

APPENDIX E – APPLICANT’S RESPONSE TO COUNCILLOR SUBMISSION

planning

working beyond expectations

ADW JOHNSON PTY LIMITED

ABN 62 129 445 398

Response to Planning Report prepared by Moody & Doyle

Development:
Subdivision at West Wallsend

Applicant:
Hammersmith Management

Date:
May 2012



project management • town planning • engineering • surveying
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1.0 Background

The JRPP considered DA 133/2011 (DA) for a subdivision at West Walsend on 3 November 2011. The Council assessment report to the JRPP recommended the DA for approval.

The JRPP deferred the determination of the DA and sought further information on the following matters:

1. The small lot housing requirements of the LMCC LEP 2004.
2. The omission of Lot 15 DP 4049003 from the contamination assessment.
3. The separation distance requirements of the proposed development to the 'Butterfly Caves'.
4. The need for the Heritage and Urban Design Guidelines to incorporate visual mitigation measures.
5. Consideration of climate change in the stormwater and flood assessment.
6. Enhancement of the Heritage and Urban Design Guidelines to address the whole of the site.
7. Updating of the Visual Assessment Report to include the small lot areas.
8. Agreement of all interested parties to the dedication of offset lands as required by OEH concurrence conditions 3 and 6.

A comprehensive response to the above matters was submitted to Council on 21 December 2011, and DA information was re-exhibited principally over February 2012.

The Lake Macquarie City Council Councillors have since commissioned Moody & Doyle to prepare a submission on their behalf in relation to the DA. The Moody & Doyle report comments on a range of matters well beyond the scope of the additional information sought by the JRPP. The report provides substantial comment on matters already found by the Council Staff and the JRPP to be sufficiently addressed.

Notwithstanding, the purpose of this response is to comprehensively respond to all issues raised in the Moody & Doyle Planning Report, which includes supporting input from a number of consultants.

The DA and the additional information submitted in response to the JRPP matters were supported by extensive and detailed professional reports. The proposal has received all required General Terms of Approval and the required concurrence from the Office of Environment and Heritage. The proposal as modified to address the JRPP matters represents a development proposal that strikes a balance between social, economic and environmental factors taking into account specific local and site factors.

In this regard, the current proposal provides for 397 residential lots over a site area of 70.15 ha.

Of the 70.15 ha site, approximately 59 ha is zoned Residential, approximately 11 ha is zoned Open Space and approximately 1 ha is zoned Infrastructure. 21.3 ha (or 36%) of the Residential zoned land is included in the proposed conservation area. Overall 45 % of the site (residential zone + open space zone) is excluded from the development footprint with all existing vegetation being retained in these areas.

Section 2 of this report provides a table addressing all the matters raised in the Moody & Doyle report. Attached to this letter are copies of the detailed responses prepared by the consultants to specific matters raised in the report relevant to their discipline. The attachments are:

- A. Moir Landscape Architecture - detailed additional comment on the matters relating to visual impact.
- B. Niche Environmental - additional consideration of owl habitat issues.

*Statement of Environmental Effects
Proposed Multi-Use Development
77530 Hillsborough Road, Murrumbidgee
(Ref. 50066)*

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C. Brown Consulting - information on engineering aspects of the proposal including cut and fill, clearing and detention basins

D. Vipac Engineers – Updated Noise Impact Assessment

E. JBA Planning – Response to Small Lot Housing (SEPP 1 Objection)

In summary, the visual impact issues for the site have been assessed and addressed in detail via impact assessment, the proposed street scaping/landscaping works, the Vegetation Management Plan measure and the Heritage and Urban Design Guidelines that will control future development within the subdivision. The overall impact of the proposal has been assessed as low provided the mitigation measures are implemented. Furthermore, the proposal retains a significant bushland edge to West Walkend and protects the vegetated ridgeline to the site. It also significantly enhances the existing degraded character of the bushland entry to West Walkend via Withers Street, and significantly retains the bushland character of the Carrington Street entry.

We note that the Moody & Doyle Planning Report does not support the SEPP 1 Objection submitted with the proposal and ultimately forms the view that small lot housing is required. The arguments in support of this view however do not address the grounds of the SEPP 1 Objection. The Planning Report refers to other subdivisions where small lot housing has been provided for as part of the development but does not acknowledge that, or recognise that, most of these have not been constructed or that they are at least proposed in locations that may be able to support this form of housing (e.g. adjacent or nearby to services and facilities). The Planning Report also fails to recognise that the Council is removing the small lot housing controls from its next LEF. The SEPP 1 Objection argues that a better way of broadening housing access (the underlying purpose of the small lot housing controls) in the circumstances is to increase the number of smaller conventional lots available in the subdivision. In this way the intention of the small lot housing development standard is met by the proposal.

The planning and design of subdivisions inevitably involves compromises in search and achievement of an appropriate balance. Single issue criticisms of planning and subdivision design are often easily made but a broader and more objective perspective should be adopted and the overall merit of a proposal considered. This approach was undertaken by the Council Staff and the outcome was a recommendation for approval subject to conditions.

