



***MODIFICATION REQUEST:
Catherine Hill Bay Subdivision
(MP10_0204 MOD 1)***

Description of Modification Request

- subdivision of the Wallarah House heritage precinct into two lots
- relaxation of the prohibition on the keeping of dogs
- an expanded role for accredited private certification of the requirements for certain nominated conditions
- revised subdivision layout for Stages 1 and 2 with no overall increase in lot yield
- vegetation management to provide fire protection, access and maintenance
- revised Statement of Commitments to specify timing of community consultation

Director-General's
Environmental Assessment Report
Section 75W of the
Environmental Planning and Assessment Act 1979

May 2013

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Published May 2013
NSW Department of Planning & Infrastructure
www.planning.nsw.gov.au

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EXECUTIVE SUMMARY

A Project Application for a 550 lot residential subdivision at Catherine Hill Bay was granted approval by the Planning Assessment Commission (PAC) on 13 May 2011. The project is in pre-construction phase.

This report is an assessment of a modification application by Coastal Hamlets Pty Ltd, (the proponent) requesting that the project be modified to facilitate:

- subdivision of the Wallarah House Heritage Precinct into two lots;
- relaxation of the prohibition on the keeping of dogs;
- an expanded role for private certification of certain post approval requirements;
- revised subdivision layout for Stages 1 and 2 with no overall increase in lot yield;
- vegetation management to provide fire protection, access and maintenance; and
- revised Statement of Commitments to modify the timing of community consultation.

The department publically exhibited the application from 23 November 2012 to the 7 December 2012 and consulted with Lake Macquarie City Council (LMCC) and relevant public agencies. Submissions were received from the Office of Environment and Heritage (OEH) on behalf of the Heritage Council and LMCC. Four (4) submissions were received from the public.

Key issues raised in submissions included:

- the heritage and visual impacts associated with the proposed two lot subdivision of the Wallarah House Heritage Precinct;
- impacts associated with relaxing the prohibition on the keeping of dogs; and
- the proposal to expand the role of accredited certifiers.

The department supports the proposed subdivision of the Wallarah House Heritage Precinct as the subdivision merely reflects the siting of the two existing buildings, facilitating the creation of separate land ownership titles for each building. Any future redevelopment of the new lots would be subject to separate development applications which would require an assessment of heritage impacts and consideration of the adopted Conservation Management Guidelines for the Wallarah House Heritage Precinct and the controls for the site in State Environmental Planning Policy (Major Development) 2005. Together, these controls are considered to be adequate to protect the heritage values of the site.

In relation to relaxing the prohibition on keeping of dogs, the department considers that the proponent has not demonstrated an adequate strategy to protect fauna adjacent to a State Conservation Area. The department also shares the OEH's concerns regarding the potential threat to fauna as well as the added management and compliance burden that it would impose.

In relation to expanding the role for accredited certifiers, the department agrees that several of the proposed modified conditions are acceptable for approval by an accredited certifier. However, the department does not support accredited certifiers approving post approval matters which require further consideration by the department and/or LMCC, such as environmental management plans.

The application is referred to the PAC for determination as LMCC objects to the proposed modification.

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1. BACKGROUND

On 13 May 2011, the PAC approved a Project Application for a subdivision at Catherine Hill Bay creating up to 550 residential lots, one retail lot and nine public open space lots over seven stages. The proposal is in pre-construction phase.

The site sits between the existing village of Catherine Hill Bay to the north and the Munmorah State Conservation Area to the south, in the Lake Macquarie local government area. The site has an area of approximately 72 hectares.

The project location is shown in **Figure 1** below.

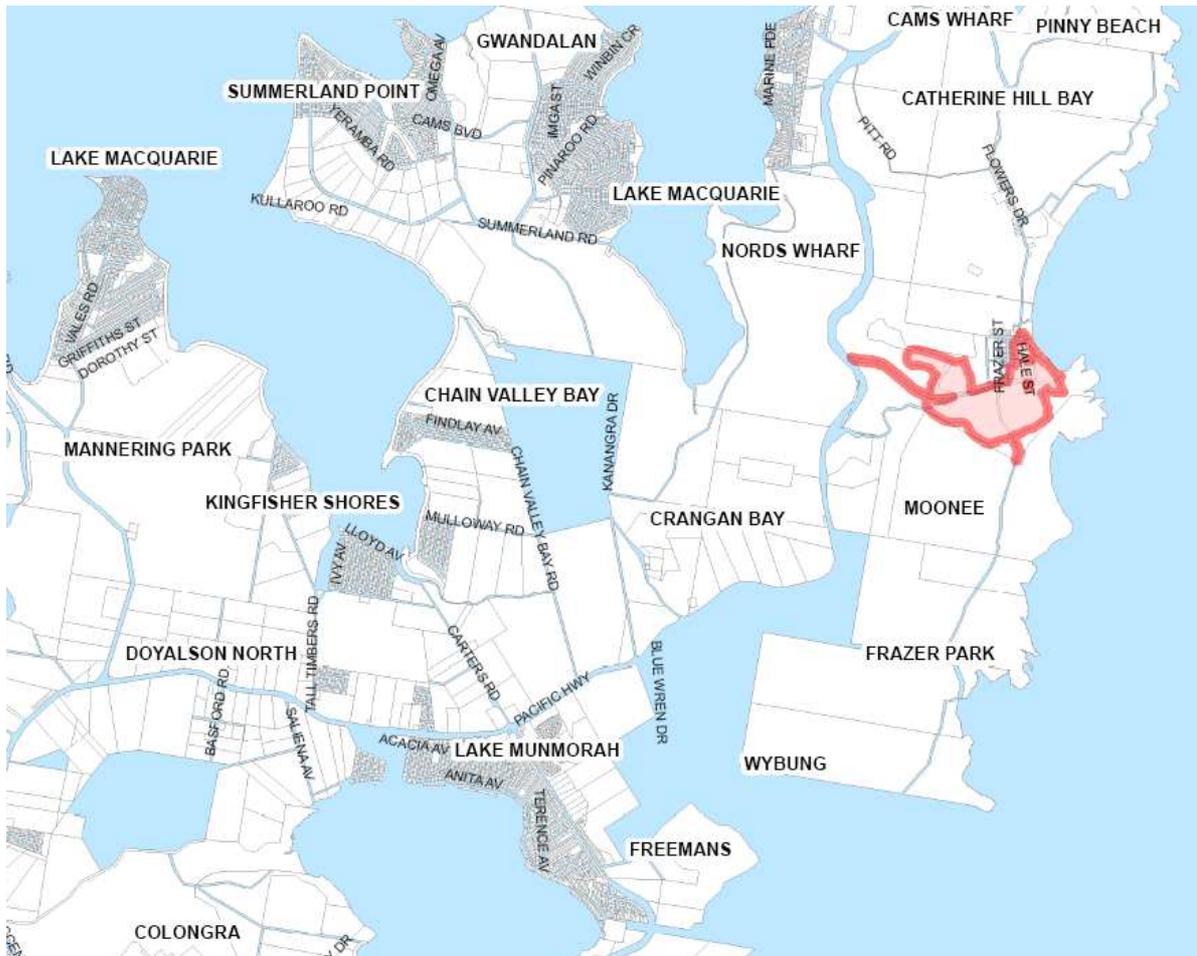


Figure 1: Project Location

A large part of the site comprises disused mining lands and associated mining infrastructure including concrete hard stands, former coal storage areas, roads, a dwelling, and parking and maintenance areas. The site also includes bushland and bush regeneration areas as well as a heritage precinct incorporating the State heritage listed Wallarah House and the former Jetty Masters Cottage.

The general project layout and stages of the development are illustrated in **Figure 2**.

