

4 May 2009

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Mr Stuart Withington – Senior Environmental Planner  
Coastal Assessment  
Major Project Assessments  
Department of Planning  
22-33 Bridge Street  
Sydney NSW 2001

Dear Stuart,

**RE: MP08\_0014 – PROPOSED RESIDENTIAL SUBDIVISION, MORISSET PARK**

**1. INTRODUCTION AND OVERVIEW**

We have provided below a response to the various issues raised by the Department of Planning (“DOP”) in their letter dated 9 February 2009. Our response is supported by the following plans and documents:

1. Traffic Review (April 2009) prepared by TPK & Associates (Appendix 1).
2. Letter from Northrop Engineers dated 4 May 2009 along with the following amended drawings [CO1DA – Concept Sediment and Erosion Control Plan – Issue C; C02DA – Concept Stormwater Management Plan – Issue C; C03DA – Details Sheet – Issue C; C04DA – Road Long Sections Sheet 1 of 2 – Issue A; C05DA – Road Long Sections Sheet 2 of 2 – Issue A] (Appendix 2).
3. Amended Proposed Plan of Subdivision prepared by de Witt Consulting (013-SUBDIV-30.04.09) (Appendix 3).
4. Letter from Armstrongs Solicitors Pty Ltd dated 7 April 2009 (Appendix 4).
5. Revised Statement of Commitments (see Section 13).

The above documents and plans include some minor amendments to the project to address the issues raised by DOP. These amendments are summarised in Section 12 of this submission.

The issues have been dealt with below in the order set out in the DOP letters for ease of reference.



## **2. PUBLIC SUBMISSION FROM JOHNSON PROPERTY GROUP DATED 29 JANUARY 2009**

### **2.1 Misleading Definition of Project**

The project is as described in the Environmental Assessment Report ("EAR") and supporting documentation. It comprises a development to subdivide the site into 62 residential lots with one lot to be dedicated as a public drainage reserve. This project description was reflected in the public exhibition and therefore no re-exhibition is considered necessary.

### **2.2 Inconsistency of Traffic Results**

An independent Traffic Review (April 2009) has now been prepared by TPK & Associates and is included in Appendix 1. The traffic results within this Traffic Review have included all known developments (existing and proposed) along the Morisset Park peninsula and all developments referenced in the Traffic Impact Assessment prepared by Better Transport Futures. This has included the Trinity Point Marina and the residential subdivision at the intersection of Fishery Point Road and Station Street.

Commitments have been made in Section 13 of the Traffic Review to undertake road works in kind to ensure the proposed subdivision contributes a fair share to the upgrading of the road infrastructure. This is also now reflected in the revised Statement of Commitments in Section 13 of this letter.

### **2.3 Incomplete Commitments**

(refer to Section 2.2 above).

## **3. PUBLIC SUBMISSION FROM ERENA LOWIS DATED 21 JANUARY 2009**

### **3.1 Adverse Impacts on Fauna and Flora**

The impacts on fauna and flora have been comprehensively addressed in the EAR and supporting documents including the following:

1. Ecological Assessment Report prepared by Harper Somers O'Sullivan Pty Ltd (Appendix 16 of EAR).
2. Ecological Report Pertaining to Wildlife Corridor Issues prepared by Harper Somers O'Sullivan Pty Ltd (Appendix 17 of EAR).

No further consideration of fauna and flora impacts is considered necessary.

## **4. PUBLIC SUBMISSION FROM DIANNE POWELL DATED 28 JANUARY 2009**

### **4.1 Unfairness**

The issue of Lot 358 remaining as part of a wildlife corridor has been addressed in the EAR, particularly the Ecological Report Pertaining to Wildlife Corridor Issues prepared by Harper Somers O'Sullivan Pty Ltd (Appendix 17 of EAR). The Proposed Plan of Subdivision has been designed to ensure only around 7 hollow bearing trees will be removed. This has been achieved by creating a lot of around 9,610 square metres (Lot 3) along the western boundary of the site to ensure maximum retention of the trees on the site. In addition, nesting boxes will be placed within the larger trees within proposed Lot 3 so to be close to the existing adjoining bushland.



#### **4.2 Stormwater Precautions**

The submission prepared by Northrop Engineers in Appendix 2 has addressed these concerns. Stormwater quality and quantity controls have been designed to comply with the requirements of Lake Macquarie City Council.

#### **4.3 Road Grading/Kerb & Gutter Morisset Park Road**

Kerb and guttering along the frontages of the site will be a condition of any project approval. This has been addressed by Northrop Engineers in Appendix 2 of this letter and is also reflected in the Revised Statement of Commitments in Section 13 below.

#### **4.4 Asset Protection Zone**

This comment appears to be a misunderstanding. The required asset protection zones along the common boundary with Lot 458 to the west, will be protected by the easement (they are one and the same).

#### **4.5 Principles**

The issues associated with Ecologically Sustainable Development have been addressed in the EAR, including Section 6.14. The impacts on fauna and flora have been comprehensively addressed in the EAR and supporting documents including the following:

1. Ecological Assessment Report prepared by Harper Somers O'Sullivan Pty Ltd (Appendix 16 of EAR).
2. Ecological Report Pertaining to Wildlife Corridor Issues prepared by Harper Somers O'Sullivan Pty Ltd (Appendix 17 of EAR).