Our Conclusion

The Moody & Doyle Planning Report states that it supports residential development of the site but not based on the current layout.

The reasons for not supporting the current layout are not well founded and generally fail to acknowledge the positive aspects of the proposal. We also note that many of the issues raised were not related to matters required to be addressed by the JRPP to enable it to determine the application. The current application is the outcome of extensive assessment, compromise and significant design changes to address issues raised by the JRPP, Council staff, Councillors, Government Agencies and the public.

We trust that all matters raised in the Moody and Doyle Planning Report have been more than adequately addressed by this comprehensive response and that the application currently being considered by Council remains supported by Council Staff and reported back to the JRPP for consideration and determination at the earliest possible time.

2.0 Planning Report Response

Planning Report Comments	Response
3. RELEVANT PLANNING CONTROLS	
3.1 Based on the reports of Council Officers and the Applicant's Consultants, the following Planning Controls appear to be the primary Planning Controls for assessment of the current DA:	There are other relevant strategic documents such as the Lower Hunter Regional Strategy and the Newcastle Lake Macquarie Western Corridor Planning Strategy that contain relevant planning objectives particularly in regard to housing provision.
3.1.1 Environmental Planning and Assessment Act 1979, including, but not limited to Section 79C matters (EPAA)	Agreed
3.1.2 Various State Environmental Planning Policies	Agreed
3.1.3 Lake Macquarie Local Environmental Plan 2004 (LEP)	Agreed
3.1.4 Lake Macquarie Development Control Plan No. 1 (DCP)	Agreed - Council has submitted an assessing officers report to the JRP that finds compliance with relevant LEP and DCP provisions
There is also the accompanying Lifestyle 2020 Strategy of Council which the Applicant's Planning Consultant states "was used to develop the LEP."	Agreed
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:	The relevance of individual cases is limited unless points of law are made, general planning principles developed or cases refer directly to the relevant LEPs or SEPPs.
3.2.1 Zhang v Centisbury City Council [2001] NSWCA 167 – Development Control Plans are to be a focal point of assessment.	Agreed
3.2.2 Stock and 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.	Agreed
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.	Agreed

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Planning Report Comments	Responses
3.2.4 Parratt v Klamia 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 scope categories for residential development.	Agreed
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 downward towards the township".	Slope instability has been assessed and addressed by the proposal with appropriate geotechnical controls detailed. In addition the JRPP did not seek additional information in this regard.
iii) Flora and Fauna on the subject site.	Concurrence has been received from OEH.
iv) Extensive trees on a significant portion of the subject site.	Agreed and it should be noted that a minimum of 45% of the site will retain existing vegetation under the current proposal.
v) The subject site has Cultural and Heritage values and is part of a wider Heritage Precinct.	While there is part of a heritage item on part of the site its significance has been assessed (as limited) and appropriate interpretation provided as part of the proposal. The significance of the site's location in a heritage precinct has been addressed through the subdivision layout and the Heritage and Urban Design Guidelines prepared for future housing development within the subdivision.
vi) Aboriginal Items	Adequate and agreed provision has been made for the protection of Aboriginal cultural values on the site. It has been established as part of the project assessment that works will not damage or harm the "Butterfly Caves". OEH has provided its General Terms of Approval under the relevant sections of the NSW NPW Act 1974.

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Planning Report Comments	Responses
vi) High Scenic Value as acknowledged in Council's Planning Controls, and also acknowledged by Council's Officers and the Applicant's Consultants.	The scenic values of the site have largely been retained and visual mitigation measures have been incorporated into the Heritage and Urban Design Guidelines. All ridgefire and creek line vegetation is retained by the proposal.
vii) Whilst noting that the proposed lot sizes are in excess of the minimum requirement, they are less than the average within West Wallsend.	Applying an average lot size comparison to the existing West Wallsend Township is inappropriate given that small conventional lots are provided within the subdivision, a product not currently available in West Wallsend. A more relevant analysis would be to consider the dwelling density proposed for the subdivision, which equates to less than 5.7 dwellings per hectare. This density takes into consideration all of the scrubbies of the site and is at the lower end of density expectations set by State Government Policy for 'sensitive sites'.
3.2.5. CBD Prestige Holdings Pty Ltd v Lake Macquarie City Council [2005] NSW EC 367 – More care is to be taken in assessing small lots. Larger average lot sizes allow for the retention of more trees.	Agree generally however the relevance to the current proposal is unclear given that through a restricted development footprint 45% of the existing vegetation on the site is proposed to be retained and conserved. Furthermore, significant steel, detention basin and individual lot planting are proposed/required.

