



Office of
Environment
& Heritage

Your reference: DA/113/2011
Our reference: Doc12/26901;
Fil09/13990-03
Contact: Robert Gibson
(02) 4908 6851

The General Manager
Lake Macquarie City Council
Box 1906
HRMC NSW 2310
Attention: Mr Matthew Brogan

Dear Sir

**CONCURRENCE CONDITIONS - SUBDIVISION OF LOTS 103 & 105 DP 10000408, LOT 15 DP 849003,
AND LOT E DP 938528, WEST WALLSEND (DA/113/2011)**

Reference is made to the emails from Lake Macquarie City Council ('Council') to the Office of Environment and Heritage (OEH) of 29 June and 2 July 2012 requesting a review of the concurrence issued on 22 March 2012 with respect to the land the subject of the concurrence.

OEH notes the concurrence issued by the delegate of the Minister administering the TSC Act on 22 March 2012 under section 79B of the *Environmental Planning and Assessment Act 1979* (EPA Act 1979) referred to the proposed residential subdivision of Lots 103 & 105 in Deposited Plan (DP) 1000408, and Lot E DP 938528 at West Wallsend only. OEH notes that the assessment report, which informed the decision to issue a concurrence on 22 March 2012, addressed the proposed subdivision of Lots 103 & 105 DP 10000408, Lot 15 DP 849003, and Lot E DP 938528, West Wallsend and proposed biodiversity offset lands. As such, the incomplete property description used in the concurrence document of 22 March 2012 has been the result of a typographical error.

Accordingly based on its review, OEH has agreed to issue a concurrence under S79B EPA Act 1979 for the subdivision of Lots 103 & 105 DP 10000408, Lot 15 DP 849003, and Lot E DP 938528, being land at West Wallsend. This concurrence is subject to a number of conditions; a copy is provided in **Attachment A**.

If you have any questions about this matter then please phone Mr. Robert Gibson in our Newcastle office on 4908 6851.

Yours sincerely

DL Crosdale

4/7/12

DIANE CROSDALE
Manager - Planning and Aboriginal Heritage
Office of Environment and Heritage

cc: Mr Wes van der Gardner

Encl.: ATTACHMENT A: CONCURRENCE CONDITIONS FOR DA/113/2011 FOR PROPOSED SUBDIVISION OF LOTS 103 & 105 DP 10000408, LOT 15 DP 849003, AND LOT E DP 938528, WEST WALLSEND (DA/113/2011)

ATTACHMENT A

CONCURRENCE CONDITIONS FOR DA/113/2011 FOR PROPOSED SUBDIVISION OF LOTS 103 & 105 DP 10000408, LOT 15 DP 849003, AND LOT E DP 938528, WEST WALLSEND (DA/113/2011)

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

Reason: To ensure that the proposal is undertaken as described in the SIS and incorporates amelioration measures for threatened species as agreed to by the Minister administering the Threatened Species Conservation Act 1995 in this Concurrence Report.

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

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

3. The provision of biodiversity offsets on parts of Lot 103, 105 & 107 of DP 1000408, Lot 15 DP 849003 and Lot 88 DP 755262, at West Wallsend, (**West Wallsend Offset Lands**): as shown in Figure 1 of this Concurrence Report and 178.44 ha of part of Lot 1 DP 78136 and Lot 13 DP 114564 at Brimbin (**Brimbin Offset Lands**) adjoining the Brimbin Nature Reserve as shown in Figure 2 of this Concurrence Report must be secured in perpetuity for conservation. The proponent must provide evidence of ownership to the consent authority prior to granting consent.
4. The Proponent must not sell or lease or offer for sale or lease the **West Wallsend Offset Lands** and/or that part of Lot 1 DP 78136 and Lot 13 DP 114564 at Brimbin (as per Figures 1 and 2 of this Concurrence Report) forming the biodiversity offsets.
5. The Proponent must not, whilst owner or occupier of the **West Wallsend Offset Lands** or the **Brimbin Offset Lands** conduct any works or activities, including the granting of any easements on the **West Wallsend Offset lands** or the **Brimbin Offset Lands** without the written permission of OEH Manager Planning and Aboriginal Heritage Section – North East.
6. Within 12 months of consent being granted the proponent must secure the **West Wallsend Offset Lands** with a section 88E instrument under the *Conveyancing Act 1919*. The **West Wallsend Offset Lands** may be transferred at no cost to Lake Macquarie City Council provided agreement of Lake Macquarie City Council and OEH's Manager Planning and Aboriginal Heritage Section – North East is obtained. This transfer of land is conditional on the **West Wallsend Offset Lands** remaining secured in perpetuity under a section 88E instrument of the *Conveyancing Act 1919*.
7. The Proponent must provide funding to the owner of the **West Wallsend Offset Lands** as agreed by the proponent and owner to implement the Plan of Management provided in Appendix E of the SIS in perpetuity and meet OEH's biodiversity offsetting requirements. The Plan of Management may be reviewed every five years and amended by this review with the approval of OEH's Manager Planning and Aboriginal Heritage Section – North East. Should a dispute over the amount of funds provided occur OEH's Manager Planning and Aboriginal Heritage Section – North East may determine the amount required to fund the Plan of Management. Once the funding amount is agreed or determined,

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

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

Note: Definitions

- For the purposes of this Concurrence references to OEH's Regional Manager Hunter means Manager Planning and Aboriginal Heritage Section – North East, Conservation and Regulation – North, Office Of Environment and Heritage,
- For the purposes of this Concurrence references to OEH's Area Manager Manning means the officer holding the position of Area Manager Manning, Parks and Wildlife Group, Office Of Environment and Heritage, Department of Premiers and Cabinet.

