



13 May 2011

**Report on the Proposed Residential Subdivision
at Catherine Hill Bay by Coastal Hamlets Pty Ltd**

1. INTRODUCTION

On 10 February 2011, the former Minister for Planning, the Hon Tony Kelly MLC requested the Planning Assessment Commission (the Commission) to provide advice on the recommendations in the Director General's assessment report on the proposed residential subdivision at Catherine Hill Bay in the Lake Macquarie Local Government Area. He requested this advice be received within 2 weeks of receiving the assessment report. He also requested Ms Kibble to chair the Commission to provide the advice because of her previous involvement on the Independent Hearings and Assessment Panel for the 2007 proposal for the site.

On 22 March 2011, the Commission received a second letter from the then Minister advising that he had reconsidered his earlier request. Due to the high level of public interest in the proposal he was of the view that it would be more appropriate for the Commission to determine the application. He also requested the Commission to comment on the draft Development Control Plan (DCP) that was submitted with the project application as required by the Director General's Requirements.

The Commission consisted of Ms Gabrielle Kibble AO (chair), Ms Janet Thomson, and Mr Richard Thorp. On 12 April 2011, Ms Kibble appointed Ms Donna Campbell to assist the Commission by providing some legal input on the proposed development before a determination was made on the project application.

Commission members visited the surrounding areas of the site on 25 February 2011.

2. HISTORY OF THE PROJECT

On 16 October 2006 a Memorandum of Understanding (MOU) between the then Minister for Planning and Coastal Hamlets Pty Limited was signed providing for the transfer of 305 ha of land owned by the Rose Group to the NSW Government for inclusion into the Wallarah National Park. Following the MOU, a concept plan application was submitted for the development of land at Catherine Hill Bay for residential development. The MOU provided conservation offsets for the proposed residential development.

On 11 November 2006, the then Minister for Planning appointed an Independent Hearing and Assessment Panel (IHAP) to advise on the proposed residential development. On 13 April 2007, the Panel provided an interim report indicating that the proposed subdivision pattern in the submitted form was unacceptable. The Panel considered that development potential did exist on the site, but any such development should be consistent with "best practice" planning principles for development on coastal land and specific design principles were established by the Panel. In response to this report, the proponent redesigned the development scheme.

On 24 August 2007, the proponent lodged a new environmental assessment report and concept plan for the site and 2 project applications for subdivision and construction of Hamlets 1 and 2 and a project application for site preparation works and subdivision into super lots.

On 18 December 2007, the IHAP provided its final report to the Minister. The Panel found the revised concept plan should be modified to address its concerns, particularly Hamlet 1 (the headland area). The recommendations included:

- 1) Hamlet 1 should be redesigned in accordance with the following principles:
 - (b) A minimum of 25m set back from the cliff top for the coastal walk and the provision of a public lookout and associated small scale café/kiosk on the top of the Bin Building;
 - (c) Buildings to be 1 storey with a maximum 5m height limit;
 - (d) Maximum 40% site coverage with a minimum of 50% of landscaped area;
 - (e) Minimise the visibility of dwellings when viewed from the village and Middle Camp Beach;
 - (f) Preserve existing significant trees (to be identified) on site; and
 - (g) Dwellings to be set back at least 15m from the coastal walk.
- 2) There should be at least one north south running spine road and a perimeter road that would facilitate public access to Moonee Beach through the site but should avoid impacts on SEPP 14 wetland. On street parking as well as public parking areas should be provided for public access to Moonee Beach.
- 3) Retail and commercial floor space to be limited to 750m².
- 4) The internal planning within Hamlets 2-5 should be reviewed to identify adequate deep soil areas;
- 5) Bin building to be stabilized and made safe with the top to be reused as a public lookout. Any future adaptive reuse of the building would require a separate development application.
- 6) A perimeter road should be provided in Hamlets 6 and 7.
- 7) Project applications be deferred until they are resubmitted in a form consistent with the amended concept plan which addressed the Panel's recommendations.

On 27 February 2008, the final Preferred Project Report (PPR) for the concept plan was lodged.

On 2 September 2008, the concept plan was approved with certain modifications including the building heights to a maximum of 5m in the area of high visual sensitivity and a maximum of 7.5m within the area of low visual sensitivity in Hamlet 1. The height controls were subsequently adopted in the Major Development SEPP 2005 South Wallarah Peninsula Height of Buildings Map. (See Figure A)

Figure A Building Height Map



On 2 December 2008, a judicial review of the determination of the concept plan and project application was lodged by the Gwandalan Summerland Point Action Group on the basis that the approvals for the concept plan and project application for Gwandalan were invalid as there was a reasonable apprehension that the Minister was biased in his decision and that in making his decision the Minister took into account matters that were irrelevant to the decision. This related to the MOU and Deed of Agreement for the transfer of the conservation lands.

On 31 August 2009, the Land and Environment Court set aside the approvals for both the Catherine Hill Bay and Gwandalan Concept Plan and project application for Gwandalan. The MOU and Deed of Agreement were subsequently terminated. However, the Court's decision did not affect the zoning of the land. Nevertheless, the zoning was re-made as a precautionary measure.

On 5 November 2010, the site was rezoned as noted below under the heading "statutory planning context".

3. THE CURRENT PROJECT APPLICATION

The land generally referred to as the Catherine Hill Bay site is located in the former Moonee Colliery. A previous development proposal on the site was the subject of an IHAP inquiry in 2007. The current application is substantially different to that proposal.

The current application comprises two key components. They are:

- Bulk earth works and subdivision infrastructure provision; and
- Staged subdivision.

3.1 Bulk earth works and infrastructure

The site was a former coal mine and a significant part of it is disturbed lands with remnant mine infrastructure. Remediation of the site is required to a level that is suitable for the intended uses. The proposed bulk earth works include a very extensive cut and fill program of up to 11m in places and significant recontouring of the site.

Infrastructure works include roads, intersections, and stormwater, sewer, water and electricity services.

It is proposed to simultaneously remediate the land and carry out other subdivision works to the extent that it is cost effective and logical to do so.

3.2 Staged subdivision

Following remediation of the whole site, it is proposed to subdivide the land in 7 stages to create 553 residential allotments, 2 retail allotments, 7 reserves for drainage and open space and a coastal walkway.

Stage 1 includes the improvement of Montefiore Street and Hale Street, construction of the village park, the first greenlink, about 120 residential lots, and 2 retail lots.

Stage 3 is the most sensitive proposal involving the creation of 41 residential lots on the headland and the construction of the coastal reserve including the walkway.

Stages 2, 4 and 5 are the remaining areas south of Montefiore Street and Stages 6 and 7 are located to the north of Montefiore Street in an area known as Possum Gully.

4. STATUTORY PLANNING CONTEXT

4.1 State significant site

On the 5 November 2010, the site was identified as a state significant site under *State Environmental Planning Policy (Major Development) 2005* ("Major Development SEPP") The planning controls for the site are now set out in Part 14 of Schedule 3 to that SEPP replacing the controls that formerly applied under the relevant local environmental plan.

The Major Development SEPP rezones the land part R2 (Low Density Residential) and part E2 (Environmental Conservation). It also contains height controls and identifies part of the site as a Heritage Conservation Area. (See Figure B). Development of this area is identified as Stage 3 and part Stag 1.

Figure B Conservation Area



4.2 Part 3A project

The proposed development was declared a Part 3A project as it is a proposal for subdivision of more than 100 lots in a sensitive coastal location (*Clause 1(1)(b) of Schedule 2 in Major Development SEPP*).

Under the Major Development SEPP, Part 3A projects on this site are exempted from most of the Part 14 planning controls. The main Part 14 planning controls that continue to apply to the site are the zoning and height controls.

4.3 Draft Development Control Plan (DCP)

Clause 29 of the Major Development SEPP provides for a development control plan to be prepared to ensure that development on land within Zone R2 Low Density Residential occurs in a logical and cost effective manner, in accordance with a staging plan. Development consent cannot be granted under Part 4 until a DCP has been prepared. The clause lists the matters that must be included in the DCP and these include detailed urban design controls for significant development sites.

Clause 29 does not apply to Part 3A projects (*cl 6 of Part 14 of Schedule 3*), however one of the assessment requirements in the Director General's requirements for this proposal is -

The EA must address the following key issues and discuss how the proposed development is consistent with the Development Control Plan prepared for this part of the site:

Development Control Plan

- Provide a Development Control Plan which includes, but is not limited to, the matters listed in Clause 29 in Schedule 3, Part 14 (South Wallarah Peninsula site) in the Major Development SEPP.

A draft DCP has been prepared and the Commission has provided a separate report on it, in response to a request from the former Minister. The Commission noted that Lake Macquarie City Council raised various concerns about the inadequacy of the draft DCP. The Commission shared similar concerns and has addressed some of these in this determination. The Commission was also concerned about the urban design controls for future dwellings to be erected on allotments in the Heritage Conservation Area on the site.

The Commission has recommended that a substantially enhanced DCP should be prepared to ensure appropriate development controls are in place before any Part 4 development applications are lodged with the Council.

4.4 Future dwellings - Exempt and Complying Development Codes SEPP

The Exempt and Complying Development Codes SEPP will apply to the erection of dwellings on the proposed lots, except for the area identified as a Heritage Conservation Area in the Major Development SEPP. This area is identified in the proposal as Stage 3 and part of Stage 1.

The Department has advised the draft DCP cannot apply to dwellings outside the Heritage Conservation Area if those dwellings comply with the development standards in the Housing Code contained in that SEPP.

The draft DCP will however apply to the erection of dwellings on lots in Stage 3 and part of Stage 1. The draft DCP will also to any other proposed dwellings erected elsewhere on the site if they do not comply with standards in the Housing Code.

5. THE DEPARTMENT'S ASSESSMENT REPORT

The application was exhibited between 15 December 2010 and 7 February 2011. A total of 3560 public submissions were received by the Department objecting to the proposal. Key issues raised include:

- Impact on the heritage significance and existing character of the area;
- Compliance with relevant strategic and statutory instruments;
- Consistency with the IHAP recommendations on the concept plan;
- Visual impact;
- Bushfire issues;
- Subdivision design;
- Traffic, access and car parking;
- Ecological impacts on conservation areas and SEPP 14 wetlands;
- Stormwater design and treatment;
- Lack of public transport, services and employment; and
- Cumulative impacts.

The preferred project report amended the application to address issues raised by the Department and in the submissions. The amendments included:

- The landscape buffers along Montefiore Street and Road 2 will be managed through positive covenants on title on individual residential lots.
- Road 20 (perimeter road) will be widened to 6m carriage way plus road side parking with a reduced landscape verge.
- Relocation of the retail area to the east adjacent to the intersection of Montefiore and Hale Streets.

The Department's assessment concluded that there still remained issues that the amended subdivision plan had not adequately addressed. These include the IHAP recommendations on relevant coastal planning policies and best practice, particularly in relation to the following matters:

- Lack of protection of green ridge along Montefiore Street,
- Lack of perimeter roads as required by Planning for Bushfire Protection 2006;
- Proposed perimeter roads are inadequate for fire fighting and public access purposes;
- Poor vehicular connections to proposed perimeter road along southern boundary;
- Inappropriate location of the retail development on the ridgeline; and
- Privatization of land adjacent to the coastal walkway through inclusion of private allotments.

In view of these concerns, the Department has recommended that the subdivision layout be amended as follows:

- The coastal reserve be widened to 40m from the Bin Building to the southern extent of Stage 3 and a perimeter road be provided along the reserve for public access.
- The Montefiore Parkway reserve is to include the 15m wide landscape buffer.
- A direct connection is to be provided from Road 10 to Road 20;
- Road 20 is to be extended to either Road 17 or 18;
- A 6m wide perimeter road is to be provided in Stages 6 and 7.
- Road 20 is to be a minimum of 8m wide in addition to the parking lane.
- Driveway access onto Roads 2, 10 and 11 is to be minimised
- Delete Lots 1005 and 1006 and incorporate them into the village park;
- Consolidate Lots 1001 to 1004 into one allotment for the proposed retail and parking uses; and
- Road 20 and lots in the vicinity of the SEPP 14 wetland are to be amended to provide a buffer of a minimum 50m at any point to the "ground truthed" SEPP14 wetland boundary as mapped in Figure 3.5 of the Ecological Assessment report.

