APPENDIX 2 - RESPONSE TO ADJOINING LANDHOLDER COMMENTS ON DA 0216/13

The table below sets out comments received from adjoining landholders in relation to DA 0216/13 and proponent responses to those comments. Two adjoining landholders submitted comments these being Gwen Day of Hall St Pitt Town and Johnson Property Group (JPG) the owner of Lot 11 the adjoining lot to the west of Lot12.

Comments submitted by JPG	Proponent Responses to JPG comments
Concept Plan Modification Condition A2 of the Part 3A Concept Plan approval indicates that development should be generally consistent with the following plans and documentation: c. Masterplan for Blighton, Drawing No L03017 – Bligh -V6, dated 27 March 2008 and prepared by Brown Consulting. We note that the applicant has provided commentary in their Statement of Environmental Effects that suggests that their layout is "slightly different to the Master Plan that was drawn as part of the rezoning process….. The slight alteration of the proposed subdivision layout from that indicated in the Masterplan is not therefore at odds with what might have been expected in respect of subdivision within the Blighton lot layout". The fact remains that: 1) Whether minor or not, the layout is different to the approved Part 3A Concept Plan and Blighton precinct Masterplan for this project; and 2) As we understand, via the absence of any commentary by the applicant, the applicant has not discussed the revised layout with Department of Planning – the approving body of the Part 3A Concept Plan and Blighton precinct	1. The intention of the approved Part 3A Concept Plan for the Pitt Town Subdivision including the Blighton Precinct was to propose lot configurations that are indicative. This intention is clearly stated in **condition B3 of the Instrument of Approval** as set out below. ***B3. Lot Layout and Distribution*** *The lot layouts for each precinct are **considered to be indicative only**, however the maximum number of lots within each precinct as approved in this concept plan are not to exceed:* • *Fernadell – 210 lots* • *Bona Vista – 246 lots* • *Blighton – 19 lots* • *Cleary – 112 lots* • *Thornton – 69 lots* This is an appropriate and widely used approach for developments such as those approved under Part 3A and is acknowledgement that it is impossible to understand all circumstances in minute detail at the time of initial approval. The issue is not whether it is "different" but rather that it is "generally consistent" as required by condition A2 of the Instrument of

masterplan; and 3) Council set a precedent position to our adjoining 112 lot subdivision (DA0456/09) whereby Council required Vermont Quay's P/L to secure a Part 3A modification to the layout in this subdivision (the Part 3A layout had to change because of engineering purposes) prior to Council approving the subdivision Development Application – Council's position was that the subdivision DA we sought consent for was different to the Part 3A approved plan (albeit slightly in road geometry that affected a small portion of the site – one of six stages only) and therefore Council required a Part 3A modification prior to determining the subdivision DA. Whilst we understand that the applicant has suggested landownership reasons for this modification – the principle is still the same (ie if the applicant proposes to modify the layout then, for the same reasons Council imposed on the adjoining development, Council should also require them to secure a Section 75W Part 3A Modification prior to determination of this subdivision DA). Reference is Cleary Precinct Lot + Road Layout which can be downloaded from the Department of Planning's Major Project website; and 4) In relation to 3) above, the department of Planning as part of the Part 3A process required JPG to consider this precinct as one precinct (disregarding landownership issues). Because the applicants modified layout now affects both Vermont Quay's P/L land and holdings (in what we deem to be a significant modification) as well as their own land holdings, and despite this subdivision DA only applying to their land, then any Part 3A modification application would require the consent of all landowners (including Vermont Quays P/L).	Approval. 2. The applicant has had both face to face and phone discussions with DoPI in relation to the proposed revised lot layouts and has had numerous discussions with relevant Hawkesbury Council staff. 3. This assertion is incorrect as Council cannot set a binding precedent as to how it deals with these matters. No precedent was set by Council in relation to decisions for DA456/09. Council and other assessment agencies necessarily maintain the right to assess all individual development applications on a case by case basis based on the merits of each application. In any case Council has advised that it also requires this application to be dealt with as a Part 3A modification which is what is now happening. 4. This assertion is incorrect. Councils and/or DoPI are the consent authorities not adjoining landholders. As stated in point 3 above, Council and other assessment agencies necessarily maintain their right to assess all individual development applications on a case by case basis based on the merits of each application. Notwithstanding the reasons leading up to the Masterplan for Blighton the fact remains that the Masterplan lot layout goes across two land owner's boundaries and as presently drawn (if strictly adhered to) neither lot can be developed without the approval of both owners. This is thwart with difficulties given that the owner of Lot 12 wishes to develop without the constraint of dealing with the owner of Lot 11. Providing that a revised lot layout can be demonstrated without adverse impact on either landowner then a modification application can be properly determined. It is noteworthy that the owner of Lot 12 did not consent to the lot layout in the Part 3A approval in the first instance. The Minister and/or the DoPI have the authority to determine this modification application.