#### **4.6 Social**

The social impacts of the development have been comprehensively assessed in the EAR including the Social Impact Assessment prepared by Key Insights Pty Ltd (Appendix 25 of the EAR). These impacts have been found to be acceptable.

#### **4.7 Environment**

These are the same issues addressed in Section 4.1 above.

#### **4.8 Ecology**

These are the same issues addressed in Section 4.5 above.

#### **4.9 Threats**

These are the same issues addressed in Section 4.5 above.

### **5. ANONYMOUS UNDATED SUBMISSION**

#### **5.1 Clarification of Lot Numbers**

This has been dealt with in Section 2.1.



## **5.2 Area of Lot 3**

The area of Lot 3 is 9,610 square metres, as detailed on the Proposed Plan of Subdivision prepared by de Witt Consulting.

## **5.3 Drainage Detention Basin**

The adequacy of the proposed detention basin and stormwater management system has been addressed by Northrop Engineers in Appendix 2 of this letter.

## **5.4 Control of Mosquito Lava**

The proposed detention basin will not be a permanent wetland. It has been designed as a dry basin which allows it to be turfed and landscaped, with opportunities for play and recreation by future residents. It will only have water in it when raining, after which the water will discharge from the basin via the piped system and offsite into the stormwater management system. As a result, the detention basin will not provide a breeding area for mosquitoes.

## **5.5 Flora and Fauna**

These are the same issues addressed in Section 4.5 above.

## **5.6 Bushfire**

Bushfire management issues have been comprehensively addressed in the EAR, particularly the Bushfire Threat Assessment prepared by Harper Somers O'Sullivan Pty Ltd (Appendix 18 of the EAR).

## **5.7 Water Cycle Management**

The submission prepared by Northrop Engineers in Appendix 2 has addressed these concerns. These matters were also addressed in the Flooding, Surface and Groundwater Hydrology Assessment prepared by Northrop Engineers (Appendix 26 of the EAR) and the Concept Stormwater Management Plan and Road Design prepared by Northrop Engineers (Appendix 27 of the EAR). Stormwater quality and quantity controls have been designed to comply with the requirements of Lake Macquarie City Council.

## **5.8 Social Impacts**

The social impacts of the development have been comprehensively assessed in the EAR including the Social Impact Assessment prepared by Key Insights Pty Ltd (Appendix 25 of the EAR). These impacts have been found to be acceptable.

## **5.9 Noise During Construction**

Construction noise will be controlled through appropriate conditions of any consent granted.

## **5.10 Traffic**

This matter relates to Council maintenance of local roads rather than any impacts resulting from the proposed development.

## **5.11 Infrastructure**

Matters relating to the provision of infrastructure and utility services have been dealt with in the EAR, particularly Sections 4.5 and Appendix 30. All infrastructure is either presently available to the site or will be made available to service the proposed development



## **5.12 Easements**

As this submission is anonymous this matter cannot be addressed as we do not have the property/address details of the adjoining property referred to. In any event, all proposed works will take place within the confines of the site and will not adversely impact on any adjoining property.

## **5.13 Ground Water Hydrology**

This matter was addressed in the EAR, particularly the Flooding, Surface and Groundwater Hydrology Assessment prepared by Northrop Engineers (Appendix 26 of the EAR).

## **5.14 Soils**

The Stability Assessment and Preliminary Contamination Assessment prepared by Coffey Geosciences Pty Ltd (Appendix 23 of the EAR) addressed all matters associated with any potential areas of fill that require further assessment and remediation. No further investigations in this regard are required.

## **5.15 Contamination**

This matter has been addressed in Section 5.14 above.

## **5.16 Existing Development**

No further comments are considered to be necessary.

## **5.17 Scenic Management**

The visual impacts of the proposed subdivision have been addressed in the EAR. In particular reference should be made to the Landscape Design Report prepared by Terras Landscape Architects (Appendix 14 of the EAR) and the Visual Impact Statement prepared by Terras Landscape Architects (Appendix 15 of the EAR). A substantial canopy of trees will be retained throughout the site, including along the road frontages, to minimise visual impacts on the Lake Macquarie State Conservation Area.

## **5.18 Access and Traffic**

Access and traffic issues were comprehensively addressed in the EAR, including the Traffic Impact Study prepared by Northern Transport Planning and Engineering (Appendix 24 of the EAR). In addition, an independent Traffic Review (April 2009) has now been prepared by TPK & Associates and is included in Appendix 1 of this letter. A range of road works are proposed, including the provision of bus shelters, to ensure the proposed development contributes a fair share to the upgrading of the road infrastructure. This is also now reflected in the revised Statement of Commitments in Section 13 of this letter.

## **5.19 Flora and Fauna**

Refer to our response in Section 4.5.

## **5.20 Services**

Refer to our response in Section 5.11.

## **5.21 Social Environment**

The social environment was described in the Social Impact Assessment prepared by Key Insights Pty Ltd (Appendix 25 of the EAR). This description was supported by the relevant facts, including the Australian Bureau of Statistics data.



## **5.22 Proposed Subdivision**

Refer to our response in Section 2.1.

## **5.23 Future Management, Easements, Restrictions and Positive Covenants**

The frequency of maintenance of the detention basin will be a matter for Council post development. The easements over lots marked "C" in the Proposed Plan of Subdivision will protect underground services.

## **5.24 Stormwater Management**

This matter has been addressed in Section 5.7 above.