Subject to the recommended amendments and conditions, the Department was satisfied that the proposal had merits and potential impacts had been adequately addressed via the PPR and Statement of Commitments. The application was recommended for approval with conditions.

6. MEETINGS WITH DEPARTMENT, COUNCIL AND PROPONENT

6.1 Meeting with Department of Planning and Infrastructure

The Commission met with staff of the Department of Planning and Infrastructure Mr Tom Gellibrand and Mr Michael File and consultant Ms Helena Miller on 23 February 2011 for a preliminary briefing. A second meeting was held on 28 March 2011 following the submission of the Department's assessment report. A third meeting was held on 2 May 2011 with Mr Gellibrand, Mr File and Mr Cirillo.

The first meeting was a preliminary briefing to understand the proposal and the timing of the assessment of the application.

The second meeting was focused on the Department's assessment and recommendations. The key issues discussed at the meeting included:

- The differences between the subdivision layout and the previous concept plan that was considered by the IHAP;
- the role of the Development Control Plan following the approval of this subdivision, if it were to be approved, and the application of the Exempt and Complying Development Code SEPP to the site;
- The recommended amendments, particularly for Stage 3, would result in significant change to the layout which could require re-exhibition;
- The open spaces identified in the subdivision plan are mainly drainage reserves, not usable open space;
- The previous proposal included various lot sizes and a mix of housing types and the current proposal is a "uniform" suburban type development;
- the extensive cut and fill proposal and the issue of contamination; and
- the current proposal is for Torrens title subdivision whilst the design of the previous concept plan was based on community title.

The Commission sought a further meeting with the Department on the following issues:

- geotechnical matters;
- the proposed cut and fill;
- site contamination and remediation works;
- application of the Exempt and Complying SEPP and the DCP; and
- the number of plans and reports that are required in the recommended conditions.

6.2 Meeting with Lake Macquarie City Council Officers

Following a review of the Council's submission, the Commission considered it would benefit from a meeting with the Council officers to gain further understanding of the Council and the community's concerns about the proposed subdivision. The meeting was held on 20 April 2011. Council was represented by Mr Tony Farrell, Ms Sharon Pope, Ms Susan Boyd, Ms Jody Blake, Mr Robbie Economos and Mr Greg Field.

Council officers reiterated the concerns and objection to the proposed subdivision. The key issues discussed included:

- The site should go through a master planning process. The planning process adopted for North Wallarah (Murray Beach) was cited as a good example for similar development. Given the sensitivity of the site, a reduced development footprint would be appropriate.
- Lack of a conservation management plan and the inadequacy of the DCP;
- Stages 6 and 7 not supported as they are in an isolated area. Other concerns include edge effect, set back and water quality issues.
- Lack of social facilities.
- Planning of the coastal reserve is fragmented as it does not link up to State reserves or Moonee Beach. Cycle way is not connected to existing cycleway.
- The Jetty should be retained but maintenance is a problem.
- Bin Building should be used as an interpretation centre in association with the Jetty.
- Impacts of connecting services (sewage and water) to site have not been assessed/discussed as this would involve a lot of clearing for the services.
- Uncontrolled fill of up to 11m and a lack of detailed information on removal/reuse of coal rejects.

- Some slopes on the detention basins are very steep, others require retaining walls up to 3.5m high. The detention basins need to meet Council's requirements. These areas are identified for open space purposes. Also it is preferable to have one big park than several small parks.
- Issue of slope and site stability and leachate. Geotechnical report requires amplification.
- Road width needs to meet bush fire requirements and incorporate a cycle way. A direct access for fire services is required. Access to fire trail should be kept open or replaced.
- More information is required on hydrology to ensure the proposed drainage system would not impact on SEPP14 wetlands, conservation areas, and flora and fauna.
- As to S94 contributions, Council Officers expressed the view that Council would prefer works in kind.

6.3 Meeting with Proponent

The Commission met with the proponent on 5 May 2011 to seek clarification on the design of the subdivision, issues relating to cut and fill and contamination and how the DCP would work. Mr Bob Rose, Mr Bryan Rose, Mr Nick Jackman, Mr Scott Day, Mr Ian McNicol, Mr Lincoln Gibbs, Ms Oi Choong and Mr Chris Bozinovski attended the meeting.

The issues discussed in the meeting included:

- Stage 3
 - the number of dwellings and lot sizes when compared with the concept design presented to the IHAP.
 - Detailed design of dwellings in Stage 3 to achieve the coastal village objective.
 - Possibility of the use of community title for the Stage 3 development.
 - Future subdivision of individual lots; and
 - financial viability without Stage 3.
- Bulk earth works
 - The standard of remediation;
 - The certification of remediation works;
 - Whether the remediation works would be done in stages;
 - The need to import or export fill if the cut and fill is not balanced;
 - The likelihood of final landform that would be significantly different from what is proposed in the current application; and
 - Treatment of undeveloped area following remediation and recontouring.
- The density of the overall proposal (currently less than 8 dwellings per hectare);
- The design principle of developing a model coastal village, not a standard suburban development;
- Planting species and maintenance of landscaping;
- Application of Exempt and Complying Development Code SEPP;
- The need for future housing development to comply with the DCP;
- construction traffic and public access to Moonee Beach;
- Issues concerning putting landscape buffers on private lots;
- Providing perimeter roads to Stages 1, 6 and 7; and
- Consultation with the Progress Association and Council.

7. COMMISSION'S COMMENTS

The following is a brief summary of the Commission's assessment and response to the key issues.

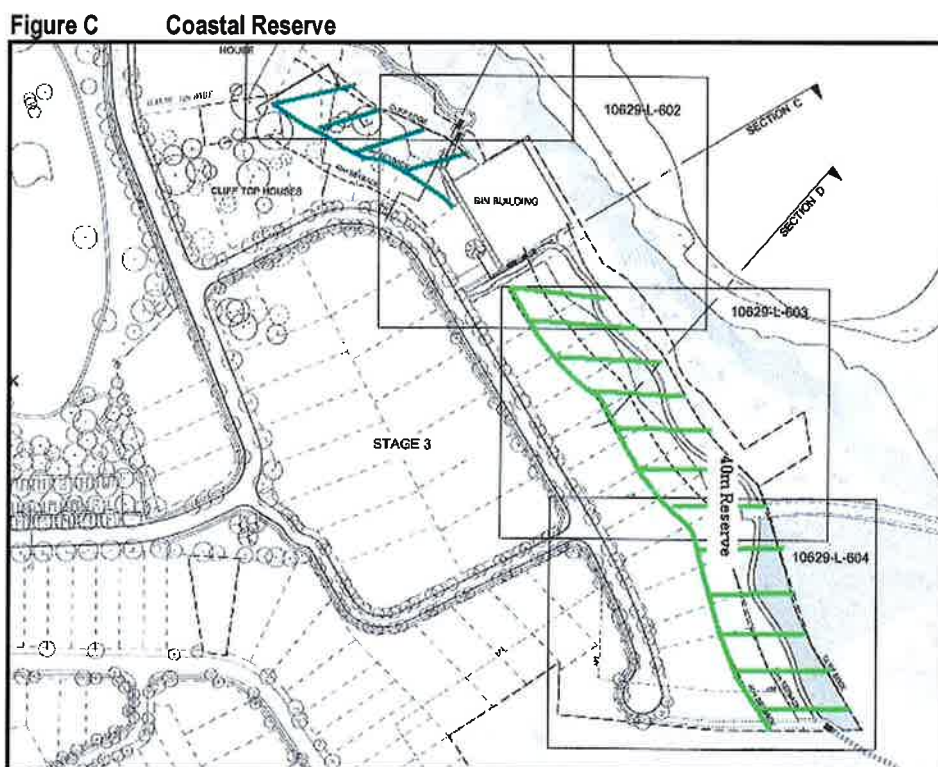
7.1 Stage 3

Stage 3 is identified in the Major Projects SEPP as part of the Heritage Conservation Area. It is located on a highly sensitive headland where future development could impact on the heritage significance of the existing Catherine Hill Bay village. The scenic quality of the coast must also be protected. Any development in this area must be sensitively treated to ensure minimal intrusion into the visual catchment of the village and the scenic quality of the coast.

a) Coastal Reserve

The proposed coastal reserve and walkway is a significant public benefit of the proposal. The IHAP recommended a 25m coastal reserve from the cliff line. In response to public submissions, the Department recommended a 40m coastal reserve as well as a perimeter road to be provided adjacent to the reserve for easy public access.

The Commission supports a 40m coastal set back from the cliff line south of the Bin Building. To the north of the Bin Building, the coastal reserve should be 25m from the cliff line as the coastal walk would be below the cliff line. However, the set back is required for visual impact and safety reasons. (see Figure C)



The Commission questioned the need for the perimeter road, particularly when the coastal reserve is increased from 25m to 40m. If the extra 15m reserve is well vegetated, it could provide a very substantial boundary between public and private properties as well as protecting the scenic quality of the coast. With a well designed public area in the Bin

Building area and good signage, the coastal walk would be easily identified and public access to the coastal reserve could be maintained without the need for a perimeter road.

The coastal reserve should be constructed as part of Stage 2 to allow plantings to be well established to ensure housing development when occurs will be within a well landscaped area to minimise any potential intrusion into the visual catchment of the heritage village and the scenic coastal area.

b) The Layout and Design

The Commission remains unconvinced that the Stage 3 subdivision layout has been designed in accordance with the best practice urban design principles. The proposed design does not reflect that the site is located in a sensitive area within a Heritage Conservation Area and in a coastal location.

The Commission considers that Stage 3 must be redesigned using the earlier design concept for new houses in this area to “nestle” into the slope. Houses should not be contiguous and substantial revegetation is required to preserve the integrity and setting of the existing village and Wallarah House.

Figures 7 and 9 in the Department’s assessment report confirmed that the proposed development would dominate the headland. This is inconsistent with the design concept mentioned above.

The Commission believes the 40m coastal reserve south of the Bin Building and the 25m reserve north of the Bin Building would assist in reducing the visual impact from the Stage 3 development.

The redesign should not result in more than 40 residential lots and these lots should not be further subdivided in future.

c) Bin Building

The previous concept plan envisaged that Montefiore Street would act as the main street that would be extended to the Bin Building to provide a sense of arrival and frame the view out toward the sea. The top of the Bin Building would be developed as a public terrace providing expansive views along the coast and a resting place for the coastal walk.

The current design provides no direct connection from Montefiore Street to the Bin Building and the layout does not encourage public use of the Bin Building area. It is the Commission’s view that there should be adequate separation between the residential development and the Bin Building to clearly identify public and private spaces. The redesign of Stage 3 should re-introduce the concept of “arrival” and a “sense of place” including a well defined and easily identified public space in front and adjacent to the Bin Building.

The Commission is concerned that the current application does not include any proposal for adaptive reuse or redevelopment of the Bin Building. There is an urgent need to resolve the future use of the Bin Building. The proposed coastal walk when constructed will increase the number of visitors to the area. There is a need to stabilise or make the building safe to mitigate any risk to the public.

In the meantime, there is a need to prevent public access to unsafe areas. A condition to this effect has been included in the instrument of approval.

7.3 Greenlinks

The Commission considers the Department's recommendation to impose a positive covenant on individual lot owners to maintain the landscape buffer of the greenlinks is unsatisfactory. The long term maintenance of the landscape buffer is the key concern. In the Commission's view, the landscape buffer should be part of the road reserve and should be maintained by the Council as the roads authority. The proponent should maintain the landscape buffers for 5 years following certification of completion of work to ensure the trees will be well established before Council takes over the long term maintenance

The road reserve for the greenlink should be a minimum of 32m in width including a 7.5m landscape buffer on either side of the road. The buffers should be planted at the time the road is constructed.

