

APPENDIX C – COUNCILLOR SUBMISSION

**PLANNING REPORT TO
JOINT REGIONAL PLANNING PANEL
HUNTER AND CENTRAL COAST REGION
PROPOSED SUBDIVISION, WEST WALLSEND**

**APPLICANT
HAMMERSMITH MANAGEMENT PTY LTD**

**BY
TONY MOODY
BTP(UNSW), LL.B (UTS)(Hons), MPIA**

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CURRICULUM VITAE
JACK ANTHONY MOODY

QUALIFICATIONS:	1977	Bachelor of Town Planning - University of N.S.W., Kensington
	1982	Bachelor of Laws (Hons.) - University of Technology, Sydney (including High Distinction in Environmental Studies)
EXPERIENCE:	1984-Present	Moody & Doyle (formerly Tony Moody Town Planning Pty. Limited) - Partner in Town Planning Practice. Appears as a Court Appointed Expert and as an Expert Witness for Applicants & Local Councils in the Land & Environment Court.
	1983-1992	Bankstown City Council - Senior Development Control Planner
	1981-1983	Penrith City Council - Area Town Planner
	1979-1981	Wyong Shire Council - Assistant Town Planner
	1974-1975	Grafton City Council Student Town Planner

1. INTRODUCTION

- 1.1. I refer to the proposed subdivision within West Walsend (DA) which is under consideration of the Hunter and Central Coast Joint Regional Planning Panel (JRPP). On 26 August, 2010, the JRPP rejected a previous proposed subdivision for the subject site. On 3 November, 2011, the JRPP considered an original proposal under the current DA. The JRPP raised a number of matters requiring additional information from the Applicant. The Applicant has provided additional information for the consideration of the JRPP.
- 1.2. The Councillors of Lake Macquarie City Council (Council) have objected to the DA and requested that I prepare a Planning Report to the JRPP. I should note that I do not support all of the objections raised by the Councillors.
- 1.3. My Planning Report deals with my assessment of the DA. I also note that Council's Assessment Officer will be submitting a separate report on the DA.
- 1.4. I wish to briefly introduce myself. I am a Consultant Planner with a Bachelor of Town Planning Degree from the UNSW, Sydney and a Bachelor of Laws (Hons) from UTS, Sydney including a High Distinction in Environmental Studies. I was previously employed in 3 Local Government Councils over a period of 15 years including 9 years as Senior Development Control Planner. Since 1992, I have been one of the Principals of Moody and Doyle Pty Ltd. I have appeared as a Planning Witness for approximately 9 Councils in the Land and Environment Court and I have also appeared in approximately 30 Appeals as a Court Appointed Expert.
- 1.5. This Planning Report deals with planning matters within my areas of expertise and does not seek to provide my assessment on matters outside my expertise.
- 1.6. There are a range of objections raised by local residents but I have not canvassed all of these objections because I either do not agree with them or because they are outside my areas of expertise.
- 1.7. I have reviewed the DA, as well as the submissions received by Council and the reports prepared by Council Officers and the Applicant's Consultants. My review raises a number of significant concerns relating to the DA.

- 1.8. Similar to the processes of the Land and Environment Court, I recognise that my professional duty is to the JRPP. I have instructed Council that I will only be presenting views consistent with my professional opinion and within my areas of expertise.
- 1.9. I note that the DA is Integrated Development and that the proposed development was placed on public exhibition and notified to adjoining owners. I assume that the proper procedures have been followed by the Applicant and Council in relation to the procedures relating to Integrated Development and public notification.
- 1.10. I should note that the current DA has received the concurrence/agreement of a range of authorities including, but not limited to, the following:
- 1.10.1. Mine Subsidence Board
 - 1.10.2. NSW Rural Fire Service
 - 1.10.3. National Parks and Wildlife Service
 - 1.10.4. NSW Office of Water
 - 1.10.5. NSW Roads and Maritime Authority
 - 1.10.6. Department of Environment Climate Change and Water (National Wildfire)
 - 1.10.7. NSW Office of Environment and Heritage
 - 1.10.8. NSW Department of Education and Training
- 1.11. I wish to make the following comments to assist the JRPP in its decision on the DA. I stress the following comments represent only a brief summary of my views.

2. EXECUTIVE SUMMARY

- 2.1. The subject site has been zoned for residential purposes for a number of years. Furthermore, Council recently sought to rezone the subject site from its residential zoning to a conservation zoning but the Department of Planning, whilst acknowledging the sensitivity of the subject site, declined to support the proposal.
- 2.2. In view of 2.1 above, I do not support the request by a number of objectors that the subject site be rezoned and that residential development should not occur. Some form of residential subdivision should be permitted but of a design which is consistent with the sensitivity of the subject site.
- 2.3. There have been numerous objections raised against the DA by Councillors and local residents. I do not support all point of objections, but do consider that the following primary objections outlined in paragraph 2.4 justify refusal of the DA in its current form.
- 2.4. My primary objections to the DA are as follows:
 - 2.4.1. Adverse Visual Impact and Inadequate Visual Assessment – primarily at the Withers Street and Carrington Street entrances to the Township and the proposed lots on the higher eastern slopes.
 - 2.4.2. The lack of Building Envelopes for future dwellings as recommended by Council Officers.
 - 2.4.3. The lack of Small Lot Housing.
 - 2.4.4. A number of the unresolved issues referred to in Section 6.

