage.

The majority of high value habitat will be protected and managed in perpetuity, as required by conditions contained within concurrence granted by the Office of Environment and Heritage.

APPENDIX E – APPLICANTS RESPONSE TO COUNCILLOR SUBMISSION

OBJECTION MATTER	APPLICANT RESPONSE
1.0 SUBDIVISION LAYOUT AND DESIGN	
1.1 No separation or buffer between old and new lots	<p>1.1 This objection implies that a physical separation or buffer is required between what is proposed and what exists.</p> <p>Broad Landscape Level At a broad landscape level, and as established by Council for the West Wallsend/Holmesville Heritage Precinct, the critical matter of importance is the landscape setting of the precinct and the separation this provides from expanding suburban areas. In that sense, we consider (relative to this proposal) that means protecting the ridgeline and some of the bushland that frames the eastern extents of the precinct, along George Booth Drive (which has been expanded in area from that identified by Council in its original strategic planning), to ensure the precinct does not merge with other suburban areas along George Booth Drive, such as Cameron Park. The ridgeline and bushland proposed to be retained and protected supplements the dominant natural feature to the Heritage Precinct being Mt Sugarloaf and the Sugarloaf Ranges. The bushland to be retained and protected has been informed by environmental, heritage, visual and landscape analysis.</p> <p>Interface Area Whilst the proposal represents a 'new' physical addition to the West Wallsend/Holmesville urban area (but reduced in extent from that strategically zoned to become that edge), we believe it is appropriate planning practice to attempt to link, join and integrate the old and the new, and not physically separate or create barriers to them.</p> <p>The residential zone objectives require that the character of surrounding development is respected. Lifestyle 2020 outlines that where new development is of greater density than adjoining development (such as is the case here) that character is respected by incorporating transition areas at the interface. Lifestyle 2020 also seeks to integrate compatible development, rather than separating it from existing surrounding development.</p>

OBJECTION MATTER	APPLICANT RESPONSE
	<p>So rather than an automatic need for a physical separation or buffer (or indeed replication or providing the same as what exists), the critical consideration is identifying transition areas and responses to those.</p> <p>That is the approach that has been adopted by Council's technical heritage, visual and landscape officers in assessing this current proposal, which has identified relevant interfaces and defined features that should apply in those locations. The only instance where an additional physical separation has been assessed as appropriate is where the proposal immediately fronts the original and historic subdivision pattern of West Wallsend, facing Robertson Street (where an additional landscape setback has been provided). The heritage and/or landscape character of the urban area entries at Carrington and Withers Streets are addressed separately (refer response 3.7).</p> <p>The approach of Council's assessment staff to interface considerations is further endorsed via the established planning principle relating to compatibility in the urban environment (<i>Project Venture Developments v Pittwater Council [2005] NSW LEC 191</i>). That principle does not rely upon physical separation or distances to achieve compatibility, but establishes that matters such as building height, setbacks and landscaping, as well as architectural style and materials in heritage conservation areas (which this is not) are key relevant contributors. It is these matters that form the interface response of the proposal with the existing urban area (see responses 1.2 and 1.3 for specific interface transition details).</p> <p>It is our understanding that Council's technical assessment staff are supportive of the proposed subdivision design and layout relating to interface considerations, without the need to rely upon physical separation and buffers.</p>
1.2 Inconsistent with and no regard to existing subdivision pattern	<p>1.2 It is incorrect to say that the proposal has had no regard to the existing subdivision pattern. As outlined above, the design approach has not been to replicate the existing subdivision pattern, lot sizes or density, but to provide an appropriate transition to interface edges where deemed necessary to respect the surrounding character.</p> <p>Original and Historic Subdivision Pattern of West Wallsend</p> <p>The existing subdivision pattern was analysed early in the</p>

OBJECTION MATTER	APPLICANT RESPONSE
	<p>process. That included identifying parts of the existing areas that formed part of the original and historic subdivision pattern of West Wallsend. This identified the importance of the interface of the proposal with Carrington Street, Brown Street, Wallace Street and Robertson Street. One small part of the development site interfaces to that area, being Stage 8. The specific response along Carrington Street is addressed further below (see response 3.7).</p> <p>Within this interface area:</p> <ul style="list-style-type: none"> An additional lineal setback is provided to Robertson Street, to provide additional landscaping to interface to the original subdivision pattern. A cycleway is then extended along and from the end of Robertson Street, with bushland and open space (rather than residential lots) on either side until it joins a perimeter road extension to Edden Street. <p>The additional landscaped setback is supplemented by special guidelines for future development on the nine lots which gain access from Robertson Street, including:</p> <ul style="list-style-type: none"> - requirement for min 7m front setback - requirement for planting of trees within the first 3m - recommended roof materials <p>These apply in combination with general interface guidelines relating to site coverage, minimum side and rear setbacks, colours and materials, building heights, architectural form and massing and roof forms and colours.</p> <ul style="list-style-type: none"> The existing vista along Brown Street is respected by retaining an existing large tree at its terminus, and the lots which may be visible from the end of Brown Street (along Robertson Street) have interface requirements as outlined above; Wallace Street is extended (via road 12) into the stage, via an 8m carriageway. The road reservation narrows from the existing as the extension is a perimeter edge road with lots only on one side (separated from the carriageway by a 4.5m wide verge). Bushland is located along the full eastern side of the street extension and themed street tree planting is also

OBJECTION MATTER	APPLICANT RESPONSE
	<p>proposed. Lots along Robertson Street have interface requirements as outlined above.</p> <p>Newer Subdivision Pattern of West Wallsend and Holmesville</p> <p>The existing subdivision pattern was analysed early in the process. That included where the site fronts or accesses existing streets and where it adjoins the rear of existing lots. These areas are differentiated from the original historic areas in the heritage assessments.</p> <p>The middle and southern parts of the proposal essentially extend and complete the road network (eg. extensions to Edden and Fegan Streets, with a modified grid interconnecting the internal road system and connecting back into the existing street network between Seaham, Withers and Fegan Streets). Like the extension to Brown Street (see above), the extensions to Edden and Fegan Streets continue with wider carriageways (8m), but as perimeter roads with lots on one side, bushland on the other and themed street tree planting. Where the proposal relies on connection to the existing road system adjacent to existing lots (eg. to Fegan Street, Withers Street and Seaham Street), those extensions are existing unformed road reserves, established for the purpose of such connectivity. New intersection points provided (to Withers Street and Carrington Street) are not directly adjacent existing lots, and have been proposed taking into account the character of those immediate areas.</p> <p>The proposal also considered the character of lot size and dimensions within the existing subdivision pattern. Generally, whilst the existing lots are larger (typically quarter acre), they are generally 20m wide and deeper than would be typical in new conventional subdivisions. Generally, most dwellings are built towards the street but with wider setbacks to the street than would be typical in newer conventional subdivisions (other than along Fegan Street where some dwellings are setback further into their lots to take advantage of views).</p> <p>Taking these characteristics into account, generally the proposed lots have widths of 17.5-18m, which is not out of character with the existing lot width pattern of 20m wide. The existing depth of lots are not replicated within the proposal to provide for efficient use of land commensurate with modern urban planning that has shifted away from the 'quarter acre block' philosophy.</p>