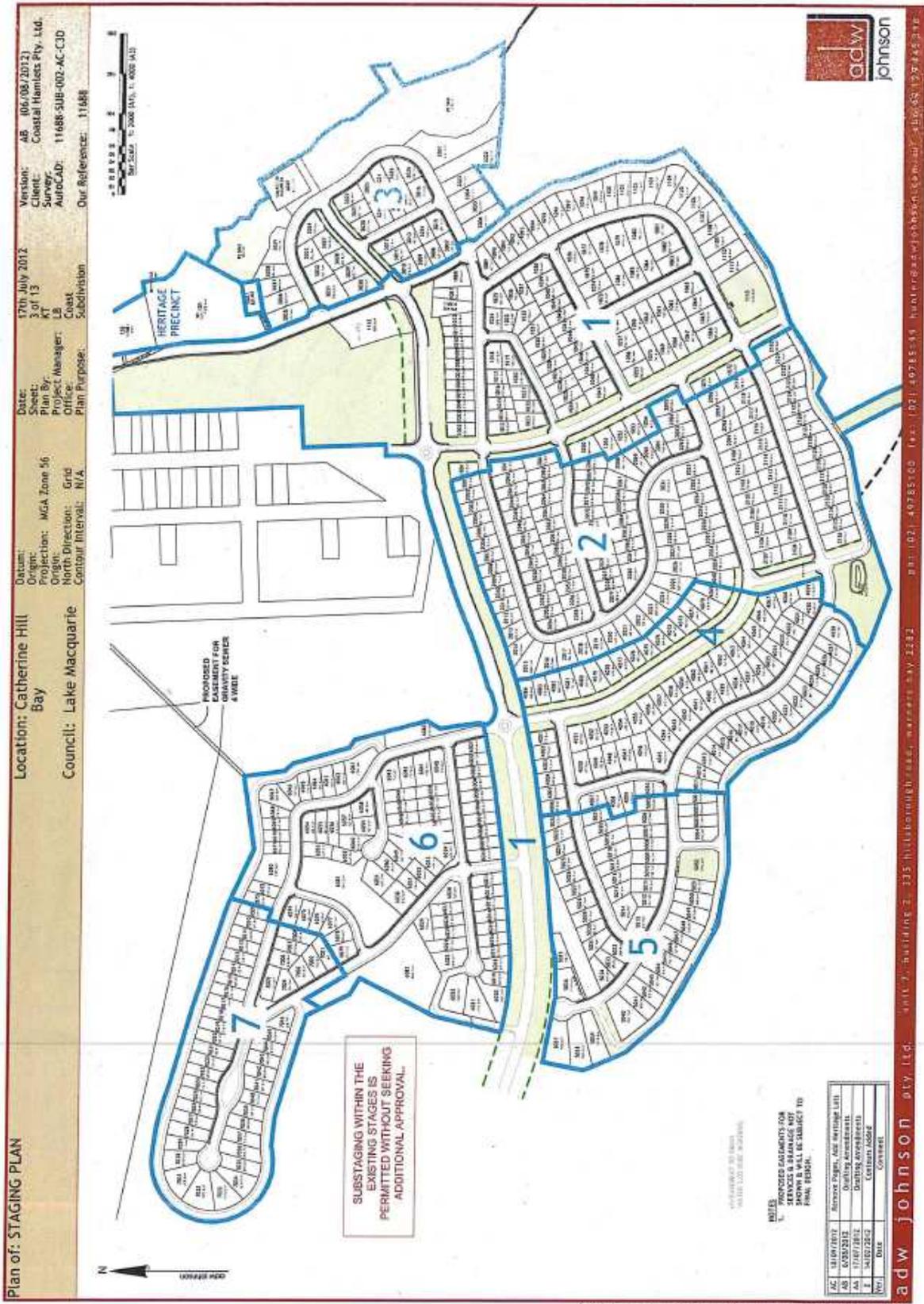


Figure 2: Staged Project Layout

Previous Approvals

On 31 August 2009, the Land and Environment Court overturned previous Major Project approvals (MP 07_0110 and MP 07_0330) for the redevelopment of Catherine Hill Bay and Gwandalan.

An amendment to SEPP (Major Development) 2005 was gazetted on 5 November 2010, which listed the South Wallarah Peninsula site as a State significant site. The SEPP amendment zoned the site part R2 Low Density Residential and part E2 Environmental Conservation. The SEPP includes permissible land uses, height controls and identified part of the site as a Heritage Conservation Area.

A Project Application for a residential subdivision of land at Catherine Hill Bay (MP10_0204) was submitted by Rose Group on behalf of Coastal Hamlets Pty Ltd in November 2010 and was subsequently approved by the PAC on 13 May 2011. The proponent now seeks to modify aspects of the approval.

2. PROPOSED MODIFICATION

2.1 Modification Description

The key aspects of the proposed modification are listed in **Table 1**, below.

Table 1: Proposed Modifications

<i>Modification</i>	<i>Description</i>
<i>(a) Wallarah House Precinct subdivision</i>	Subdivision of the Wallarah House Heritage Precinct into two allotments (refer Figure 3) comprising the Wallarah House on Lot 101 and the Jetty Master's Cottage on Lot 102. Condition A7(i) of the current approval currently requires the precinct to be consolidated into one lot.
<i>(b) Relax dog prohibition</i>	Relaxation of the prohibition on the keeping of dogs. Dogs would be allowed to be kept only in an enclosed/fenced yard.
<i>(c) Expanded role for accredited certifiers</i>	Modification of several conditions (refer to the Table in Appendix E) to enable accredited certifiers to deal with/approve certain requirements of the approval conditions, including: management plans; conditions that reference standards; and to allow flexible timing of implementation of certain conditions.
<i>(d) General subdivision layout detail</i>	Revised subdivision layout (refer Figures 4 and 5) to adjust boundaries, road alignment and lot widths in Stages 1 and 2 to suit the development types anticipated in the Catherine Hill Bay DCP. There is no increase in lot yield.
<i>(e) Minor vegetation removal/management</i>	Some minor vegetation removal is proposed for general maintenance purposes to manage weeds, improve access and fire hazard reduction (Condition B10(12)).
<i>(f) Revised Statement of Commitments</i>	Amend item B6 in the Statement of Commitments to undertake a community consultation program at least three months prior to the start of works.

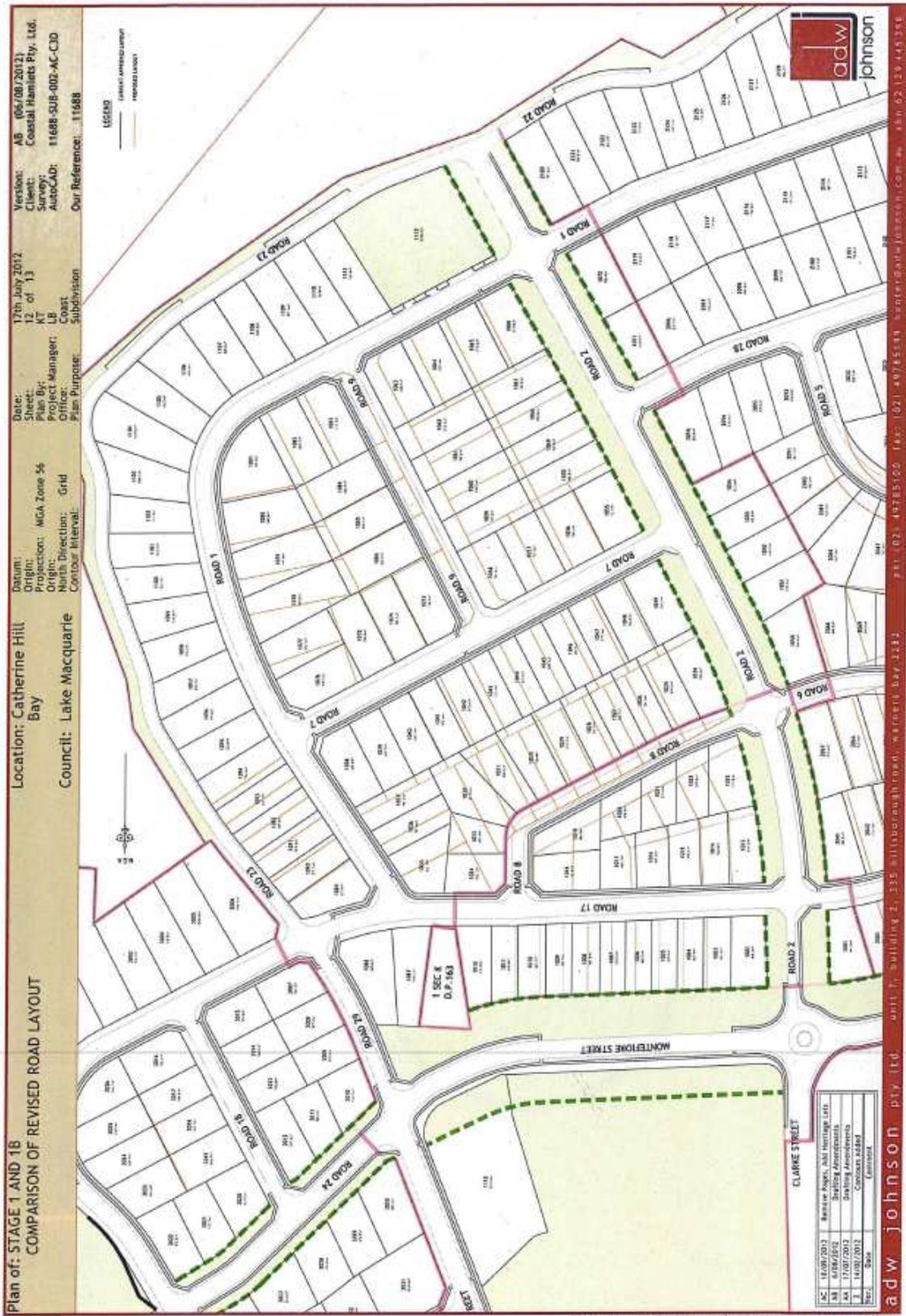


Figure 4: Proposed Modified Parts of Stages 1 and 2 Layout (and following page)
 (Note: Current subdivision layout is shown in brown and the proposed modification is shown in black)



Figure 5: Proposed Modified Parts of Stages 1 and 2 Layout (and preceding page)
(Note: Current subdivision layout is shown in brown and the proposed modification is shown in black)

3. STATUTORY CONTEXT

3.1 Modification of the Minister's Approval

Under clause 3 of Schedule 6A of the Act, section 75W of the Act as in force immediately before its repeal on 1 October 2011 and as modified by Schedule 6A, continues to apply to transitional Part 3A projects.