Lot size anomaly Page 6 of the Statement of Environmental Effects provides commentary in regard to "the Masterplan is not in accord with the subsequent Hawkesbury local environmental plans in terms of the Pitt Town Lot Size Map". The Lot Size map s prepared by Department of Planning and gazetted on 18 July 2008 under the title of State Environmental Planning Policy (Major Projects) Amendment (Pitt Town 2008). This gazettal followed the Part 3A Concept Plan approval that was issued on 10 July 2008. It is our understanding that Council, as part of Hawkesbury LEP 2012, adopted the controls/maps prepared by Department of Planning which formed the 20087 Pitt Town SEPP Amendment. The Part 3A legislation provided provisions where a Part 3A Concept Plan can be approved even if it is inconsistent with an Environmental Planning instrument. It is our understanding that, despite the lot size map controls, Council cannot refuse to issue development consent for a proposal that is consistent with a Part 3A Concept Plan. Therefore, the applicant's lot size argument is flawed and should be given no weight – it is not a valid reason to support modifying the Part 3A layout.	Agreed. Whilst it is agreed that a Part 3A Concept Plan can be approved even if inconsistent with a planning instrument the fact remains that an applicant is able to make a case for altering of the Part 3A and related Masterplan. This is what is now being done.
Statement of Commitments Part 3A Condition A2 requires the development to also be carried out in accordance with the "revised Statement of Commitments received by the Department on 18 April 2008". The applicant's land is a site to which the Part 3A approval applies and therefore they are also bound by the requirements	It is acknowledged that the Statement of Commitments was not assessed in the previous development application before Council. This will be done for any future application to Council as will be required should the DoPI support this modification application to the Part 3A approval. The Statement of Commitments is an important part of the original Instrument of Approval. It is also acknowledged that any development needs to be carried out with due consideration of the Statement of Commitments. The Statement of Commitments largely relate to disturbance related

of the Part 3A Statement of Commitments. The Statement of Environmental Effects fails to address the Statement of Commitments – with several key pieces of information missing.	impacts created by the construction of dwellings and related structures. It is therefore more appropriate and beneficial to address the Statement of Commitments as part of development applications individual dwellings if the modification application is approved. It is impossible at this stage to predict when, where and the size of the footprint of any disturbance that may or may not occur in the future. This modification proposes a revised lot layout only and does not propose any land disturbance. It is more appropriate and beneficial to address in detail the Statement of Commitments as part a dwelling related development application when and if this occurs in the future.
Hawkesbury LEP Clause 4.1 – Minimum Subdivision Lot Size The objective of: • Part 1(b) of this Clause is to ensure that each lot created in a subdivision contains a suitable area for the erection of a dwelling house….., • Part 1 (c) of this Clause is to ensure a ratio between the depth of the lot and the frontage of the lot that is satisfactory having regard to the purpose for which the lot is to be used. The following plan has been extracted from the applicant's Proposed Plan of Subdivision. What this shows, which is an outcome the Department of Planning avoided as part of the Part 3A Concept Plan assessment by assessing the site as one (disregarding land ownership issues, is that the applicant's proposed layout for JPG controlled land forces an unsatisfactory width to depth ratio on Lots 101 and 102. Combined with the setback requirements of the Pitt Development Control Plan – it would be unlikely that either of these two lots would be able to contain a suitable dwelling footprint. The size of Lots 103. 104 and 105 on JPG land, as per below plan, are unable to be changed because of Heritage Office requirements. This therefore dictates where this internal road	The circumstances behind the lodgement of DA 0216/13 and now this modification clearly illustrate why Condition B3 was included in the Part 3A approval i.e. individual landholders having separate time frames and priorities for progressing development of their landholdings. The revised lot configuration for Lot 11 presented in DA 0216/13 was intended to be indicative only and the argument about the shape of Lots 101 and 102 are not relevant as the owner of Lot 11 can devise his own lot layout and in this respect there are a variety of lot configurations that can be applied to Lot 11 that satisfy the "general consistency" and "indicative only" requirements of the Part 3A approval. The revised lot configuration for Lot 11 presented in the main body of this modification document presents a possible lot configuration but it is not the only configuration that the owner of Lot 11 could look at. The aim of this suggested lot configuration is to demonstrate that it is possible to comply with the spirit of the Part 3A approval and Masterplan whilst at the same time addressing various controls that come from the Part 3A approval. However, this is only one example of what is