3. RELEVANT PLANNING CONTROLS

3.1. Based on the reports of Council's **Officers and the Applicant's** Consultants, the following Planning Controls appear to be the primary Planning Controls for assessment of the current DA:

- 3.1.1. Environmental Planning and Assessment Act 1979, including, but not limited to, Section 79C matters (EPAA)
- 3.1.2. Various State Environmental Planning Policies
- 3.1.3. Lake Macquarie Local Environmental Plan 2004 (LEP)
- 3.1.4. Lake Macquarie Development Control Plan No. 1 (DCP)

There is also the accompanying Lifestyle 2020 Strategy of Council which the **Applicant's Planning Consultant states "was used to develop the LEP."**

3.2. A number of judgements of the Land and Environment Court are also relevant to the proposal including, but not limited to, the following:

- 3.2.1. *Zhang V Canterbury City Council* [2001] NSWCA 167 – Development Control Plans are to be a focal point of assessment.
- 3.2.2. *Stockland Development Pty Ltd v Manly Council* [2004] NSWLEC 472 – A Development Control Plan may operate to confine the intensity of development otherwise permitted by a Local Environmental Plan.
- 3.2.3. *Aldous v Greater Taree City Council* [2009] NSWLEC 17 – Conditions that lack finality, or require further assessment, may render a consent invalid.
- 3.2.4. *Parrott v Kiama Council* [2004] NSWLEC 77 – It may be appropriate for a proposed subdivision to place constraints on future development if the site is sensitive or if the lots are smaller than normal. The subject site is, in my view, correctly acknowledged to be a sensitive site due to a range of factors including, but not limited to, the following:
 - i. Steep slopes on part of the subject site. However, I note the assessment of the **Applicant's Planning Consultant that "the**

majority of the proposed lots are on sloping land but within the acceptable slope categories for residential development".

- ii. Some parts of the subject site, albeit a very minor portion, have a "risk of slope instability" as acknowledged by the Applicant's Geotechnical Consultant. The Applicant describes the subject site in the following terms, *"generally the site slopes steeply west down towards the existing township"*.
- iii. Flora and Fauna on the subject site.
- iv. Extensive trees on a significant portion of the subject site.
- v. The subject site has Cultural and Heritage values and is part of a wider Heritage Precinct.
- vi. Aboriginal Items
- vii. High Scenic Value as acknowledged in Council's Planning Controls, and also acknowledged by Council's Officers and the Applicant's Consultants.
- viii. Whilst noting that the proposed lot sizes are in excess of the minimum requirement, they are less than the average within West Wallsend.

3.2.5. *CBD Prestige Holdings Pty Ltd v Lake Macquarie City Council* [2005] NSWLEC 387 – More care is to be taken in assessing small lots. Larger average lot sizes allow for the retention of more trees.

4. ADVERSE VISUAL IMPACT

4.1. Relevant Planning Controls for consideration in terms of the issue of Visual Impact include, but are not limited to, the following:

4.1.1. LEP

The objectives of this zone are to: ...

- c) ensure that housing development respects the character of surrounding development and is of good quality design, and ...*

4.1.2. DCP

Section 3.2 Subdivision

P2.3

- Street systems respond and address natural waterways and topography, open space and ecological corridors to complement and enhance existing streetscapes and landscapes,*
- Subdivision design layout responds to the site's characteristics and minimises unnecessary clearing and reshaping of the land, and*

A2.3 The subdivision design ensures:

- Minimal lots that are considerably higher or lower than the road level;*
- All lots are restricted to a maximum cut or fill of 600 mm from natural ground level*

Section 2.1 Environmental Responsibility & Land Capability

P1.2 Development visible from, or adjoining the coastline, Lake Macquarie or its waterways, or on ridgelines, maintains and enhances the scenic value of these features.

The subject site is located within Zone B (see Figure 1) of the Scenic Values Map, assigned to areas that are, *“highly valued in the City for*

the maintenance of the scenic quality and identity of the various localities”.

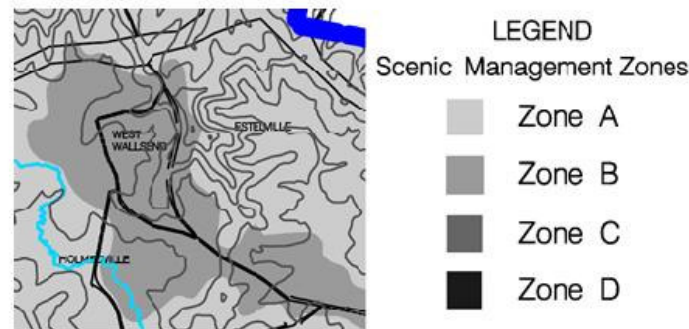


Figure 1. Extract from Scenic Management Zones map showing the subject site in Zone B.

Section 4.5 West Wallsend/Holmesville Area Plan – Heritage Precinct

West Wallsend/Holmesville is regarded as the best preserved of all the early settlements in Lake Macquarie City.