Planning Report Comments	Response
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:	A full visual impact assessment in accordance with Council guidelines has been prepared and the recommendations incorporated into the Heritage and Urban Design Guidelines for the site. In response to the visual impact issues raised in the Moody & Doyle Planning Report, Moir Landscape Architecture has provided comprehensive comments (Refer to Attachment 4) and ultimately reaches the following conclusion: <i>The criticisms of the LVA within the Planning Report are purely subjective, based on vague assumptions and without any clear or quantifiable justification. As a result of considerable time and effort analysing the site and the potential impacts of the proposed development the submitted LVA received support from both LMCC Council officers and the JPPP.</i>
	<i>It is apparent that the author of the Planning Report has not undertaken the same rigorous assessment of either the character of the site, the development proposal or the LVA and has failed to review and analyse the necessary information, including the LVA itself. In fact, the author has repeatedly chosen to selectively paraphrase sections of the LVA out of context to support their opinion whilst ignoring significant key findings and their associated justification.</i> Also refer to Attachment C prepared by Brown Consulting addressing the engineering aspects of the proposal raised under the visual comments.

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Planning Report Comments	Responses
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 ...	Heritage and Urban Design Guidelines have been prepared for the future housing within the proposed subdivision.
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.	The street layout has been developed to reflect topographic features, existing street pattern and the local heritage values of the site. There are no significant visual impacts associated with the proposed street layout.
Subdivision design layout responds to the site's characteristics and minimises unnecessary clearing and reshaping of the land, and	Existing streetscapes e.g. Withers Street are to be enhanced. The layout allows the contours and where possible avoids reshaping of the land. Some reshaping is however necessary to ensure adequate road grades and service infrastructure efficiencies.
A2.5 The subdivision design ensures: Minimal lots that are considerably higher or lower than the road level;	The design provides for access to all proposed lots in accordance with Councils engineering guidelines.
All lots are restricted to a maximum cut or fill of 600 mm from natural ground level	The design achieves a minimum cut and fill balance. See attached comments from Browns, (refer to Attachment C).
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 proposed development is set well below the ridge line, with a significant portion of the vegetated eastern rim of West Wallsend retained. Improved and conserved in perpetuity as a result of the proposal.

Planning Report Comments	Response
The subject site is located with Zone B (see Figure 11) 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".	The visual impact has been assessed to the requirements of Zone B and the proposal complies. Moir Landscape Architecture has provided the following comment in regard to this point (Refer to Attachment A): <i>The Planning Report makes direct reference to numerous planning controls relevant to the Local Government Area (LGA) however it does not explain how the (LGA) fails to address these planning controls. LMCC's Scenic Quality Guidelines, a key document for the preparation of Visual Impact Assessments in the LGA, is mentioned briefly in the Planning Report however it does not detail the core objectives of those guidelines, which in Moody and Doyle's opinion the proposal fails to address.</i>
4.2 Withers Street Entrance The Withers Street entrance is correctly described as a "gateway" by the Applicant's Planning Consultant. The Landscape Architect for the Applicant also acknowledges the bushland area to West Walsend from Withers Street. Whilst I agree with 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 current DA provides the opportunity to reinvigorate the positive values of the Withers Street entrance.	Moir Landscape Architecture responded comprehensively to this issue, including supporting figures and photographs (Refer to Attachment A). The response also included the following comment in regard to this issue: <i>The Planning Report considers 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. The Planning Report fails to acknowledge the positive aspects of the Proposal which, in addition to the items listed above, include mandatory landscaping setbacks, tree planting, fencing and built form controls that ensure that future development is sympathetic to the intended character of this area.</i>
I also support the comments of L Yang, previous Landscape Architect of Council, that the southern entry road to West Walsend provides a landscaped setting of bushland which provides protection and easement for the residential areas	A landscaped setting of bushland will be retained by the proposal. Furthermore the proposed avenue of trees will enhance the entry and provide a sense of arrival.

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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 selling 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 the objective of maintaining a bushland setting.	Disagree - the entrance character of West Wallsend will alter on Withers Street but not "dramatically" and the proposed avenue of trees is a positive contribution. The Carrington Street entry will remain almost entirely intact. This is consistent with the scenic management objectives for the area. Muir Landscape Architecture has responded comprehensively to this issue, including supplanting figures and photomontages (Refer to Attachment A). The response also included the following comment in regard to this issue <i>Considering the proximity of residences associated with Seaham Street and Government Road (Hainesville) to the south and southeast of the Withers Street entry it is clear that residential properties already contribute to the identity of the Withers Street bushland character. Although shorter, the bushland entry to Withers Street is retained and in some aspects enhanced with the rehabilitation of the currently degraded bushland adjacent to the roadway.</i>
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.	The VIA addendum for the subdivision states that in this area visual dominance will be transferred to the avenue created by the street trees. While the rear fences will be visible they will not be the main visual feature. In addition there are specific controls proposed in the Heritage and Urban Design Guidelines
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 Bath Drive.	The levels of Withers Street will not change so the issue of the topography of the street in regard to visual effects is unclear.