OBJECTION MATTER	APPLICANT RESPONSE
	<p>The following interface areas have been identified as follows:</p> <ul style="list-style-type: none"> • Areas adjoining and fronting Appletree Road and Withers Street. <p>In addition to street reserve plantings, these areas have requirements for larger front setbacks (7m) and future planting within those, to assist respect the character of surrounding areas and the pattern of the street without replicating lot sizes or lot dimensions for existing lots along those streets. That is in addition to general interface guidelines relating to site coverage, minimum side and rear setbacks, colours and materials, building heights, architectural form and massing and roof forms and colours (and roof materials).</p> <ul style="list-style-type: none"> • Areas adjoining the rear of existing lots along Seaham Street, Fegan Street and on the initial connections to Fegan and Edden Streets. <p>In these areas, it was determined general interface guidelines should apply relating to site coverage, minimum side and rear setbacks, colours and materials, building heights, architectural form and massing and roof forms and colours (and roof materials), as well as a fencing requirement to provide consistency in fencing design at the interface boundary. In combination, these measures will not only address interface issues but will also minimise the potential future issues of unacceptable overlooking, overshadowing and the like, particularly when considering the existing location of dwellings, structures and trees in the existing deeper lots.</p> <ul style="list-style-type: none"> • Areas adjoining the rear of existing lots along Withers Street were not deemed to require specific transitional guidelines. Unlike Fegan Street, these existing lots have dwellings predominantly built towards their street frontage and away from the rear/common boundary, with similar lot widths proposed between the existing and new (i.e. 17.5-18m proposed, generally 20m existing). <p>It is our understanding that Council's technical assessment staff are supportive of the proposed subdivision design and layout relating to interface considerations taking into account</p>

OBJECTION MATTER	APPLICANT RESPONSE
	the existing subdivision pattern.
1.3 No transition between old and new to define historic nature of existing	<p>1.3 As outlined in responses 1.1 and 1.2 above, the approach of the proposal has been to establish interface areas and appropriate interface responses, to provide a transition between old and new.</p> <p>The Councillor objection does not specifically challenge any of the interface areas or transition controls proposed (other than Stage 8 – see response 1.5 below). It is our understanding that Council technical assessment staff is supportive of the proposed subdivision design and layout relating to interfaces and transitions.</p>
1.4 Road patterns differs significantly to traditional wide road reserves	<p>1.4 As outlined in responses 1.1 and 1.2 above, the approach of the proposal has been to establish interface areas and appropriate interface responses, to provide a transition between old and new, and that includes where the proposed road pattern directly joins into the existing traditional wide road reserves.</p> <p>The key differences in the character of the street pattern between the current and proposed reflects the changes in street design requirements for new roads in urban areas – such as the addition of formalised street drainage, addition of constructed cycleways and footpaths and inclusion of street tree planting.</p> <p>As outlined in responses 1.1 and 1.2 above, an additional landscape setback has been provided along Robertson Street which connects to the historic subdivision pattern.</p> <p>As outlined in response 1.2 above, extensions to Wallace, Edden and Fegan Streets are perimeter roads, which, in combination with themed street tree planting, reduce the visual and streetscape impact of different road standards and features between the old and the new. The connection points to Seaham and Fegan Streets are via pre-existing and pre-determined road reserves.</p> <p>As outlined in response 1.2 above, where new lots are proposed along existing streets (such as Withers Street and Appletree Road), the character of the streets has been respected through additional setback and landscaping requirements, in combination with streetscape inclusions such as themed street tree planting.</p>

OBJECTION MATTER	APPLICANT RESPONSE
	<p>Over time, we consider that the inclusion of features in the streetscape that currently do not exist (such as cycleways, pathways, themed street tree planting and perimeter road edges to bushland) will contribute to the setting of the urban area and its visual connection to bushland areas that will frame the urban edge.</p> <p>It is our understanding that Council's technical assessment staff are supportive of the proposed subdivision design and layout and road patterns.</p>
<p>1.5 Significant amenity and privacy impacts to existing lots adjoining Stage 8</p>	<p>Stage 8 adjoins 6 existing lots which front Carrington Street. Whilst these are larger lots, their dwellings are predominantly built close to Carrington Street, with various sheds, structures, yards and existing trees providing an interface to the residential zoned land at the rear, which is proposed for seven lots.</p> <p>The submission identified the one example in this area where an existing lot will share a common boundary with five proposed lots. In a typical grid subdivision, each lot will have three major and two minor adjoining lots. In this instance, the lot will have its existing neighbour plus the additional five (i.e. an additional two neighbours than might be typical).</p> <p>That lot (20m x 73m) has an existing dwelling sited to the front of Carrington Street. The first adjoining proposed lot (Lot 822) which directly adjoins the existing dwelling on that land, is wider (some 25.9m), providing opportunities for siting of a new dwelling relative to protecting the amenity and privacy of the existing dwelling. A building envelope plan for this lot was submitted to Council which illustrated setbacks from Carrington Street (some 16m), which exceeds that provided by the existing dwellings front setback. Additionally, that proposed lot and the two adjoining them (Lots 822, 821 and 820) are identified with interface controls, which include maximum building heights (9m), minimum 4m rear setbacks and maximum 50% site coverage, as well as the requirement to consider scale and form taking into account surrounding neighbours, and would still be subject to assessment under the NSW General Housing Code (which for example would require a 2 storey dwelling to be setback 8m from the rear and common boundary) or Council's DA merits assessment. With setbacks around the edge in this order (or merits assessment otherwise), future potential privacy and amenity impacts into the large rear yard of that site are minimised.</p>