The strong sense of social identity, resulting from the area's history. The physical boundaries of the locality including the semi-rural bushland setting and separation from expanding suburban areas,

4.2. Withers Street Entrance

The Withers Street entrance is correctly described as a “gateway” by the Applicant’s Consultants. The Landscape Architect for the Applicant also acknowledges the bushland arrival to West Wallsend from Withers Street. I note the comment of the Applicant’s Heritage Consultant that the “bushland entry via Withers street, unlike Carrington Street, has been diminished in the last 60-70 years”. I consider that the subject DA should not further diminish the value of this ‘gateway’ and that the DA provides an opportunity to reinvigorate the positive values of the Withers Street entrance.

I also support the comments of L. Yang, Council’s previous Landscape Architect, that the southern entry road to West Wallsend provides a landscaped setting of bushland which provides “protection and easement for the residential areas from the harsh environment from high speed traffic. It also creates visual

transition and the sense of welcoming for the residence and visitors before they arrive home."

I consider that the current proposal will dramatically alter the entrance character of the suburb, particularly along Withers and Carrington Streets, a setting that, in my opinion, defines the character of the area. Under the current proposal, the approach to West Wallsend on Withers Street from the east will be drastically altered. The alterations which create significant concern, on an individual and cumulative basis, are as follows;

- 4.2.1. Linear Extension – There will be a linear extension of residential lots along Withers Street instead of the existing bushland entrance to the Township. Whilst I acknowledge the proposed landscaping works and 'design guidelines', I consider that such measures will not ensure that the objective of maintaining a bushland setting.
- 4.2.2. Rear Fences – I have a concern relating to the provision of rear fences along some of the proposed lots adjoining Withers Street and the likely visual impact distraction from what is currently a positive and predominantly natural landscape setting. Rear yards backing onto Withers Street is contrary to the Performance Criteria.
- 4.2.3. Topography – The subject site has an undulating topography that generally rises up from the eastern terminus of the current town to the east towards George Booth Drive.
- 4.2.4. Cut/Fill – The Performance Criteria under DCP A2.3 requires that the subdivision layout minimise unnecessary clearing and reshaping of the land. An acceptable solution is to minimise cut and fill to 600mm from natural ground level. Fill levels in parts of the proposed subdivision adjacent to Withers Street are much higher than 600mm. The fill alters the natural landform, making the future dwellings more prominent.
- 4.2.5. Removal of Trees – The proposed fill is also likely to require significant removal of trees on the subject site. This is contradictory to the Performance Criteria requirement of minimising clearing of natural vegetation. Inadequate information has been included in the DA that demonstrates the extent of the subject site that will be cleared of

vegetation. On a sensitive site, such as in this case, the potential significant loss of trees is a major concern.

- 4.2.6. Detention Basins – The proposed detention basin at the entrance to Withers Street on its southern side is of concern. Whilst I acknowledge that there will be landscaping provided in conjunction with the proposed detention basins, I have a concern that the proposed detention basin will limit the ability to satisfactorily maintain the bushland setting.

West Wallsend has been subject to flooding events in the recent past. The proposed development, upslope of the existing Town, is of concern to local residents. The Applicant has proposed several detention basins for the storage of stormwater runoff.

Whilst detention basins are often desirable from the perspective of reducing flooding concerns, detention basins may have negative visual impacts for the following reasons:

- Open detention basins are not characteristic of the locality.
- The Applicant has not provided details of how the drainage basins will appear from surrounding areas including inadequate cross sections of the detention basins and of the proposed fill.
- The detention basins will reduce opportunities to provide trees.
- The location of a number of the detention basins immediately adjoining residential lots is of concern for a range of reasons including issues of safety and visual aesthetics. Further note the concerns raised by a local doctor regarding the potential increase in diseases by mosquitoes but I must defer to appropriate experts.
- Details of the type and height of any required safety fencing around the detention basins appear not to have been provided.

4.3. Proposed Amendments – Withers Street Entrance

Some Council Officers have also raised a number of concerns relating to the Withers Street frontage. In relation to the northern side of Withers Street at the entrance to the proposed subdivision, Council's **Landscape Architect L Yang**

has proposed an amendment as indicated in Figure 2 below. I agree with this amendment.

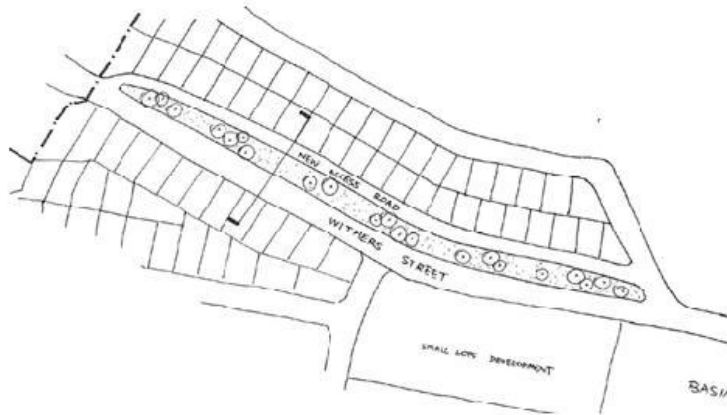


Figure 2. Council's Landscape Officer Recommended Layout of Subdivision along the northern side of Withers Street.