The subdivision plan should be amended to clearly identify the landscape buffers as part of the road reserves with no private property encroachment.

An access plan that shows the location of shared vehicular access to the lots along the greenlinks should be submitted as part of the revised subdivision plan.

As the greenlinks are significant features of the future character of the site and serve as a natural precinct boundary, the Commission requires the western half of Road 2 to be included in Stage 2, not Stage 4 as proposed in the application to ensure the landscape is established as early as possible.

7.4 Access Roads

a) Perimeter Road

The Department recommended the carriage way of Road 20 be widened to a minimum of 8m. The Department further recommended that Road 20 should be extended to either Road 17 or Road 18 in Stage 3. A perimeter road should be provided for Stages 6 and 7 as an appropriate asset protection zone and interface with the adjacent Conservation area.

The Commission noted Road 20 may only be extended to Lot 1039 as the gradient from thereon north may be too steep to enable a connection to Road 17 or Road 18.

b) Direct access to Road 20

The current subdivision plan provides only one direct access from Montefiore Street to Road 20, the perimeter road adjacent to the Munmorah State Conservation Area. Council considered there is a need for a second direct access for bush fire fighting purposes. The Department recommends that Road 10 be extended to connect to Road 20 to provide the second direct access.

The Commission considers there are 3 options to provide a second direct access from Montefiore Street to Road 20. The options are through Road 3, or Road 4, or Road 10. The revised subdivision plan should clearly indicate the location of the second direct access.

7.5 Drainage Reserve/Open Space

The Commission considers the identification of the drainage reserves as open space is not satisfactory. There are safety and access issues that have not been adequately addressed. Within these reserves, there are small pocket areas that are to be developed as parks. The

Commission noted Council's contention that the Department of Planning's Planning Guidelines for Local Government – Outdoor Recreation and Open Space requires any open space in new development area should have a minimum area of 0.5ha.

The Commission also noted the Statement of Commitments provides the village park and precinct parks shown on the plans are to be dedicated to Council at no cost to Council. In the Commission's view, these parks are drainage reserves and should be dedicated as such, not public parkland.

7.6 Cut and Fill

Council raised a significant concern in relation to the extent of cut and fill that is proposed in the subject application. The Commission shared some of the concerns including remediation of contaminated fill, volume of cut and fill and certainty that the proposed land form could be achieved without the need to import or export fill.

The proponent confirmed that the civil works component covered three areas:

- Cut and fill the site to the required levels,
- Compaction of material to achieve a stabilised site; and
- Remediate the site for its intended use.

These works are to be achieved in one process for the whole site. It was also confirmed that the engineering calculations in the project application are correct and that the cut/fill will be balanced. There will be no need to export/import fill and therefore no adverse impacts from road haulage.

The Commission noted that the Department has recommended a condition "Filling and Haulage" that requires details of the final design of the cut and fill for the site, verification of the cut and fill balance, heavy construction materials and proposed routes to and from the site are to be submitted to and approved by Council.

To address the Commission's concern, the Department advised that the condition could be amended to provide that:

The final earthworks plan shall be submitted to the Department for approval prior to the issue of a Construction Certificate and shall be generally in accordance with the bulk earthworks plan (Drawing 11688-5001 Revision D prepared by ADW Johnson and dated February 2011) and the detailed geotechnical methodology and remedial strategies. Any significant variations would require a Section 75W modification.

The Commission agrees that this revised condition adequately addresses its concerns but considers that it would be more appropriate for the final earthwork plans to be submitted to the Council for approval rather than the Department. .

7.7 Site Contamination

As a former mine, the site must be remediated before any further development can occur. Site contamination is a significant issue and the Commission considers that the whole site must be remediated before any subdivision of the land is registered.

The Department has advised that a Mine Closure and Rehabilitation Plan was prepared in 2003. However, the level of remediation required under such a plan depends on the final land use of the site. Implementation of the plan has been delayed pending the determination of the final land use.

A Remedial Action Plan has been prepared for the site but it is considered inadequate and needs to be updated (based on the AECOM letter to the proponent dated 28 Feb 2011 in relation to a review of contamination issues).

The Department recommended the following conditions to address the issues:

- an accredited site Auditor to be engaged to ensure remediation work is adequate to meet consent agency requirement.
- supplementary investigations to be undertaken to provide further clarification on the likely extent of contamination issues.
- following the supplementary investigation, a details and conservative remedial action plan is to be prepared for site auditor endorsement prior to implementation.
- if coal rejects are to be reused, further chemical testing is to be undertaken to determine acid leachate generation potential.
- any remediation works required within the proposed road reserves should be completed prior to dedication to Council.

The Commission is satisfied that contamination can be adequately addressed by these conditions.

7.8 Other Issues

Other issues of concern are addressed via conditions of approval including:

- Stormwater design and management – details are to be approved by Council;
- Community facilities – Contributions are required under S94 of the EP&A Act and the voluntary planning agreement.
- Landscape plan is to be prepared and approved by Council. Public domain landscaping should be maintained by the proponent for 5 years;
- A fence is to be provided on perimeter roads on the side of public reserve to restrict vehicular access to the conservation areas and pedestrian access to designated walking tracks.

8. CONCLUSION

The Department has recommended that approval should be granted subject to conditions.

The Commission has carefully considered the documents provided by the Department and clarified issues at meetings with the Department, Council officers and the proponent.

Whilst the Commission has concluded that the proposal may be approved, it considers that further conditions are required and some need to be strengthened.

Firstly, the plan of subdivision must be substantially revised, particularly in relation to Stage 3 which covers the Heritage Conservation Area. Condition A7 of the approval sets out the changes that must be made to the plan and requires the plan to be amended to the satisfaction of the Commission.

The Director's requirements for the project required the preparation of a draft DCP for the site providing specific controls relating to subdivision and urban design.

The Commission considers that the draft DCP is inadequate for a range of reasons. This is the subject of a separate report to the Director General. However, the Commission considers that the deficiencies in the DCP do not prevent an approval from being granted to

this subdivision application as the issues to be addressed in the DCP relating to the overall planning of the site have been adequately addressed by conditions of this approval.

In summary, the Commission has determined that:

- 1) Remediation work should be carried out as soon as practicable to ensure the adjacent conservation areas are protected;
- 2) Stage 3 should:
 - be redesigned to:
 - (a) provide for a 25-40m coastal reserve;
 - (b) have regard to its location within a Heritage Conservation Area and special coastal area; and
 - (c) be based on best urban design principles that respond to the significance of the site and its environmental attributes.
 - Create a maximum of 40 allotments;
 - not allow any individual lot to be further subdivided.
- 3) The remainder of the subdivision plan requires amendments as follows:
 - The coastal reserve should be included as part of the Stage 2 development;
 - Extension of Road 20 to Stage 1 and provision of a perimeter road in Stages 6 and 7;
 - The landscape buffers in the Greenlinks are to be in road reserves;
 - Clear indication of lot sizes and dimensions and road widths should be provided;
 - A second direct access is required from Montefiore Street to Road 20;
 - The western section of Road 20 (second greenlink) should be included as part of Stage 2 development;
 - A minimum of 50m riparian buffer is to be provided at any point to the "ground truthed" SEPP 14 wetland boundary; and
 - An updated staging plan and details of proposed development in each stage should be provided
- 4) The revised subdivision plans are to be amended to the satisfaction of the Commission prior to the issue of any construction certificate for the subdivision infrastructure works (this excludes bulk earthworks and remediation).
- 5) A subdivision certificate must not be issued for the site until it has been remediated and the remediation has been certified by an accredited auditor as suitable for the proposed residential use.



Gabrielle Kibble AO



Janet Thomson



Richard Thorp

Attachment 1

Instrument of Approval

ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979

DETERMINATION OF MAJOR PROJECT NO. 10-0204


(FILE NO. 10/0204)

The Planning Assessment Commission, having considered the matters in section 75J(2) of the *Environmental Planning & Assessment Act 1979* (the Act), determine pursuant to section 75J(1) of the Act to **grant approval** to the major project referred to in the attached Schedule 1 subject to the conditions of approval in Schedule 2 and Statement of Commitments in Schedule 3.

This approval applies to the plans, drawings and documents cited by the Proponent in their Environmental Assessment, Preferred Project Report and Statement of Commitments, subject to the conditions of approval in Schedule 2.

The reasons for the imposition of conditions are:

- (1) To adequately mitigate the environmental and construction impacts of the development;
- (2) To reasonably protect the amenity of the local area; and
- (3) To protect the public interest.



Member of the Commission



Member of the Commission



Member of the Commission

Sydney, 13 May 2011

SCHEDULE 1

PART A — TABLE

Application made by:	Coastal Hamlets Pty Ltd
Application made to:	Minister for Planning
Major Project Number:	10- 0204
On land comprising:	Lot 100, 101,102, 103 and 106 DP 112872, Lot 1 DP 1141989, Lot 1, DP 1129299 and Lot 1, DP 1151628.
Local Government Area	Lake Macquarie
For the carrying out of:	Subdivision of land to create up to 540 residential lots, 1 retail lot and 7 reserves, bulk earthworks and infrastructure
Capital Investment Value	\$54.8M.
Type of development:	Project approval under Part 3A of the EP&A Act
Determination made on:	13 May 2011
Determination:	Project approval is granted subject to the conditions in the attached Schedule 2.
Date of commencement of approval:	This approval commences on the date of the Planning Assessment Commission's approval.
Date approval is liable to lapse	5 years from the date of determination unless specified action has been taken in accordance with Section 75Y of the EP&A Act.

PART B — DEFINITIONS

In this approval the following definitions apply:

Act means the *Environmental Planning and Assessment Act, 1979* (as amended).

Environmental Assessment means the document titled *Environmental Assessment Report – Catherine Hill Bay - Bulk Earthworks, Infrastructure and Staged Subdivision for Residential Development*, including all appendices, prepared by ADW Johnson Pty Ltd

BCA means the Building Code of Australia.

Council means Lake Macquarie City Council.

Certifying Authority has the same meaning as in Part 4A of the Act.

Department means the Department of Planning and Infrastructure or its successors.

Director means the Director of the Strategic Assessment Branch (or its successors) of the Department of Planning and Infrastructure.

Director General means the Director General of the Department of Planning and Infrastructure.

Executive Director means the Executive Director of the Urban Renewal and Major Sites Division (or equivalent) within the Department of Planning and Infrastructure.

Major Project No. 10_0204 means the project described in Condition A1, Part A, Schedule 2 and the accompanying plans and documentation described in Condition A2, Part A, Schedule 2.

Minister means the Minister for Planning and Infrastructure.

PCA means a Principal Certifying Authority and has the same meaning as in Part 4A of the Act

Project means development that is declared under Section 75B of the Act to be a project to which Part 3A of the Act applies.

PPR and Preferred Project Report means the document titled *Preferred Project Report MP 10/0204 prepared by ADW Johnson Pty Limited*

Proponent means the person proposing the carry out of development comprising all or any part of the project, and includes persons certified by the Minister to be the proponent.

Regulation means the *Environmental Planning and Assessment Regulations, 2000* (as amended).

Statement of Commitments means the final Statement of Commitments submitted to the Department of Planning as part of the Preferred Project Report for this project.

Subject Site has the same meaning as the land identified in Part A of this schedule.

SCHEDULE 2

CONDITIONS OF APPROVAL

MAJOR PROJECT APPLICATION NO. MP 10_0204

PART A – ADMINISTRATIVE CONDITIONS

A1 Development Description

Project Approval is granted for the following works:

- Subdivision of the site into up to 550 residential lots, 1 retail lot and 7 lots for reserves;
- Associated bulk earthworks;
- Infrastructure works including roads, drainage works and utility services provision;
- Landscaping works.