OBJECTION MATTER	APPLICANT RESPONSE
	<p>The remaining two proposed lots which adjoin this existing property are battle-axe lots. These will either be controlled by the NSW Housing Code (which establishes reduced impact housing through various siting and massing controls developed across the state to protect reasonable amenity and privacy of adjoining residents, including expanded rear setbacks if 2 storey housing is proposed) or by merit assessment by Lake Macquarie City Council.</p> <p>It is our understanding that Council's technical assessment staff are supportive of the proposed subdivision design and layout relating to Stage 8 and its interface to existing lots fronting Carrington Street.</p>
2.0 FLORA AND FAUNA	
<p>2.1 Has not reasonably avoided impacts on native vegetation by clearing and edge effects, and associated impacts on EEC and threatened species, with unacceptable impact on biodiversity and against targets in the Lower Hunter Regional Conservation Plan</p>	<p>2.1 The Office of Environment and Heritage has assessed the impacts of the proposal on threatened flora, EEC, fauna and biodiversity, and has granted its concurrence to the proposal. OEHL are the statutory body who authored the Lower Hunter Regional Conservation Plan, and in deciding whether to grant concurrence have had to consider matters such as the submitted SIS, public submissions, whether the development will reduce the long term viability of species, populations or ecological communities in the region, whether it is likely to accelerate extinction or place these at risk of extinction, principles of ecologically sustainable development and the likely social and economic consequences of granting concurrence or not. The OEHL undertakes their assessment based on published assessment guidelines and biodiversity principles and methodologies. The first principle considered under OEHL's "Principles for the Use of Biodiversity Offsets in NSW" is "impacts must be avoided first by using prevention and mitigation measures". It is unfounded to claim that OEHL, in undertaking their regulatory role, have not considered the concept of 'avoidance'.</p> <p>In granting its concurrence, OEHL has satisfied themselves that there will not be an unacceptable impact on biodiversity or on endangered ecological communities or threatened species.</p> <p>Whilst we understand the consent authority is not bound to approve the proposal on the basis of concurrence alone, it provides substantial weight to the consideration of ecological and biodiversity impact and should not be lightly discounted or overridden. Issues briefly raised in the submission do not</p>

OBJECTION MATTER	APPLICANT RESPONSE
	<p>draw on detailed information included in the submitted Species Impact Statement, nor the existence of the OEH concurrence that has established a position on the matters raised within the objection and has not formed the same opinion as the objection (i.e. it determines that the offset package is appropriate, not inappropriate as claimed in the submission; it determines that impacts on threatened species and EEC are acceptable, not unacceptable as claimed in the submission).</p> <p>The submission also fails to acknowledge the positive aspects that the proposal will have in regard to the long term protection and sustainability of approximately 40% of the site being set aside for conservation purposes and the management and funding for management (in perpetuity) of the biodiversity offset lands locally and in the region.</p> <p>It is our understanding that Council's technical assessment staff are generally supportive of the proposal relative to ecological, flora and fauna and biodiversity considerations.</p>
<p>2.2 Fails to value and retain habitat and remnant vegetation on site as generated by the 'green system map' and intent of Lifestyle 2020</p>	<p>2.2 The green system map referenced is a broad LGA wide strategic planning map generated at best from aerial photography. That map across the LGA appears to have simply mapped all vegetated areas of the LGA. Lifestyle 2020 correctly mapped the subject lands as being on both part of the 'green system' and as part of the existing urban area. It seeks that development in urban areas preserve or enhance the character of the local areas including aspects that result from the 'green system'. The intention of the 'green system' is protection of ecology (and 'high value habitat') and scenic amenity and character throughout the city and maintaining natural boundaries between individual localities.</p> <p>It is our view that the 'green system map' is not as robust and thorough (as it relates to the site and its context) as the ecological and visual assessments undertaken as part of this proposal. The majority of locally present 'high value habitat' as robustly reviewed through the SIS process is retained (and importantly will also be actively managed, an outcome identified as important within Lifestyle 2020). The lesser value vegetation has been offset with higher value equivalent vegetation and habitat elsewhere. The scenic amenity of the locality, as robustly reviewed through the Visual Impact Assessment process, is reasonably protected with the natural boundary to the locality reinforced and protected in perpetuity.</p> <p>The conclusions of these detailed and specific assessments,</p>

OBJECTION MATTER	APPLICANT RESPONSE
	<p>and the validity of Council's technical assessment staff on these should not be overridden simply by the presence of the 'green system map', which is one aspect of an entire strategic planning document that also seeks to facilitate underdeveloped lands to contribute to the supply of residential land.</p>
3.0 HERITAGE	
<p>3.1 Does not analyse cultural significance of the cultural landscape of the Heritage Precinct, and has not provided recommendations for appropriate design responses for new developments arising from that landscape and as such does not meet heritage objectives of LM LEP clauses 43, 47 and 52 as a result</p>	<p>3.1 The submission is misleading in its claim that the heritage objectives of LM LEP cl43, 47 and 52 have not been met relative to the cultural landscape of the heritage precinct.</p> <ul style="list-style-type: none"> • The objective of Part 6 of the LEP (clause 43) is to protect and conserve places of cultural significance (including the environment of heritage conservation areas), through the making of provisions. • The clauses of Part 6 (including clauses 47 and 52) establish those provisions, which relate to assessment of the effect of a proposal on the heritage significance of heritage items or heritage conservation areas. <p>West Wallsend is not a declared heritage conservation areas, and has not been given that status through a robust legislative process. As such, the <u>LEP requirement</u> relating to heritage (other than the tramway corridor which is separately addressed elsewhere) is limited to consideration of clause 52, which deals with development in the vicinity of a heritage item (and impacts on the setting of those specific items). The clause requires a heritage impact statement if development is in the vicinity of a heritage item, and seeks an HIS to include recommendations relating to size, shape and scale of setbacks and materials used in any proposed buildings or works, or modifications to reduce the impact on heritage significance of each item.</p> <p>To comply with this requirement, additional commentary is attached from EJE, confirming that as part of their assessment clause 52 was considered in regard to the heritage items. EJE formed the view that the proposal did not warrant any specific recommendations relating to the heritage significance of individual heritage items within West Wallsend/Holmesville (other than the tramway corridor which is separately addressed elsewhere) or that weren't otherwise covered by the broader consideration of the key elements of the cultural landscape. This aspect of the proposal was not queried by</p>

OBJECTION MATTER	APPLICANT RESPONSE
	<p>Council's technical staff in any review of submitted Heritage Impact Statements (original or as modified).</p> <p>EJE comprehensively addressed the less robustly defined 'heritage precinct' identified in the Lake Macquarie DCP and also matters relating to the significance of the cultural landscape... In consultation with Council's heritage planner, the key components of the cultural landscape were defined as:</p> <ul style="list-style-type: none"> • Original historic subdivision patterns of West Wallsend and Holmesville; • Town gateways • Visual setting • Former tramway alignment and its historical links <p>The Statement of Heritage Impact analysed each of these components, and additional commentary was provided on these relative to questions which should be answered in the heritage impact assessment process, including commentary on 'curtilage'. The heritage experts and Council's heritage planner has been involved in developing the design response for the current proposal, and particular in considering the components of the landscape and design responses to those. Responses 1.1-1.2, 3.7 and 4.1-4.3 respond to specific objections relating to some of those key landscape components.</p> <p>It is our understanding that Council's technical assessment staff are supportive of the proposed subdivision design and layout relating to consideration of the key elements of the cultural landscape.</p>
3.2 Does not demonstrate conformity to the Burra Charter process	<p>3.2 The Burra Charter process predominantly relates to the conservation of existing fabric. Relative to the former railway alignment, very little fabric actually remains. A Heritage Impact Statement (HIS) of the remaining fabric has been appropriately undertaken taking into account the Burra Charter process of understanding the item and its significance and maximising conservation. Conservation of key parts of the remaining fabric has indeed been achieved through management plans and agreements and via development consents where that fabric exists and is able to be 'understood' being on land outside the land subject to this DA.</p> <p>The alignment within the site has limited physical fabric to conserve. Whilst it is acknowledged that the Burra Charter</p>