Section 75W(2) of the Act provides that a proponent may request the Minister to modify the Minister's approval of a project. The department is of the opinion the application can be modified under section 75W(2) of the Act because the modifications are minor and the proposal will remain substantially the same as that approved under the original Project Application (MP10_0204).

3.2 Environmental Assessment Requirements

Section 75W(3) of the Act provides that the Director-General may notify the proponent of environmental assessment requirements (DGRs) with respect to the proposed modification that the proponent must comply with before the matter will be considered by the Minister.

In this instance, following an assessment of the modification request, it was not considered necessary to issue revised DGRs with respect to the proposed modification, as sufficient information was provided to the department to consider the request.

3.3 Delegated Authority

Under delegation dated 14 September 2011, the Minister delegated his powers and functions under section 75W of the EP&A Act to the PAC where the local Council objects to the application. The proposal is referred to the PAC for determination as LMCC objects to aspects of the proposed modification including the proposed subdivision of the Wallarah House Heritage Precinct into two lots and the modification of several conditions which seek to expand the role of an accredited certifier.

3.4 Relevant Statutory Controls

Under sections 75I(2)(d) and 75I(2)(e) of the EP&A Act, the Director-General's report for a project is required to include a copy of, or reference to, the provisions of any State Environmental Planning Policy that substantially governs the carrying out of the project, and the provisions of any environmental planning instruments that would (except for the application of Part 3A) substantially govern the carrying out of the project and that have been taken into consideration in the assessment of the project.

The Department's consideration of relevant State Environmental Planning Policies (SEPPs) and Environmental Planning Instruments (EPIs) is provided in **Appendix D**. The Department considers that the proposal is consistent with relevant SEPPs and EPIs.

4. CONSULTATION AND SUBMISSIONS

4.1 Exhibition

Under Section 75X(2)(f) of the EP&A Act, the Director-General is required to make the modification request publicly available. The department:

- publicly exhibited the proposal from 23 November 2012 until 7 December 2012 (14 days):
 - on the department's website and information centre;
 - at the Lake Macquarie City Council offices;
 - at the Newcastle Regional Office of the department;
- advertised the public exhibition in the Newcastle Herald and Central Coast Express on 23 November 2012; and
- notified relevant State and local government authorities in writing.

The department received a total of seven submissions, including three submissions from public authorities and four submissions from the general public, including a local special interest group.

4.2 Public Authority Submissions

The Office of Environment and Heritage (OEH), Lake Macquarie City Council (LMCC) and the Mine Subsidence Board all made submissions.

The **OEH**, on behalf of the Heritage Council, initially opposed the subdivision of the Wallarah House Heritage Precinct into two lots citing concerns regarding heritage and scenic impacts. The OEH also opposed relaxing the prohibition on the keeping of dogs on the grounds of potential adverse impacts on nearby native fauna. Further, OEH noted that its general policy response is to not allow dog ownership in new residential developments adjacent to national parks.

The proponent subsequently submitted additional supporting information in response to OEH's concerns. However, after reviewing this information OEH maintained its objection to the proposed modification due to the potential threat to fauna, as well as the added management and compliance burden due to the potential for uncontrolled dogs to enter the adjacent Munmorah State Conservation Area.

LMCC objects to the subdivision of the Wallarah Precinct into two lots due to its potential heritage and scenic impacts. It also objects to the modification of several (but not all) conditions which seek to expand the role of accredited certifiers on the grounds that most of these conditions should be certified by a public authority (generally, LMCC or the department). LMCC has also suggested additional conditions relating to the management of the proposed removal of vegetation.

The issues raised by the **OEH** (on behalf of the **Heritage Council**) and **LMCC** are outlined and assessed in detail at Section 5 of this report.

The **Mine Subsidence Board** raised no objections to the proposed modifications.

4.3 Public Submissions

A total of four public submissions were received. This included submissions from the Catherine Hill Bay Progress Association and Dune Care Inc. The key issues raised in public submissions are listed in **Table 2** below.

Table 2: Summary of Issues Raised in Public Submissions

Issue	Proportion of submissions (%)
Oppose subdivision of the Wallarah House Heritage Precinct into more than one allotment (precinct includes the Jetty Masters Cottage).	100%
Object to relaxation of the prohibition on the keeping of dogs	25%
Object to expanded role for accredited certifiers	100%
Object to non noxious weed vegetation removal and management	50%

The department has considered the issues raised in public submissions in its assessment of the proposed modification in Section 5 of this report.

5. ASSESSMENT

The department considers that the key assessment issues for the proposed modification are:

- the heritage and visual impacts associated with the proposed two lot subdivision of the Wallarah House Heritage Precinct;
- impacts associated with relaxing the prohibition on the keeping of dogs; and
- the proposal to expand the role of accredited certifiers.

5.1 Wallarah House Heritage Precinct Subdivision

The proposed subdivision of the Wallarah House Heritage Precinct into two lots was a key issue raised in public submissions and by the OEH and LMCC. In particular, concern was raised regarding the potential heritage and visual impacts arising from excessive future development of the site.

In support of the proposed subdivision, the proponent submitted a Heritage Impact Statement (HIS) undertaken by Giles Tribe Architects. The HIS concludes that subdivision of the precinct into two lots will assist in a more effective conservation of the two buildings without compromising any desired heritage outcomes for the precinct, in accordance with the provisions of the MD SEPP and the Catherine Hill Bay DCP. In particular, the HIS noted that the views and vistas of the Catherine Hill Bay Cultural Precinct and of the Catherine Hill Bay Heritage Precinct are maintained for both buildings. Further, the heritage setting of both buildings would be undisturbed by the proposed subdivision.

The original Project Application sought approval to subdivide the Wallarah House Heritage Precinct into four lots, however, this was not supported by the department as no assessment of the heritage impacts associated with the subdivision was provided. The department therefore recommended amalgamation of the precinct into one lot (refer Condition A7(i)). The department was concerned that a four lot subdivision would invite additional development outside of the 20 metre curtilage nominated in the SEPP which would impact on the heritage and visual setting of the heritage items.

The department considers that the proposed two lot subdivision alone would not lead to any unreasonable heritage or visual impacts. The only immediate impact associated with the subdivision would potentially relate to fencing the new boundary between the two buildings. However, the proposed line of subdivision closely reflects the previous fencing on the site which defined a curtilage for the Jetty Masters Cottage. Notably, the 1947 photograph provided in the HIS (**see Figure 7**) provides compelling evidence of the historical fenced separation of the two buildings. It should also be noted that separate approval would be required for any future fencing between the two buildings.

The proposed subdivision boundary also retains the 20 metre 'development curtilage' (specified in the MD SEPP) for both the Jetty Master's Cottage and Wallarah House, as shown in **Figure 8** below.