A2 Development in Accordance with Plans and Documentation

The development shall be in accordance with the following plans, documentation and recommendations made therein:

Environmental Assessment Report – Catherine Hill Bay - Bulk Earthworks, Infrastructure and Staged Subdivision for Residential Development, including Appendices A-O, prepared by ADW Johnson Pty Ltd and as amended by:

- *Preferred Project Report MP 10/0204 prepared by ADJ Johnson Pty Ltd, including Appendices A-M;*
- *The Statement of Commitments; and*
- *The conditions of this approval, and in particular condition A7 and the amended subdivision plan.*

A3 Inconsistency between plans and documentation

In the event of any inconsistency between conditions of this project approval and the plans and documentation referred to above, the conditions of this project approval prevail.

A4 Lapsing of Approval

The project approval will lapse 5 years after the approval date in Part A of Schedule 1 of this project approval unless specified action has been taken in accordance with Section 75Y of the Act.

A5 Compliance with Relevant Legislation and Australian Standards

The proponent shall comply with all relevant Australian Standards and Codes (including Building Code of Australia) and obtain all necessary approvals required by State and Commonwealth legislation in undertaking the project described in Condition A1, Part A, Schedule 2 of this approval.

A6 Development Control Plan

The development control plan at Appendix F of the PPR is not approved.

A7 Amendments to Subdivision Plan

The subdivision plan is to be amended prior to the issue of a Construction Certificate for subdivision infrastructure to the satisfaction of the Planning Assessment Commission as follows:

- (a) Lots 1117, 1118, 1119 and 1120 are to be deleted and the residue allotment resulting from the proposed realignment of Hale Street is to be consolidated into one single allotment comprising the Wallarah House Precinct.
- (b) the green ridgeline and visual backdrop to the existing Catherine Hill Bay Village is to be protected by provision of Montefiore Parkway as a public road with a width of 50m (comprising a central road reservation of 22m with 15m wide landscape buffer either side) for the entire length of Montefiore Street from the western boundary of the development site through to the intersection with the realigned Hale Street in the

east. The entire 50m road reserve which is to form the "Green Ridge" on Montefiore Street is to be within public areas of the site (i.e. not within private properties).

- (c) A 6m wide perimeter road is to be included within the development area surrounding the allotments in Stages 6 and 7 to provide an appropriate asset protection zone and interface with the adjacent Conservation Area.
- (d) Road 20 (perimeter road to Stages 2, 4 and 5) is to be widened to a carriageway width of 8m comprising one trafficable lane in each direction and parking lane. The parking lane shall be located on the southern side of the road within an informal verge on the southern side. A second direct access from Montefiore Street to Road 20 shall be provided via either Road 3 or Road 4 or Road 10. Landscaped areas must be provided within the parking lane of Road 20 at regular intervals with a minimum space of 50m.
- (e) Road 20 is to be extended to Lot 1039 and where practical to connect to Road 18 to ensure appropriate bushfire protection for allotments in this area.
- (f) Proposed Lot 1006 and Lot 1005 are to be deleted and incorporated into the adjacent Village Park with appropriate landscaping.
- (g) Proposed Lots 1001 to 1004 are to be consolidated into one allotment for the proposed retail precinct and to provide off street car parking for the retail precinct and Village Park. Any future project application for the retail development shall demonstrate appropriate frontage to Montefiore Street, Hale Street and the village park and incorporate appropriate car parking for the retail and park uses.
- (h) There must be no direct vehicular access from any residential lots onto Montefiore Street.
- (i) Allotments fronting the designated "green link" roads (north south running sections of Roads 2, 10 and 11) are to be provided with share access point.
- (j) Stage 3 of the development is to be redesigned to provide for a coastal reserve including the coastal walk. The reserve must be 40m from the cliff line south of the Bin Building and 25m from the cliff line north of the Bin Building. The cliff line is defined as the line that represents the point where the land at the cliff edge has a slope of 20%. Private property must not encroach onto the reserve.

As part of the redesign of Stage 3 (refer (j) above) consideration is to be given to minimisation of cut and fill to retain as many existing trees as possible and to minimise the visibility of the area when viewed from the north. Evidence of this analysis is to be provided prior to referral to the Commission for consideration.
- (k) Road 20 and lots in the vicinity of the SEPP 14 wetland are to be amended to provide for a primary riparian buffer of not less than 50m at any point to the "ground truthed" SEPP 14 wetland boundary as mapped in Figure 3.5 of the Ecological Assessment Report (RPS, September 2010) to development lands.
- (l) Following inclusion of perimeter roads as required above, Asset Protection Zones and requirements for dwelling construction are to comply with AS3959-2009 and be to the satisfaction of the Rural Fire Service. Evidence of the RFS agreement to the proposal should be obtained prior to referral to the Commission for consideration.

A8 Restoration or adaptive reuse of heritage items

No approval is granted for the restoration or adaptive reuse of any heritage items on site. These works will require a separate approval under Clause 22 of Part 14 of Schedule 3 to the Major Development SEPP.

A9 Bin Building

An assessment must be made of the public risk posed by the Bin Building before the Coastal Walkway is constructed and public access must be prevented to any areas of the building that are unsafe.

A10 Mediation

Where this approval requires further consent from Council or another Authority, the parties shall not act unreasonably preventing an agreement from being reached. In the event that an agreement is unable to be reached within 2 months or a timeframe otherwise agreed to by the Director General, the matter is to be referred to the Director General for resolution. All areas of disagreement and the position of each part are to be clearly stated to facilitate a resolution.

PART B—PRIOR TO COMMENCEMENT OF WORKS

B1 Coastal Walkway Design

- (1) Detailed engineering plans of the Coastal Walkway are to be approved by Council prior to the issue of the Construction Certificate for those works. These plans are to illustrate that the Coastal Walkway has been designed and will be constructed to:
 - Ensure the safety of members of the public; and
 - Take account of coastal processes and coastal hazards and potential impacts, including sea level rise.

B2 Certificates/Engineering Details - General

- (1) A Construction Certificate is to be issued by the Principal Certifying Authority prior to commencement of any works. The application for this Certificate is to satisfy all of the requirements of the Environmental Planning and Assessment Regulation 2000.
- (2) An application for a Subdivision Construction Certificate or for approval of designs for civil engineering works is to be submitted to Council where Council is nominated as the Principal Certifying Authority or where approvals are required from Council as the Roads or Water Supply Authority.
- (3) Prior to the issue of a Construction Certificate for the relevant subdivision infrastructure, the applicant must apply under Section 305 of the Water Management Act 2000 to Hunter Water as the Water Supply Authority for any works and contributions required for the obtaining of a Section 307 Certificate of Compliance. (Note for a single dwelling the payment of the required plumbing and drainage inspection fees satisfies the requirements of the Water Management Act).
- (4) Prior to the issue of a Construction Certificate for roads, the proponent is to enter into a deed of agreement with the Roads and Traffic Authority for the intersection upgrade works to the intersection of Montefiore Street and the Pacific Highway.

B3 Construction Management Plan

- (1) Prior to the issue of a Construction Certificate for any works, a Construction Management Plan shall be submitted to and approved by the Certifying Authority. The Plan shall include, but not be limited to, the following:
 - (a) hours of work;
 - (b) contact details of site manager;
 - (c) written notice to the PCA and Council prior to commencement of works on site;
 - (d) induction procedures for all site workers on measures to protect Aboriginal heritage and native flora and fauna, particularly endangered ecological communities (EEC)
 - (e) integration of the following management plans:
 - construction traffic and management ,
 - noise and vibration management;
 - construction waste management; and
 - erosion and sediment control.
- (2) The Construction Management Plan shall document the proposed method of work within the construction site boundaries with regard to the health and safety of the public and affect on the road reserve must be submitted to and approved by the Certifying Authority prior to the issue of the civil construction certificates. If any part of the road reserve or public land is proposed for long term (exceeding 24 hours) inclusion in the construction site boundaries this area must be identified in the Construction Management Plan and to the approval of Council.
- (3) The Proponent shall submit a copy of the approved plan to the Department and Council if Council is not the Certifying Authority.

B4 Construction Traffic and Management Plan

- (1) Prior to the issue of a Construction Certificate, a Construction Traffic Management Plan (CTMP) prepared by a suitably qualified person shall be submitted to and approved by the Certifying Authority. The Plan shall address, but not be limited to, the following matters:
 - (a) proposals for reducing any impact of the construction site on the adjacent traffic network,
 - (b) construction staging plan indicating the estimated start and finishing date of each stage,
 - (c) traffic management of short term activities such as delivery of materials,
 - (d) accessing, exiting and parking in and near the work site by trucks, tradesmen work vehicles and the like,
 - (e) mitigation measures to ensure that delivery trucks and trade vehicles do not deposit any spoil on public roadways,
 - (f) loading and unloading, including construction zones,
 - (g) predicted traffic volumes, including traffic volumes generated from the neighbouring public school, during the peak traffic times before and after school hours, types and routes,
 - (h) pedestrian and traffic management methods, and
 - (i) Public consultation procedures – procedures to be put in place for notification of adjoining residents of the relevant details of the CTMP and details of complaint handling procedures.
- (2) The Proponent shall submit a copy of the approved plan to Council, if Council is not the Certifying Authority.

B5 Construction Waste Management

- (1) Prior to the issue of any Construction Certificate which involves works that create waste, the proponent shall submit a Waste Management Plan prepared by a suitably qualified person in accordance with Council's Development Control Plan 2005 for Council's approval. An on site storage area for reuse, recycling and disposal of materials is to be provided during construction.
- (2) During construction, building materials must be re-used, recycled or disposed of in accordance with the Waste Management Plan.

B6 Erosion and Sediment Control Plan

- (1) Prior to the issue of a Construction Certificate for any works, the submission to the Certifying Authority of design plans for the control of soil erosion on the site and the prevention of silt discharge into drainage systems and waterways in accordance with Lake Macquarie Council's Development Control Plan No 1 Volume 2 – Engineering Guidelines, in particular Part 1 Design Specification D7 Erosion Control and Stormwater Management is required. Details are to include all major stages of construction and sequences of the works together with treatments necessary at these stages. The design plans must be approved by the Certifying Authority prior to issue of the Construction Certificate. The plans are to include nutrient and sediment control measures to mitigate runoff affecting the SEPP 14 wetlands.
- (2) Nutrient and sediment control devices should be erected pre-clearing and post-construction works in sensitive areas where degradation processes may be triggered such as areas adjacent to watercourses until suitable rehabilitation has occurred to maintain surface integrity. Furthermore, stockpiles should be subject to individual sediment and nutrient control devices.

B7 Environmental Management Plan

Prior to commencement of work, the proponent is to submit an environmental management plan to the Department for approval. The plan is to integrate the following management plans to ensure their implementation will complement each other and maximise the environmental outcomes of their performance.

- a. storm water management;
- b. water quality management
- c. flora and fauna management;

- d. habitat restoration; and
- e. riparian zone management.

B8 Stormwater Management

- (1) The stormwater system for the subdivision is to be provided in accordance with *Stormwater Management & Concept Engineering Report for Proposed Residential Subdivision at Montefiore Street, Catherine Hill Bay* prepared by ADW Johnson December 2010 (Reference 11688SWV1). Design plans must be submitted to and approved by the Council prior to issue of a Construction Certificate.
- (2) If wetlands are to be constructed for stormwater management purposes, they shall be designed by an appropriately qualified person and generally in accordance with the *Constructed Wetlands Manual (DLWC 1998)*.
- (3) A Wetland Management Plan must be submitted to the Council for approval prior to issue of the Construction Certificate for wetlands. Details to include operational, access and maintenance requirements and are to be included on the approved Construction Certificate plans.