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Planning Report Comments	Responses
4.2.4 Cut/Fill - The Performance Criteria under DC3 A2.3 require 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.	Brown Consulting provided a response to matters relevant to their discipline including this issue (refer to Attachment C) as follows: <i>It is unrealistic to expect a development of this size over land which is undulating to restrict cut/fill levels to 600mm. All roads within the development comply with Council's minimum/maximum grades and a textured cut/fill ratio is expected to be achieved over the entire site. There has been careful consideration of the impact on the existing landscape throughout the engineering feasibility and design stages of this development.</i> The visual impact along Withers Street is mitigated by the retention of existing trees where possible, the proposed avenue of trees and planting proposed within the detention basin to the south of Withers Street. There are also controls in the Heritage And Urban Design Guidelines that ensure the character of the new development is consistent with the existing character of West Wallsend.

Planning Report Comments	Responses
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 with the DA that demonstrates the extent of the subject site will be cleared of native vegetation. On a sensitive site, such as in this case, the potential significant loss of trees is a major concern.	Mor Landscapo Architecture provided a response to this issue (refer to Attachment A), including the following: <i>The extent of tree clearing is covered in detail in the Species Impact Statement (SIS) and Offsets Package. The SIS was used as a basis for the preparation of a Vegetation Management Plan (VMP), which detailed the extent of earthworks, proposed remediation works and associated methodologies.</i> The Planning Report does not recognise that 45% of the site is to remain undeveloped, retaining its existing landform and vegetation. Furthermore, the retained vegetation is proposed in a contiguous parcel, principally along the eastern ridgeline and along creek lines. It should also be noted that while offsets have been provided on the basis that the entire development footprint would be cleared, Council has included a condition which limits the clearing of any associated with the subdivision as follows: <i>"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."</i> It is assumed that once these works are completed, removal of additional trees on the site would be limited to clearing required to accommodate future dwellings on the lots. Any trees not required to be removed as a result of either of the above works would be retained within the subdivision.
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, have a concern that the proposed detention basin will limit the ability to satisfactorily maintain the bushland setting.	Brown Consulting, who designed the basins, have made the following comments in regard to this issue (refer to Attachment C): <i>The provision of onsite detention is required for the site to meet Councils DOPs and Engineering guidelines. The basins not only serve to detain flows for stormwater quantity management, but also integrate</i>

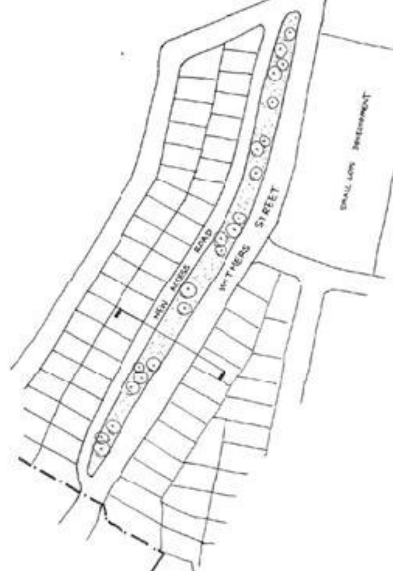
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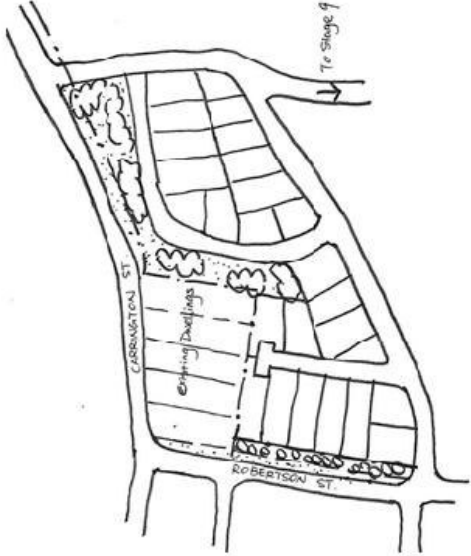
Planning Report Comments	Responses
	<i>Detention filtration of flows to treat stormwater quality to a level that is required in Councils Water Cycle Management Guidelines.</i> Muir Landscape Architecture provided an additional comment in relation to this issue (refer to Attachment A). Maintaining the bushland setting is achieved by retaining 45% of the site under natural vegetation. The stormwater assessment prepared in support of the subdivision proposal found that the detention basins will reduce existing flooding problems. Detention basins are provided because of their proven environmental benefits and they are a mandatory Council requirement. The basins are a mandatory requirement of Council and represent current best practice. The presence of basins will not have an adverse effect on character of West Walsend. Adequate detail has been provided including landscaping details and sections of the proposed works. The basins will have the appearance of open space/ natural areas. Generally the visual impacts of basins are positive and lots adjoining or having views of basin areas are often highly sought after. Muir Landscape Architecture provided the following comment in relation to this issue (refer to Attachment A): <i>The Planning Report claims 'the detention basins will reduce opportunities to provide trees'. To the contrary the detention basins will maximise opportunities for landscaping and tree planting.</i>
West Walsend 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 a perspective of reducing flooding concerns, detention basins may have negative impacts visual impact for the following reasons:	
Open detention basins are no 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.	