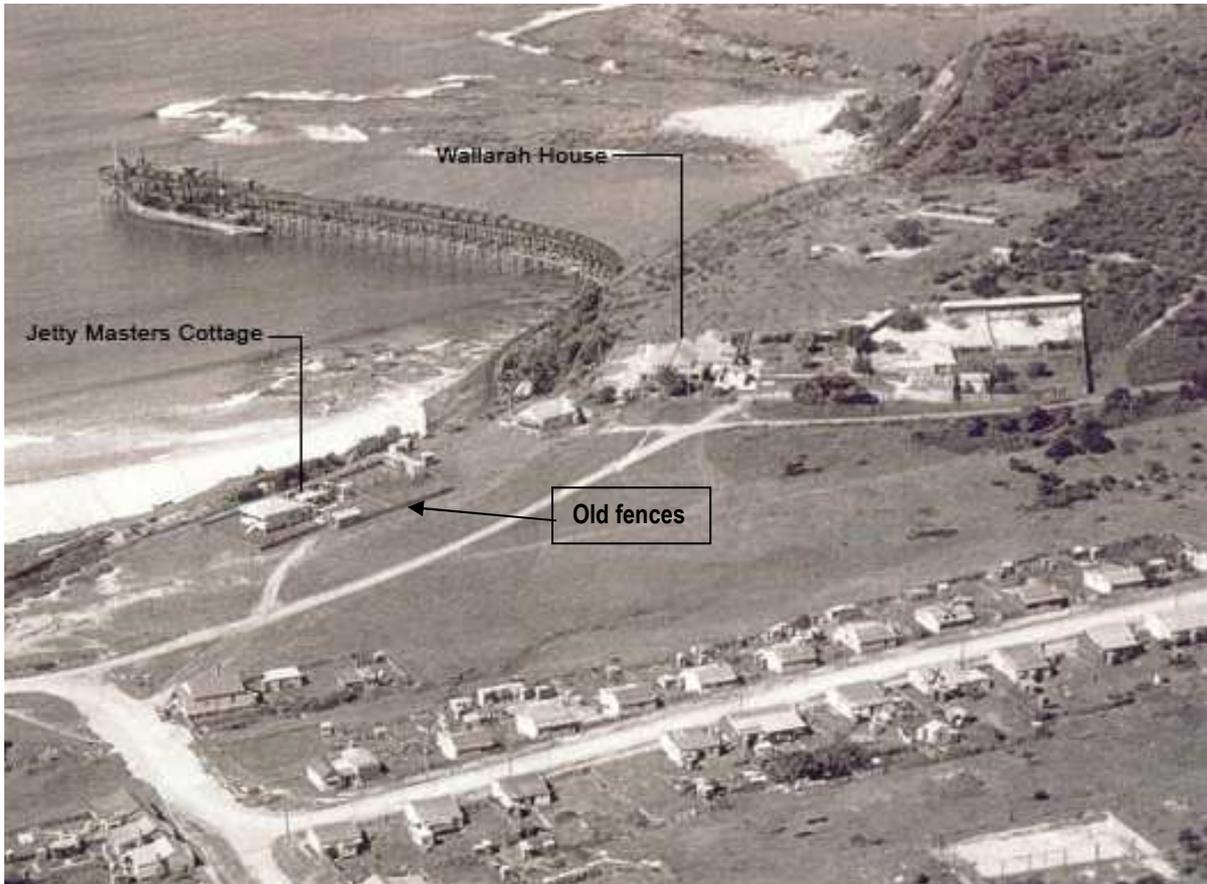


Figure 7: Fencing c. 1947 (Source: Giles Tribe, Architects)

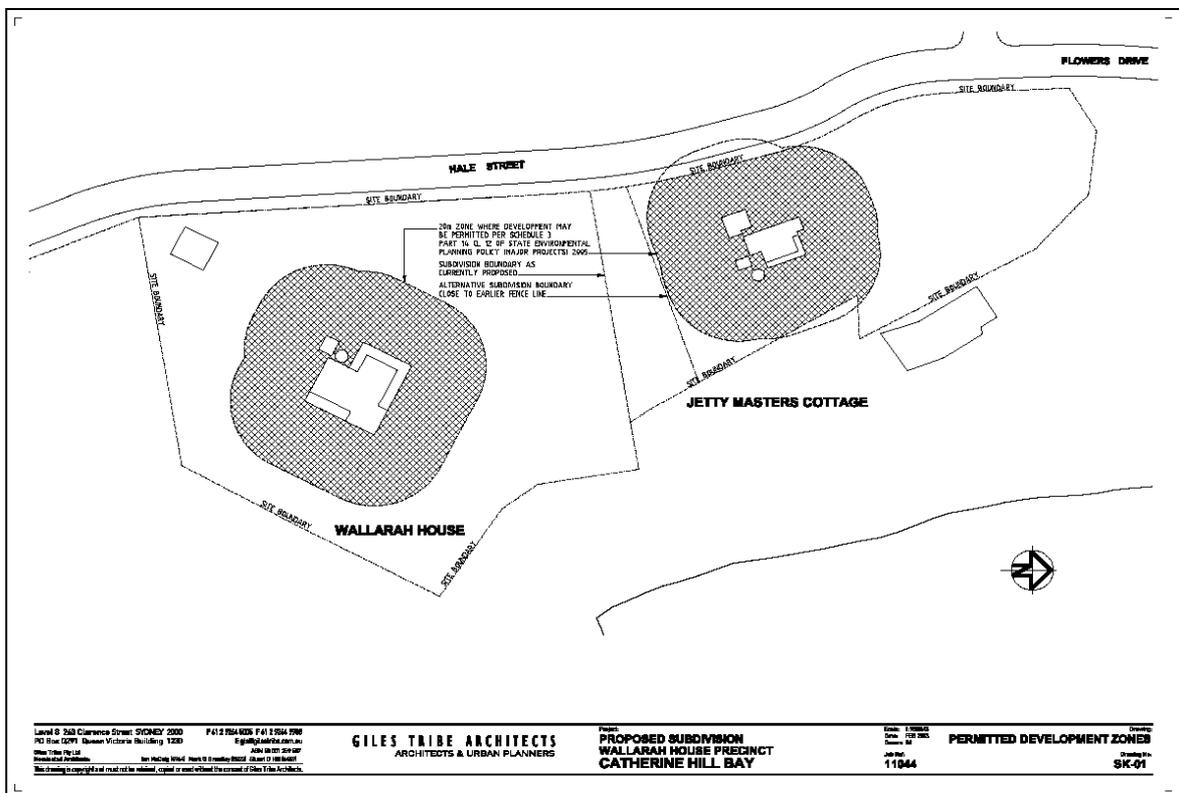


Figure 8: The 20 metre development curtilage referenced in the MD SEPP (Source: Giles Tribe, Architects).

With regard to future development of the site, the department considers that the proposed subdivision alone would not lead to excessive or inappropriate redevelopment of the Heritage Precinct. Any future development of the two lots would be subject to separate development applications which would require further assessment of the heritage and visual impacts of any future proposal.

Future applications for development on the site would require consideration of the adopted Conservation Management Guidelines for the Wallarah House Heritage Precinct and the controls for the site prescribed in State Environmental Planning Policy (Major Development) 2005. In addition, any future development application would be integrated development given both buildings are listed on the State Heritage Register. This would provide an additional level of consideration of any future development, by the Heritage Council of NSW. Therefore, if further development of the two lots is contemplated in the future, it is considered that the existing heritage controls adopted for the site would provide adequate protection to the heritage character of the precinct.

Overall, the Department considers that the subdivision of the precinct into two lots would not impact on the heritage significance of the precinct. The subdivision reflects the boundary of its heritage listing and it maintains the 20 metre 'development curtilage' under the MD SEPP. It is a logical subdivision of the site, which would not invite excessive or inappropriate development. Furthermore, the controls in the MD SEPP and the Catherine Hill Bay DCP (refer **Appendix D**), as well as the site being listed in the State Heritage Register, provide sufficient safeguards regarding the suitability of any new development on the newly created lots 101 and 102.

5.2 Relaxing the Prohibition on the Keeping of Dogs

The proponent seeks to relax the prohibition on the keeping of dogs within the approved subdivision. Condition D9 of the approval as well as the Catherine Hill Bay DCP prohibits the keeping of dogs in order to protect and enhance the environmental qualities of adjoining conservation lands.

The proponent argues that the prohibition of dogs is unnecessary given the proposal to require fencing of rear yards and the low proportionate risk to fauna. The prohibition for cats would remain.

Condition D9 currently states:

“Condition 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.”

The proponent requests that this be modified to read as follows:

“Condition D9 Prohibition of Cats and Restriction of Dogs

The plan of subdivision and section 88B instrument shall establish a restrictive covenant on all residential lots prohibiting the keeping of cats. The 88B instrument shall also establish a restrictive covenant requiring that dogs only be kept in suitably fenced yards. Council shall have the benefit of this covenant and the sole authority to release, vary or modify the covenant.”

The proponent's submission refers to recent research into the impact of dog walking on fauna within national parks and the social and therapeutic benefits of dog companionship to individuals. However, the proponent's submission is not definitive about what form of threat abatement measures could apply in circumstances where dogs may escape into protected areas, other than through owner responsibility and fencing.

After assessing both the original and subsequent additional ecologist's information supplied by the proponent, the OEH maintained its objection to residents keeping cats and dogs in areas adjacent to National Parks or State Conservation Areas. This is based on concerns over potential adverse impacts on native fauna. The OEH also raised concern regarding the added management and compliance burden, if the prohibition of dogs is lifted.