## **5.25 Site Hydraulics and Hydrology**

This matter has been addressed in Section 5.7 above.

## **5.26 Detention Modelling Results**

This matter has been addressed in Section 5.7 above.

## **5.27 Storm Water Management**

This matter has been addressed in Section 5.7 above.

## **5.28 Water Quality Treatment**

This matter has been addressed in Section 5.7 above.

## **5.29 Maintenance and Ownership**

This matter has been dealt with in Section 4.7 of the EAR. Road and stormwater infrastructure will be dedicated to Council. The frequency of maintenance of the Council infrastructure, including the detention basin, will be a matter for Council post development.

## **5.30 Erosion and Sediment Control**

This matter has been dealt with in Section 4.11 of the EAR and will be the subject of a condition of any consent granted.

## **5.31 Protection of Lake Macquarie State Conservation Area**

This matter has been dealt with in Sections 5.17 and 5.7 above.

## **6. LETTER FROM DEPARTMENT OF ENVIRONMENT AND CLIMATE CHANGE DATED 29 JANUARY 2009**

### **6.1 Offsets/Compensatory Habitat**

The DECC has suggested that Lot 3 be protected in perpetuity through an appropriate legal mechanism such as the following:

- Voluntary Conservation Agreement under the NP&W Act 1974.
- Bio-banking Agreement TSC Act 1995.
- Reservation of land under the NP&W Act 1974.



- Section 88E Covenant of the Conveyancing Act 1919.

As discussed in our meeting with DOP Officers on 13 November 2008, we do not believe that Lot 3 should be the subject of any legal instrument/agreement that retains this lot in perpetuity. This is considered an unreasonable and unnecessary burden on any future land owner. Our reasoning is as follows:

1. Such instruments are more appropriate for larger developments where land is offset as compensatory habitat to balance the adverse impacts created by the clearing/development of adjoining land. However, in this instance the land to be developed for Lots 1-63 (apart from Lot 3) is already predominantly cleared, underscrubbed and used for residential purposes. The land is currently zoned for residential purposes and comprises two dwellings surrounded by large garden areas. The vegetation within the site consists mainly of cleared areas with small patches of modified open eucalypt forest. The understorey within the site is highly modified and is currently underscrubbed on a monthly basis to provide a maintained lawn surrounding for the existing dwellings. Therefore the only potential habitat on the site is the trees on Lot 3, rather than any vegetation on the remaining area of land. As a result, it is considered that the relatively minor tree removal required on the remaining part of the site (ie. all the land excluding Lot 3) does not create an adverse ecological impact of the scale that warrants the provision of a formal offset. This is confirmed in the Ecological Assessment Report prepared by Harper Somers O'Sullivan Pty Ltd (Appendix 16 of EAR), the findings of which can be summarised as follows:
  - Mature trees, particularly those containing hollows to be retained wherever they can be safely retained with regard to public safety.
  - Where hollow-bearing trees are required to be removed within the site, a qualified ecologist is to identify and mark these trees prior to any vegetation clearing. An ecologist is to guide hollow-bearing tree removal to ensure any fauna are recovered.
  - Landscaping should aim to utilise locally occurring flowering/fruiting native shrubs that would provide potential foraging resources for threatened species and other native species.

In other words, the Ecological Assessment confirms that it is only the hollow bearing trees on the site that require protection, rather than the overall site vegetation. Notwithstanding these findings, the vegetation on Lot 3 is to be retained in addition to the retention of trees right throughout the site (particularly around the proposed building envelopes and along the road frontages). It is therefore not the case that Lot 3 is required as an offset to balance the ecological impact of vegetation removal across the remainder of the site.

2. Rather than a legal instrument such as those put forward by DECC, it is proposed that a Plan of Management will be established for Lot 3. This Plan of Management will be registered on title in a Section 88E Covenant under the Conveyancing Act 1919. This Plan of Management will also be a condition of consent. This will provide more than adequate protection for the vegetation on Lot 3 without an unreasonable burden being placed on this residential lot. The Plan of Management and will cover the following matters.
  - Weed management.
  - Native vegetation management.
  - Feral animal control.



- Fire management (including asset protection zones).
- Minimisation of edge effects.
- Public access control.
- Stormwater control.
- Management of specific habitat enhancement measures such as habitat trees, artificial hollows, nest boxes, etc).
- Fauna displacement and any appropriate translocation.
- Details of long term monitoring and implementation.

This Plan of Management is reflected in the Revised Statement of Commitments in Section 13.

*(Note: This Plan of Management will not include any long term financial commitment by way of bond payments and the like, as suggested by DECC. It is considered that this would be an extremely unreasonable burden to place on a single residential lot and a measure that is more suited to conservation land protection on a larger scale. It is common place for a Vegetation Management Plan to be enforced in the normal way by a condition of consent and the Section 88B provisions, without the need for any additional measures).*

3. Lot 3 does not form part of a native vegetation or wildlife corridor. This has been confirmed in the Ecological Report Pertaining to Wildlife Corridor Issues prepared by Harper Somers O'Sullivan Pty Ltd (Appendix 17 of EAR). As a result, no need for an offset to provide any wider ecological purpose has been demonstrated. The retention of Lot 3 in a predominantly undeveloped state is therefore an exercise in vegetation and habitat protection, rather than as an offset.
4. As stated above, a Plan of Management will protect the vegetation on Lot 3. However, it is also relevant to note that pursuant to the provisions of Lake Macquarie Local Environmental Plan 2004 (Clause 34 – Trees and Native Vegetation), development consent from Council is required for any tree or native vegetation removal. A "tree" is defined as follows:

*"tree includes:*

- (a) any sapling or shrub that is more than 3 metres in height or has a trunk with a diameter, at ground level, of 75mm or more, and*
- (b) any species of vegetation that existed in the State of New South Wales before European settlement, and*
- (c) any vegetation listed on the Council's Significant Tree Register."*

As a result, regardless of any Plan of Management and/or Section 88B Instrument, the protection of native vegetation and trees on Lot 3 will be provided through the existing Council controls.