B9 Water Quality Management Strategy

- (1) An appropriately qualified person shall prepare a Water Quality Management Strategy detailing monitoring methods for surface and groundwater quality. The strategy is to be approved by Council and shall include a plan scheduling maintenance of the detention basin, detailing the type of maintenance that is required and the body that is responsible to undertake the activity.
- (2) Water quality is to meet Council's baseline environmental target objectives.
- (3) Water quality monitoring is to be carried out throughout the length of the project and for a period of 12 months after the release of the final subdivision of this approval. Details are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate for each stage.
- (4) Water quality testing is to be carried out under sub clause (3) immediately after each storm event and significant phase of construction, or at 3 monthly intervals.
- (5) Copies of the monitoring results are to be forwarded to Council on a quarterly basis.
- (6) If the water quality does not comply with the target levels, works are to be carried out to ensure compliance with the levels.

B10 Flora and Fauna Management

- (1) A management plan is to be prepared for the removal of *Cryptostylis hunteriana* within the Catherine Hill Bay Development Lands Stage 6 in accordance with the EPBC Approval.
- (2) A weed management and monitoring plan is to be developed and implemented to minimise the potential for the invasion of aquatic and terrestrial weed species into the SEPP 14 wetland and buffer zones. The weed management and monitoring plan should be consistent with management strategies undertaken for the adjacent Munmorah SCA and Offset Lands and is to be undertaken by the proponent across the site until 80% of all lots have been developed.
- (3) Prior to the issue of a Construction Certificate, a Flora and Fauna Environmental Management Plan (FFEMP) for the Site shall be prepared by a suitably qualified and experienced ecologist and submitted to and approved by the Council. The Plan shall address, but not be limited to, the recommendations in the Ecological Assessment report prepared by RPS, and include the following:
 - (a) A tree retention plan is to be prepared identifying the mature and/or hollow-bearing trees to be retained, including those identified in the Ecological Assessment Report by RPS report, where viable. The plan is also to show tree retention where possible to retain areas for shade on the site. The plan is to reference the bulk earthworks plan to demonstrate consistency,
 - (b) Pre-clearance surveys are to be conducted within the development areas before construction commences in order to identify any breeding or nesting activities by native fauna within wooded areas. No breeding attempts or active nests should be disrupted as far as is practical during the course of the project,

- (c) During the construction/vegetation removal phase, for any tree removal within forested areas, and in particular where hollow-bearing trees may be removed, all works should be supervised by an ecologist to recover any native fauna that are potentially displaced. Furthermore, where such risks occur, site-specific ecological advice should be sought to minimise impacts during the entire process. A clearing protocol should be adopted for the removal of trees containing suitable habitat hollows as follows (this is considered as a guideline, variations on the methods employed may be required to accommodate site specific factors),
 - (d) All hollow bearing trees are to be flagged by an ecologist prior to the commencement of works on site,
 - (e) Trees and native vegetation proposed for retention are to be clearly identified on all the final approved engineering plans. The location of any threatened species or threatened communities is also to be marked on all plans,
 - (f) Underscrubbing of the entire site should be carried out by a 4x4 tractor with a slashing deck, this will minimise the establishment of degradation processes and leave a layer of mulch to aid in soil retention in the event of adverse weather. At this time felling of non habitat trees can take place, however a matrix of trees must be maintained to allow animal movement into the designated refuge area, and
 - (g) After a period of two weeks, clearing of habitat trees should commence. Clearing must be carried out moving from the fringe of the matrix towards the refuge area. Trees should be 'soft felled' and inspected immediately by an ecologist for displaced fauna. All trees must be left for a minimum of two nights prior to being moved to a stockpile, to allow resident fauna to vacate tree hollows.
- (4) Clearing should take place outside of the main breeding seasons of resident fauna, preferably during late autumn and winter.
 - (5) Species selection for future landscaping works and seed stock for revegetation should be limited to locally occurring native species to maintain local genetic diversity. This should include *Eucalyptus robusta* and other regionally significant species.
 - (6) Earthworks should be undertaken during appropriate (i.e. dry) weather conditions to ensure that any potential erosion events are intercepted and that no downstream impacts occur within any of the drainage lines.
 - (7) Management of exotic weeds and pests during the construction including infection by *Phytophthora cinnomoni*, exotic perennial grasses, Bitou, Boneseed, Lantana, exotic vines and scramblers.
 - (8) Appropriate methods of disposing of timber, tree waste and other vegetative matter removed through the development activity. Millable timber is to be recycled for use in construction, furniture or fencing or similar or through local saw mills or sawyers. Other tree waste must be woodchip or tub ground or used for firewood. Tree stumps that cannot be reasonably tub ground may be disposed of to a Council approved site.
 Unless otherwise approved the resultant materials must be used in final landscape works for soil stabilisation, improvements and rehabilitation. It is not permitted to dispose of vegetated matter removed through development activity by burning and the NSW Rural Fire Services is unable to provide a permit to dispose of such material in this manner.
 - (9) Strict management of stormwater runoff into the planning, construction and occupation phases to minimise potential impacts on EECs, known Wallum Froglet habitat and other threatened species.
 - (10) Riparian vegetation, and sediment and water management strategies to mitigate the impact on the Wallum Froglet, Regent Honeyeater and Swift Parrot, which are threatened species.
 - (11) Where possible, landscape sediment retention ponds with fringing wetland vegetation (eg *Typha* sp.) to provide habitat for species such as Green and Golden Bell Frog.

B11 SEPP 14 Wetlands

The impact of the proposed development on the SEPP 14 wetland, EECs and habitat of threatened species (as identified in the Ecological Assessment Report) must be minimised during the construction and occupation phases. A suitably qualified wetland engineer and ecologist must be engaged to provide advice to ensure that this is achieved.

B12 Habitat Restoration Plan

- (1) A Habitat Restoration Plan (HRP) for the proposed habitat protection areas and buffers to the development. The HRP is to be prepared by a suitably qualified and experienced ecologist and submitted to and approved by Council. The HRP will integrate with the required Landscape Plan and Sediment and Erosion Control Plans. In preparing the HRP the applicant is to have due regard to the following specific and required components of the HRP:
 - (a) A suitably qualified and experienced professional bush regeneration contractor is to be engaged to carry out any revegetation planting, restoration and maintenance weed control specified in the Habitat Restoration Plan, and
 - (b) The minimum qualifications and experience required for the bush regeneration contractor are a TAFE Certificate 2 in Bushland Regeneration and two years demonstrated experience (for site supervisor) and a TAFE Certificate 2 in Bushland Regeneration and one year demonstrated experience (for other personnel). In addition the site supervisor is to be eligible for full professional membership of the Australian Association of Bush Regenerators (AABR).
 - (c) The mulch/tubgrindings generated from the removal and thinning of native trees associated with the development is/are to be re-used in restoring the habitat protection areas as required.
 - (d) Any natural hollows removed by the development are to be placed wherever possible as ground hollows within retained bushland under the supervision of the consulting ecologist.
 - (e) Restoration areas are to be maintained for a minimum of three (3) years. Reports are to be submitted to Council detailing the progress of the bush regeneration works twice per year, with a final report certifying the completion of the works at the end of the three year period.
 - (f) Any plant stock used in revegetation (if required) will be supplied from provenance specific seed/material collected from within the Tuggerah Lakes catchment area. Non-provenance specific material is prohibited.
- (2) A Wildlife Management Strategy (WMS) shall be prepared by a suitably qualified and experienced ecologist and submitted to and approved by the Council. The WMS is to show how mitigation against native animal welfare issues will be achieved. The WMS is to include the following protocols:
 - (a) The consultant ecologist is to identify fauna likely to occur on site and advise on management actions to mitigate any native animal welfare issues,
 - (b) The consultant ecologist is to clearly mark each potential habitat tree required to be removed,
 - (c) The consultant ecologist is to inspect all potential habitat trees prior to removal and identify evidence of fauna use. All clearing of habitat trees is to be done under the direct supervision of a consulting ecologist and/or Office of Environment and Heritage licensed wildlife carer. When fauna are present, the animals are to be removed and relocated to the adjacent bushland/nest boxes prior to felling or the tree shall be sectionally dismantled under the supervision of the ecologist or wildlife carer before relocating animals to the adjacent bushland/nest boxes,
 - (d) Clearing will commence with the most distant vegetation from secure habitat and progressively work toward the retained bushland in order to allow fauna to disperse,
 - (e) Trees should be slowly lowered or sectionally dismantled using an excavator or similar technique,
 - (f) Any natural hollows removed by the development are to be placed wherever possible as ground hollows within retained bushland under the supervision of the consulting ecologist, and
 - (g) Nest boxes are to be provided on a one for one basis for any natural hollow removed by the development and are to be constructed of appropriate durable materials. All nest boxes are to be erected prior to the issue of a Construction Certificate and at least one month prior to vegetation clearance on the site. The monitoring of nest boxes to determine their usage and to carry out repairs or replacement (as required) every six (6) months for a minimum period of three (3) years following erection. Monitoring reports are to be forwarded to Council after each monitoring event.

B13 Riparian Zone Management

A Riparian Zone Management Plan shall be prepared to the satisfaction of NSW Office of Water (or its successors) for the stream forming the drainage corridor between Stages 6 and 7, and for the "Village Park". The plan should include:

- (a) Detailed design of the stormwater treatments, demonstrating consistency with the NSW Office of Water guidelines for controlled activities,

- (b) A riparian zone assessment and rehabilitation plan for the watercourses; and
- (c) Management responsibility and requirement details.

B14 Landscaping Plans

- (1) Prior to the issue of a Construction Certificate for subdivision infrastructure works, a Landscape Master Plan, Landscape Design Report and Landscape Construction Plan and Specifications are to be prepared by a qualified landscape architect in accordance with the requirements of Section 2.7.2 of the Lake Macquarie Development Control Plan No 1. The Plans shall be submitted to and approved by Council. The Plan is to include, but is not limited to the following:
 - (a) Details of street planting with appropriate locally endemic species;
 - (b) Tree planting and embellishments in the parks including picnic tables, bbqs, play equipment and bicycle racks to encourage community interaction.
 - (c) Seating should also be provided along pathways in the road reserve.
 - (d) Details on weed control;
 - (e) A management plan detailing on-going maintenance requirements to ensure the care and maintenance of the landscaping and revegetated areas;
 - (f) Management of stormwater runoff to minimise impact on vegetated areas; and
 - (g) The location of Water Sensitive Urban Design devices and integrate with other public domain treatments.
- (2) A Landscape Construction Plan/Specifications should be provided for each stage of the development and provide details on all landscaping to be undertaken within roads, public domain, public reserves, pedestrian links etc.
- (3) Separate landscape plans are to be provided for the Coastal Walkway and Reserve, public reserves, and treatment of the landscaped buffers to the Green Link Roads (north south running sections of Roads 2, 10 and 11) and Montefiore Parkway.

B15 Filling and Haulage

The final earthworks plan shall be submitted to the Department for approval prior to the issue of a Construction Certificate and shall be generally in accordance with the bulk earthworks plan (Drawing 11688-5001 Revision D prepared by ADW Johnson and dated February 2011) and the detailed geotechnical methodology and remedial strategies. Any significant variations would require a Section 75W modification.

B16 Geotechnical Investigations / Earthworks

Prior to the commencement of earthworks a detailed geotechnical methodology and remedial strategies are to be prepared for the approval of Council consistent with the recommendations of the Stage 1 – 5 Supplementary Geotechnical Investigation (Geotech Solutions, December 2010) and Stages 6 and 7 preliminary geotechnical investigation undertaken by Geotech Solutions (December 2010). The proposed measures should limit the need for piling and address the nature of the existing fill material on site.

B17 Contamination

Prior to the commencement of any works:

- (a) Supplementary investigations as identified by the Geotech Solutions (2009) are to be undertaken to provide further clarification of the likely extent of contamination;
- (b) A detailed and conservative Remedial Action Plan (RAP) is to be prepared and endorsed by a NSW EPA accredited Site Auditor certifying that the land will be suitable for the proposed residential development if the site is remediated in accordance with that Plan.
- (c) If reuse of coal rejects is proposed, further chemical testing is to be undertaken to determine acid leachate generation potential.
- (d) Any remediation works required within the proposed road reserves must be completed prior to dedication to Council.