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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. I further note the concerns raised by a local doctor regarding the potential increase in diseases by mosquitoes but must defer to appropriate experts.	Brown Consulting have provided the following comments in response to this issue (refer to Attachment Q): <i>The proposed internal batter slopes of the basins have been designed such that safe egress of persons can be achieved. All detention basins are located on existing natural drainage flow paths upstream of the existing discharge point from the site, which is necessary to manage stormwater flows discharging from the site. The basins are designed to be dry basins. Retention times proposed are sufficiently short such that dewatering of the basins will be achieved in less than 48 hours following a rainfall event. These basins will not hold permanent water.</i> There are no significant mosquito habitat issues with dry basins.
Details of the type and height of any required safety fencing around the detention basins appear not to have been provided	LMCCs basin safety requirements, which include criteria for the provision of fencing, will be applied to detailed design and approved as necessary via the subdivision construction certificate.
Proposed Amendment – Withers Street Entrance Some Council Officers have 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 the Figure 2 below. I agree with this amendment.	The JRPP has already considered the layout for the northern side of Withers Street with no concerns raised. Council staff have not previously raised this as an issue.
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.	These issues raised have already been addressed in comments above. Vegetation loss is unavoidable and is adequately offset. The rear fences to Withers Street will not be a dominant visual feature due to the proposed street landscaping including planting and setbacks. What is proposed adequately resolves the issues given the consulting planning and design principles.

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Planning Report Comments	Responses
 Figure 2. Recommended Layout of Subdivision along the northern side of Wilbers Street.	Council's assessing officer has recommended that the applicant's layout for this area be approved. The JRPP has considered the applicant's layout and has not identified any concerns. The proposed Council design for Wilbers Street is not well resolved. It is not drawn to scale and is quite misleading as to what is achievable in this area. There are potentially adverse traffic implications and the two rows of lots north of the access road introduce more smaller conventional lots (raised as an issue in the planning report) and may be unachievable given Council's lot size requirements and the site constraints. In addition the layout would increase road lengths and costs unnecessarily. This is not a viable alternative design.
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 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 Wilbers Street entrance, should retain a bushland character.	Agreed
	The proposed subdivision has no lots directly fronting/addressing Carrington Street. There will be very large setbacks to dwellings in this area and minimal effect on the entrance character.

Planning Report Comments	Responses
4.6 Proposed Amendments – Carrington Steel Entrance Council's Landscape Officer has proposed the following amendments (see Figure 3 below) which I support.  Figure 3 Council Landscape Officer recommended layout of subdivision near the Carrington St entrance to the town	The subdivision layout in this area was developed to primarily address heritage issues. The JRP has considered the applicants layout and has not identified any concerns. Muir Landscape Architecture provided the following comments (refer to Attachment A): <i>The suggestion that the character of the entry at Carrington Street would be dramatically altered by the proposal is unreasonable....The proposal retains vegetation associated with the ridge line between Carrington Street and proposed lots, which are set down on the other side of this ridge line which naturally screens the proposed development from Carrington Road. A building envelope is proposed 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 landscape buffer to the entrance to the existing lots of West Wallsend.</i> Council's Landscape Officer has now presented his alternative layout. There may be topographic and traffic constraints with the relocation of the entry road of Carrington Street and its heritage implications have not been assessed. This alternative layout does not represent a significant improvement on the applicant's layout when the effects on the town entrance are considered.

Planning Report Comments	Responses
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 30abanking 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 insensitive and does not accord with the above mentioned 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 on 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.	The high east slopes will stay under the current vegetation. The visual impact of the development has been assessed and appropriate mitigation measures have been incorporated in the Heritage and Urban Design Guidelines and Vegetation Management Plan. Mair Landscape Architecture provides a comprehensive response to this issue (refer to Attachment A).
4.6.3 Topography 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 on the Township.	Already addressed see 4.2.4 above. The houses on these lots once developed may be visible but are highly unlikely to be prominent once landscaping matures.
4.6.4 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.	Already addressed
	Already addressed 4.2.5 above.

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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 out 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 easement is not part of the current proposal. The minimum tree buffer between the subdivision footprint and the easement is approximately 50 metres. A minimum vegetated width of 20 metres will be retained between the easement and George Booth Drive. If clearing of the easement occurs there will still be a tree ridge as viewed from West Wallsend. M&P Landscape Architecture also address this issue (refer to Attachment A)
4.6.3 Lot Size	All APZs have been included in the subdivision footprint.
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.	As stated earlier, applying an average lot size comparison to the existing West Wallsend township is inappropriate given that small conventional lots are provided within the subdivision. A product not currently available in West Wallsend. A more relevant analysis would be to consider the dwelling density proposed for the subdivision, which equates to less than 5.7 dwellings per hectare. This density takes into consideration all of the sensitivities of the site and is at the lower end of density expectations set by State Government Policy for 'sensitive sites'.
The DCP states the following in regards to lot sizes:	
A1. Subdivision design complies with the lot sizes detailed in LCP 2004 and:	Achieved
Provides a range and mix of LOT sizes	A lot size range of 451m² to 2313 m² is proposed.