## **6.2 Vegetation/Habitat Management**

As stated in Section 6.1 above, a Plan of Management will be established for Lot 3. This Plan of Management will be registered on title in a Section 88E Covenant under the Conveyancing Act 1919. This Plan of Management will also be a condition of consent. This will provide more than adequate protection for the vegetation on Lot 3 without an unreasonable burden being placed on this residential lot. This Plan of Management is reflected in the Revised Statement of Commitments in Section 13.



It is relevant to note that this Plan of Management will not include any long term financial commitment by way of bond payments and the like, as suggested by DECC. It is considered that this would be an extremely unreasonable burden to place on a single residential lot and a measure that is more suited to conservation land protection on a larger scale. It is common place for a Vegetation Management Plan to be enforced in the normal way by a condition of consent and the Section 88B provisions, without the need for any additional measures.

### **6.3 Hollow-bearing Trees and Nest Boxes**

These comments from DECC are noted and supported in principle. These provisions will be reflected in the Plan of Management.

### **6.4 Displaced Fauna**

These comments from DECC are noted and supported in principle. The Revised Statement of Commitments in Section 13 reflects these provisions.

### **6.5 Tree Planting**

The proposed street trees to the subdivision will comprise native trees such as Tulipwood, Crow's Ash, Brushbox and Corymbia Summer Red. Although these trees are not indigenous to the site, they have been chosen as they perform well as street trees without the potential for high public risk and/or nuisance commonly associated with the larger Eucalypts and Angophoras. These trees are also better suited to be used within clear zones associated with streets as the tree trunks do not reach proportions that are likely to cause significant damage should they be involved in a vehicular accident.

The proposed choice of trees thereby reduces future applications from future residents to have trees removed (once the building of dwellings commences). In addition, the trees proposed provide better amenity from a marketing perspective. As a result it is not proposed to amend the internal landscape scheme.

### **6.6 Aboriginal Cultural Heritage**

These comments from DECC are noted and supported in principle. The Revised Statement of Commitments in Section 13 reflects these provisions.

### **6.7 Attachment 2 Draft Conditions**

#### ***6.7.1 G1 – Works to be Undertaken in Accordance with Information Supplied to DECC***

We do not have any objections to the imposition of this condition.

#### ***6.7.2 TS1 – Threatened Species Compensatory Habitat/Offsets***

For the reasons outlined in Section 6.1, we do not support the imposition of this condition. This condition is unnecessary and unreasonable.

#### ***6.7.3 TS2 – Vegetation/Habitat Management Plan***

As outlined in Sections 6.1 and 6.2, we do not object to the principle of this condition, provided the wording is amended to remove reference to the following:

- Measures to ensure conservation in perpetuity (eg. transfer to DECC estate, voluntary conservation agreements, covenants, etc).



- Long term financial commitments to any proposed conservation measures, including any mechanism to be implemented to achieve this and costings.
- Gantt chart or similar which outlines the activity, costing and timing.

#### **6.7.4 TS3 – Fauna Translocation**

We do not have any objections to the imposition of this condition.

#### **6.7.5 ACH1 – Aboriginal Cultural Heritage**

We do not have any objections to the imposition of this condition.

#### **7. LETTER FROM NSW RURAL FIRE SERVICE DATED 19 JANUARY 2009**

We do not have any objections to the conditions proposed by the NSW Rural Fire Service.

#### **8. LETTER FROM RTA DATED 16 DECEMBER 2008**

The comments from the RTA are noted. No further action is required in this regard.

#### **9. EMAIL FROM NSW DEPARTMENT OF PRIMARY INDUSTRIES DATED 30 JANUARY 2009**

The comments from the NSW Department of Primary Industries are noted. No further action is required in this regard.

#### **10. EMAIL FROM DEPARTMENT OF WATER AND ENERGY DATED 3 FEBRUARY 2009**

The comments from the NSW Department of Water and Energy are noted. No further action is required in this regard.

#### **11. LETTERS FROM LAKE MACQUARIE CITY COUNCIL DATED 30 JANUARY AND FEBRUARY 2009**

##### **11.1 Overview**

Both letters from Lake Macquarie City Council ("Council") predominantly repeat the same issues. A response to all the issues raised in these letters is provided below. Meetings were held with Council Officers on 19 March and 24 March 2009 to discuss stormwater management and traffic/section 94 Contribution issues, respectively. We understand that minutes from these meetings have been provided to DOP.