B18 Roads - General

- (1) Separate approval from the Roads Authority must be obtained under the Roads Act 1993 prior to the issue of a Construction Certificate for any proposed new Council roads or works within an existing Council road reserve. Design plans must be submitted to and approved by the Roads Authority prior to issue of the Construction Certificate.
- (2) Additional civil works necessary to ensure satisfactory transitions to existing work as a result of work conditioned for the development are to be provided at no cost to Council. Design plans are to be approved by the Roads Authority prior to the issue of a Construction Certificate.
- (3) A comprehensive road signage and pavement marking plan identifying parking restrictions, accesses and traffic management facilities is to be submitted to Council for approval by the Local Traffic/Development Committee and works completed prior to issue of the Subdivision Certificate.
- (4) Proposed names for the roads under the Roads Act within the subdivision are to be submitted to Council for approval of the prior to issue of a Subdivision Certificate.

B19 Pacific Highway Intersections

The intersection of the Pacific Highway and Montefiore Street shall be upgraded / modified in accordance with the RTA's specifications, the RTA's Road Design Guide, the relevant Austroads guidelines and Australian Standards, to the satisfaction of the RTA prior to the issue of the first Subdivision Certificate which creates the first urban lot.

B20 Montefiore Street Upgrade

The developer is to upgrade the road pavement and drainage for the entire length of Montefiore Street from its intersection with Hale Street in the east to the intersection with the Pacific Highway to the west in accordance with Council's requirements prior to the issue of the first Subdivision Certificate which creates the first urban lot.

B21 Public Transport

- (1) The proponent is to liaise with Transport NSW and local bus operators to identify appropriate locations for bus stops.
- (2) The design of the bus stops shall address the following:
 - (a) Bus stops and bus shelters are to be provided in accordance with the requirements of the Bus Operator, TNSW and Council. All facilities need to be installed in accordance with Disability Discrimination Act (DDA) requirements,
 - (b) Footpaths and pedestrian refuges are to be provided to service the bus stops, to Council's satisfaction, to ensure pedestrian safety and encourage the use of public transport, and
 - (c) Details of proposed bus stop locations are to be submitted to Council for approval.

B22 Dilapidation

A dilapidation report must be submitted to Council as the Roads Authority prior to the commencement of any works. The report must document and provide photographs that clearly depict any existing damage to the public road, kerb, gutter, footpath, driveways, water supply, sewer works, street trees, street signs or any other Council assets in the vicinity of the development.

B23 Acid Sulphate Soils

A detailed acid sulphate soil investigation shall be undertaken and an acid sulphate soil management plan prepared where the proposed development will impact on any acid sulphate soils. The management plan shall be prepared by a suitably qualified person in accordance with the *Acid Sulphate Soil Assessment Guidelines* (Acid Sulphate Soil Management Advisory Committee, 1998) and submitted to and approved by the Certifying Authority prior to issue of a Construction Certificate.

B24 Water and Sewer services/Infrastructure

- (1) All water and sewer works or works impacting on water and sewer assets are to be designed and constructed to the requirements of Hunter Water as the Water Supply Authority under the Water Management Act 2000. The requirements of Section 306 of the Water Management Act, 2000 apply to this development. The design plans must be submitted to and approved by Hunter Water prior to the issue of a Construction Certificate.
- (2) Arrangements to the satisfaction of other service/infrastructure providers are to be made for the provision of services prior to the issue of a Construction Certificate for those works.

B25 Water Licensing Requirements

- (1) An authorisation under the Water Act 1912 or the Water Management Act 2000 is to be obtained from the NSW Office of Water with the appropriate purpose identified for any activity relating to the taking of or interception of groundwater prior to that activity commencing.
- (2) Prior to the construction of the detention basin, the proponent should contact the NSW Office of Water to determine if a surface water licence is required.

B26 Retaining Wall

Retaining walls must be designed and certified by a qualified structural engineer in accordance with AS4678 Earth Retaining Structures prior to the issue of a Construction Certificate. The retaining walls must be located fully within the boundaries of the subject property.

B27 Other Authorities

Other public authorities may have separate requirements and should be consulted prior to commencement of works in the following respects:

- Australia Post for the positioning and dimensions of mail boxes in new commercial and residential developments,
- AGL Sydney Limited for any change or alteration to gas line infrastructure,
- Energy Australia for any change or alteration to electricity infrastructure or encroachment within transmission line easements, and
- Telstra, Optus or other telecommunication carriers for access to their telecommunications infrastructure.

B28 Aboriginal Cultural heritage

The developer shall implement the Aboriginal Cultural Heritage Management Plan (ACHMP) for the project area prepared by Insite Heritage Pty Ltd (December 2010) in consultation with the registered local Aboriginal stakeholders.

B29 Bushfire

- (1) Having regard to the required subdivision amendments and inclusion of perimeter roads adjacent to conservation lands, documentation is to be submitted to the Director, Strategic Assessment to demonstrate that the NSW Rural Fire Service endorse the final proposed APZ depths and dwelling construction requirements for affected allotments in accordance with AS 3959-2009.
- (2) A bushfire risk management plan is to be prepared in consultation with the Rural Fire Services by a suitably qualified person. The plan is to be submitted and approved by the Certifying Authority.
- (3) Water supply for fire fighting purposes and water, electricity and gas are to comply with Planning for Bushfire Protection 2006.
- (4) Landscaping is to be in accordance with Planning for Bushfire Protection 2006.

PART C—DURING CONSTRUCTION

C1 Approved Plans

A copy of the stamped approved and certified plans, specifications and documents incorporating conditions of approval and certification must be kept on site for the duration of site works and be made available upon request to either the Principal Certifying Authority or an officer of the Council or the Department.

C2 Aboriginal Relics

- (1) An Aboriginal Cultural Education Program must be developed for the induction of all personnel and contractors involved in the construction activities on site. Records are to be kept of which staff/contractors were inducted and when for the duration of the project. The program should be developed and implemented in collaboration with the local Aboriginal community.
- (2) In the event that surface disturbance identifies a new Aboriginal site, all works must halt in the immediate area to prevent any further impacts to the object(s). A suitably qualified archaeologist and representatives of the local aboriginal community must be contacted to determine the significance (cultural and scientific) of the object(s). The site is to be registered in the Aboriginal Heritage Information Management system (AHIMS) (managed by OEH) and the management outcome for the site included in the information provided to the AHIMS). The proponent will consult with the Aboriginal community representatives the archaeologist and OEH to develop and implement management strategies for all objects/sites. Works may only recommence following endorsement for such from the OEH.
- (3) The proponent is to provide fair and reasonable opportunities for the registered local Aboriginal stakeholders to monitor any initial ground disturbance works associated with the area described as a band of archaeological sensitivity, identified in Figure 4 of the report titled 'Aboriginal Cultural Heritage Management Plan for Project Approval, Catherine Hill Bay' (dated December 2010), by Insite Heritage Pty Ltd, and the area immediately adjacent to Aboriginal site 'CHB 1'. In the event that additional Aboriginal objects are uncovered during the monitoring program, the objects are to be recorded and managed in accordance with the requirements of sections 85A and 89A of the *National Parks and Wildlife Act 1974*.
- (4) If human remains are located in the event that surface disturbance occurs, all works must halt in the immediate area to prevent any further impacts to the remains. The NSW Police are to be contacted immediately. No action is to be undertaken until police provide written notification to the proponent. If the skeletal remains are identified as Aboriginal, the proponent must contact OEH's Enviroline on 131555 and representatives of the local Aboriginal community. No works are to continue until OEH provide written notification to the proponent.
- (5) All reasonable efforts must be made to avoid impacts to Aboriginal cultural heritage at all stages of the development works. If impacts are unavoidable, mitigation measures are to be negotiated with the local Aboriginal community and OEH. All sites impacted must have an OEH Aboriginal Site Impact Recording (ASIR) form completed and submitted to OEH AHIMS unit within three (3) months of completion of these works.

C3 Dust Control

Adequate measures shall be taken to prevent dust from affecting the amenity of the neighbourhood during construction. In particular, the following measures must be adopted:

- (1) Physical barriers shall be erected at right angles to the prevailing wind direction or shall be placed around or over dust sources to prevent wind or activity from generating dust emissions,
- (2) earthworks and scheduling activities shall be managed to coincide with the next stage of development to minimise the amount of time the site is left cut or exposed;
- (3) The surface should be dampened to prevent dust from becoming airborne but should not be wet to the extent that run-off occurs;
- (4) all vehicles carrying spoil or rubble to or from the site shall at all times be covered to prevent the escape of dust or other material and wheels washed before leaving the site;
- (5) Gates shall be closed between vehicle movements and shall be fitted with shade cloth; and
- (6) Cleaning of footpaths and roadways shall be carried out regularly.

C4 Hours of Work

- (1) The hours of construction for all stages of the project, including the delivery of materials to and from the site, shall be restricted as follows:
 - (a) Between 7.00am and 6.00pm, Monday to Fridays inclusive;
 - (b) Between 8.00am and 1.00pm, Saturday; and
 - (c) No work on Sundays and public holidays.

- (2) Works may be undertaken outside these hours where:
 - (a) The delivery of materials is required outside these hours by the Police or other authorities;
 - (b) It is required in an emergency to avoid the loss of life, damage to property and/or to prevent environmental harm;
 - (c) The work is approved through a Construction Noise and Vibration Management Plan; and
 - (d) Residents likely to be affected by the works are notified of the timing and duration of these works at least 48 hours prior to the commencement of the works.

C5 Construction noise objective

- (1) The construction noise objective for all stages of the project is to manage noise from construction activities (as measured by a L_{A10} (15 minute) descriptor) so it does not exceed the background L_{A90} noise level by:
 - (a) for construction period of 4 weeks and under, not more than 20dBA;
 - (b) for construction period greater than 4 weeks but not exceeding 26 weeks, not more than 10dBA; and
 - (c) for construction period greater than 26 weeks, not more than 5dBA.
- (2) The Proponent shall implement all feasible noise mitigation and management measures with the aim of achieving the construction noise objective.
- (3) Any activities that have the potential for noise emissions that exceed the objective must be identified and managed in accordance with an approved Construction Noise and Vibration Management Plan.
- (4) If the noise from a construction activity is substantially tonal or impulsive in nature (as described in Chapter 4 of the NSW Industrial Noise Policy), 5dBA must be added to the measured construction noise level when comparing the measured noise with the construction noise objective.

C6 Construction Noise Management

The Proponent shall:

- (1) schedule rock breaking, rock hammering, sheet piling, pile driving and any similar activity only between the following hours unless otherwise approved in the Construction Noise and Vibration Management Plan:
 - (a) 9.00am to 12.00pm, Monday to Friday;
 - (b) 2.00pm to 5.00pm, Monday to Friday; and
 - (c) 9.00am to 12.00pm, Saturday.
- (2) ensure that wherever practical, and where sensitive receivers may be affected, piling activities are completed using bored piles. If driven piles are required they must only be installed where approved in a Construction Noise and Vibration Management Plan.

C7 Vibration Criteria and Management

- (1) For all Stages of the project, vibration resulting from construction of all stages of the project must not exceed the evaluation criteria presented in the Environmental Noise Management - Assessing Vibration: A Technical Guide (DEC, 2006).
- (2) Vibratory compactors must not be used closer than 30 metres from residential buildings unless vibration monitoring confirms compliance with the vibration criteria specified in the DEC Technical Guide referred to above.