has to go which therefore means, if you look at the two existing land holdings in isolation, the subdivision outcome proposed does not meet the outcomes of the Part 3A Concept Plan layout for this precinct.	possible and allows both landholders to develop separately.
Hawkesbury LEP Clause 4.1B – Additional requirements for certain subdivisions in rural, residential and environmental protection zones Under this Clause, Part 2(d) requires that the consent authority is satisfied that each lot to be created contains a suitable area for a dwelling house….. Also under this Clause, Part 2(d) requires that, Development consent must not be granted to development unless the consent authority is satisfied that there is a satisfactory ratio between the depth of each lot and the frontage of each lot, having regard to the purpose for which the lot is to be used. Refer above commentary from JPG under the title Clause 4.1 – Minimum Subdivision Lot Sizes.	See response above to Hawkesbury LEP Clause 4.1 – Minimum Subdivision Lot Size
Hawkesbury LEP Clause 5.10 – Heritage Conservation The following information has been supplied by JPG's Project Archaeologist to date – Peter Douglas, Managing Director of archaeological & Heritage Management Solutions <u>Introduction</u> I am a professional heritage consultant and archaeologist. I have worked as a professional archaeologist since 1984 following my graduation, with undergraduate and post graduate qualifications in archaeology from the Universities	As stated in paragraph 3 of this comment "detailed historical and Aboriginal heritage assessment and archaeological test excavation" has already been carried out which provides a detailed assessment of the heritage values of the Blighton Precinct. The heritage assessment, which is set out in Appendix S of the Part 3A EA submission, included extensive consultation with the NSW Heritage Office, Aboriginal Groups and Government Agencies. This assessment was deemed to be satisfactory by DoPI during the Part 3A assessment process. These investigations were considered to be of a suitable standard for the development of heritage zones for the protection and enhancement of heritage values. The establishment of these heritage zones provides a fundamental and important mechanism for the protection of heritage values.

of Auckland and Otago. I am, and have worked, as Managing Director of Archaeological and Heritage Management Solutions Pty Ltd since 1998. Since 2004-05, I have directly undertaken and/or managed the detailed historical and Aboriginal heritage assessment and archaeological test excavation of land north of Hall St and Pitt Town in accordance with numerous permits issued by NSW Heritage Branch and the Office of Environment and Heritage. The land subject to those heritage and archaeological investigations includes land subject to Development Proposal DA0216/13 received by Hawkesbury City Council. I present the following material for consideration by Hawkesbury City Council in response to Council's Notification of Development Proposal DA0216/13 for land within Lot 12, as shown in Deposited Plan 1021340, 21 Hall St Pitt Town 2756. Clause 5.10 Heritage Conservation It is noted that the application is for a subdivision DA. Taking this into consideration, it is noted that the proponents planning report is correct in regards to Clause 5.10 in that the proposal will not result in direct heritage impacts on an Aboriginal object or on the identified heritage values of the land. However, heritage investigations must be undertaken to inform the development of any rezoning, in particular Master Plan DAs and indicative Layout Plans. Heritage investigations undertaken early in the planning process allows the	It is therefore pointless in carrying out any further investigations at this stage as this modification does not challenge or propose any changes to the heritage preservation zones in place across the Blighton Precinct nor does it propose any land disturbance within the Blighton Precinct. A more appropriate and beneficial course of action is to attach conditions to any successful future dwelling development applications with a Section 90 permit condition pursuant to the National Parks and Wildlife Act as suggested in the final paragraph of the adjacent comment. This is an appropriate course of action as all dwelling related disturbance will be set out in detail. It should be noted that this modification application is to amend the Pitt Town Masterplan so that it recognises that each of Lots 11 and 12 can be developed independently. Whether a subsequent subdivision application is made that exactly conforms with the Masterplan as currently existing or for a revised lot layout the fact remains that heritage matters will need to be addressed.