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	<p>process does not deal with 'interpretation', the HIS has justified the heritage response in the circumstances of the case. Response 3.4 below provides details of the interpretation strategy proposed, which we believe will provide a historical record and significantly improve the understanding historicalrelevance of the former tramway and the role it played in the local area.</p>
<p>3.3 Does not demonstrate how it protects the natural environment and heritage resource and enhances the localities character as intended by Lifestyle 2020</p>	<p>3.3 We disagree with this statement, for reasons outlined in responses 2.1-2.2 and 3.1 above.</p>
<p>3.4 Does not demonstrate that loss of steam tram line will not affect the significance of the heritage item nor does it address adverse impacts on archaeology of that item and of known and potential relics associated with it, and does not meet LM LEP cl43, 47 and 51 as a result</p>	<p>3.4 The statement within the submission that the tram line is 'lost' misrepresents the situation relating to this heritage item. The previous tramway corridor which extended from West Wallsend to Newcastle has been substantially built over since it was decommissioned. In the vicinity of the site the tramway corridor has been built over immediately west of Appletree Road, which adjoins the site. East and a small section west of Dunbar Road has also been built over or recently approved to be built over. The majority of all physical remnants and fabric of the steam line itself within the site have previously been removed by others. Extensive heritage and archaeological assessment of the site and surrounds has been undertaken and identified that the only physical remains of the tramway is a 50m section of ballast covered embankment and extremely limited evidence of bridge construction. It reports that these remnants are not in themselves a unique heritage item and of limited aesthetic and technical significance. The more significant extensive remnants of the former tramwayis a relatively complete 400-500m section of raised embankment, with a ruined bridge abutments present at the minor creek crossing and an identifiable alignment.This remnant occurs outside the siteand has been protected and conserved under a separate development consent (DA 2433/2004) and associated Tramway Management Plan</p> <p>The proposal recommends retention of the historic, social and personal/human aspects of significance through signage, information boards and use of surface materials to identify original sections of the alignment, and the establishment of a cycle/pedestrian route through the subject land 'in the vicinity of the alignment" between Appletree Road to George Booth Drive. It acknowledges that the route does not need to follow the exact alignment but provide access along an alignment</p>

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	<p>which replicates the previous transport function of the tramway route.</p> <p>The heritage response has been to explore the opportunity presented by the proposal to provide residents and visitors with an appreciation of the tramway and its history. This has resulted in inclusion of the following recommendations in the heritage and archaeological assessments that have been formulated through extensive consultation with Council's technical assessment staff:</p> <ul style="list-style-type: none"> • A tramway reserve provided adjoining Withers Street, at the 'entry' to the subdivision and adjacent retained bushland, for interpretation including signage, seating, bollards, a pathway alignment and symbolic use of materials to enhance the understanding and appreciation of the former tramway's history and meaning. A concept plan has been prepared illustrating this reserve; • The inclusion of a designated cycleway through the site (not on the former alignment but to represent the transport movement connection through the site), with treatments such as shot blast treatment to concrete and paver banding sections of the cycleway, along with informative text about the history of the former tramway to reveal its meanings and associations in the local context. The proposed cycleway links Appletree Road around the edge of proposed road 3 and connects to Withers Street, and then to the tramway reserve via a short section of on road cycleway (as well as 1.2m wide pedestrian paths either side of Withers Street). • Additional interpretative streetscape treatments are also proposed to mark the former alignment of the tramway where it intersects with the road network (at three locations along proposed road 3), with concepts showing changes in material and symbolic lines and materials. <p>These recommendations were formulated to protect and enhance the heritage significance of the tramway.</p> <p>The submission does not acknowledge any of the above.</p> <p>It is our view that Clauses 43, 47 and 51 of LM LEP have</p>

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	<p>been appropriately considered and addressed and it is our understanding that Council's technical assessment staff are supportive of the proposed subdivision design and layout and assessment and responses to the local heritage item (former tramway alignment)</p>
<p>3.5 Whilst acknowledging receipt of GTAs on aboriginal heritage matters, questions the lack of consultation by Council with the local Awabakal Aboriginal Land Council as required by LM LEP cl50</p>	<p>3.5 It is understood that Council has consulted formally with the Awabakal Aboriginal Land Council and received a response supporting the project subject to conditions, hence satisfying the requirements of LM LEP cl50.</p> <p>It should be noted that the proponent has consulted with the Awabakal Aboriginal Land Council on the previous and current proposal since 2007.</p>
<p>3.6 Does not meet intent of heritage requirements under Section 2.4.1. and DCP issues relating to future development of the heritage precinct, acknowledging that these emphasise development within the existing pattern</p>	<p>3.6 By Council's own admission, Section 4.5 of DCP 1 (West Wallsend/Holmesville Area Plan – Heritage Precinct) was written simply excluding all consideration of the urban zoned area that was yet to be developed within the precinct and simply emphasised development in the existing developed footprint and controls on development of existing housing stock and infill development within that existing pattern.</p> <p>In the absence of any particular guidance on appropriate development of the site, the proposal has been informed by the history and existing character of the urban area (including the original mining town and the more recent development) and the role of the bushland setting separating it from the broader expanding suburban areas. It has also been informed by its cultural landscape and provided appropriate design responses in this regard (refer responses 1.1-1.4, 3.1).</p> <p>It is our understanding that Council's technical assessment staff are supportive of the proposed subdivision design and layout and assessment and responses to heritage requirements of DCP 1.</p>
<p>3.7 Impacts on historic entry and first impressions of the town, specifically the inclusion of lots facing Withers Street that destroys the landscape buffer that separates the historic visual isolation of West Wallsend from Holmesville</p>	<p>3.7 The heritage impact assessment considered the importance of the two entries into the township, and concluded that the Carrington Street entry identifies the start of the original subdivision and contributes to the perceived character of West Wallsend. The setting of Carrington Street is retained and the bushland entry and early subdivision pattern will continue to define that 'gateway', with the northern extent of the proposal being screened from view through a combination of topography, vegetation retention and the setting back of development to Carrington Street. Notably the submission does not raise specific concerns with this entry.</p>