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- 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.		The subdivision layout proposals are an efficient and appropriate development outcome for the site. Ridgeline vegetation is protected. An appropriate balance with housing is achieved. The most significant trees are protected. Lot alignment has been based on heritage requirements at Council's request. A minimum of 45% of the site is to be retained under existing vegetation. No vegetation on the higher slopes is affected by the subdivision proposal.
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 and that is densely vegetated. The Heritage Town of West Wyalandi currently enjoys a significant landscaped curtilage with vegetated ridgelines around the village. As such, retention of vegetation on the higher slopes should be a high priority.		The smaller lots are consistent with Council's efficiency criterion. The most significant landscape feature in this area, the treed ridgeline is well outside the subdivision footprint. The Visual Impact Assessment demonstrates that the impact with appropriate mitigation will not be significant. Brown Consulting provided the following comment in regard to this issue (refer to attachment C): <i>It is also worth noting that a larger lot size would not necessarily reduce the amount of earthworks and subsequent vegetation removal.</i>
4.6.4 Lack of Appropriate Design Guidelines – The JPPP stated in the Minutes of a 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		The guidelines have been amended to address the JPPP concerns. Subject to compliance with the guidelines there is no evidence that there will be unacceptable impacts from individual dwellings. The relevant planning objectives are to enhance the existing desirable character (i.e. low density urban) and to ensure the height, form and scale of development is not visually prominent which will be achieved through the guidelines and proposed street scaping.

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<i>Visual Impact Assessment</i>. 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 JPP 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.	The highest sensitivity areas of the site will not be developed and are proposed to be maintained, improved and conserved in perpetuity.
Senior Commissioner Roseth of the Land and Environmental Court formed the following Planning principle in the case of <i>Parrot v Klamra</i> [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)	Heritage and Urban Design Guidelines have been produced covering all proposed lots.
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.	Disagree, the setback and site cover ratio controls in the Heritage And Urban Design Guidelines provide adequate controls to inform the building envelopes.
On this point, Council's Heritage Officer stated that it is "considered necessary to require specific development	The Heritage And Urban Design Guidelines will provide the controls and be applied to all lots via an 88B covenant

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Planning Report Comments <i>controls for this subdivision, backed where necessary by a set of appropriate covenants</i>	Responses
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 Judgment of CBD Prestige Holdings Pty Ltd v Lake Macquarie City Council [2005] NSWLEC 367 wherein Commissioner 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 with 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 area of the proposed lots is less 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 dwellings in a landscaped setting.	These matters have all been considered. See the Heritage And Urban Design Guidelines. There is a trade off in subdivision design between lot size and efficiency. It is more effective and ecologically sound to protect large areas of bushland than to retain individual trees. As 45% of the site is to be retained under existing natural vegetation this is already a significant strategic outcome. The bushland edge to the town and the ridge will be retained. Over time new housing will visually integrate with the retained bush as viewed from outside the site.
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:	A minimum of 45% of the site will be retained with the existing trees and landscape.
• They will be more in keeping with the Heritage Character of the area, being dwellings in a landscaped setting.	Disagree; this convention confuses bushland tree retention and landscaping. Existing dwelling lots in West Wallsend are landscaped, native tree retention around dwellings is minimal. The proposed lots make generous provision for landscaping through a site cover ratio which is consistent with the existing West Wallsend character and Council's current DCP controls.

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- 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 building to lot ratios.	True but of limited relevance when there are also broader objectives such as housing to consider. Groundwater recharge is not an issue for the locality. See also Brown Consulting comments (refer to Attachment C). The local road network has the capacity to cater for the proposed development without adverse impacts. True but no need for larger lots has been established as part of the environmental assessment of the proposal.
4.8 Visual Impact Assessment by Applicant In response to the comments of the JPP, 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 "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 JPPP. Photographs 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 photographs 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:	Provision of a Visual Impact Assessment is a Council requirement. The visual impacts of urban subdivision are well known and understood as are effective mitigation measures. Without knowing the precise detail of future development it is still possible to deal with a high degree of confidence the outcome of mitigation measures over time. The Visual Impact Assessment and photographs are more than adequate for the circumstances. Morr Landscape Architectures response to these issues (refer to Attachment A) includes the following: <i>The author of the Planning Report has not made any reference to the methodologies utilised in the preparation of the VIA nor have they provided any alternative means for assessing the likely visual impacts. They have merely made subjective judgments and opinions based on assumptions and anecdotal evidence</i>
The VIA does not appear to be based on any known building envelopes of proposed dwellings and proposed finished ground levels and heights of future dwellings (as per Parrat v Klamia Council).	This level of detail is not required to develop adequate visual mitigation measures.