identification of areas of heritage significance and provide an opportunity for their conservation in the planning process. Investigations would identify conservation areas, heritage view lines and heritage curtilage boundaries 'up front' during the planning process that can be incorporated as part of any rezoning. This process has successfully occurred at the Bungarribee Estate in Western Sydney and the East Leppington Precinct at the North West Growth Centres. Although rezoning itself does not physically cause harm or impacts areas of heritage significance, it facilitates these impacts during later development stages. By this time, is often too late to develop meaningful and positive outcomes. In my opinion, subdivision has comparable long-term ramifications for land containing significant heritage assets. <u>JPG Comment</u> Due to the significance of the site from a heritage point of view, as explained by an experienced archaeological consultant who has worked on this project for many years, the applicant should be asked to provide the required Heritage Assessment documentation as part of the development application process to satisfy this clause. In addition, should Council support the application and provide development conditions of consent, then like all of JPGs other approved subdivisions, we would expect Council to impose a Section 90 condition pursuant to the National Parks and Wildlife Act and that this permit be provided to Council prior to construction activities occurring.	

Hawkesbury LEP Clause 6.7 – Essential Services Under this Clause, Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the proposed development are available or that adequate arrangements have been made to make them available when required: (a) the supply of water, (b) the supply of electricity, (c) the disposal and management of sewage, (d) Stormwater drainage of on-site conversation, (e) Suitable road access. <u>Electrical Supply</u> The applicant also commented that electricity facilities are also available to the site. This statement is not entirely accurate. As Council's Mayor General Manager and Director of Planning are aware, in 2010 JPG fully funded the installation of underground 11kv electrical supply connecting Pitt Town to the Windsor substation. This installation, costing in excess of $3.5 million, was the first of two electrical feeders required by the service authority prior to JPG continuing developing their land holdings at Pitt Town. It is JPG's understanding that, because JPG fully funded this infrastructure, the electrical service authority has allocated all of its available capacity of JPG controlled land interests only. Anyone else who developed in Pitt Town, including the applicant of this DA, would trigger the need to supply the second electrical feeder.	This is a modification dealing with a revised lot configuration. No additional lot's are proposed therefore the lots will use the essential services proposed in the original Part 3A approval. <u>Electrical Supply</u> It is nonsense to suggest that because JPG funded some of the required infrastructure to Pitt Town that the benefits of it only go to JPG controlled land interests. It is factually incorrect. Even if correct the fact is that electricity is available even if it requires further infrastructure provision. This is a matter for assessment either at the time of subdivision application to Council or at the time of Council's imposition of normal conditions of consent relating to service provision.

Therefore, until the second feeder is installed (by others) the twelve lots being proposed under this subject subdivision DA (and any future DA's for non-JPG controlled land in the Pitt Town catchment) has no electrical supply and therefore on this basis, Council would be prevented from issuing Development Consent as Clause 6.7(b) cannot be satisfied. <u>Sewer Supply</u> The applicant has commented that each housing lot is "to be connected to the Pitt Town Sewerage Scheme". As Council fully understands, development in Pitt Town can no longer be connected to the Council Section 64 Pitt Town Sewerage Scheme due to capacity issues at McGraths Hill. Therefore a broad statement such as that provided by the applicant should not be considered acceptable. The only feasible option for new development in Pitt Town is to connect the Pitt Town Water Factory infrastructure (which is different to the Pitt Town Sewerage Scheme). This infrastructure was fully funded by JPG but is privately run and operated under the controls of the Water Industry Competition Act 2006. At the time of writing this submission, the applicant has not made representations to the Pitt Town Water Factory Company about connecting this development to their sewer infrastructure. This vies is supported by a lack of commentary in the Statement of Environmental Effects and an apparent lack of understanding of how Pitt Town is serviced. Prior to Council determining subdivision Development Applications for JPG controlled land, Council required JPG to secure written evidence from the Pitt Town Water Factory Company to confirm that they would be supplying sewer services	<u>Sewer Supply</u> Sewer can be supplied to the land in one of three options. 1. Connection to the Pitt Town Water Factory infrastructure which was set up to cater for the number of lots proposed within the Part 3A approval. As this modification application proposed no additional lots it is a reasonable assumption that the Water Factory will provide sewer to any subdivision of Lot 12 regardless of the lot layout but providing it proposes no additional lots than the original Masterplan lot count. 2. Connection to the Council controlled McGraths Hill sewer plant. This may, or may not be, problematic but again is an option that can be pursued. 3. Provide on-site effluent disposal systems for each lot or provide a "package" treatment system for all lots within Lot 12 to connect to. In an original proposal to Council the owner of Lot 12 wanted to have individual on-site effluent disposal. The lots are each of a size where this can be done and which would meet Council's normal requirements of a minimum allotment size of 4000m2. There is no evident statutory reason why this could not be done. It is not strictly true that Council require evidence of infrastructure provision at the time of a development application. Providing that reasonable evidence exists of available options then Council can either require further assessment to be done with an application or can condition an approval that such be provided prior to release of subdivision plans.