##### **11.2 Subdivision Layout**

1. The Project Application includes the demolition of the existing dwellings on the site. This is referred to in the EAR, including Sections 4.1, 4.3 and 5.6.2.6. The demolition of these dwellings is also included in the Proposed Plan of Subdivision in Appendix 11 of the EAR.
2. The amended Proposed Plan of Subdivision in Appendix 3 now shows splay corners at all new intersections and at Chifley Road and Morisset Park Road.
3. The requirement of Schedule 2 of Lake Macquarie LEP 2004 to make provision for 10% of lots to accommodate small lot housing, was discussed with Council's Chief Subdivision Engineer (Mr Greg Field) at a pre-DA meeting on 4 December 2007 (see Appendix 34 of the EAR). At this meeting it was agreed that this requirement would be satisfied by ensuring at least 4 of the proposed lots are of sufficient size to cater for future dual occupancy development (ie. a total of 8 future small lot housing lots). As detailed in Section 5.6.2.5 of the EAR, the majority of lots



have been designed to enable them to accommodate a future dual occupancy dwelling, subject to separate Council approval.

4. The boundary treatment of the detention basin will be subject to the requirements of Council regarding safety, etc (see Section 13 of the Northrop letter in Appendix 2). As detailed in the Landscape Design Report in Appendix 14 of the EAR, the detention basin has been designed as a dry basin, which allows it to be turfed and landscaped, with opportunities for play and recreation by future residents. Planting around the basin will consist of screening trees to the outside (*Melaleuca stypheliodes*, Prickly Paperbark and *Allocasuarin littoralis*, Black She-Oak) and larger high trunk trees of *Euclayptus haemostom* (Scribbly Gum) which is native and well represented on the existing site. This landscaping treatment to the basin will ensure that the amenity of the streetscape will be significantly enhanced.
5. There is no intention to stage this subdivision.

### 11.3 Stormwater Management

The various matters raised by Council regarding stormwater management have been comprehensively addressed in the submission from Northrop Engineers dated 4 May 2009 (see Appendix 2).

With regard to whether the existing Lot 358 DP 755242 is benefitted by the easement over lot 2 DP 244002, we refer to the letter from Armstrongs Solicitors Pty Ltd dated 7 April 2009 (Appendix 4). These terms are being finalised with the owners of Lot 2 DP 244002 to ensure the easement refers to both lots.

### 11.4 Landscaping

This comment is accepted and can be dealt with as a condition of any consent granted.

### 11.5 Traffic

All traffic matters have been addressed in the Traffic Review (April 2009) prepared by TPK & Associates (see Appendix 1).

### 11.6 Ecology

#### 11.6.1 Binding Agreement

This matter has been dealt with in Sections 6.1 and 6.2 of this letter. A Binding Agreement in the form suggested is not agreed to. However, a Vegetation Plan of Management will be prepared and be registered on title in a Section 88E Covenant under the Conveyancing Act 1919.

#### 11.6.2 *Tetratheca Juncea*

It is considered that additional surveys for *Tetratheca Juncea* are completely unnecessary for the following reasons:

1. The first flora survey was undertaken in December 2007 which is only marginally outside the flowering period of *Tetratheca Juncea* (which extends up to the end of November). The second flora survey was undertaken on 12 August 2008 which is during the flowering period of *Tetratheca Juncea*. This survey found no evidence of *Tetratheca juncea* on site.
2. Notwithstanding the above, the land to be developed for Lots 1-63 (apart from Lot 3) is already predominantly cleared, underscrubbed and used for residential purposes. The land is currently zoned for residential purposes and comprises two dwellings surrounded by large garden areas.



The vegetation within the site consists mainly of cleared areas with small patches of modified open eucalypt forest. The understorey within the site is highly modified and is currently underscrubbed on a monthly basis to provide a maintained lawn surrounding the existing dwellings. Therefore the only potential habitat on the site is the trees on Lot 3, rather than any understorey that may be suitable for *Tetratheca Juncea*.

3. Even though the site may be suitable for *Tetratheca Juncea* in a regenerated state, the understorey comprises maintained lawn. As a result, any future flora or fauna surveys (regardless of when they are undertaken) are highly unlikely to be of any benefit in providing additional information.
4. The vegetation on Proposed Lot 3 will be protected by a Vegetation Plan of Management as detailed in Sections 6.1 and 6.2. This will ensure that suitable habitat is provided on at least part of the site should it prove to be suitable habitat for *Tetratheca Juncea* in a regenerated state.

### **11.6.3 Threatened Owl Nest Trees**

This is accepted and can be dealt with as a condition of any consent granted. This is also reflected in the Revised Statement of Commitments in Section 13.

### **11.7 Section 94/Developer Contributions/Road Infrastructure**

Council's comments are noted regarding the fact that currently the Section 94 Contributions Plan does not levy for road and traffic facilities in the Morisset Peninsula.

A meeting to discuss the development's contribution to road and traffic facilities was held with Council Officers on 24 March 2009 (the minutes of which have been provided to DOP under separate cover). As detailed in the Traffic Review (April 2009) prepared by TPK & Associates (Appendix 1), it is proposed that various roadworks in kind are undertaken as part of the development, rather than entering into a Voluntary Planning Agreement with Council. This would enable such works to be addressed by conditions of consent and avoid the significant time delays associated with preparing, exhibiting and endorsement by Council of a VPA (estimated to take around 6-8 months). As detailed in Sections 12 and 13 of the Traffic Review in Appendix 1, the works in kind will ensure a fair and equitable contribution is made by this development to the road and traffic facilities required. These works have been included in the Revised Statement of Commitments in Section 13.