The department considers, the prohibition of dogs should be maintained given the concerns raised by the OEH. The proponent's additional ecological submission does not provide a compelling enough argument to support a general relaxation of the prohibition on the keeping of dogs, which would also be contrary to the requirements of the Catherine Hill Bay DCP. The department particularly shares the OEH's concerns regarding the potential threat to fauna, as well as the added management and compliance burden due to the potential for uncontrolled dogs to enter the adjacent Munmorah State Conservation Area. The proponent's request for a general relaxation of the prohibition on the keeping of dogs is therefore not supported.

5.3 Expanded role for accredited private certification

The table at **Appendix E** provides an assessment of the proposed modifications to conditions of approval, which seeks to expand the role of an accredited certifier for post approval matters. The department's assessment of the proposed changes consider whether or not the proposed modifications are acceptable in the circumstances of each case, accompanied by a brief rationale.

Public submissions objected to any expansion of accredited certification. Submitters raised particular concern that expanding the role of accredited certifiers is contrary to the intent of the PAC recommendation to ensure that the development is implemented within the intended Catherine Hill Bay DCP framework.

LMCC also objected to the proposed modification, particularly regarding management plans being endorsed by accredited certifiers.

As a general principle, the department considers that where a condition incorporates qualitative assessment (e.g. not governed by, or related to, an adopted and recognised standard), or involves the approval of a management plan, especially where there is a need to consider integrated conditions or other management plans, the role of "approver" should be retained by either the local council or the department. This is because there is often a considerable measure of merit assessment, discretion and/or judgement involved, rather than simply requiring compliance against a standard, or specific criteria.

Frequently, independent specialist or agency advice may be sought to assess post approval requirements and management plans. This can also involve consultation between approver and the proponent's technical advisor, sometimes with alternative solutions required to balance competing outcomes.

As such, the proposal to modify conditions to provide for accredited certification of the Environmental Management Plan, Water Quality Management Strategy, Fauna and Flora Environmental Management Plan, Habitat Restoration Management Plan, Landscaping Master Plan and aspects of the Stormwater Management Plan is not considered appropriate.

Condition A10 also provides for the Director-General to mediate over any matters in dispute, between Council and/or State agencies to ensure a timely outcome is achieved on post approval requirements.

Other conditions are sought to be varied to reflect the need for their implementation at a later stage of the project rather than before a Construction Certificate is issued. Generally, the

revised timing is considered appropriate. Those conditions identified as “acceptable” in the far right column of the **Table in Appendix E** are recommended for approval.

5.4 Other Matters

Revised Subdivision Layout

The modified lot layouts relate to Stages 1 and 2 (refer to **Figure 2**). These modified boundaries maintain the existing residential lot yield (currently 547 lots, 9 reserve lots and 1 retail lot – as corrected in Condition A1 and Schedule 1 of the project approval).

There were no objections to the revised layout of Stages 1 and 2. The department considers that the proposed modification to the subdivision layout is minor and acceptable (refer to **Figures 4** and **5**). Notably, the layout remains consistent with the PAC’s previous assessment of compliance with layout and design matters specified in Condition A7.

Vegetation Maintenance and Removal

The proponent seeks approval to undertake minor vegetation maintenance and management works subject to the requirements of modified Condition B10 (12). The vegetation works would enable the proponent to control weeds and maintain access for bushfire management and control. This would allow all stages of the proposal to be maintained as the site is progressively redeveloped over time.

Two objectors raised general concerns regarding the proposed modification to undertake vegetation maintenance and management works. However, the department considers that provided the vegetation management work is undertaken for bushfire control, maintenance and access, some vegetation removal is considered appropriate given the likely timeframe for the site to be redeveloped.

LMCC has recommended that Condition B10 (12) be further modified to ensure that no native tree over three metres tall is removed and those that are able to be removed are recycled. The department concurs with LMCC’s suggested condition and has recommended that the condition be modified accordingly.

Amended Statement of Commitment

The proponent seeks to modify an existing Statement of Commitment which states:

“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.”

This commitment has not been undertaken within the anticipated timeframe, therefore the proposal seeks to vary the Statement of Commitment to undertake the required community consultation at least three months before commencement of works. The department considers that the revised timeframe is adequate and will allow sufficient time for community consultation to occur prior to the commencement of works. However, to ensure the detail of the community consultation program is adequate it is recommended that the program be submitted to the Director-General for prior approval. Therefore the department recommends that the proponent’s modified provision be amended (in **bold**) to read as follows:

*“A detailed programme for future community consultation will be developed by the proponent **(and be subject to the prior approval of the Director-General)** and commenced 3 months prior to the start of works.”*

Administrative Modifications

The following administrative changes have been incorporated into the recommended modification approval:

1. The maximum number of residential lots referred to in Schedule 1 of the approval has been changed from 540 to 550 lots to be consistent with Condition A1 which nominates 550 as the maximum number of residential lots;
2. The maximum number of reserves nominated in the approval has been changed from 7 to 9 reserves at both Schedule 1 and Condition A1 to be consistent with the original proposal;
3. Condition D1(2) has been amended to make clear that the subdivision of the heritage precinct is not linked to the wider remediation works required for the South Wallarah Precinct. Subdivision of the heritage precinct does not involve any physical works and any potential remediation works would not be required at this stage;
4. Condition D1(3) of Part D of the project approval, has been amended to make clear that development contributions apply to the residential development only and not the subdivision of the heritage precinct; and
5. An approval lapsing date, as required under section 75Y of the Act, was not included in the original project approval. In accordance with the Transitional Part 3A provisions where a lapsing date was not specified, the approval will lapse 5 years from the date of the repeal of Part 3A, which is 1 October 2016. The lapsing date is recommended to be included in Schedule 1 of the approval.

6. CONCLUSION

The department has considered the modification application as well as submissions received from the public, State agencies and the LMCC.

Key issues raised in submissions include:

- the heritage and visual impacts associated with the proposed two lot subdivision of the Wallarah House Precinct;
- impacts associated with relaxing the prohibition on the keeping of dogs; and
- the proposal to expand the role of accredited certifiers.

The department supports the proposed subdivision of the Wallarah House Heritage Precinct. Any future redevelopment of the site would be subject to separate development applications which would include an assessment of relevant heritage controls for the site. These controls are considered to be adequate to protect the heritage values of the site.

In relation to relaxing the prohibition on the keeping of dogs, the department considers that the proponent has not demonstrated an adequate strategy to protect fauna adjacent to a Conservation Area. The department also shares the OEH concerns regarding the potential threat to fauna as well as the added management and compliance burden that it would impose.

Following consideration of the proposed expanded role for accredited certifiers, the department has identified several of the conditions proposed as being acceptable for accredited certification but does not support others. Notably, modifying conditions to provide for accredited certification of Management Plans is not considered appropriate.

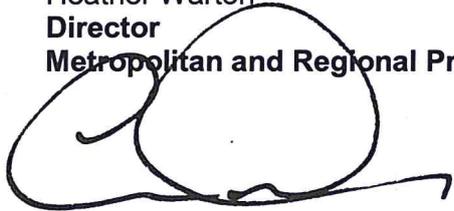
7. RECOMMENDATION

The department recommends that the Planning Assessment Commission:

- **consider** the recommendations of this report;
- **approve** the modification, subject to conditions, under section 75W of the *Environmental Planning & Assessment Act 1979* by **signing** the attached instrument of modification (refer **Appendix F**).



Heather Warton
Director
Metropolitan and Regional Projects, North



10.5.13

Chris Wilson
Executive Director
Development Assessment Systems and Approvals

APPENDIX A MODIFICATION REQUEST

See the Department's website at www.majorprojects.planning.nsw.gov.au

APPENDIX B SUBMISSIONS

See the Department's website at www.majorprojects.planning.nsw.gov.au

APPENDIX C RELEVANT REPORTS OR DOCUMENTS

See the Department's website at www.majorprojects.planning.nsw.gov.au

APPENDIX D RELEVANT USE AND HERITAGE CONTROLS

The main controls that relate to the proposed subdivision of the Wallarah House precinct are found in State Environmental Planning Policy (Major Development) 2005 (MD SEPP). All other aspects of the proposed modification are unaffected by these controls.

State Environmental Planning Policy (Major Development) 2005

The relevant planning controls for a Transitional Part 3A project within the MD SEPP are incorporated into Schedule 3, Part 14 and include clauses 1-7, 13, 15, 16, 18, 20, 25, 27, and 28. The operation of clause 6 specifies that *only* these clauses apply for the purposes of Part 3A. The subdivision proposal for Wallarah House precinct is both permissible and consistent with the MD SEPP planning provisions by virtue of clauses 14 and 22. Additional permissible uses are incorporated at clause 12.