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	<p>The heritage impact assessment considered the importance of the Withers Street entry and forms the view that it has been diminished and eroded via c1970s subdivision along Withers Street and along Seaham Street, and it no longer defined a heritage gateway to West Wallsend nor has the significance of the Carrington Street entry. Notwithstanding this, the proposal still acknowledges the contribution that existing vegetation makes to the arrival, and that has been specifically assessed via the visual impact assessment and through development of the landscape masterplan. Whilst the length of a bushland entry is reduced by the proposal, some 200m of the entry remains vegetated. Native planting is extended along a proposed basin and the adjacent tramway reserve, with an entry theme extended into the urban streetscape for a further 500m through the introduction of themed street tree avenue plantings which overtime will contribute to the entry into the urban area. To assist in blending the streetscape where proposed new lots front Withers Street, additional front setback (min 7m) and landscape controls are proposed to apply to the relevant lots.</p>
<p>3.8 Limited impact of 'heritage and urban design guidelines' due to ability for new homes to be progressed via SEPP (Exempt and Complying Codes) 2008, and subsequent impact on cultural landscape</p>	<p>3.8 The submission makes multiple references to the lack of assurance to manage and control subsequent future housing as a result of the NSW General Housing Code, which provides development to be approved as Complying Development. This is a convenient argument that we believe is overstated and not appropriately investigated or given due consideration.</p> <ul style="list-style-type: none"> • In theory, this argument applies to the whole of West Wallsend and the whole LGA and is not unique to the proposed subdivision. • The comment implies that the NSW General Housing code is an entirely inappropriate control. It is our view that in the absence of any DCP controls (or the requirement to consider them) or any title restrictions proposed by the applicant and Council (which are proposed in this case, as discussed over page), the Code has been developed with the key goal of limiting the bulk and scale of residential dwellings relative to responsibly controlling impacts to adjoining residences, through the application of state wide tested controls including matters such as maximum building height, site coverage, rear setbacks, side setbacks, front setbacks, landscaping in front setbacks, landscape areas, size of dwellings and the

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	<p>like.</p> <ul style="list-style-type: none"> In consultation with Council's heritage planner, the heritage and urban design guidelines have been established, and are proposed to be applied to identified lots through title restrictions. These will be required via the subdivision development consent and will include identifying Council as a being party to the restrictions. The submission states that under the General Housing Code no regard would be given to those restrictions. Is the submission expressing that Council as well as private certifiers would ignore those restrictions in their role as 'principal certifying authority'? <p>The Department of Planning publication 'NSW Housing Code Overview' provides the following statement relating to how the Housing Code interacts with covenants – <i>"Some areas have covenants on the land title to define particular characteristics of housing development on that land. The NSW Housing Code does not override covenants. It is incumbent on the home owner to ensure that any development undertaken under the NSW Housing Code does not breach the term of any covenant applying to that land"</i>.</p> <p>In addition, we have contacted several PCA's to pose the question of how they regard title restrictions in undertaking complying development assessments. They each advised that they would raise queries with owners about any covenants, and in particular any applied by a local authority or where the local authority is party to them, relative to their own duty of care and insurances.</p> <p>It is our understanding that Council's technical assessment staff are supportive of the proposed subdivision design and layout and use of the Heritage and Urban Design Guidelines through title restrictions.</p>
3.9 Concerns for indirect impacts on 'butterfly caves', and questions timing of a management plan for that area required by GTA	3.9 The Awabakal Aboriginal Land Council has been consulted on this proposal since 2007. In response to the submission, it is understood that Council have further formally consulted with the Land Council and received a response supporting the project subject to conditions, which directly considers the issue of indirect impacts to the 'butterfly caves'.

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	It is our understanding that Council's technical assessment staff are supportive of the proposed subdivision design and layout in regard to matters raised by the Awabakal Aboriginal Land Council, subject to inclusion of the conditions requested.
4.0 LANDSCAPE	
<p>4.1 Visual impact not adequately addressed, particularly visual dominance of Stages 7, 8 & 9 (and distortion of views from the village) and elevated nature of Stages 4, 5 & 6.</p> <p>Built form and design of future dwellings will be very insensitive and may generate undesirable visual and cultural changes</p>	<p>4.1 A very comprehensive visual impact assessment, following council guidelines, has been researched and prepared for the proposal. Whilst the submission makes claims about visual dominance and elevation of land, it does not identify specific aspects of the visual impact statement that is challenged or disagreed with, nor the role of proposed primary and secondary mitigation measures.</p> <p>The visual impact assessment:</p> <ul style="list-style-type: none"> • considers the regional and site context; • defines landscape character units and elements at the regional and local scale which reflect visual amenity, locally consisting of Gregory Park, the historic early subdivision of West Wallsend, southern West Wallsend (Fegan and Edden Streets), Holmesville and the main road entries; • identifies that the higher eastern extents of the site are to remain vegetated, covering the local high points and ridgelines and identifies that the higher northern section of the site retains vegetation corridors between pockets of development areas providing visual separation and to prevent the dominance of housing; • outlines a viewpoint selection process and provides viewpoint analysis (including visual sensitivity and visual effect) from 22 viewpoints, including from multiple viewpoints sited within the local urban area. It outlines that the most direct visual impact is likely to be seen from the west including Gregory Park and select vantage points within established areas of West Wallsend. Gregory Park is one of the few locations where there is potential for a greater percentage of the proposal to be visible. <p>Localised negative impacts have sought to be reduced through a combination of primary measures (ridgeline protection, tree retention, site planning) and secondary measures (landscaping, street trees, colour and material</p>

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	<p>selections). The combination of mitigation measures will ultimately achieve a low or moderate visual impact, compatible with the surrounding environment. Through the application of mitigation measures, the resultant visual impact is 7 viewpoints with moderate visual impact and 15 viewpoints with low impact.</p> <p>The assessment concludes that the development can be undertaken whilst retaining the core landscape values of the local and regional context.</p> <p>Mitigation measures identified in the Visual Impact Assessment have been incorporated into a comprehensive Landscape Masterplan Report.</p> <p>To further supplement these mitigation measures, and through extensive consultation with Council's heritage and landscape officers, additional areas of the proposal were identified to have future dwelling controls applied to them, due to their potential viewing from vantage points in the existing urban area (a total of 31 proposed lots generally being located at the more elevated edges of the proposed development). These areas have requirements for specific roof materials and colours (dark grey, green or charcoal palette) to assist visual blending of the roof form into the background vegetation.</p> <p>The assumption of the submission that future built form will be very insensitive and uncontrolled is unfounded, as addressed generally in responses 1-3 above).</p> <p>It is our understanding that Council's technical assessment staff are supportive of the proposed subdivision design and layout on visual impact matters.</p>
<p>4.2 Development will impact on streetscape along Withers Street and be incompatible with the surrounding environment, with smaller front setback and open landscaped front yards than existing</p>	<p>4.2 The streetscape along Withers Street is addressed in response 3.7 above, and subdivision pattern and heritage are addressed within responses 1 and 3 above.</p> <p>The proposal acknowledges the contribution that existing vegetation makes to the arrival at Withers Street, and that has been specifically assessed via the visual impact assessment and through development of the landscape masterplan. Whilst the length of a bushland entry is reduced by the proposal, some 200m of the entry remains vegetated. Native planting is extended along a proposed basin and the adjacent tramway reserve, with an entry theme extended into the urban streetscape for a further 500m through the introduction of themed street tree avenue plantings which overtime will</p>