C8 Ecology/Trees

- (1) The applicant is to engage a suitably qualified and experienced consulting ecologist, arborist and soil erosion consultant to supervise the construction of each stage of the development and to ensure and certify to that the trees and vegetation are adequately retained and protected during construction. The consultant ecologist and arborist are to provide reports to demonstrate the proposal is meeting tree retention and protection requirements following completion of the following stages of development:
 - (a) Following erection of required tree protection fencing (and prior to the issue of a Construction Certificate/Commencement of Works),
 - (b) Following induction of each civil contractor and subcontractor,
 - (c) Following initial clearing and excavation/filling of the site,
 - (d) Following provision of services, and
 - (e) Following completion of each construction phase (and prior to the issue of a Subdivision Certificate/Occupation Certificate/Final Certificate/Practical Completion).

- (2) The following tree protection measures shall be used during construction/vegetation clearance:
- (a) Trees and vegetation to be retained are to be protected by the erection of 1.8 metre-high man-proof fencing as per the consulting arborist and ecologist's direction and maintained in good working order for the duration of the works,
 - (b) Erection of tree protection fencing is to be confirmed to Council's Development Ecologist in writing by the consultant arborist/ecologist prior to the issue of a Construction Certificate,
 - (c) All fenced tree protection areas are to be clearly marked as "No Go Area" on all final approved engineering plans,
 - (d) All fenced tree protection areas are to be clearly marked as "No Go Area" on the fencing itself. No clearing of vegetation or storage of vehicles, fill or materials or access is to occur within No Go Areas,
 - (e) The consultant arborist/ecologist may require other habitat and/or trees to be protected via fencing from time to time. This fencing is to be erected at the appropriate root zone protection limits (as determined by the consultant arborist / ecologist), prior to works being carried out around that particular habitat or tree,
 - (f) The management protocols and requirements within these conditions relating to tree and vegetation retention, protection and rehabilitation are to be included in all contract documentation, plans and specifications used by each civil contractor and sub-contractors, and
 - (g) The consultant ecologist and arborist are to induct each civil contractor and sub-contractor in relation to these ecological protocols and requirements.
- (3) All construction contractors and personnel are to be advised of the importance of conserving No Go Areas as part of their site and OH&S induction program. No clearing of trees or vegetation or storage of vehicles, fill or materials or access is to occur within retained areas.
- (4) Tree protection measures must be installed in accordance with Council's requirements prior to commencement of work. Documentary evidence from a qualified Arborist / Horticulturist that suitable tree protection measures have been installed may be submitted to the Principal Certifying Authority and Council, or alternatively Council must be notified to undertake an inspection of the works.
- (5) Native fauna must be appropriately managed during clearing and construction phases of the approved works. In this regard, an appropriately licensed fauna ecologist is to be employed to advise and supervise the clearing of trees. Where, in spite of precautions, wildlife is injured, the fauna ecologist is to take the necessary action to treat the animal, which may include veterinary treatment or transfer of the animal to a volunteer wildlife carer group such as W.I.R.E.S or Wildlife Arc.
- (6) Trees containing trunk or branch hollows provide habitat and shelter to native wildlife. Removal of hollow bearing trees is to be done under the advice and supervision of an experienced wildlife carer or consultant who holds an appropriate National Parks and Wildlife Services Licence to mitigate against any animal welfare issues. The wildlife carer or consultant ecologist is to inspect all potential habitat trees prior to removal and identify evidence of fauna use. Should a threatened species be positively identified, all clearing works are to cease and the advice of the National Parks and Wildlife must be sought. When fauna are present, the animals are to be removed and suitably relocated by the ecologist prior to felling or the tree shall be sectionally dismantled under the supervision of the ecologist before relocating animals. Wildlife must be relocated locally to an area with adequate resources and provided with a nest box or relocated hollow under instruction from the licensed carer or consultant.

C9 Erosion and Sedimentation Control

The provision of soil erosion and silt controls on the site in accordance with Council's Development Control Plan No 1 Volume 2 – Engineering Guidelines in particular Part 1 Design Specification D7 Erosion Control and Stormwater Management and the approved development plans prior to any works commencing on the site.

C10 Site requirements

- (1) Toilet facilities must be available or provided at the work site before works begin and must be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site. Each toilet must:
 - (a) be a standard flushing toilet connected to a public sewer, or
 - (b) have an on-site effluent disposal system approved under the LGA 1993, or be a temporary chemical closet approved under the LGA 1993 supplied by a licensed contractor.
- (2) The provision of a hoarding or safety fence between the work site and the public place in accordance with Work Cover Authority requirements, for the duration of the project. Details to be submitted to the Principal Certifying Authority/appropriately Accredited Certifier unless the hoarding is required within the footpath area where approval from Council under the Roads Act as the Roads Authority is required.
- (3) The Principal Contractor (or Owner/Builder) is to erect a sign in a prominent position on the site (not attached to any tree) identifying the name, address and telephone number of the Principal Certifying Authority (PCA) for the work; the name, address and telephone number (including a number for outside of business hours) of the Principal Contractor for the work (or Owner/Builder); and stating that unauthorised entry to the site is prohibited. The sign must be maintained while the work is being carried out and is to be removed when the work is completed. Appropriate signs can be collected from Council's Customer Service Centre, where Council is the nominated PCA.
- (4) The proponent shall ensure that the outside business hours contact telephone number is attended by a person with authority over the works for the duration of the development.

C11 Earthworks

All earthworks are to be contained to the site and construction access is to be limited to within the site. No earthworks are to be undertaken on adjacent conservation lands nor is access for earthworks to be provided from adjacent lands unless with the prior authorisation of the Office of Environment and Heritage.

PART D – PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE

D1 Certificate/remediation/engineering details

- (1) An application for a Subdivision Certificate must be submitted to and approved by the Council/Principal Certifying Authority prior to registration of the plan of subdivision.
- (2) The application must be accompanied by evidence that an accredited EPA auditor has certified that the Remediation Action Plan has been implemented and that the whole site which is the subject of this application is suitable for the proposed residential development.
- (3) The application must also include documentation to demonstrate full compliance with all approval conditions in accordance with Section 157 Clause 2 (f) of the Environmental Planning and Assessment Regulations 2000. Prior to the issue of a Subdivision Certificate, payment must be made to Council of contributions (as contained in the attached Schedule) under Section 94 of the Environmental Planning and Assessment Act and Council's Contribution Plan. Council's contributions are adjusted on 15 February, 15 May, 15 August and 15 November each year. The amount of the contributions will be adjusted to the amount applicable at the date of payment.

The following contributions are applicable to the proposed subdivision:

Facility	Levy Per Lot (current at date of writing)
Open space land acquisition	\$7,729
Recreation Facilities	\$5,793
Community Facilities – Capital	\$2,298
Community Facilities – Land	\$640
Management	\$176
Total	\$16,636

The next indexation is to occur on 15 May 2011. Agreements will need to be reached with Council regarding the provision of works in kind for any of these contributions.

- (4) The obtaining of a Section 307 Certificate of Compliance under the Water Management Act 2000 for water and sewer requirements for the development from Hunter Water as the Water Supply Authority prior to issue of the Subdivision Certificate. All works for the development must be approved by Council prior to the issue of a Certificate of Compliance.

D2 Dilapidation

Any damage not shown in the Dilapidation Report submitted to Council before site works had commenced, will be assumed to have been caused as a result of the site works undertaken and must be rectified at the proponent's expense, prior to release of the Subdivision Certificate.

D3 Landscaping

- (1) The landscaping and public domain works for the village park and precinct park in Stage 1 and the revegetation works in the road reserve of Montefiore Street shall be completed prior to the issue of the first Subdivision Certificate for any urban lot in Stage 1.
- (2) The landscaping and public domain works for the coastal reserve and coastal walk ("the Coastal Headland Reserve") shall be completed prior to the issue of the first Subdivision Certificate for any urban lot in Stage 2.
- (3) The landscaping works for each Stage (including street tree planting, drainage reserves and the "green links") shall be completed prior to the issue of a Subdivision Certificate for an urban lot within that Stage.
- (4) The landscape designer must provide certification to the Principal Certifying Authority certifying that landscaping has been implemented in accordance with the approved landscape plan, prior to issue of a Subdivision Certificate. Where Council is not the Principal Certifying Authority, a copy of the certificate must be provided for Council's records.
- (5) The landscaping works shall be completed by the proponent at their cost. The Coastal Headland Reserve shall be dedicated to Council or other public authority.
- (6) The proponent shall maintain all hard landscaping works in areas to be dedicated to Council for a period of 12 months after completion to ensure all maintenance and repairs required are carried out during the maintenance period. The maintenance period for all soft landscaping is 5 years following certification of completion.

D4 Roads

- (1) All road signage and pavement marking works must be provided in accordance with the plans approved by the Local Traffic/Development Committee and approved by Council prior to issue of the Subdivision Certificate.
- (2) All additional civil works required to ensure satisfactory transitions to existing work as a result of work conditioned for the development works are to be approved by Council prior to issue of the Subdivision Certificate.
- (3) All works within a public road such as kerb and guttering, road pavement, drainage, footpaths, cycleways, vehicular access crossings and fencing must be in accordance with Lake Macquarie DCP No 1 Volume 2 - Engineering Guidelines and approved by Council as the Roads Authority under the Roads Act 1993, prior to the issue of a Subdivision Certificate.
- (4) All road works under the Works Authorisation Deed shall be completed prior to issuing a Subdivision Certificate for any lot on which development may occur.

D5 Maintenance Deposit

A deposit with Council (Cash or a Bank Guarantee) is required for a period of twelve months from completion of all engineering work of a sum equal to 5% of the cost of Engineering Works prior to the issue of a Subdivision Certificate for each stage. This security is to guarantee the quality of work and to ensure that the contractor carries out all maintenance and repairs required during this period.

D6 Stormwater

- (1) Provision of the necessary easements for access, maintenance and operation of the detention/infiltration basins in accordance with the *Stormwater Management and Concept Engineering Report for Proposed Residential Subdivision at Montefiore Street, Catherine Hill Bay* (Appendix N of EA) prior to issue of the Subdivision Certificate.
- (2) The stormwater system with water quality control facilities to treat stormwater runoff from the development discharging into Council's system or public land must be approved by Council under Section 68 of the Local Government Act prior to issue of the Subdivision Certificate.

D7 Mine Subsidence

Evidence is to be provided to the Principal Certifying Authority by a qualified structural engineer that the land as subdivided is able to meet the requirements of the Mine Subsidence Board and that stability, subsidence potential and load bearing capacity of the site have been appropriately addressed.

D8 Subdivision Works

- (1) A report is to be provided to Council by a consulting engineer classifying each lot being created in accordance with AS2870-1996 - Residential Slabs and Footings, prior to issue of a Subdivision Certificate.
- (2) The provision of Works as Executed information as identified in Council's DCP No 1 Volume 2 – Engineering Guidelines prior to issue of the Subdivision Certificate. This information is to be approved by Council prior to issue of the Subdivision Certificate.

D9 Prohibition of cats and dogs

The plan of subdivision and Section 88B instrument shall establish a restrictive covenant on all residential lots prohibiting the keeping of cats and dogs, with the Council having the benefit of this covenant and having sole authority to release vary or modify the covenant.

D10 Registration of Easements/Restrictions to use

- (1) Prior to the issue of any Subdivision Certificate, the Proponent shall provide evidence to the Certifying Authority that all easements for services including sewer, water supply, stormwater system and drainage and Section 88E covenants required by this approval, and other consents have been or will be registered on the certificates of title.
- (2) Covenants pursuant to the Conveyancing Act 1919 shall be established for
 - (a) the restriction on future subdivision of allotments in Stage 3;
 - (b) the provision of and maintenance of asset protection zones in accordance with Planning for Bushfire Protection 2006, on residential lots that have an asset protection zone. The extent of the land affected by the covenant shall be defined by bearings and distances shown on the plan of subdivision; and
 - (c) the prohibition of direct vehicular access from properties to Montefiore Street.
- (3) Any Section 88B or 88E Instruments creating restrictions as to user, rights of carriageway or easements which benefit Council shall contain a provision enabling such restrictions, easements or rights of way to be revoked, varied or modified only with the consent of Council.
- (4) Details are to be provided of the easement through the Munmorah State Conservation Area for the sewer infrastructure from Stage 6 of the development.