Clauses 12, 14 and 22 of the SEPP Major Development 2005 are reproduced below - relevant subclauses are highlighted in ***bold italics***. [Note that other than for the purposes of permissibility, Clause 13 “switches off” these clauses for the purposes of this Part 3A modification].

Cl. 12 Additional permitted uses

(1) Despite any other provision of this Part, development for the following purposes may be carried out on the following land with development consent:

(a) ***bed and breakfast accommodation, dwelling houses, home-based child care, home businesses, home industries and information and education facilities—on land within 20 metres of the following buildings:***

- (i) “Wallarrah House”, 1a Keene Street, being Part Lot 103, DP 1129872, as shown hatched and labelled “1” on the Additional Permitted Uses Map,
 - (ii) Jetty Master’s Cottage”, Part Lot 103, DP 1129872 and Part Lot 1, DP 1151628, as shown hatched and labelled “2” on the Additional Permitted Uses Map,
 - (b) recreation areas—on land known as the “Village Park” and the “Coastal Walkway”, as shown hatched and labelled “3” and “4”, respectively, on the Additional Permitted Uses Map.
- (2) Despite any other provision of this Part, development for the purpose of home occupations may be carried out without development consent on land within 20 metres of the following buildings:

(a) ***“Wallarrah House”, 1a Keene Street, being Part Lot 103, DP 1129872, as shown hatched and labelled “1” on the Additional Permitted Uses Map,***

(b) ***“Jetty Master’s Cottage”, Part Lot 103, DP 1129872 and Part Lot 1, DP 1151628, as shown hatched and labelled “2” on the Additional Permitted Uses Map”*** (Note that the additional permitted uses map identifies the two buildings Wallarah House and The Jetty Masters Cottage).”

14 Subdivision—consent requirements

(1) ***Land within the South Wallarah Peninsula site may be subdivided, but only with development consent.***

(2) However, development consent is not required for a subdivision for the purpose only of any one or more of the following:

- (a) widening a public road,
- (b) a minor realignment of boundaries that does not create additional lots or the opportunity for additional dwellings,
- (c) a consolidation of lots that does not create additional lots or the opportunity for additional dwellings,
- (d) rectifying an encroachment on a lot,
- (e) creating a public reserve,
- (f) excising from a lot land that is, or is intended to be, used for public purposes, including drainage purposes, rural fire brigade or other emergency service purposes or public toilets.

Cl. 22 Heritage conservation

(1) **Requirement for consent**

Development consent is required for any of the following:

- (a) **demolishing** or moving a heritage item or a building, work, relic or tree within a heritage conservation area,
- (b) **altering a heritage item or a building**, work, relic, tree or place within a heritage conservation area, including (in the case of a building) making changes to the detail, fabric, finish or appearance of its exterior,
- (c) altering a heritage item that is a building by making structural changes to its interior,
- (d) disturbing or excavating an archaeological site while knowing, or having reasonable cause to suspect, that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed,
- (e) disturbing or excavating a heritage conservation area that is a place of Aboriginal heritage significance,
- (f) erecting a building on land on which a heritage item is located or that is within a heritage conservation area,
- (g) subdividing land on which a heritage item is located or that is within a heritage conservation area.

(2) **When consent is not required**

However, consent under this clause is not required if

- (a) –(d)...[Subclause 2 lists types of minor development that does not need consent]

(3) **Effect on heritage significance**

The consent authority must, **before granting consent under this clause, consider the effect of the proposed development on the heritage significance of the heritage item or heritage conservation area concerned.** This subclause applies regardless of whether a heritage impact statement is prepared under subclause (4) or a heritage conservation management plan is submitted under subclause (5).

(4) **Heritage impact assessment**

The consent authority may, before granting consent to any development on land:

- (a) on which a heritage item is situated, or
- (b) within a heritage conservation area, or
- (c) within the vicinity of land referred to in paragraph (a) or (b),

require a heritage impact statement to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.

(5) **Heritage conservation management plans**

The consent authority may require, after considering the significance of a heritage item and the extent of change proposed to it, the submission of a heritage conservation management plan before granting consent under this clause.

The MD SEPP table to Clause 22 provides the heritage provisions for the site, and lists *Wallarah House* as a heritage item (No. 1). The Heritage Map shows the item boundary as closely aligning to that of proposed Lot 101 in the proposed subdivision, so that Lot 101 is a virtual definition of the Wallarah House listing in the MD SEPP (compare **Figures 3** and **6** in the report). The Jetty Master's Cottage is not listed in the environmental heritage table in the MD SEPP.

Overview of the MD SEPP Controls.

Clause 13 of the MD SEPP operates only to define what is prohibited (in effect, what is permissible). Of the other applicable clauses only clauses 14, 18 and 22 are relevant (by virtue of clause 6), even then, in the case of clause 18, it applies only indirectly to this application as it concerns the potential to use buildings as a bed and breakfast establishment, which would be the subject of a further application under Part 4 of the Act.

Subdivision is a permissible use, allowed by the operation of clauses 14 and 22. There are no other provisions or development standards that apply under these clauses.

Although, technically, most of Part 14 (including clauses 12 and 22) of the MD SEPP does not apply to a Part 3A project, it is useful to contemplate the role that the MD SEPP would play in the consideration of future development (i.e. under Part 4 of the Act) of the heritage precinct.

The intent of Clause 12 is to limit the extent of further physical development to within the 20 metre area around Wallarah House and the Jetty Master's Cottage. This 20 metre "curtilage" around each of the two buildings is illustrated in **Figure 8** of the report. The proposed subdivision is consistent with clause 12 in that it does not, by itself, permit any physical development within the 20 metre curtilage, nor does the modification prejudice the attainment of the additional permitted uses. Note that the range of permissible uses is also very limited.

State Heritage Register

The 'Catherine Hill Bay Cultural Heritage Precinct' is listed in the State Heritage Register (SHR). This includes both the Jetty Master's Cottage and Wallarah House. The Heritage Precinct for Wallarah House identified in the relevant Conservation Management Plan is shown in **Figure A** below by blue edge. The area included as the Catherine Hill Bay Cultural Heritage Precinct in the SHR also comprises a much larger area, including the existing Catherine Hill Bay village and a large tract of land to the north

Catherine Hill Bay Development Control Plan

Clause 29 of Part 14, Schedule 3 of the MD SEPP specifies the matters that must be incorporated into the Catherine Hill Bay Development Control Plan (CHB DCP). Notably, heritage provisions are *not* included. Nevertheless, heritage criteria have been incorporated into the CHB DCP. *From a statutory viewpoint, the CHB DCP does not apply to this Part 3A project approval.* However, it is considered as a guide to the controls and principles that would otherwise apply under Part 4 (since it will apply to future Part 4 development applications).

The CHB DCP objectives are listed in Section 5.4.2 of the CHB DCP states:

"The key objectives of works in the Wallarah House Heritage Precinct are to:

- *To ensure that an appropriate curtilage is maintained around the existing Wallarah House.*
- *Preserve the historic spatial relationship between Wallarah House and the Jetty Master's Cottage.*
- *Provide built form controls for alterations and additions to Wallarah House and Jetty Masters Cottage which are sympathetic to their heritage significance.*
- *Preserve the heritage and scenic qualities of the Precinct."*

Controls

1. *Development applications applying to land within the Wallarah House Precinct shall include a heritage impact statement that assesses the impact of the proposed development on the heritage significance of the heritage items and heritage conservation area.*

Any proposed development within the Wallarah House Heritage Precinct shall:

- *Retain and enhance the heritage curtilage around the existing Wallarah House [Reproduced in **Figure 7** in the report].*
 - *The curtilage includes Wallarah House, the Jetty Master's Cottage and the surrounding landscape generally bounded by the proposed Hale Street to west, the access road from Lindsley Street to the surf club to the south, the cliff to the east and the property boundary to the north.*
 - *Include details of any proposed new buildings / additions within the Precinct and assess the impact of these on the heritage significance of the Precinct.*
2. *Ensure the views from the north veranda of Wallarah House are not obscured.*

3. Enhance the dominant landmark quality of Wallarah House by avoiding the over planting of trees to the north and west.
4. The existing norfolk island pines at the jetty masters cottage should be retained. All other planting or seedling norfolk island pine trees should be removed.”

The main difference between the MD SEPP and the CHB DCP is the definition of the respective heritage curtilages for Wallarah House (compare **Figure A**, below and **Figures 6** and **7** in the report). However, the greatest detail is provided by the MD SEPP in the form of its nominated 20 metre ‘development curtilage’ provisions around the Jetty Master’s Cottage and Wallarah House (illustrated at **Figure 6** in the report).