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	<p>contribute to the entry into the urban area. To assist in blending the streetscape and respecting the pattern (c1970s) of development that extends along Withers Street proposed new lots which front Withers Street have been proposed with additional front setbacks (min 7m) and front landscape controls. Side setback controls are also proposed.</p> <p>We note the submission references retaining walls at the front of lots fronting Withers Street. No retaining walls are proposed along that street edge.</p> <p>It is our understanding that Council's technical assessment staff are supportive of the proposed subdivision design and layout as it relates the Withers Street streetscape.</p>
<p>4.3 Impacts on cultural landscape features of the existing streetscape, by reduced road reserve widths and use of retaining walls</p>	<p>4.3 The features of the existing streetscape and the differences in the proposed streetscapes are addressed in response 1.4 above.</p> <p>In terms of retaining walls, the use of them has been limited throughout the subdivision, with parts of perimeter road edges facing bushland around Stages 7, 8 and 9 to include small sections of retaining wall. In total, the length of retaining walls are 575m, with heights generally ranging from 0.5m-1.7m, with a maximum height of 2.3m. That length of retaining walls represents approximately 8% of the entire road length and that length and proposed heights are not excessive.</p> <p>Where proposed, the retaining walls are sited on the edge of perimeter roads and face into bushland and will not present as visually dominant features in the streetscapes. The Landscape Masterplan outlines the use of natural materials (i.e. sandstone) to complement bushland character of the area.</p>
<p>4.4 No transition to existing dwellings to the west and south</p>	<p>4.4 The issue of transition raised in this part of the objection reiterates points raised earlier in the submission. Refer to responses 1.1 and 1.3 above.</p>
<p>5.0 PUBLIC SUBMISSIONS</p>	
<p>5.1 Amended proposal is not in the public interest as concerns raised by the public have resulted in negligible modifications to the proposal</p>	<p>5.1 It is acknowledged that a large number of objections have been received during exhibition of the proposal.</p> <p>All of the matters raised by objectors, as summarised in the submission, have been addressed through the formulation of</p>

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	<p>the current proposal, through responses to additional information requests from Council through the assessment process and Council's technical assessment of the proposal where relevant. The issues have also again been comprehensively addressed in this response as detailed below:</p> <ul style="list-style-type: none"> • Impacts on flora and fauna, impacts on the natural environment and offsets has been addressed (refer response 2.1); • Impact on indigenous and non-indigenous heritage has been addressed (refer responses 3.1-3.9) • Impact on character and amenity has been addressed (refer responses 1.1-1.5, 3.1, 3.6-3.8, 4.1-4.4); • Impact of sense of community has been addressed (refer response 6.1, 6.3); • Traffic impacts has been addressed in the application, with the Councillor objection raising impacts of noise from traffic which is addressed in response 7.2; • Impact on services and facilities has been addressed (refer response 6.1); • Impact of increased population and densities has been addressed (refer response 6.1); • Impact between old and new subdivisions has been addressed (refer responses 1.1-1.5, 3.1, 3.6-3.8, 4.1-4.4); • Impact on local services/economy has been addressed (refer response 6.1); • Impact on criminal activity has been addressed (refer response 6.1); • Impact on scenic values has been addressed (refer responses 1.1-1.5, 3.1, 3.6-3.8, 4.1-4.4); • Impact on privacy and amenity has been addressed (refer responses 1.1-1.5); • Impact on flooding and stormwater has been addressed in the application, with the Councillor objection raising a stormwater matter which is addressed in response 8.1; • Impact of slope stability has been addressed in the application, with the Councillor objection raising one impact matter which is addressed in response 9.1; • Statutory consultation has been undertaken by Council.
6.0 SOCIAL IMPACT	

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<p>6.1 Social impact assessment fails to investigate concerns such as increase in population, impacts on cohesiveness and sense of place of the existing community by diminishing interpretability of the existing village and reducing community pride, impacts of gentrification and impacts on village character and atmosphere, demands on community infrastructure (particularly child care, public transport), capacity of health services, impact of lot sizes and lack of small lot housing</p>	<p>6.1 It is noted that the concerns listed in the submission reflect the position adopted by Council's Co-ordinator of Social and Community Planning, who has formed the view that the proposal will result in a net negative social loss with potential negative impacts not mitigated. We strongly refute this view.</p> <p>The proposal will result in an increase in population of the local area, as anticipated by the Lower Hunter Regional Strategy and the site's residential land use zoning. We disagree with assertions that the proposal represents an overdevelopment of the site. We disagree that just because density is different to the existing (whilst still clearly at standard residential housing densities) that the proposal has inadequately considered that matter – as outlined in detailed responses above, the key consideration is how the proposal respects the character of the surrounding area (not replicates it or separates from it). We do not agree that the proposal unreasonably diminishes interpretability of the existing village nor unreasonably impacts on the setting and character of the existing – again as outlined in detailed responses above.</p> <p>On several of the matters raised, the position adopted by Council's social planner and the submission does not acknowledge that some issues cannot be individually solved by individual development proposals. Issues such as affordability, access to health care, access to child care and demands on community infrastructure are shared issues across the local area and region. That is acknowledged at all levels of government including in the Lower Hunter Regional Strategy. Lake Macquarie Council themselves have created plans (such as Social Plans and Ageing Population Plans) to provide frameworks and strategies for co-ordinated responses to the challenges that face all. If Council were to adopt the position taken in the objection on such matters, it is difficult to see when it would support new development anywhere, as many of the issues are faced across the local area and the Lower Hunter.</p> <p>Notwithstanding those broader considerations:</p> <ul style="list-style-type: none"> • West Wallsend has access to a range of basic services (as documented in the SIA); • The public transport system has capacity for additional passengers (as documented in the SIA); • Department of Education has advised that the additional population can be catered for within their