to JPG controlled land. To satisfy the Essential Services clause from the LEP, Council are not able to issue development consent until the applicant provides similar evidence from the Water Factory Company to demonstrate that they too will be serviced with essential sewer infrastructure.	
<u>Stormwater Drainage</u> Apart from a broad brush statement that, "some detention may be required however would be subject to actual dwelling design on the lots" the applicant, in our opinion, has not provided sufficient information to be able to assess the impacts of stormwater drainage and to back up the validity of this statement. It is unclear as t how the site will drain – does it discharge to adjoining land or, discharge directly to Hawkesbury River? What are the ground conditions like for infiltration? Does the infiltration cause downstream affects to neighbours? Are there appropriate water quality controls in place? Development consent for subdivision of the 12 proposed lots are sought and appropriate stormwater controls need to be assessed as part of this application, pursuant to Clause 6.7 – not diverted to future house design assessments. Based on the scant information supplied, it is our opinion that Council would not have enough information from the applicant to be fully satisfied that this Clause 6.7(d) can be met.	<u>Stormwater Drainage</u> JPG's comments are inappropriate. The fact is that detailed stormwater drainage provisions have not been undertaken or assessed for the Masterplan lot layout in the first instance. Even if a subdivision was proposed strictly in accordance with the existing Masterplan, stormwater drainage would need to be calculated and designed. This is another reason why the Part 3A approval requires subdivision to be generally consistent with the Masterplan which is indicative only. The rigidity which JPG is suggesting is not workable. If Council requires detailed drainage provisions then it can do so at subdivision application stage. It is not required for this modification application. However, this is unlikely to be a significant issue as Lot 12 is virtually flat and the soils on the site are sandy over bank deposits from the adjacent Hawkesbury River. The sandy nature of the area to the north of Hall St is evidenced by previous unsuccessful sand mining proposals. A flat site with sandy soils means that there is little if any runoff during storm events as infiltration is very high.
<u>On-site Conservation</u> Refer commentary in this submission under the Heading of Clause 5.10 Heritage Conservation.	<u>On-site Conservation</u> See response to comment Clause 5.10 – Heritage Conservation above
<u>Suitable Road Access</u> Whilst we do not dispute that the proposed lots have direct road	<u>Suitable Road Access</u>

access, we do dispute the fact that JPG were required to (for engineering purposes which Council approved in CC0371/0) fully construct both sides of Hawkesbury Street – which benefits this landowner directly – without having been compensated for it. The requirement to construct both sides of Hawkesbury Street was over and above our consent condition requirements but had to be done to satisfy Council. Council's Mayor, General Manager, Director of Planning and subdivision Engineer are all aware of the issue where we have applied for compensation in early 2012. Whilst Council have agreed that the work had to be done, and that is directly benefits an adjoining landowner (being the applicant of this DA), the matter of compensation is still outstanding. As advised in out letter to Council's General Manager on 7 March 2012, "JPG does not own, nor do we have under our control Lot 12, DP 1021340 which benefits from this full road construction. The total amount spent by JPG on completing both sides of Hawkesbury Street for the Riverlands (Cleary Stage 1). The remaining 50% of this cost relates to the other half of Hawkesbury Street res7ulting from engineering requirements in order for Hawkesbury6 Street to function properly. Accordingly, JPG has incurred and contributed an additional $359,077 and requests that this amount be credited….."	The construction of Hawkesbury Street is irrelevant to this modification application. Any claim for construction costs is a matter for Council and JPG.
It's not fair that this applicant continues to get a "free ride" from JPG in everything we have done. We continue to seek compensation for this past work that directly benefits this adjoining development.	This is a result of normal development procedure. Sometimes landowners benefit and sometimes they don't. It is not a matter of fairness. JPG didn't have to develop land at Pitt Town but as they chose to do so they were required to provide certain infrastructure. It is nonsense to suggest that infrastructure provision can only relate to JPG controlled land.