I also consider that an amended design needs to address my concerns relating to the southern side of Withers Street which are outlined in this section of my report. Issues of excessive fill, loss of vegetation, rear fences along the Withers Road frontage and the proposed detention basin on the southern side are all concerns, which in my view, require resolution.

4.4. Carrington Street Entrance

The Carrington Street entrance is described as a "second gateway" by the Applicant's Planning Consultant. The Applicant's Landscape Consultant also describes the entry as being "via open forest vegetation". The proposal includes several roads and lots to the south of Carrington Street. Council's Landscape Officer has raised a number of concerns about the proposed subdivision pattern in this location. The area is obviously an important gateway and as such, similar to the reasons listed above for the Withers Street entrance should retain a bushland character.

4.5. Proposed Amendments – Carrington Street Entrance

Council's Landscape Officer has proposed the following amendments (see Figure 3 below) which I support.

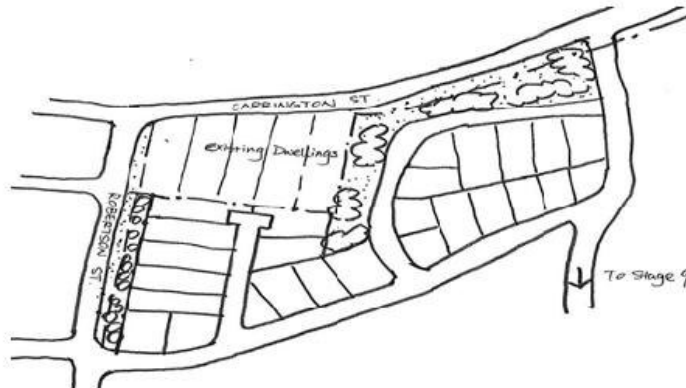


Figure 3. Council's Landscape Officer Recommended Layout of Subdivision near the Carrington Street entrance to the town.

4.6. Eastern Slopes

It should be acknowledged that the current DA retains significant areas of vegetation in part of the higher eastern slopes by reason of the fact that the proposed subdivision creates "fingers" of development. On this point, the DA also incorporates an "offset package" which includes the provision of a Biobanking Scheme. Nonetheless, I do have significant concerns about the Visual Impact of the DA, particularly in relation to the following elements.

I consider that the proposed subdivision on the high slopes to the east of West Wallsend Town is particularly insensitive and does not accord with the aforementioned Planning Controls in the following manner:

4.6.1. Cut/Fill – There are many portions of the proposed subdivision which propose extensive cut/fill arising from the proposed lots and roads. These proposed lots tend to be grouped where the topography begins to steeply incline to George Booth Drive, and as such are some of the most prominent lots in the subdivision. In these cases, where fill reaches well above ground level, the impact of a 2 storey dwelling would have a significant impact on the visual aesthetics of the Township.

- 4.6.2. Removal of Trees – The proposed cut/fill together with future dwellings will likely result in the removal of an extensive level of the existing vegetation on the eastern slopes.

In addition, there is possible removal of trees within the existing electricity easement, which forms an important backdrop on top of the ridge. In relation to the electricity easement, I have been advised that the Electricity Authority does not have any plans to use or clear the electricity easement but it will continue to retain the easement. Accordingly, it is reasonable to assume the clearing of the easement is likely to be required. Assuming my assumption is correct, I consider it appropriate that one should assume that the easement will be cleared of vegetation at some point in the future and unresolved building envelopes. As the Planning Controls state the importance of maintaining the existing ridgelines around West Wallsend, it is even more critical that the proposal maintains a reasonable visual buffer between the highest proposed lots and the electricity easement.

There will also be removal of trees arising from the proposed Asset Protection Zones for bushfire purposes.

- 4.6.3. Lot Size – The proposed Lot Sizes, although compliant with the minimum standards required by Council, are an average of 684sqm, compared to the existing average lot size in West Wallsend of 867sqm.

The DCP states the following in regards to lot sizes:

A1. *Subdivision design complies with the lot sizes detailed in LEP 2004 and:*

- *Provides a range and mix of **LOT** sizes,*
- *Responds to inherent site conditions, constraints and uses land efficiently;*
- *Retain significant features of the site, such as trees or views.*
- *Protects ecological, scenic, social and heritage features*

- Ensures boundaries are a minimum of 1 metre from any large trees; and
- Aligns lots to maximise vegetation retention in the front and rear of proposed lots.

While the smaller lot sizes in and of themselves would not ordinarily be of concern as they exceed the minimum standard, some of the proposed lots in the proposed subdivision are on highly visible, sloping land that is densely vegetated. The Town of West Wallsend currently enjoys a significant landscaped curtilage with vegetated ridgelines around the village. As such, reasonable retention of vegetation on the higher slopes should be a high priority.

- 4.6.4. Lack of Appropriate Design Guidelines – The JRPP stated in the Minutes of its meeting held on 3 November 2011, that, *“The Heritage and Urban Design Guidelines [be] enhanced and modified so they address the whole site and establish a desired future character for the future housing development on the site within the context of the landscape qualities of the site and surroundings areas”* and that the *“Heritage and Urban Design Guidelines appropriately incorporate the mitigation measures recommended in the Visual Impact Assessment”*.

The Applicant has lodged generic design guidelines for all lots, and some specific controls for lots bordering existing residential areas/roads.