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	<p>existing school infrastructure (as documented in the SIA);</p> <ul style="list-style-type: none"> • Child care services exist within West Wallsend and an offer was provided to communicate with the operator of the existing service to provide potential lead time in the planning for their services (as documented in the SIA). Child care is a regional issue and the target of numerous government strategies. With the advent of privately provided child care in private child care centres or across family day care arrangements, and the choice of individual families in where they seek child care facilities (i.e. close to home, on path to/from work, close to work) means that over time the provision of child care services can respond to market forces and expand. • A local medical centre does exist with books open only to people of the local area, with others directed to medical services sited Edgeworth and Glendale. GP numbers are a shared issue across the region, with recent government responses being the creation of 'super clinics' and out of hours services. • A total of some \$6M in contributions will be provided to Council over the course of the development, consistent with their own established section 94 plan for open space, recreation and community facilities; • Whilst the urban area of West Wallsend is contained within its own geographic node, it is not an 'island' and is relatively well positioned within the Lower Hunter Urban Structure, with good connectivity and accessibility to employment areas and services and facilities, such as within the immediate locality, in the newly establishing Cameron Park area, along the renewal corridor at Edgeworth and to the emerging sub-regional centre at Glendale (as documented in the SIA). <p>It would be expected that with the expanding population and emerging role of centres on this western side of Lake Macquarie (which this subdivision is a small component of) that none of these considerations would warrant refusal of the application on social impact grounds.</p> <p>It is recognised that the existing community is concerned. Both the community and Council are concerned that the inclusion of additional development will result in the loss of their sense of place and cohesiveness and reduce their community pride. There is stress from residents who do not</p>

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	<p>want the scale and amenity of their immediate area to change.</p> <p>Whilst those fears are understood there is little evidence to suggest that over time that community pride or sense of place will be lost or be the automatic outcome of new subdivision in the area. Rather than separate the new and old, it is important to integrate the new community with the old, which has been attempted to be done within the proposed structure of the proposal and its connectivity to existing and provision of linkages through the new area to the bushland setting which contributes to the community's sense of place. The SIA recommends project updates be provided over the course of development to assist in dissemination of factual information and encourage opportunities for new residents to integrate with the existing community. None of these matters are 'physical' responses that can be incorporated into, and they rely somewhat on Council facilitating those opportunities, not feeding fears of social discontent.</p>
6.2 Result in loss of affordable housing	<p>6.2 The submission claims that the proposal will result in gentrification and the loss of affordable housing. The proposal is for new housing stock on residential zoned land and does not generate any displacement of residents nor imply 'gentrification' (purchase of old housing stock to renovate and once renewed becoming unaffordable for those who have sold up). Commentary on affordable housing is very topical and ever-present across NSW and one of the key contributors to lack of housing affordability from all commentators is the lack of physical supply of residential land. It is not logical to claim that this subdivision, on land identified as part of the existing urban area and strategically intended to provide (in small part) for the projected population of the region, will reduce housing affordability.</p>
6.3 Whilst acknowledging economic benefits and contribution to the sustainability of businesses, may result in loss of the unique heritage and 'sleepy and relaxed' feel of the area	<p>6.3 Some issues raised in the submission reflect a misunderstanding of the Social Impact Assessment report. New subdivision is described in the report as likely to support existing small businesses (chapter 9 Impact Analysis). This is a reasonable position as it is known that most additional retail expenditure is likely to occur in major retail centres such as Glendale.</p> <p>How support of small business "<i>will have a significant effect on the nature and characteristics of the community including the unique heritage</i>" is not explained. Similarly, how such support might result in a <i>loss of the unique heritage as well as the "sleepy and relaxed" feel of the area</i> is not specified.</p> <p>Council acknowledges that the majority of the new population</p>

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	<p>expenditure will be likely to be elsewhere.</p> <p>Given the circumstances it is highly unlikely that the proposed subdivision will have the effects described in the submission. Some additional activity in the commercial area is likely but not to the extent that there are significant effects on local character.</p>
<p>6.4 Mitigation measures do not negate social impacts and are only recommendations without specific actions</p>	<p>6.4 Neither the submission nor Council's Social Planner has identified actions they believe would be reasonable for the applicant to do in response to their concerns. The Social Impact Assessment proposed a number of recommendations which the applicant is willing to do and can be conditioned to ensure compliance.</p> <p>The measures proposed are valid measures to address what are the likely impacts of new population in a greenfields subdivision. The impacts specified as likely by Council are:</p> <ul style="list-style-type: none"> • Gentrification, • Loss of community character including social cohesiveness and heritage, • Reduction of the available affordable housing Lake Macquarie, • Place additional strain on community facilities including child care. <p>Gentrification, loss of community character and affordable housing impacts are not associated with suburban greenfields subdivision, nor are there any local circumstances that suggest these impacts might occur.</p> <p>Additional strain on community facilities is likely. Such impacts are mitigated by s.94 contributions to Council to cover additional demand on public facilities. The child care example quoted by Council is in fact a partly private service where new demands can be accommodated with market responses. The other example of health care services quoted by Council is addressed in the SIA where it was found there was local general practice capacity available. While this doesn't mean all health services are locally available it highlights what is a regional problem that won't be solved via development applications.</p>

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	<p>There is no evidence from the Social Impact Assessment, which was conducted in accordance with Council guidelines and good assessment practice, that any of the impacts listed by Council will occur. Existing communities are naturally suspicious of change and are worried about what might happen. The fears about change and incoming population are seldom realised and the new and the old overtime often become an expanded community without significant impacts or social disruption.</p> <p>It is our understanding that Council's other technical assessment staff are supportive of the proposed subdivision design and layout as it relates social issues.</p>
7.0 NOISE	
<p>7.1 Subdivision layout does not minimise the number of dwellings exposed to noise impacts from George Booth Drive and should not rely upon noise attenuation measures for internal noise compliance at subsequent dwelling design stage, and does not provide for appropriate external noise amenity</p>	<p>7.1 The subdivision design responds adequately to noise constraints and in accordance with Council practice for recent subdivision approvals in the vicinity of this proposal site.</p> <p><i>The NSW Road Noise Policy</i> (DECCW March 2011) under <i>Chapter 4 Mitigation And Management Of Road Traffic Noise</i> section <i>4.3 Strategies for traffic generating developments on existing roads</i> states the following. <i>"Examples of applicable strategies include acoustic treatments."</i></p> <p>Acoustic treatments as provided for in the Road Noise Policy are proposed to mitigate road traffic noise. Acoustic treatments are being applied to new dwellings in a current land release along George Booth Drive by LMCC subdivision approval (DA 2433/2004) (approximately 1km to the east of the current proposal) via a restriction on the use of land applied to the relevant titles as follows</p> <p><i>"No dwelling may be erected on the lot unless it has been certified by an acoustic consultant as complying with recommendations outlined in section 6.2 and 6.3 of document entitled "Proposed Subdivision, Pambulong Forest – Traffic Noise Assessment"</i></p> <p>This proposal relies on a similar solution to that accepted by LMCC in the example above. Council's concerns about the</p>