Hawkesbury LEP Clause 6.8 – Arrangements for Designated State Public Infrastructure The following commentary has been extracted from the applicants Statement of Environmental Effects (page 21): This clause normally requires that subdivision consent shall not be granted unless the Director-General has certified in writing to the Council that satisfactory arrangements have been made to contribute to the provision of regional transport infrastructure and se4vices in relation to the land. However, Hawkesbury Council's S94 Contributions Plan 2008 provides the following in relation to certain lands at Pitt Town including the subject land: "…the commitments made under the voluntary planning agreement are deemed to represent satisfactory arrangements under clause 55…" Therefore there is no requirement to refer the proposal to the Director-General as any contributions payable etc is provided within the current S94 plan. We strenuously object to this statement. The following observations are made: 1) The subject site has a density control notation on the Pitt Town Subdivision and Designated State Public Infrastructure Map. Therefore, this clause applies; 2) The proposal creates a subdivision that exceeds the density controls – therefore this clause still applies;	The assertion that the owner of Lot 12 (referred to here as the applicant) has not contributed to any section 94 contributions in the adjacent comment is incorrect and strenuously rejected. The owner of Lot 12 (the applicant) was also the previous owner of Lot's 14 and 15 in the Cleary Precinct of the Pitt Town subdivision. The applicant sold lot's 14 and 15 to JPG at a substantial discount with the understanding that this discount was compensation to JPG for costs associated with acquiring the Part 3A re-zoning approval including a contribution to any section 94 payments and a profit margin for JPG. This means that, although the applicants name does not appear in the Hawkesbury Section 94 Contributions Plan, the applicant has in effect contributed to the Section 94 Plan indirectly by selling lot's 14 and 15 to JPG at a substantial discount. This is reflected in the inclusion of Lot 12 DP 1021340 and Lot 13 DP 1021340 in the Hawkesbury Section 94 Contributions Plan. As pointed out by JPG in the adjacent comment the Hawkesbury Section 94 Contributions Plan includes Lot 12 DP 1021340 and Lot 13 DP 1021340. The excerpt from the Section 94 Plan is set out again below. *The voluntary planning agreement will be taken to constitute the making of satisfactory arrangements for regional infrastructure under clause 55 for land subject of the agreement and for the following lots for which further regional infrastructure contributions will not be sought:* *Lot 11, DP 1021340 [owned by Vermont Quay's P/L – a JPG company party to the JPG VPA]* *Lot 12, DP 1021340 [NOT owned by JPG and NOT a party to the JPG VPA]* *Lot 13, DP 1021340 [NOT owned by JPG and NOT and NOT a party to the JPG VPA]*