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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.	Urban housing is not generally a source of adverse visual impacts. The fact that dwellings can be seen does not of itself constitute an unacceptable visual impact. The issue is whether any potentially significant impacts are reasonably mitigated. In this case adequate street screening is proposed and then there is provision for visual integration of the developed subdivision through the lot controls in the Heritage and Urban Design Guidelines. The limits of the subdivision below the ridge and tree line further ensure the integration of the housing with the landscape.
The photographs do not show proposed building envelopes and the visual impact of these proposed building envelopes.	This level of detail is not required to develop adequate visual mitigation measures.
The VIA has not provided details as to the extent of the removal of vegetation as a result of various elements including 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 an 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.	The VIA assumes full clearing of the development footprint. If and when the easement is cleared there will still be a substantial bushland edge to the town. Future clearing by others will be important but cannot be reasonably quantified or assessed as part of the current application. The effects of road widening on George Booth Drive are likely to be minimal. The road is already 3 and 4 lanes in this area and the widening required is on the other side of the ridge and away from West Wallsend. Reference has been provided earlier in this report in regard to the electricity easement.
It is my strongly held view that until such time as the above mentioned detailed information is provided, one cannot properly assess the visual impact of the proposed subdivision and likely future dwellings.	The VIA provides a comprehensive and accurate assessment of the impacts. The impact has been properly assessed in accordance with all relevant policies and visual assessment methodologies.

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5. SMALL LOT HOUSING	
5.1 The LEP requires the provision of small lot housing subject to the following Schedule 2:	Although the LEP requires small lot housing it has not been a successful planning control and based on Council's draft LEP it seems that this control is to be discontinued by Council.
8 Subdivisions (other than of approved dual occupancy or approved small lot housing) that create 10 or more lots At least 70% 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 JRP at its previous meeting on the 3 November, 2011. The JRP deferred the DA, in part, for the Applicant to provide further information on the "small lot housing requirements of the LEP." Furthermore, the JRP sought an update of the visual assessment report to include the small lot crosses. I understand the small lot housing was proposed by the Applicant in large "development lots" which were lost considered by the JRP. 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." While the area of these proposed lots is smaller than the conventional lots, they do not meet the area requirements for small lot housing. Accordingly, the Applicant has lodged an Objection under SEPP No 1 to avoid the requirement to provide small lot housing.	The JRP deferred the consideration because of a legal issue regarding small lot housing. A change in the Council's LEP has resulted in a change in the way small lot housing can be considered. Council's practice has been to allow small lot housing to be deferred indefinitely through the creation of development lots on which small lot housing could be built in future. Now that deferral via development lots is no longer an option, an alternative proposal consistent with Council's intentions for small lot housing has been provided. The alternative proposal requires a SEPP 1 Objection; however, importantly the intent of small lot housing is preserved by the alternative proposal.

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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 to provide no small lot housing. The primary grounds for the Applicant's Objection appear to be the following: • Reckless advice from an agent currently selling new Greenfields subdivision into the local market confirming 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 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.	JBA Planning has provided further information in support of the SEPP 1 Objection and the grounds of objection (refer to Attachment E). JBA confirms the validity of the SEPP 1 Objection as follows. This description of the SEPP 1 Objection does not provide an accurate summary of the grounds of objection. The last 3 dot points imply that it is costs to the applicant that are the problem (and grounds of objection) rather than the effects of the planning standard for small lot housing.
5.4 The SEPP 1 Objection does not, in my view, satisfactorily address the 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 Camberbury City Council entitled "Small Lot Housing in the Richmond Grove Estate, Earlwood" refers to the Aims and Objectives as follows:	The objection goes into considerable detail of the underlying objective of the small lot housing standard (as required by SEPP1) based on the LHS/VLE 2020 document. It is this document, which the Planning Report identifies in section 3.1.4, "was used to develop the LEP". JBA identifies this as a valid approach to SEPP 1 in the circumstances. The objectives of other planning instruments and policies are irrelevant. The content of a DCP relating to a planning instrument of another LGA is completely irrelevant to the SEPP 1 Objection.

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i. To seek quality design outcomes for housing on narrow allotments. On this point, I note Clause 24(4) 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.	JBA's comments (refer to Attachment E) in this regard are: - The Report fails to adequately consider the broader objectives for small lot housing, and how they may apply to small lot housing within Lake Macquarie. The reference to Canterbury City Council's Development Control Plan 47 is obscure and irrelevant in that: - The DCP defines small lot housing as allotments that have a frontage of less than 10 metres; and, - The intention of the DCP is to ensure quality design outcomes for housing on narrow lots within an existing urban area, being a defined geographic location known as Richmond Grove Estate, Eastwood. There are a number of the controls across Sydney whose principles and objectives cannot be conveyed to a green field subdivision in Lake Macquarie. The Report suggests that the SEPP 1 Objectives does not refer to the objective of the standard. There is no nominated objective in the LEP and objectives from other LEPs in NSW cannot simply be imported into the LEP. Accordingly the SEPP 1 Objectives refers to and addresses the inferred objective (page 11). This is a valid and acceptable approach.
	It is not made clear what the relevance of Clause 24(4) of LMCC LEP 2004 has to another Councils DCP on narrow allotments. Specific design guidelines have been prepared for housing on the proposed subdivision.