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	<p>potential of the requirements to be missed due to the NSW Housing Code are addressed generally in response 3.8 above. The NSW Housing Code does not override covenants.</p> <p>Reliance on noise attenuation measures for dwellings is thus appropriate and consistent with current Council practice, and will be clearly articulated to purchasers. It is not appropriate to simply exclude the land from development. The noise consultant has stated that <i>“given the traffic noise levels identified in the report, we do not believe these treatments will be unrealistic or cost prohibitive”, and “in the worst- case, glazing would be 6.38 to 10.38mm laminated glass which is commonly used in residential estates”</i>.</p> <p>Please note that the submitted noise report (section 6.3) and plan identified a total of 50 lots affected (with 43 on Withers Street). The plan was in error and has now been updated. Correspondingly, Section 6.3 of the report was in error and is updated as well. Please refer corrected map and summary from Vipac attached. Rather than 50 lots affected (with 43 on Withers Street), the correction is 42 lots affected (with 35 on Withers Street).</p> <p>Appropriate external noise amenity is stated as not being provided. There are no specific external noise amenity criteria for NSW. The relevant criteria are the day and night noise criteria for residential land uses as assessed for the proposal.</p> <p>Under the proposal all dwellings in the proposed subdivision will be able to achieve satisfactory internal noise amenity levels. Even where there is proximity to traffic noise sources, dwellings are likely to have outdoor areas that also meet the criteria due to the screening provided by development of the subdivision and structures on their own lots, or adjoining lots. People will not be forced into the confines of their dwellings.</p>
7.2 Fails to address impacts on increased traffic noise on existing residential properties along Withers Street and Carrington Street	<p>7.2 A Noise Impact Assessment was undertaken by Vipac which included measuring noise levels in Carrington and Withers Streets. Both measurement sites were approximately 300m away from George Booth Drive. At the sites and for both streets the existing traffic noise already exceeded the criteria for day time and night time for sensitive land uses.</p> <p>For collector roads such as Withers and Carrington the relevant criteria are day (7.00am to 10.00pm (LAeq (15hr)) 60 decibels and night (10.00pm to 7.00am (LAeq (9hr)) 55</p>

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	<p>decibels. The measurements were Carrington Street 64.4 decibels (day) and 56.8 decibels (night) and Withers Street 65.3 decibels (day) and 56.1 decibels (night).</p> <p>According to NSW Road Noise Policy (DECCW March 2011) - Section 2.4 Relative increase criteria "<i>..any increase in the total traffic noise level at a location due to a proposed project or traffic-generating development must be considered</i>". This section states that increase in the Existing Traffic LAeq (15hr or 9hr) by 12 dBA or more should be considered for noise mitigation measures.</p> <p>As per the noise prediction method for road traffic in Calculation of Road Traffic Noise (CoRTN), an increase in the traffic by twice its existing quantity (keeping the rest of the parameters i.e. road gradient, road surface, traffic speed, etc. the same) the increase in the LAeq (15hr or 9hr) would be approximately 3 dBA.</p> <p>According to the Traffic Assessment Report by Brown Consulting, it considered a peak hour generation rate of 0.85 trips per dwelling two-way from the proposed development. The 366 proposed lots would effectively increase the traffic flow by less than twice the existing traffic quantity. This is a conservative estimate as not all of the traffic generated by the proposed subdivision would pass existing residences in Carrington and Withers Streets. The likely portion for developed areas of each street is less than half of the total traffic generated.</p> <p>Therefore it would be safe to predict that the increase in the LAeq (15hr or 9hr) for the existing residences near the Carrington Street and Withers Street due to the increase in the total traffic noise level from the proposed development would be <<12dBA (and quite well below, as outlined with the worst case scenario being an extra 3 dBA). Hence there would be no requirement for any noise mitigation measures for the existing residences along Carrington Street and Withers Street.</p>
8.0 STORMWATER	
8.1 No owners consent for works associated with piping stormwater and creation of	8.1 Consent has not been sought for drainage works on other private property (see DA application form for the full scope of property details) as part of the current proposal.

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easements	<p>There is existing drainage infrastructure capable of accommodating site stormwater flows from the proposal. The development site already drains through this infrastructure. This infrastructure is indicated on the civil DA plans but is on private property and there is no easement over the affected private property.</p> <p>What is required is owners consent under the Conveyancing Act for the establishment of an easement. The proponents have agreed to pursue an easement on behalf of Council. A positive determination of the development application would facilitate discussions with the relevant land owners to formalise the stormwater infrastructure that currently exists within the properties and as part of this process formalise an easement to which the infrastructure is contained.</p> <p>On this basis, it has been requested of Council that the matter be addressed as a deferred commencement consent condition of the current proposal. Should discussions for whatever reason fail with the relevant landowners there are statutory processes for obtaining easements under s.88k of the Conveyancing Act that could be called upon if needed.</p> <p>It is our understanding that Council's technical assessment staff are supportive of this approach and obtained its own legal advice in this regard.</p>
9.0 SLOPE STABILITY	
9.1 SIS has not considered impact of unidentified remedial measures to an area of high risk of slope instability and the need or otherwise for clearing of vegetation	<p>9.1 The slope stability investigation report prepared by Douglas Partners identifies an area of slope instability associated with previous localized landslip within the site. It also clearly identifies the part of this area to which development is proposed that will need to be "remediated through the construction process". The principal remediation works involve bulk excavation of unstable material and compaction of the excavated area with clean fill (2-3m depth).</p> <p>The slope stability investigation report also identifies drainage works, some of which are required to be undertaken outside the development footprint, and therefore within the proposed conservation area. The drainage works within the proposed conservation area involve approximately 250 metres of subsoil drainage and approximately 400 metres of perimeter surface</p>

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	<p>drainage.</p> <p>The author of the SIS (Niche Environment and Heritage) has provided the following advice regarding the potential impacts of the drainage works on the proposed conservation area:</p> <ul style="list-style-type: none"> • The surface drainage is unlikely to have any significant effect as it can be designed and located to ensure minimal impact. • The initial trenching works for sub soil drainage is unlikely to cause any permanent ecological damage due to the existing disturbance of the understorey and that significant vegetation should be able to be avoided at the detailed design stage where necessary including <i>Tetratheca juncea</i>. <p>Niche further commented that provided there is adequate rehabilitation of the initial works no long term effects are likely. Overall the remediation works were thought unlikely to affect the long term conservation values of the land and specific measures to address any of these issues could be incorporated into the Plan of Management that is required to be prepared in accordance with the Office of Environment and Heritage Concurrence Conditions and any conditions deemed appropriate by Council.</p> <p>On this basis we are confident that no long term effect on the ecological values of the conservation area are likely to arise from the drainage works required and can be accommodated via the conditions of the OEH concurrence.</p> <p>It is our understanding that Council's technical assessment staff are supportive of the proposed subdivision design and layout as it relates slope stability issues.</p>