3) The proposal is not within land noted as special contributions area (as defined under Section 93C of the Act) – therefore this clause still applies; 4) The inference that no requirement to refer the proposal to the Director-General because of the commentary in the Section 94 Plan is fanciful. Whether or not the land is caught up in the Section 94 Plan has no relevance because this LEP Clause makes no specific reference to the Hawkesbury Section 94 Contribu7tions Plan; 5) The Clause is clear in its interpretation – Council **MUST**, **prior to** granting any consent for the subject land, obtain written certification from the Director-General in regard to arrangements for contributions to State Infrastructure; The Director-General ,ay deem it appropriate to issue satisfactory arrangements certification on the basis of the commentary within the Section 94 Contributions Plan but the separate referral, consideration and written certification must be secured specific to this subdivision application, before consent is issued, to satisfy Clause 6.8. Notwithstanding the above comment, JPG would object in the strongest possible terms to the Director-General certification being issued on the basis of the commentary within the section 94 Contributions Plan as explained below. <u>Clause 7A.3 of Hawkesbury Section 94 Contributions Plan – Satisfactory Arrangements for the Provision of Regional Transport Infrastructure</u> The following is a direct extract from Clause 7A.3 – relevant	*Lot 14, DP 1021340 [owned by Vermont Quay's P/L – a PJG company party to the JPG VPA]* *Lot 15, DP 1021340 [owned by Vermont Quay's P/L – a JPG VPA]* *Lot 18, DP 1021340 [owned by Vermont Quay's P/L – a JPG company party to the VPA]* *Accordingly, the commitments made under the voluntary planning agreement are deemed to represent satisfactory arrangements under clause 55 for the development of the Bona Vista, Fernadell, **Blighton, Cleary** and Thornton precincts as shown in the precinct plan at Appendix 1A.* *Where no voluntary planning agreement or other arrangement has been made by a developer for the provision of the infrastructure listed above then the developer will be required to additional contributions toward regional infrastructure under this Plan (that is, for development of land within the Central, Cattai and Thornton East Precinct as shown in the precinct map at Appendix 1A).* The assertion in the adjacent JPG comment that the Hawkesbury Section 94 Contributions Plan is erroneous is incorrect and strenuously rejected. The Hawkesbury Section 94 Contributions Plan is a binding agreement that should stand and it should be recognised that other landholders including the applicant have contributed indirectly through the sale of land to JPG at substantial discount. **The fact remains that there is an approved and binding Section 94 Contributions Plan that covers Lot 12 DP 1021340 and Lot 13 DP 1021340**. Any proposed changes to the Hawkesbury Section 94 Contributions Plan should be done in consultation with all landholders whose landholdings are listed therein. Because of unrealised business aspirations/outcomes JPG now seeks to have a "second bite of the cherry" by requesting that the applicant compensates JPG again with direct section 94 payments. The assertion that the applicant has had a" free

sections in bold text: The "additional contributions" discussed in Section A.2 stem from requirements contained in Hawkesbury Local Environmental Plan 1989. Clause 55 of that plan requires the Director-General of the Department of Planning to certify that satisfactory arrangements have been made for the provision of regional transport infrastructure prior to the granting of development consent for initial subdivision of land in Catchment 5. Certain lands in Catchment 5 are the subject of a voluntary planning agreement entered into under section 93F of the Environmental Planning and Assessment Act 1979. The parties to the agreement are the **Minister for Planning, Johnson Property Group Pty Ltd, Bona Vista Properties Pty Ltd, Fernadell Properties Pty Ltd and Vermont Quays Pty Ltd** [all JPG controlled companies]. Lands subject to the planning agreement are as follows: Lot 14,DP 865977 Lot 132,DP 1025876 Lot 101,DP 1113833(previously Lot 1, DP 133026) Lot 16, DP 1021340 Lot 17, DP 1021340 Lot 2, DP 76375 The agreement requires contributions to be made by the	ride" or has attempted to "fly under the radar" is incorrect and offensive. When all is said and done the reality is that this is a matter for Council in determining a development application for subdivision or, if deemed to be necessary, for the DoPI to assess in this modification application. However we submit that the proposed modification is so inconsequential in the overall scheme of the Pitt Town Masterplan, and does not propose any additional allotments. There is no requirement or basis for revisiting any contributions.

developer parties toward the following infrastructure: Acquisition of additional land adjoining existing school site. Contribution toward school construction costs Upgrade of 5 intersections Upgrade Pitt Town Road Shoulders Acquisition of conservation lands The voluntary planning agreement will be taken to constitute the making of satisfactory arrangements for regional infrastructure under clause 55 for land subject of the agreement and for the following lots for which further regional infrastructure contributions will not be sought: Lot 11, DP 1021340 [owned by Vermont Quay's P/L – a JPG company party to the JPG VPA] Lot 12, DP 1021340 [NOT owned by JPG and NOT a party to the JPG VPA] Lot 13, DP 1021340 [NOT owned by JPG and NOT and NOT a party to the JPG VPA] Lot 14, DP 1021340 [owned by Vermont Quay's P/L – a PJG company party to the JPG VPA] Lot 15, DP 1021340 [owned by Vermont Quay's P/L – a JPG VPA]	