However, I do not consider that the design guidelines provided by the Applicant adequately address the comments of the JRPP and that more specific building envelope controls must be set, particularly for the lots on the high eastern slopes of the proposed subdivision and the two gateway entrances.

4.7. Proposed Amendments – Eastern Slopes

- 4.7.1. Design Guidelines – As previously advised, it is acknowledged that the subject site is a sensitive one. It is considered vital in this case that the proposal include a demonstration of the dwellings to be built in the future and the associated visual impact of such dwellings.

Senior Commissioner Roseth of the Land and Environmental Court stated the following Planning Principle in the case of *Parrott v Kiama* [2004] NSWLEC 77, "A subdivision application should provide constraints on future buildings when the proposed allotments are **smaller than usual**, or **environmentally sensitive** or where **significant impacts on neighbours is likely** and needs careful design to minimise them." (emphasis added)

I consider that the proposed subdivision should provide adequate building envelope controls now as part of the assessment of the current DA based on the sensitive nature of the subject site.

On this point, Council's Heritage Officer stated that it is "considered necessary to require specific development controls for this subdivision, backed where necessary by a set of appropriate covenants".

I agree with the assessment that a range of matters need to be considered in the design of dwellings on the subject site including height, site coverage, setbacks, materials, roof forms, cut/fill, extent of glazing, roof form, etc. and these matters need to be considered in the light of the proposed excavation/fill throughout the subject site.

- 4.7.2. Lot Sizes - A strategic planning method to reduce the loss of trees and to minimise impacts on landform (cut and fill) is to provide larger lots. The more prominent lots, at higher elevations, should be larger. I refer to the Land and Environment Court judgement of *CBD Prestige Holdings Pty Ltd v Lake Macquarie City Council* [2005] NSWLEC 367 wherein Commissioner T Bly states that "a slightly larger average lot size would be preferable ...would probably enable the retention of more trees". Thus, whilst acknowledging that the proposed lot sizes exceed the minimum standard under the LEP, the sensitive nature of portions of the subject site require larger lot sizes than currently proposed. On this point, it is noted that the average of the proposed lots are smaller than the average of the existing lots in the Township.

Larger lot sizes on the eastern slopes will not only maintain more trees and likely require less cut/fill, but will also have the following added benefits:

- They will be more in keeping with the Heritage Character of the area, being larger lots that allow a superior landscaped setting.
- Allows for greater infiltration of stormwater and reduce runoff.
- Will ultimately reduce the number of lots, reducing the impact on the existing road network.
- Reduce the building footprint to lot size ratio and thus reduce its visual impact.

4.8. Visual Impact Assessment by Applicant

In response to the comments of the JRPF, the Applicant has provided a Visual Impact Assessment (VIA) by way of a number of documents. This VIA acknowledges the high visual qualities of the subject site and adjoining Township and also acknowledges that there are parts of the proposed subdivision with a "high" visual impact. Furthermore, the VIA has concluded that residential development of the existing bushland area will have an adverse visual impact, but states that, *"with the incorporation of proposed mitigation measures...the resulting visual impact is considered low and acceptable"*. The Applicant has produced a range of documents including an original and amended VIA for the consideration of the JRPF. Photomontages have also been included in the VIA with the objective of seeking to *"convey the final visual image of the proposal from typical vantage points"*. I am strongly of the view that the VIA and its associated photomontages do not achieve the objective of conveying the final visual image of the proposal. I consider that the VIA fails to provide the following essential elements;

- The VIA does not appear to be based on any known building envelopes and proposed finished ground levels and heights of future dwellings (as per *Parrot v Kiama Council*).
- The Applicant has provided a number of generic building envelope controls for all lots, but in my view this does not properly acknowledge

the different sensitivities of areas within the proposed subdivision, particularly on the steeper slopes and the entrances to the Town.

- The photomontages do not show proposed building envelopes and the visual impact of those proposed building envelopes.
- The VIA has not provided details as to the extent of the removal of vegetation as a result of various elements including proposed building envelopes, proposed cutting and filling for lots and roads, removal of vegetation within the Asset Protection Zones the removal of vegetation for future road works along George Booth Drive and any future clearing within the electricity easement. The loss of vegetated screening is a very important consideration but, to date, the information provided by the Applicant does not provide me with a sufficient understanding of the extent of the proposed clearing.

It is my strongly held view that until such time as the abovementioned detailed information is provided, one cannot properly assess the visual impact of the proposed subdivision and likely future dwellings.

5. SMALL LOT HOUSING

- 5.1. The LEP requires the provision of small lot housing subject to the following Schedule 2:

8 Subdivisions (other than of approved dual occupancy or approved small lot housing) that create 10 or more lots

At least 10%, but no more than 50%, of lots must be small lot housing lots.

small lot housing means a single dwelling on an allotment of land with an area of not less than 300 square metres but not more than 450 square metres in Zone 2 (1).