The assessment of the merits of the proposed subdivision in terms of heritage is discussed in Section 5.1 of this report.

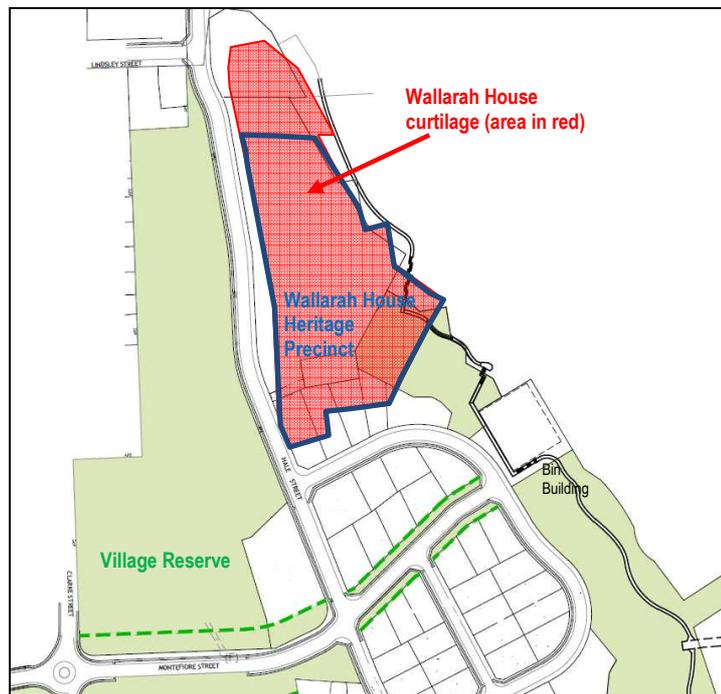


Figure A: Wallarah House Heritage Precinct and curtilage (Source: Catherine Hill Bay DCP – Fig. 16)

APPENDIX E ASSESSMENT OF MODIFICATION TO CERTIFICATION AND DEFERRAL OF CONDITIONS

Table Assessment of Proposed modified conditions for expanded accredited certification or deferral of implementation.

Cond No.	Current Condition	Proponent's proposed amended condition (modified wording in red)	Department's assessment of proposed modification to conditions.
B1	<p>Coastal Walkway Design Detailed engineering plans of the Coastal Walkway are to be approved by Council prior to the issue of the Construction Certificate for those works.</p>	<p>Coastal Walkway Design Detailed engineering plans of the Coastal Walkway are to be approved by Council or an accredited certifier prior to the issue of the Construction Certificate for those works.</p>	<p>Since the coastal walkway design requires integration with the existing walkway, the approval of detailed engineering plans should be undertaken by the council – it is unacceptable for an accredited certifier to undertake this task in this case.</p>
B5	<p>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.</p>	<p>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 or an accredited certifier approval.</p>	<p>Construction waste management is a routine aspect of development for which guidelines and requirements exist in the Council's DCP. It is acceptable for an accredited certifier to deal with this condition.</p>
B7	<p>Environmental Management Plan Prior to commencement of work, the proponent is to submit an environmental management plan to the Department for approval.</p>	<p>Environmental Management Plan Prior to commencement of work, the proponent is to submit an environmental management plan to the Department or an accredited certifier for approval.</p>	<p>In this case, since the matters to be addressed by the EMP incorporate or rely (in part) on other conditions, it is unacceptable for this condition to be dealt with by an accredited certifier.</p>
B8	<p>Stormwater Management 1. The stormwater system for the subdivision is to be provided in accordance with <i>Stormwater Management & Concept Engineering Report for Proposed Residential Subdivision at Montefiore Street, Catherine Hill Bay</i> 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.</p> <p>4 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</p>	<p>Stormwater Management 1. The stormwater system for the subdivision is to be provided in accordance with <i>Stormwater Management & Concept Engineering Report for Proposed Residential Subdivision at Montefiore Street, Catherine Hill Bay</i> prepared by ADW Johnson December 2010 (Reference 11688SWV1). Design plans must be submitted to and approved by the Council or an accredited certifier prior to issue of a Construction Certificate.</p> <p>4 A Wetland Management Plan must be submitted to the Council or an accredited certifier for approval prior to issue of the Construction Certificate for wetlands.</p>	<p>As there is a submitted design concept for the stormwater system it would usually be appropriate for an accredited certifier to deal with the final design plans. However, since the design must also account for all other conditions that relate to or influence stormwater design prior to the issuing of a Construction Certificate including the interpretation of an outcome oriented Wetland Management Plan it is unacceptable in this case. (Refer PAC report para 7.8).</p> <p>4A It is unacceptable for the Wetland Management Plan to be dealt with by an accredited certifier as the ecological circumstances and integrated nature of the wetland management with other conditions require coordination and consideration by the Council.</p>

Cond No.	Current Condition	Proponent's proposed amended condition (modified wording in red)	Department's assessment of proposed modification to conditions.
	requirements and are to be included on the approved Construction Certificate plans.	Details to include operational, access and maintenance requirements and are to be included on the approved Construction Certificate plans.	
B9	<p>Water Quality Management Strategy</p> <p>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.</p>	<p>Water Quality Management Strategy</p> <p>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 or an accredited certifier 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.</p>	It is unacceptable for the Water Quality Management Strategy to be approved by an accredited certifier as the ecological circumstances and integrated nature of the water quality management with other conditions require coordination, and consideration by the Council.
B10	<p>Flora and Fauna Management</p> <p>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.</p>	<p>Flora and Fauna Management</p> <p>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 or an accredited certifier.</p>	It is unacceptable for the Flora and Fauna Management Plan to be dealt with by an accredited certifier as the ecological circumstances and integrated nature of the flora and fauna management with other conditions require coordination and consideration by the Council.
B12 (1) & (2)	<p>Habitat Restoration Plan</p> <p>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:</p> <p>A Wildlife Management Strategy (WMS) shall be prepared by a suitably qualified and experienced ecologist and submitted to and approved by the</p>	<p>Habitat Restoration Plan</p> <p>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 or an accredited certifier. 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:</p> <p>2. A Wildlife Management Strategy (WMS) shall be prepared by a suitably qualified and experienced ecologist and submitted to and approved by the Council or an accredited certifier.</p>	<p>It is unacceptable for the Habitat Restoration Plan to be dealt with by an accredited certifier as the ecological circumstances and integrated nature of the wetland management with other conditions require coordination and consideration by the Council.</p> <p>It is unacceptable for the Wildlife Management Strategy to be dealt with by an accredited certifier as the ecological circumstances and integrated nature of the wildlife management with other conditions require coordination and consideration</p>

Cond No.	Current Condition	Proponent's proposed amended condition (modified wording in red)	Department's assessment of proposed modification to conditions.
	Council.		by the Council.
B12 (3)(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	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 commencement of works 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	It is acceptable for nest boxes to be installed prior to the commencement of works, at least 1 month before vegetation removal.
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.	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 or, an accredited certifier. # (insert) The Landscape Master Plan, Landscape Design Report, Plans shall be submitted to and approved by Council, following which the Landscape Construction Plan and Specifications may be certified by the Council or an accredited certifier as complying.	It is unacceptable for the Landscape Master Plan and Landscape Design Report to be approved by an accredited certifier as the design concept and master plan for landscaping requires consideration of particular qualitative aspects (e.g. Habitat Restoration Plan) and matters raised during the PAC assessment of the proposal (refer Condition A7 of consent). The outcomes sought are best coordinated and considered by the Council. It is acceptable for the <i>Landscape Construction Plan and Specifications</i> to be dealt with by an accredited certifier, subject to these being consistent with the Council approved Landscape Master Plan and Design Report. See the department's recommended revised part of Condition B14, in blue in column 3.
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	Filling and Haulage The final earthworks plan shall be submitted to the Department or an accredited certifier for approval prior to the issue of a Construction Certificate and shall be generally in accordance with the bulk earthworks plan (Drawing	Remediation of the site and its landforming (including geotechnical considerations) was a major consideration of the proposal. It is therefore necessary for this to be referred to the Department for approval. It is unacceptable for an accredited certifier to approve the