D11 Asset Protection Zones

The plan of subdivision and Section 88B instrument shall establish a restrictive covenant on all residential lots requiring the maintenance of the designated Asset Protection Zone in accordance with the requirements of Planning for Bushfire Protection 2006, with the Rural Fire Service having the benefit of this covenant and having sole authority to release vary or modify the covenant.

PART E – ONGOING CONDITIONS

E1 Mine Subsidence

Any changes to the lot numbering and registered DP than that shown in the EA shall be reported to the Mine Subsidence Board.

E2 Aboriginal Liaison

The applicant must continue to consult with and involve all the registered local Aboriginal representatives for the project, in the ongoing management of the Aboriginal cultural heritage values. Evidence of this consultation must be collated and provided to the Council upon request.

ADVISORY NOTES

AN1 Requirements of Public Authorities for Connection to Services

The proponent shall comply with the requirements of any public authorities (e.g. Energy Australia, Wyong Shire Council, Telstra Australia, AGL, etc) in regard to the connection to, relocation and/or adjustment of the services affected by the construction of the proposed structure. Any costs in the relocation, adjustment or support of services shall be the responsibility of the proponent.

AN2 Roads Act, 1993

A separate application shall be made to Council for approval under Section 138 of the *Roads Act, 1993* to undertake any of the following:

- (1) erect a structure or carry out a work in, on or over a public road, or
- (2) dig up or disturb the surface of a public road, or
- (3) remove or interfere with a structure, work or tree on a public road, or
- (4) pump water into a public road from any land adjoining the road, or
- (5) connect a road (whether public or private) to a classified road.

AN3 Stormwater Drainage Works or Effluent Systems

Works that involve stormwater drainage work or management of waste as defined by Section 68 of the *Local Government Act, 1993* require separate approval by Council under Section 68 of that Act. Applications for these works must be submitted on Council's standard Section 68 application form accompanied by the required attachments and the prescribed fees.

AN4 Temporary Structures

An approval under Section 68 of the *Local Government Act 1993* must be obtained from the Council for the erection of the temporary structures. The application must be supported by a report detailing compliance with the provisions of the *Building Code of Australia*.

Structural certification from an appropriately qualified practicing structural engineer must be submitted to the Council with the application under Section 68 of the *Local Government Act 1993* to certify the structural adequacy of the design of the temporary structures.

AN5 Excavation – Historical Relics

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

AN6 Long Service Levy

Under Section 34 of the *Building and Construction Industry Long Service Payments Act 1986* any work costing \$25,000 or more is subject to a Long Service Levy. The levy rate is 0.35% of the total cost of the work and shall be paid to either the Long Service Payments Corporation or Council. Under section 109F(1) of the *Environmental Planning & Assessment Act, 1979* this payment must be made prior to commencement of building works.

AN7 Commonwealth Environment Protection and Biodiversity Conservation Act 1999

The Commonwealth Environment Protection and Biodiversity Conservation Act 1999 provides that a person must not take an action which has, will have, or is likely to have a significant impact on a matter of national environmental significance (NES) matter; or Commonwealth land, without an approval from the Commonwealth Environment Minister. This application has been assessed in accordance with the New South Wales *Environmental Planning and Assessment Act, 1979*. This assessment has not involved any assessment of the application of the Commonwealth legislation. It is the proponent's responsibility to consult Environment Australia to determine the need or otherwise for Commonwealth approval and you should not construe this grant of approval as notification to you that the Commonwealth Act does not have application. The Commonwealth Act may have application and you should obtain advice about this matter. There are severe penalties for non-compliance with the Commonwealth legislation.

SCHEDULE 3

STATEMENT OF COMMITMENTS

PART A — ADMINISTRATIVE CONDITIONS

A1. Development Description

The Project Application is to permit the following:

- Bulk Earthworks
- Complete the residential subdivision of 554 lots.
- Upgrade Montefiore Street,
- Carry out landscape works
- Subdivide the site into 553 residential lots and 1 retail lot.
- Dedicate Village Park, Precinct Parks and roads to Council.

A2. Development in Accordance with Plans

The development shall be generally in accordance with the Catherine Hill Bay Project Application No.MP10-0204.

PART B - GENERAL

B1. Development Control

The Proponent commits to a set of design guidelines set out in the Draft Development Control Plan. Future development is to comply with the approved DCP.

Responsibility – Proponent and Department of Planning

B2. Dedications

A plan of subdivision providing for dedication of the environmental offset lands has been previously approved and the subject land transferred to DECC.

Note

B3. Bushfire Management

Bushfire hazard will be managed consistent with Planning for Bushfire Protection Guidelines by:

- Use of fire trails.
- Installation of hydrants as appropriate APZ's implemented as required.

Asset Protection Zones managed as follows:

- On Torrens Title subdivision lots by incorporating the APZ into the individual lots with positive covenants applying management requirements;

Responsibility – Proponent and Occupants

B4. Land Contamination Investigation

To ensure the site is suitable for residential purposes additional assessment will be carried out as required. Site audits will be carried out as necessary to certify the suitability of the site for the proposed uses and according to SEPP55 Guidelines.

Responsibility – Proponent

B5. Mining Activities

The proponent will negotiate with the holders of Petroleum Exploration Licence No.s 5 and 446 to allow exploration prior to construction works.

Responsibility – Proponent

B6. Community Consultation

A detailed programme for future community consultation will be formalised by the proponent and agreed by the Department, within three months after the determination date of the Project Application to the satisfaction of the Department.

Responsibility – Proponent

B7. Utilities

Utilities will be provided as follows:

- Provision of water and sewer services by Hunter Water;
- Collection of stormwater for open space irrigation
- Carefully managed and treated stormwater discharges.

Responsibility – Proponent and Hunter Water

B8. Traffic Management

- The intersection of Montefiore Street and Pacific Highway will be upgraded as agreed with RTA;
- Intersection of Hale Street and Flowers Drive to be re-designed to create an entry statement as well as creating a greater amenity to the existing corner property.
- The areas of Montefiore Street which are currently in private ownership will be dedicated to LMC.

Responsibility – Proponent and RTA

B9. Community and Other Facilities

The Proponent shall carry out the following facilities:

- Village Park to be landscaped and dedicated to LMC. For clarity the Village Park is that land between Hale Street and the existing village.
- Retail space will be provided as part of this proposal up to a maximum of 750sqm.

Responsibility – Proponent

B10. Submission of Subsequent Applications

Subsequent project applications for the development of the subject site will be in accordance with the approved Design Control Plan(DCP).

Responsibility – Future Applicant

B11. Developer Contributions

The Proponent will pay contributions in accordance with the Lake Macquarie City Council Section 94 Contributions Plan No.1 Citywide 2004 – Belmont Catchment. The total monetary contribution will be made up of dedication, monetary contribution and Works in Kind or any combination of them.

The Proponent will enter into a Deed of Agreement with Lake Macquarie Council.

Responsibility – Proponent/Department of Planning

B12. Regional Infrastructure

The Proponent proposes to make a monetary contribution or Works in Kind for the provision of regional infrastructure as determined by the state government generally in accordance with the principles setout in the Infrastructure Contributions Plan Circular PS08-017, 23rd December 2008. The Proponent has offered to enter into a Voluntary Planning Agreement with the Minister for the amount of **\$902.26 per urban lot.**

Responsibility – Proponent/Department of Planning

B13. Council Dedications and Titling Arrangements

The following items are to be dedicated to LMC at no cost to the Council:

- Village Park
- Area of land 25m wide for a clifftop walk.
- Montefiore Parkway
- Hale Street
- All other roads within the development.
- Precinct Parks as shown on the plans.

All other land is to be Torrens Title freehold land.

PART C—PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

Design Details and Changes

C1. Landscaping and Bushfire Management

Detailed landscape plans are to be submitted to the Certifying Authority prior to the issue of a Construction Certificate. The landscape plans are to be generally in accordance with the approved plans. The plans are to show compliance with Planning for Bushfire Protection requirements for asset protection zones.

C2. Aboriginal Heritage

Works are to be carried out generally in accordance with the Aboriginal Cultural Heritage Management Plan prepared by Insight Heritage. Details of complying with the key principles of the plan are to be submitted to the Certifying Authority.

C3. Environmental Management

A management plan shall be submitted to the Certifying Authority in accordance with the recommendations outlined in the Ecological Assessment Report prepared by RPS. Details are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

C4. Contamination

A Work Method Statement shall be submitted to the Certifying Authority in accordance with the recommendations set out in the Remedial Action Plan prepared by Geotech Solutions. Details are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate. The works carried out under the Work Method Statement must be certified by a DECC accredited auditor.

C5. Erosion and Sedimentation Control

Details of groundwater and SEPP14 Wetland sampling analysis and locations as well as ongoing reporting requirements shall be submitted to the Certifying Authority in accordance with the recommendations set out in the Stormwater and Groundwater Monitoring Plan prepared by Geotech Solutions. Details are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

C6. Geotechnical

Provide a geotechnical report confirming classification of soil and that the footing design complies with AS2870. Details are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

PART D — PRIOR TO COMMENCEMENT OF WORKS

D1. Notice to be Given Prior to Excavation

The PCA and Council shall be given written notice, at least 48 hours prior to the commencement of excavation works on the site.

D2. Traffic & Pedestrian Management Plan

Prior to the commencement of any works on the site, a Traffic and Pedestrian Management Plan prepared by a suitably qualified person shall be submitted to and approved by the Certifying Authority. The Plan shall address, but not be limited to, the following matters:

- (1) ingress and egress of vehicles to the site,
- (2) loading and unloading, including construction zones,
- (3) predicted traffic volumes, types and routes,
- (4) pedestrian and traffic management methods, and

The Applicant shall submit a copy of the approved plan to the Department.

D3. Noise and Vibration Management Plan

Prior to the commencement of any works on the site, a Noise and Vibration Management Plan prepared by a suitably qualified person shall be submitted to and approved by the Director. The Plan shall address, but not be limited to, the following matters:

- (1) Identification of the specific activities that will be carried out and associated noise sources,
- (2) Identification of all potentially affected sensitive receivers including residences, schools, and properties containing noise sensitive equipment,
- (3) The construction noise objective specified in the conditions of this consent,
- (4) The construction vibration criteria specified in the conditions of this consent,
- (5) Determination of appropriate noise and vibration objectives for each identified sensitive receiver,
- (6) Noise and vibration monitoring, reporting and response procedures,
- (7) Assessment of potential noise and vibration from the proposed construction activities including noise from construction vehicles and any traffic diversions,
- (8) Description of specific mitigation treatments, management methods and procedures that will be implemented to control noise and vibration during construction
- (9) Justification of any proposed activities outside the construction hours specified in the conditions of this consent.
- (10) Construction timetabling to minimise noise impacts including time and duration restrictions, respite periods, and frequency,
- (11) Procedures for notifying residents of construction activities that are likely to affect their amenity through noise and vibration,
- (12) Contingency plans to be implemented in the event of non-compliances and/or noise complaints,

The Applicant shall submit a copy of the approved plan to The Department.

D4. Construction Noise Objective

Approved silencing measures shall be provided and maintained on all power-operated plant used in demolition, excavation, earthworks, and construction of the building, or work.

PART E — PRIOR TO SUBDIVISION CERTIFICATE

E1. Subdivision of Land

This consent allows for a 556 lot land subdivision. A subdivision certificate for complying development may be issued by an accredited private certifier under Division 3 of Part 23 of the Conveyancing Act 1919.

E2. Registration of Easements

Prior to the issue of the relevant Occupation Certificate for subsequent project applications, the applicant shall provide to the PCA evidence that all easements required by this approval and subsequent project approvals, and other relevant consents have been or will be registered on the certificates of title.