- 5.2. The issue of the provision of small lot housing was considered by the JRPP at its previous meeting on the 3 November, 2011. The JRPP deferred the DA, in part, for the Applicant to provide further information on the *"small lot housing requirements of the LEP"*. Furthermore, the JRPP sought an update of the visual assessment report to include the small lot areas. I understand that small lot housing was proposed by the Applicant in large 'development lots' when the DA was last considered by the JRPP. I further understand that the Applicant has now removed all proposed small lot housing and the previously proposed development lots accommodating small lot housing have been replaced by the provision of *"smaller conventional lots with a size range of 451sqm to 550sqm"*. Whilst the area of these proposed lots is smaller than the conventional lots, they do not meet the standards for small lot housing. Accordingly, the Applicant has lodged an Objection under SEPP No. 1 to avoid the requirement to provide small lot housing.
- 5.3. The Applicant has submitted a SEPP No. 1 Objection to this development standard seeking, in effect, not to provide small lot housing as required under the LEP. The **primary grounds for the Applicant's** Objection appear to be the following:
- Real estate advice from an agent: currently selling new greenfields subdivision into the local market contending that a small lot housing product is not viable and that small vacant lots are an acceptable alternative.

- Advice from a Land Economist on the economics of small lot housing generally and specifically for West Wallsend advising that small lot housing is uneconomic in the location.
- Peer review and supporting advice from JBA Planning, Planning Consultants on the soundness of the objection.
- Legal advice and opinion from Mr Adrian Galasso, Senior Counsel on the technical soundness of the objection.
- The difficulty/expense in preparing the required plans for dwellings on the small lots.
- A lack of market demand for such housing.
- It is not economical for the Applicant.

5.4. The SEPP 1 Objection does not, in my view, satisfactorily address the primary objectives of the development standard relating to small lot housing. On this point, the LEP does not specifically refer to the Objectives of the Small Lot Housing Development Standard. There are various planning documents within NSW which refer to the Aims and Objectives of Small Lot Housing. For example, Development Control Plan No 47 of Canterbury City Council entitled *"Small Lot Housing in the Richmond Grove Estate, Earlwood"* refers to the Aims and Objectives as follows;

i. To seek quality design outcomes for housing on narrow allotments.

On this point, I note Clause 24(4) of the LEP which requires, in effect, that consent for a small lot housing subdivision must not be granted unless *"consent has been or is also given to the erection on the land of dwellings that will comprise small lot housing"*. Thus, the LEP requires approval of the dwelling design as part of the small lot housing subdivision. The current DA does not provide the required dwelling designs because it does not seek to provide small lot housing.

ii. To promote a variety of housing forms.

On this point, the Applicant seeks to provide smaller lots as part of the current DA but these smaller lots do not meet the standard for small lot housing.

- iii. *To ensure that future development on narrow allotments allows for off street car parking*

Again, this is part of the dwelling design for small lot housing which is required under Clause 24(4) which has not been provided.

5.5. I consider that strict adherence to the development standard is reasonable and necessary and I do not support the SEPP No 1 Objection for a range of reasons including the following:

- i. The Applicant's grounds of objection primarily relate to a lack of market demand for such housing and that it is uneconomic. I consider that these are not grounds for a valid SEPP1 Objection as they do not address the primary objectives of the development standard referred to above.
- ii. The Applicant acknowledges that the intent of the standard is to, *"correct what is seen as a market failure inherent in subdivisions that generally only provide larger lots"*. However, the Applicant is contributing to the market failure by not providing small housing lots.
- iii. The same Applicant, in the original DA (and in a previous proposed subdivision on the same site) proposed small lot housing, albeit it in large development lots. At that time, the Applicant presumably saw merit in providing small lot housing. In fact, the Applicant had advised that the small lot housing component of the previous proposal would comprise between 13 – 20% of the total proposed lots and raised no objection to the provision of such housing. In addition, the Applicant in a nearby development site also proposed small lot housing. Thus, the Applicant in recent previous proposals for the subject site, and on an adjoining development site, did not raise objection to the provision of small lot housing.

- iv. As noted in (iii) above, the Applicant in previous proposals for the subject site and on a nearby approved development had proposed small lot housing by way of 'large development lots'. I have been further advised by Council Officers that a recent amendment to the LEP changes the way in which small lot housing can be provided and that the option of providing small lot housing by way of development lots can no longer be used. In my view, the mechanism by which small lot housing can be provided is not the fundamental issue. The fundamental issue is whether the development standard for small lot housing should be satisfied. I consider that the SEPP 1 Objection is not supportable and that the proposed development should incorporate small lot housing.
- v. I understand that Council's Social Planner raised objection to the lack of small lot housing.
- vi. I consider that it is not a valid or reasonable ground of objection for the Applicant to claim a difficulty/expense in preparing the required plans for a dwelling. Firstly, the LEP requires such details under Clause 24(4) of the LEP for such housing. Secondly, based on the judgement in *Parrot v Kiama Council*, building envelopes should be provided at the subdivision stage for sensitive sites (as in this case).

Overall, I do not support the Applicant's SEPP 1 Objection and consider that the current DA should provide small lot housing in accordance with the LEP.

6. UNRESOLVED ISSUES

6.1. I consider that there are a number of unresolved issues, including, but not limited to, the following:

6.1.1. Aboriginal Heritage

The JRPP required further information from the Applicant regarding the separation distance requirements of the proposed development to the "Butterfly Caves." I defer to appropriate experts.