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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 area requirements for small lot housing.	Council has requested guidelines to the area that restrict the variety and form of housing on heritage grounds. The underlying purpose of small lot housing is broadened housing access not a variety of housing forms. It is not clear what the relationship between variety of housing forms and lot size is.
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.	Irrelevant, see comments above.
5.5 considers 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:	Disagree; application of the standard is unlikely to achieve its underlying purpose in the circumstances as detailed in the SEPP1 Objection.
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.	The objection argues that the underlying intention of the standard (i.e. broadening of housing access) will not be achieved by the provision of small lot housing in this location. Small lot housing is a relatively expensive housing form that is unlikely to broaden housing access. The best way to broaden access is to provide small or conventional lots which the proposal has sought to do. The back up evidence provided with the SEPP1 Objection from the real estate and economic experts confirms that the smaller conventional lots proposed are, in the circumstances, more likely to broaden housing access. As the argument in the Planning Report does not dispute the construction of the underlying objective of the small lot housing standard, the SEPP1 Objection and supporting evidence has not been invalidated. The report provides no contrary argument. JBA's comments (refer to Attachment E) on this aspects of the SEPP1 Objection are:

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<i>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 no providing small housing lots.</i>	<i>(i) SEPP 1 requires an applicant to address whether strict compliance would hinder the achievement of certain aims of the EP&A Act, namely:</i> <i>(ii) The promotion and co-ordination of the orderly and economic use and development of land...</i> <i>The Report states that market and economic viability is not a valid ground for consideration in a SEPP 1. We disagree and submit that strict compliance with a development standard which promotes an uneconomic and unviable land use will tend to work against the promotion of the orderly and economic use and development of land. On this basis, the market and economic feasibility of a certain type of housing and land use cannot and should not be discounted.</i> <i>This argument does not address the SEPP1 Objection which contends that in the circumstances smaller conventional lots (rather than small lot housing) will address the need to broader housing access.</i>

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ii. The same Applicant, in the original DA, and in a previous proposed subdivision on the same site) proposed small lot housing, albeit in large development lots and clearly at that time, saw the 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.	Irrelevant, the previous application is not under consideration. The current SEPP 1 Objection is partly a consequence of statutory changes introduced since the previous application.
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 could 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 furcament of 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.	Other proposals by the applicant and past statutory circumstance do not assist in consideration of the current SEPP 1 Objection. The fundamental issue is the underlying objective of the small lot housing standard. The SEPP 1 Objection supports the objective of the standard and seeks an alternative means of addressing it. Council itself has recognised that the small lot housing standard is not achieving its objective as it is not to be carried over to its next LEP. The SEPP 1 Objection provides a means of achieving the underlying objective of the small lot housing controls in a form that will achieve market acceptance. This is a valid use of SEPP 1.
v. I understand that Council's Social Planner raised objection to the lack of small lot housing.	This is not relevant to the grounds of the SEPP 1 Objection, no point has been made.
vi. I consider that it is not a valid nor 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	This argument misrepresents the SEPP 1 Objection. It is not the cost to the applicant that is important but the final cost to the purchaser and the inflexibility of the resulting housing product. There is no public benefit in producing an unwanted housing

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Housing. Secondly, based on the Judgement in Parrot v Kiarrri 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.	product. Building envelopes are not relevant to the SEPP 1 Objection. No valid planning argument has been raised to refute the SEPP 1 Objection.

Planning Report Comments		Response
5. UNRESOLVED ISSUES		
5.1 I consider that there are a number of unresolved issues, including, but not limited to, the following:		
5.1.1 Aboriginal Heritage		
The JPPP required further information from the Applicant regarding the separation distance requirements of the proposed development to the "Butterfly Caves." I defer to appropriate experts.		The lot "at our" has been amended to delete lots and development within 20 metres of the rock overhang referred to as the "Butterfly Cave". Geotechnical assessment has established that this is a sufficient distance to ensure that subdivision works will not impact on the structural integrity of the rock overhang. The next management step is the preparation of management plan for the rock overhang. The applicant has undertaken to fund the management plan and implement the required management actions. This will involve Awabakal LALC. As a source of cultural knowledge the Awabakal LALC has been consulted since 1999. The requirements identified through consultation for protection and management of original cultural heritage on the site have been implemented by the applicant. The "Butterfly Cave" will be located within the proposed conservation area and the LALC will be involved in the development of a management plan for the "Butterfly Cave" area. Encires of OEH have not revealed any standard setbacks or buffers that can apply to the circumstances. A 20 metre buffer was identified through consultation in December 2011 that included Council, representatives of the Awabakal LALC and
In terms of the impact on the 'Butterfly Caves' that appears 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 Aboriginal Land Council supports the current DA. A definitive advice from the Aboriginal Land Council is required.		

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