### **11.8 Infrastructure Provision**

With regard to telecommunication services, it is relevant to note that Telstra provides such services along both street frontages, as detailed on the Survey Plan in Appendix 8 of the EAR and the Proposed Plan of Subdivision in Appendix 3. In addition, such telecommunication services are provided to all dwellings which presently adjoin the site. It is standard practice in such subdivisions for underground telecommunication services to be extended to service each of the proposed lots and such arrangements will be made with Telstra at the construction certificate stage.

Matters relating to road and traffic infrastructure have been dealt with in Section 11.7 above and the Traffic Review (April 2009) prepared by TPK & Associates (Appendix 1).

### **11.9 Contamination**

The Preliminary Contamination Assessment in Appendix 23 of the EA states the following in Section 5.4:



*"The results indicate that some contamination in the soils has occurred in the area of the fill, and burnt area, as shown on drawing N08340/01-2. It is considered that further testing in this area may be required to identify the extent of the contamination and to determine the preferred method of management of the contamination encountered."*

These potential contamination areas are small and isolated and the majority of the site is unaffected. As a result, it is logical to conclude that the site is suitable for the development proposed. Any future spot remediation can easily be addressed by a suitable condition of consent. A Stage 2 – Detailed Investigation is therefore not required prior to the granting of project approval.

It is also relevant to note Section 3.4.1 of the "Managing Land Contamination: Guidelines" prepared by NSW Department of Planning and NSW DECC states in paragraph 2 that a detailed investigation is only necessary when a land use change is proposed. This is not the case with the current subdivision proposal.

#### **11.10 Acid Sulfate Soils**

This comment is noted.

#### **11.11 Bushfire**

The Proposed Plan of Subdivision (see Appendix 3) has been amended to include the additional Asset Protection Zones required by Council.

With regard to internal road widths, it is relevant to note that these have been designed to ensure their width complies with the provisions of Part 4.1.3 of Planning For Bush Fire Protection provided "No Parking" signs are provided along one side of these roads. This can be dealt with as a condition of consent.

#### **11.12 Geotechnical**

This comment is noted.

#### **11.13 Flooding**

These comments are noted.

#### **11.14 Water Cycle Management**

These matters are addressed in Section 11.2 and the submission from Northrop Engineers dated 4 May 2009 (see Appendix 2).

### **12. SUMMARY OF AMENDMENTS PROPOSED**

We have considered all the submissions received during the exhibition period. The following amendments to the project are now proposed to address the matters raised in these submissions and to reduce the environmental impacts of the proposal.

1. An amended Proposed Plan of Subdivision has been prepared by de Witt Consulting (see Appendix 3). This includes the following amendments:
  - Splay corners are now provided at all new intersections and at Chifley Road and Morisset Park Road.



- The Asset Protection Zone ("APZ") required by the NSW Rural Fire Service to the east of proposed Lot 3 has been included in the western building setbacks of Lots 48, 57 and 58. The required APZ comprises a 10m inner protection area and a 10m outer protection area (20m total APZ). The 14.5m wide internal road provides the bulk of this APZ, with only 5.5m required on each of the above lots.
  - The APZ required by the NSW Rural Fire Service to protect proposed Lot 4 has been provided in the north eastern corner of proposed Lot 3. This comprises a 20m APZ.
2. Minor amendments to the stormwater management system have been prepared by Northrop Engineers (see Appendix 2). These amendments include the following:
- The addition of "pit inserts" within the street drainage system to provide detention and water quality management for the south eastern portion of the site.
  - The redesign of the outlet from the detention basin, including a new pit to take high level flows directly to the weir and the resizing of the outlet pipes to cater for the 1 in 100 year flow.
  - The provision of kerb and guttering along both street frontages.
  - The provision of new underground stormwater pipes along Chifley Road from the outlet of the detention basin to connect to the existing piped Council stormwater system (near the intersection of Frederick and Chifley Streets).
  - The revision of the internal batters of the detention basin to be a maximum slope of 1V:4H to cater for Council maintenance requirements.
3. An amendment to the existing easement to ensure Lot 358 DP 755242 is benefitted by the easement over lot 2 DP 244002. These terms are being finalised with the owners of Lot 2 DP 244002 (see letter from Armstrongs Solicitors Pty Ltd dated 7 April 2009 in Appendix 4).
4. The construction of roadworks in kind to ensure the proposed development contributes a fair share to the upgrading of the road infrastructure. These works will include the following:
- The construction of an AUR geometric intersection for Morisset Park Road and Chifley Road.
  - The construction of an AUR geometric intersection for Morisset Park Road and the New Access Road to the subdivision, including the provision of bus amenity.
5. The establishment of a Plan of Management for proposed Lot 3. This Plan of Management will be registered on title in a Section 88E Covenant under the Conveyancing Act 1919. This Plan of Management will also be a condition of consent. This will provide adequate protection for the vegetation on Lot 3 and will cover the following matters.
- Weed management.
  - Native vegetation management.
  - Feral animal control.
  - Fire management (including asset protection zones).
  - Minimisation of edge effects.
  - Public access control.
  - Stormwater control.



- Management of specific habitat enhancement measures such as habitat trees, artificial hollows, nest boxes, etc).
- Fauna displacement and any appropriate translocation.
- Details of long term monitoring and implementation.