In terms of the impact on the Butterfly Caves, there appear to be conflicting comments as to whether the DA will have an unreasonable impact on the Butterfly Caves. In particular, conflicting comments have been made as to whether the Local Aboriginal Land Council supports the current DA. A definitive advice from the Local Aboriginal Land Council is required.

I should note the Office of Environment and Heritage (OEH) granted concurrence to the proposed subdivision.

6.1.2. Drainage Easements

I understand that the DA requires the provision of drainage easements over adjoining lands and the Applicant proposes that this matter should be the matter of a Deferred Commencement condition.

I have seen a brief advice from Council's Solicitor in which the Solicitor advised that he "saw no legal problem with the proposal to impose a deferred commencement condition to address the matter of the stormwater easement".

6.1.3. Acoustic Impact

The Applicant had previously submitted an Acoustic Report prepared by a qualified Acoustic Consultant. This report acknowledged that "future traffic movements have the potential to cause elevated noise levels at many of the proposed lots". The Applicant's Acoustic Consultant also advised that "some lots will benefit from careful placement of acoustic barriers and that building design and landscaping measures will assist in

minimising the noise impact on the most affected lots". The Applicant's Acoustic Consultant concluded that the development of housing on the subject land is "acceptable provided the recommendations outlined in this report are implemented. This can include acoustic barriers and façade treatment of the dwellings most affected by traffic noise. The details of noise controls for individual sites should be determined at the dwelling design stage".

Mr Chris Baker, Council's **Environmental Officer**, has made the following comments in relation to the Acoustic Report submitted with the DA:-

"This report made reference to the then NSW Environmental Criteria for Road Traffic Noise, which was recently superseded in July 2011 by the NSW Road Noise Policy.

Whilst there are many similarities within both documents, there have been some changes to the criteria for residential exposure levels and how they are calculated, which will affect those dwellings on local roads, ie, those other than Withers St, Carrington St and George Booth Drive.

Both Withers and Carrington Streets are now categorised as "Sub Arterial" and not Collector roads, so the criteria is altered.

Vipac have data logged existing traffic noise in the three abovementioned streets and carried out predictive calculations till the year 2021.

I don't think that the abovementioned will change Council's view that streetscape is preferable to acoustic barriers, and we all agree that acoustic treatment of affected new dwellings is the preferred option, with some focus on the design, orientation and planning relatively quiet recreation areas.

This aspect, as I have mentioned at our meeting, allows the developer to cost shift acoustic treatments to the individual home owners, who will have a section 88B notation placed on their

affected property, requiring the provision of an acoustically designed dwelling and recreation area.

There are two different noise goals used with this road traffic noise assessment, one for existing premises and the other for new dwellings and allotments, the latter being more stringent

The consultant had predicted an increase in average road traffic noise levels to be less than 2 decibels, which means that existing allotments in Witners and Carrington streets will not require any treatments, but new allotments will.

There has been no assessment carried out on the noise increases to existing dwellings located on existing local roads, nor the effects that proposed new local road openings traffic will have on those dwellings.

My view is that the acoustic report submitted should be updated to reflect the new Road Noise Policy, and further, that assessment is extended to include traffic noise to existing local roads.

The noise contours presented are difficult to interpret, due to the size, which causes a blurred coloured contour map, and I would suggest a more definable version be provided, therefore allowing a clearer view of affected allotments."

Based on the advice of Mr Baker, the Applicant's current Acoustic Report does not provide a sufficient assessment. An updated Acoustic Report should be prepared to cover the matters raised by Mr Baker. I also note that an updated Acoustic Report should consider the following matters:

- The acoustic environment both within the dwellings and their private open space areas.
- Any acoustic impact arising from the likely removal of trees resulting from the proposed subdivision and within the proposed

electricity easement along the eastern side of the subject site adjacent to George Booth Drive.

- Any acoustic impact arising from any proposed widening of George Booth Drive by the RMS (formerly RTA). I note a report to the "Operations Committee Meeting" of Council on the 24 January, 2005 that: "the RTA has plans to upgrade George Booth Drive to a four-lane in the future." On this point, I have not received advice as to when such road widening will take place and this advice needs to be obtained from the RMS. I have also received recent advice from Council Officers that "the Hunter Expressway, which is currently under construction, is expected to reduce volumes on George Booth Drive by 25%".
- The change in volumes of traffic flow along George Booth Drive resulting from approved developments in the immediate vicinity (whether or not built). Some of the approved developments in the vicinity have been granted to the Applicant for the current DA.
- The visual impact of any proposed acoustic barriers or shields. On this point, I consider that the visual impact of any proposed acoustic barriers or shields must be assessed at this stage.

The abovementioned matters raised by Mr C Baker and myself need to be considered in an updated Acoustic Report.

I have previously advised Council that the advice of Mr C Baker should be forwarded to the Applicant with a request to provide an updated Acoustic Report.

8.1.4. Flora and Fauna

Ms Sarah Warner, Development Planner (Flora Fauna) of Council, states as follows:

Council recently engaged an owl expert John Young <http://www.johnyoungwildlife.com/> to complete a large forest owl pilot survey in the north west sector of the city. As part of this work John was provided with a number of owl records for the area. John mentioned

during discussions that the record of two sooty owls in March on the West Wallsend site could indicate that the pair may nest within a few hundreds metres of this record (i.e. potentially on the site). While Niche Environment and Heritage inspected one potential nest site and stag watched another, John indicated that this work may not have been sufficient to dismiss the potential for a nest site to occur. Powerful owl habitat was also discussed. The powerful owl record was in March, which he thought too early to determine if there was a nest site for this species. I have forwarded owl sections of the Niche SIS assessment to John so that he may be able to provide his advice in writing.