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

Reasons: To ensure that the proposal is undertaken as described in the SIS and incorporates amelioration measures for threatened species as agreed to by the Minister administering the Threatened Species Conservation Act 1995 in this Concurrence Report.

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

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

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

Figure 1 - Biodiversity Offset Map for Lots 103, 105 & 107
DP1000408, Lot E DP 938528, Lot 15 DP 849003 & Lot 88 DP755262,
West Wallsend Concurrency (DA/113/2011)

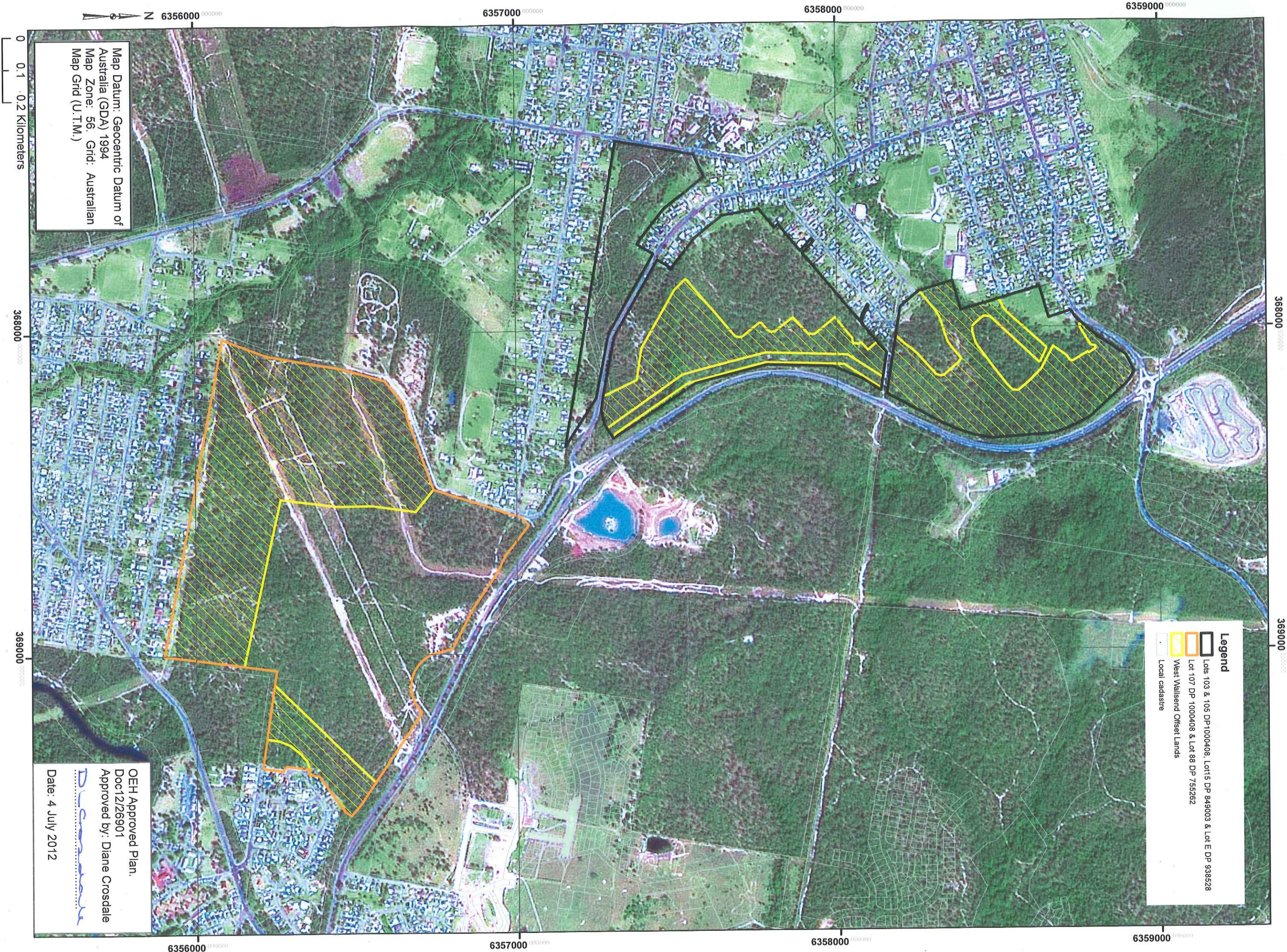


Figure 2 - Brimbin Biodiversity Offset for West Wallsend Concurrence (DA/113/2011)