### 13. REVISED STATEMENT OF COMMITMENTS

The proposed amendments outlined in Section 12 are minor when compared to the original project application lodged with DOP. Notwithstanding, a revised Statement of Commitments has been prepared to reflect these amendments. The amendments to the original Statement of Commitments have been highlighted in bold for ease of reference. If approval is granted under Part 3A of the EP&A Act, 1979, the proponent will commit to the following controls for the construction and operation of the proposed development.

NO.	ITEM	COMMITMENTS
1.	Scope of Development	<p>The development will be carried out substantially in accordance with the Environmental Assessment prepared by de Witt Consulting, supporting plans and reports, as amended by the following:</p> <ul style="list-style-type: none"> <li>• Proposed Plan of Subdivision prepared by de Witt Consulting (Drawing 013-SUBDIV-30.04.09)</li> <li>• Letter from Northrop Engineers dated 4 May 2009 along with the following amended drawings [C01DA – Concept Sediment and Erosion Control Plan – Issue C; C02DA – Concept Stormwater Management Plan – Issue C; C03DA – Details Sheet – Issue C; C04DA – Road Long Sections Sheet 1 of 2 – Issue A; C05DA – Road Long Sections Sheet 2 of 2 – Issue A].</li> <li>• Revised Statement of Commitments in the letter from de Witt Consulting dated 4 May 2009.</li> </ul>
2.	General	<p>The developer will obtain and maintain the following licences, permits and approvals for the residential subdivision:</p> <ul style="list-style-type: none"> <li>• Lake Macquarie City Council/Private Certifier – Subdivision and Construction Certificates for works associated with the subdivision. This will include engineering design plans containing, where relevant, detailed designs relating to earthworks, drainage, soil erosion, sediment control, site rehabilitation, tree clearing, site stability, roadworks, footpaths, water supply, sewerage works and landscaping.</li> <li>• Energy Australia – Design Certification</li> <li>• Hunter Water Corporation – Compliance Certificate</li> <li>• Telstra – Compliance Certificate</li> <li>• Department of Land and Property Information – Registration of Subdivision.</li> </ul>
3.	Conveyancing	<p>Prior to the release of the Subdivision Certificate, a Section 88B Instrument will be prepared to provide for, inter alia, easements for services, Asset Protection Zones and drainage.</p>
4.	Construction	<p>Prior to the release of the Construction Certificate, the developer will prepare a Construction Management Plan addressing matters relating to education of contractors, statutory obligations, management procedures,</p>



NO.	ITEM	COMMITMENTS
		sediment controls, traffic management, flora and fauna management, environmental management procedures and waste minimisation.
5.	Infrastructure	<p>Prior to the release of the Subdivision Certificate the developer will provide underground power to each residential lot in the subdivision in accordance with the requirements of Energy Australia.</p> <p>Prior to the release of the Subdivision Certificate, the developer will provide underground telecommunications infrastructure to each lot in the subdivision in accordance with the requirements of Telstra.</p> <p>Prior to the release of the Subdivision Certificate, the developer will provide reticulated water and sewerage services to each lot in the subdivision in accordance with the requirements of Hunter Water Corporation.</p>
6.	Stormwater and Water Quality	Prior to the release of the Subdivision Certificate, stormwater management and water quality infrastructure in accordance with the Concept Stormwater Management Plan prepared by Northrop Engineers will be provided. This will include a regional detention basin, pit and pipe stormwater system and gross pollutant traps.
7.	Bushfire Protection	<p>Prior to the registration of the Final Plan of Subdivision, the recommendations of the Bushfire Threat Assessment prepared by Harper Somers O'Sullivan will be implemented including:</p> <ul style="list-style-type: none"> <li>• A 20m APZ will be provided along the western boundary of the <b>building envelope on Lot 3.</b></li> <li>• A 25m APZ will be provided between the proposed dwelling on Lot 3 and the vegetation to the north.</li> <li>• A 20m APZ will be provided between the retained vegetation on Lot 3 and the residential lots to the east.</li> <li>• The internal roads will be constructed in accordance with the requirements of Planning for Bushfire Protection (2006).</li> <li>• Future dwellings on the lots will be built in accordance with the relevant construction levels in AS3959-1999 for construction of buildings in bushfire prone areas (as shown in Figure 8.1 – Construction Levels of the Bushfire Threat Assessment prepared by Harper Somers O'Sullivan).</li> <li>• The development will be linked to the existing mains pressure water supply and suitable hydrants will be clearly marked and provided for the purposes of bushfire protection.</li> <li>• The responsibility of the maintenance of the proposed APZ's will be the individual lot owner.</li> <li>• Fuel management in the APZ's will be in accordance with Planning for Bushfire Protection (2006) or as specified by the NSW Rural Fire Service.</li> <li>• <b>No parking signs will be provided along one side of the internal roads to ensure compliance with Section 4.1.3(1) of Planning for Bushfire Protection (2006).</b></li> </ul>
8.	Soil Erosion	<ul style="list-style-type: none"> <li>• A Sediment and Erosion Control Plan will be developed in accordance with the relevant guidelines prior to the commencement of construction.</li> <li>• Surface drainage for construction will be installed prior to commencement of earthworks to intercept overland flow from</li> </ul>