I realise the application has OEH concurrence and sign off from Council's previous ecologist, but I thought I should at least bring this new information to your attention (i.e. that potentially a threatened owl nest site has been overlooked and that possibly the site warrants further inspection by an owl expert).

I do note that the DA has already received the concurrence of OEH but I consider the above comments of Ms Warner need to be drawn to the attention of OEH as to whether it constitutes a fundamental change which would necessitate review of its decision. On this point, I note the advice of Mr J Andrews that *"there may be a need for further survey work to be undertaken by the Applicant, however, this will depend on the decision of OEH, particularly as they have currently signed off on the proposal"*.

8.1.5. Proposed Removal of Tramway Line Corridor

The proposed development over the Tramway Line Corridor is obviously a contentious matter with a number of local residents and has been the subject of scrutiny and assessment by the Applicant's Consultants, Council Officers and local residents. I do not have expertise in the area of Heritage Impact and I defer to the advice of appropriate experts.

It should also be noted that the Applicant has also implemented a Tramway Management Plan for that part of the tramway within its adjoining Pambulong Forest Development at Cameron Park.

6.1.6. Social Impact

Advice has been received by Mr Stephen McAlister, Coordinator Social and Community Planning of Council as follows;

"The SIA submitted for DA/113/2011 is the same as that submitted with the original proposal. However, it has been updated to take into account the revised population projections, and provides 2 additional appendices. One of these, Appendix 3, provides a response to my comments on the original SIA. However, this response does address any of the issues or concerns that I raised in my original response. Rather, it just seeks to refute most of my concerns. In addition, whilst it accepts my concerns that the proposed development will place additional strain on community facilities (in particular health and child care), the response is that the additional demand will lead to an increase in supply. However, evidence would suggest that this is not the case, as we are currently experiencing great strain on community facilities with demand already far exceeding supply.

Therefore, the concerns that I raised in my original referral response still stand. I believe that the proposal will result in a net negative social loss, and that the measures that are identified in the SIA will not maximise the positive social impacts or mitigate the potential negative impacts.

If the proposed development is to be approved, additional measures will need to be identified that will directly address the negative social impacts, with specific actions and strategies (rather than just promises to communicate/discuss/consult with other parties). These measures will need to be a condition of consent to ensure that they are implemented."

I note that the Applicant submitted a Social Impact Statement and various other reports in response to the concerns of Stephen McAlister. I am not an expert.

6.1.7. Contamination

The JRPP required further information from the Applicant relating to the assessment of contamination of Lot 15 DP 4849003. I defer to appropriate experts.

6.1.8. Climate Change

The JRPP sought further information from the Applicant regarding *"consideration of climate change in the stormwater and flood assessment"*. I defer to appropriate experts.

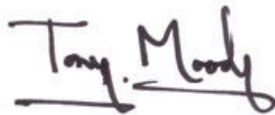
6.1.9. Offset Lands

The JRPP sought further information from the Applicant regarding the *"agreement of all interested parties to the dedication of offset lands as required by OEH concurrence conditions 3 and 6"*. On this point, I note the advice of the Applicant's Planning Consultant that, *"The Mortgagor of the land has indicated a willingness to provide written confirmation of acceptance of the dedication of the offsets land. The process however requires a range of internal procedures to be completed. The process should be completed in January 2012 and the appropriate documentation will be forwarded to Council at that time"*.

I will make further investigations as to whether the 'appropriate documentation' has been submitted to Council. If not, I would be very concerned with the lack of certainty regarding this matter.

7. CONCLUSION

- 7.1. The subject site has **been zoned residential** since the mid 1980's.
- 7.2. A number of objectors consider that the subject site should be rezoned back to a bushland conservation zoning. The Department of Planning in line with their broader strategic goals of increasing housing, has previously rejected such a request. The subject site should be developed for residential housing and I do not support those objectors who seek to stop residential development on the subject site and seek a rezoning.
- 7.3. I have assumed that residential development is appropriate and the ultimate question is the design of such residential development.
- 7.4. The subject site is a sensitive one due to a range of factors including, but not limited to, its topography, flora and fauna, heritage/cultural values and its visual significance. Accordingly, any proposal for the subject site must be a sensitive one responding to the constraints of the subject site.
- 7.5. In its current design, I consider that the current DA is not worthy of approval for the reasons outlined in my Planning Report. Furthermore, I consider that my issues of concern cannot be resolved by Conditions of Consent as they are essential matters for consideration (apart from the issue of drainage easements which can be resolved via deferred commencement conditions in accordance with the advice of Council's Solicitor).
- 7.6. The failure to provide small lot housing is also of significant concern, and the Applicant's SEPP 1 Objection is **not supported**.
- 7.7. I am strongly of the view that an alternative amended subdivision design for the subject site is possible, subject to a more sensitive design.



TONY MOODY

BTP(UNSW), LL.B (UTS)(Hons), MP/A

21 May, 2012