Cond No.	Current Condition	Proponent's proposed amended condition (modified wording in red)	Department's assessment of proposed modification to conditions.
	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.	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.	final earthworks plan.
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).	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 or an accredited certifier 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).	Having regard to the requirements of condition B15, it is unacceptable for an accredited certifier to endorse/approve the geotechnical methodology and remedial strategies based on the referenced documentation given the interaction of remediation, geotechnical (including mine subsidence) and extensive land filling.
B18 1 & 2	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.	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 for any works within an existing road reserve or an accredited certifier prior to the issue of a Construction Certificate.	1. New roads on private land are routinely dealt with by an appropriately certificated accredited certifier (in accordance with S109C of the EP&A Act). This modification is therefore acceptable . 2. For the sake of clarity, the words <i>“for any works within an existing road reserve”</i> should be added to Condition B18(2). Subject to this inclusion, which has been suggested by the proponent's accredited certifier, this modification of the condition (only in blue) is acceptable.
B18 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	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	The Council's Traffic Committee is the appropriate authority to review these matters. Accredited certifiers are not equipped to deal with integrated traffic design and management issues. The proposed

Cond No.	Current Condition	Proponent's proposed amended condition (modified wording in red)	Department's assessment of proposed modification to conditions.
	by the Local Traffic/Development Committee and works completed prior to issue of the Subdivision Certificate.	Traffic/Development Committee or an accredited certifier and works completed prior to issue of the Subdivision Certificate.	modification is unacceptable .
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.	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 or an accredited certifier's requirements prior to the issue of the first Subdivision Certificate which creates the first urban lot.	It is open <i>under the current wording</i> of this condition for an appropriately qualified accredited certifier to deal with the upgrade works according to standards specified by the RMS and council's published requirements. It is unacceptable to allow the standards to be varied other than by a road authority.
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.	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 for those works.	This condition relates only to the construction certificate for the sewerage works and is therefore acceptable .
C8	Ecology/Trees 2 (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,	Ecology/Trees 2(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 commencement of works.	It is unnecessary to specify tree protection installation prior to the grant of a Construction Certificate. The proposed modification is acceptable .

Cond No.	Current Condition	Proponent's proposed amended condition (modified wording in red)	Department's assessment of proposed modification to conditions.
D4	<p>Roads</p> <ol style="list-style-type: none"> 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. 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. 	<p>Roads</p> <ol style="list-style-type: none"> 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 or an accredited certifier prior to issue of the Subdivision Certificate. 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 or an accredited certifier prior to issue of the Subdivision Certificate. 	<ol style="list-style-type: none"> Since the Council's Traffic Committee is to review these matters in Condition 18. An accredited certifier may approve their implementation against those results. This proposed modification is acceptable. The transition works to existing civil works should be referred to the Council for approval. The potential scope of the <i>civil works</i> involved would make the use of an accredited certifier unacceptable in this case.
D6	<p>Stormwater</p> <ol style="list-style-type: none"> 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 	<p>Stormwater</p> <ol style="list-style-type: none"> 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 or an accredited certifier under Section 68 of the Local Government Act prior to issue of the Subdivision Certificate 	<p>It is unacceptable for an accredited certifier to deal with the design approval of the stormwater system as it involves outcome based criteria associated with SEPP 14 wetland areas. Certification of the implementation of the works in relation to condition D6(1) is, however, appropriate for an accredited certifier.</p>
D8	<p>Subdivision Works</p> <ol style="list-style-type: none"> 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. 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. 	<p>Subdivision Works</p> <ol style="list-style-type: none"> A report is to be provided to Council or an accredited certifier 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. 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 or an accredited certifier prior to issue of the Subdivision Certificate. 	<p>The assessment of these matters against the standards and requirements of the cited documentation by a suitably qualified accredited certifier is generally acceptable. Note for (1) however, that the information will need to be supplied to the Council since most parts of the subdivision will require development consent for future buildings, hence the option of merely providing the report to an accredited certifier is not appropriate and is therefore unacceptable.</p>

APPENDIX F RECOMMENDED MODIFYING INSTRUMENT

Modification of Minister's Approval

Section 75W of the *Environmental Planning & Assessment Act 1979*

As delegate of the Minister for Planning and Infrastructure under delegation dated 14 September 2011, the NSW Planning Assessment Commission approves the modification application referred to in schedule 1, subject to the amended modifications in schedule 2.

Commission Member

Commission Member

Sydney

2013

SCHEDULE 1

Project Approval:	MP 10_0204 granted by the Minister for Planning and Infrastructure on 13 May 2011
For the following:	Residential Subdivision at Catherine Hill Bay
Proponent:	Coastal Hamlets Pty Ltd
Modification No. :	MP10-0204 MOD 1
Modifications:	<p>Subdivision of the Wallarah Heritage Precinct into two allotments comprising the Jetty Maser's Cottage on Lot 102 and Wallarah House on Lot 101.</p> <p>Modification of conditions to enable accredited certifiers to deal with/approve certain elements of the listed conditions and conditions that reference standards, and to allow flexible timing of implementation of certain conditions.</p> <p>Revised subdivision layout to adjust boundaries, road alignment and lot widths to suit the development types anticipated in the Catherine Hill Bay (South) DCP. No increase in lot yield.</p> <p>Minor vegetation removal for general maintenance purposes, to manage weeds, access and fire hazard reduction.</p> <p>Modify item B6 in the Statement of Commitments to undertake a community consultation program at least 3 months prior to the start of works.</p> <p>Correct minor misdescriptions and clarify the lapse date for the approval.</p>

SCHEDULE 2

1. Modify Schedule 1 as follows:

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 540 550 residential lots, 1 retail lot and 7 9 reserves, bulk earthworks and infrastructure and including two heritage lots.
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	<i>On or before 1 October 2016 unless the works associated with the subdivision (including remediation) are physically commenced.</i> 5 years from the date of determination unless specified action has been taken in accordance with Section 75Y of the EP&A Act.

2. Modify condition A1 as follows:

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~~ **9** lots for reserves, **and including 2 heritage lots;**
- Associated bulk earthworks;
- Infrastructure works including roads, drainage works and utility services provision;
- Landscaping works
- ***Subdivision of the Wallarah House precinct into two lots - Wallarah House (proposed Lot 101) and Jetty Master's Cottage (proposed Lot 102).***

3. Modify condition A2 as follows:

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.*
- ***The amended boundaries in the two plans titled “Plans of Stage 1 and 1b and Plan of Stage 2 Comparison of Revised Road Layout” in the report prepared by ADW Johnson Pty Ltd dated October 2012, accompanying the Mod 1 Application.***

4. Modify condition A7 as follows:

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.~~

(a) The plan of subdivision of the Wallarah House Precinct is to provide for no more than two lots, generally in accordance with proposed Lot 101 and Lot 102 shown on Plan of Subdivision Ref 11688, Sheet 2 of 13, Version AB (06/08/2012) as revised on 19/09/2012 and be also subject to any re-aligned boundary of Hale Street.

5. Modify condition B5 as follows:

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 **or an accredited certifier's** approval. An on site storage area for reuse, recycling and disposal of materials is to be provided during construction.

6. Add the following condition clause to condition B10, after paragraph (11) as follows:

- (12) Minor clearing and vegetation management may be carried out at any time subject to the following:**
- **Minimal ground disturbance,**
 - **No removal of hollow bearing trees, EEC's or riparian vegetation,**

- **No works within 20 metres of the adjoining conservation lands,**
- **Disposal of waste in accordance with Condition B5,**
- **No native trees over 3 metres in height can be removed unless the removal is in accordance with RFS requirements,**
- **Non-weed propagating trees and shrubs which are felled shall be salvaged for re-use, either in branch form or as woodchip for erosion control and/or site rehabilitation, and**
- **Notification of Council, including plans indicating the location and extent of the works, at least 2 weeks prior to commencement of any such works.**

7. Modify condition B12(3)(g) as follows:

(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~~ **prior to commencement of works** 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.

8. Modify condition B14(1) as follows:

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 **Landscape Master Plan, Landscape Design Report, Plans** shall be submitted to and approved by Council, **following which the Landscape Construction Plan and Specifications may be certified by the Council or an accredited certifier as complying.** The Plan is to include, but is not limited to the following:

9. Modify condition B18(1) and (2) as follows:

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 **for any works within an existing road reserve** prior to the issue of a Construction Certificate.

10. Modify condition B24(1) as follows:

(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 **for those works.**

11. Modify condition C8(2)(b) as follows:

(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, commencement of those works.~~

12. Modify Condition D1 as follows:

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 **for a subdivision certificate creating residential lots** 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 **creating residential lots**, 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.

13. Modify condition D4(1) as follows:

(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 **or an accredited certifier** prior to issue of the Subdivision Certificate.

14. Modify condition D8(2) as follows:

(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 **or an accredited certifier** prior to issue of the Subdivision Certificate.

15. Modify item B6 in the Statement of Commitments to read as follows:

B6 A detailed programme for future community consultation will be developed by the proponent (and be subject to the prior approval of the Director General) and commenced 3 months prior to the start of works.

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