NO.	ITEM	COMMITMENTS
		<p>the upslope catchment area.</p> <ul style="list-style-type: none"> <li>• Topsoils will be stockpiled for landscaping purposes.</li> <li>• Any filling on the site will be placed and compacted in accordance with AS3798-1996, Guidelines on Earthworks for Commercial and Residential Development.</li> <li>• Any retaining walls over 1m constructed on site as part of the subdivision development will be engineer designed.</li> </ul>
9.	Noise	Construction operations will take place in approved Council hours.
10.	Dust	<ul style="list-style-type: none"> <li>• All loads leaving the site will be adequately covered.</li> <li>• Stockpiles will be maintained in a moist condition to minimise wind blown and traffic generated dust.</li> <li>• All roads and trafficked areas will be watered as required to minimise dust generation.</li> </ul>
11.	Landscaping	<p>Prior to the release of the Subdivision Certificate:</p> <ul style="list-style-type: none"> <li>• Plantings will be in accordance with a detailed Landscape Plan to be prepared in accordance with the Landscape Concept Plan already prepared by Terras Landscape Architects. The Landscape Plan will be prepared by a suitably qualified Landscape Architect.</li> <li>• Trees to be retained within proposed road reserves and/or within lot boundaries will be identified on a tree retention plan with the Construction Certificate application.</li> </ul>
12.	Vegetation and Tree Management	<p>Prior to the registration of the Final Plan of Subdivision:</p> <ul style="list-style-type: none"> <li>• Mature trees, particularly those containing hollows, will be retained wherever they can be safely retained with regard to public safety.</li> <li>• Where hollow bearing trees are required to be removed with the site, a qualified ecologist will identify and mark the trees prior to any vegetation clearing. Hollow bearing trees will be left standing for one night after all other vegetation is removed to allow fauna to vacate hollow. An ecologist will guide hollow bearing tree removal to ensure any fauna are recovered, with the provision of nest boxes in trees to be retained if required.</li> <li>• Future landscaping will utilise locally occurring flowering/fruited native shrubs that would provide potential foraging resources for native species.</li> </ul>
13.	Aboriginal Heritage	The developer will ensure that if there is any evidence of Aboriginal archaeological content exposed during the construction stage, the developer and any associated contractors will stop work and notify the Aboriginal stakeholders group and Department of Environment and Climate Change.
14.	Final Plan of Subdivision	The developer will prepare the Final Plan of Subdivision and required Section 88B Instruments in accordance with the requirements of Lake Macquarie City Council and the Department of Lands (Land and Property Information).
15.	Developer Contributions	The developer will pay Section 94 Contributions to Lake Macquarie City Council in accordance with Council's Section 94 Contributions Plan and as per conditions of any development consent granted, prior to the release of the subdivision certificate.



NO.	ITEM	COMMITMENTS
16.	Roadworks	<p>Prior to the registration of the Final Plan of Subdivision the developer will undertake the following roadworks:</p> <ul style="list-style-type: none"> <li>• The construction of an AUR geometric intersection for Morisset Park Road and Chifley Road.</li> <li>• The construction of an AUR geometric intersection for Morisset Park Road and the New Access Road to the subdivision, including the provision of bus amenity.</li> <li>• The carriageway along Morisset Park Road will be widened along the frontage of the site to 6.5 metres from the centreline of the existing road and provide kerb and guttering and associated drainage and footpaving.</li> <li>• The carriageway along Chifley Road will be widened along the frontage of the site to facilitate a carriageway width of 8m, along with kerb and guttering and associated drainage and footpaving.</li> </ul>
17.	Vegetation Plan of Management	<p>Prior to the release of the Construction Certificate, a Plan of Management will be established for proposed Lot 3. This Plan of Management will be registered on title in a Section 88E Covenant under the Conveyancing Act 1919. This Plan of Management will cover the following matters.</p> <ul style="list-style-type: none"> <li>• Weed management.</li> <li>• Native vegetation management.</li> <li>• Feral animal control.</li> <li>• Fire management (including asset protection zones).</li> <li>• Minimisation of edge effects.</li> <li>• Public access control.</li> <li>• Stormwater control.</li> <li>• Management of specific habitat enhancement measures such as habitat trees, artificial hollows, nest boxes, etc).</li> <li>• Fauna displacement and any appropriate translocation.</li> <li>• Details of long term monitoring and implementation.</li> </ul>
18.	Fauna Translocation	<p>The developer will ensure that should any fauna need to be translocated then this will be undertaken pursuant to NPWS (2001) <i>Policy for the Translocation of Threatened Fauna in NSW</i>. Policy and Procedure Statement No. 9. The developer will obtain a licence under S91 of the Threatened Species Conservation Act 1994 prior to the translocation of any fauna outside the approved development approval footprint.</p>

#### 14. CONCLUSION

We trust that the above information satisfies all outstanding matters. Please do not hesitate to contact me on (02) 4942 5441 should you have any further queries.

Yours sincerely  
de WITT CONSULTING

David Humphris  
DIRECTOR



## APPENDICES



## APPENDIX 1

Traffic Review (April 2009) prepared by TPK & Associates



## APPENDIX 2

Letter from Northrop Engineers dated 4 May 2009 (including amended Drawings)



## APPENDIX 3

Amended Proposed Plan of Subdivision prepared by de Witt Consulting



## APPENDIX 4

Letter from Armstrongs Solicitors Pty Ltd dated 7 April 2009