Lot 18, DP 1021340 [owned by Vermont Quay's P/L – a JPG company party to the VPA] Accordingly, the commitments made under the voluntary planning agreement are deemed to represent satisfactory arrangements under clause 55 for the development of the Bona Vista, Fernadell, Blighton, Cleary and Thornton precincts as shown in the precinct plan at Appendix 1A. Where no voluntary planning agreement or other arrangement has been made by a developer for the provision of the infrastructure listed above then the developer will be required to additional contributions toward regional infrastructure under this Plan (that is, for development of land within the Central, Cattai and Thornton East Precinct as shown in the precinct map at Appendix 1A). <u>JPG Comments</u> 1) Lot 12, DP 1021340 and Lot 13, DP 1021340 (now known as Lot 13, DP 1144032) are NOT JPG controlled lots. They are owned independent of JPG. Copies of the registered Certificates of Title for Lot 12 and Lot 13 are attached for reference: 2) The Planning Agreement referred to in this Clause of the Section 94 Plan is an agreement between the Minister for Planning and JPG controlled entities only. Despite the inference in the Section 94 Plan it does not constitute an agreement with any third party (including the adjoining landowner): 3) The section 94 Plan mentions that Lots 12 and 13 are deemed to represent satisfactory arrangements by	

virtue of the JPG Planning Agreement – this is error and needs to be corrected before determination of this adjoining subdivision application to ensure that appropriate State contributions are collected from this applicant; 4) This adjoining landowner is attempting to get a "free ride" and by the wording of their commentary in their submission, trying to go under the radar and make JPG pay their state levy so they pay nothing. We have paid enough over the years to get the applicants land rezoned and Part 3A approved (with no conversation) – this landowner is independent of JPG and should therefore pay their own way for once. We refuse to pay for them any longer and, importantly, refuse to have them associated with a Planning Agreement that applies to JPG land interests only; 5) Further, a. In the absence of a VPA applying to this land (executed by this applicant and the Minister for Planning), and b. In the absence of a State Infrastructure Contribution applying at Pitt Town, and c. The imminent issue of a Section 94 Ministerial Order as mentioned below this applicant would need to negotiate their own Voluntary Planning Agreement with the State Government and have that executed prior to the Director-General issuing a letter of Satisfactory Arrangements to satisfy Hawkesbury LEP 2012 Clause 6.8. We have written to the Department of Planning separately to	

bring this matter to their attention. <u>Ministerial Section 94 Order re State Infrastructure Contributions</u> As Council's Director of Planning is aware, the Minister for Planning is scheduled to issue a Ministerial Order (imminently) for Council to no longer collect state infrastructure contributions under the Section 94 plan. Knowing this, would expect that Council and the State Government would want ensure that appropriate contributions are collected for State Infrastructure by this applicant. As mentioned in the proceeding section, in the absence of a VPA applying to this land (executed by this applicant and the Minister for Planning), and in the absence of a State Infrastructure Contribution applying at Pitt Town – this applicant would need to negotiate their own Voluntary Planning Agreement with the State Government and have that executed prior to the Director-General issuing a letter of Satisfactory Arrangements to satisfy LEP Clause 6.8. We have written to the Department of Planning separately to bring this matter to their attention. As part of this submission we have asked the Department of Planning and Minister to consider, as part of this imminent Ministerial Order, deleting reference to Lots 12 and 13 from this Clause 7A.3.	
Clause 6.9 – Additional requirements for subdividing in Pitt Town Heritage Area Part 2 of this Clause in the LEP is quite specific in what Council MUST to consider prior to granting subdivision consent must	See response to comment Clause 5.10 – Heritage Conservation above

have: a) Considered a heritage impact statement that explains how the development will affect the conservation of the site and any relic or Aboriginal object known or reasonably likely to be located at the site, and b) In relation to any potential place of Aboriginal heritage significance-notified the local Aboriginal communities (in such a way as it thinks appropriate) of the development application and taken into consideration any comments received in response within 21 days after the notice was sent. The applicant has failed to supply Council with a Heritage impact Statement specific to this application. The applicant commented that a heritage impact statement is not considered to be required given the previous heritage studies carried out. These previous heritage studies, prepared and fully funded by JPG, were prepared as part of the original rezoning of Hawkesbury LEP 1989 (Amendment 145) and also assessed by the State Government with respect to the State Significant Site Rezoning and Part 3A Environmental Assessment in 2008. These reports document the heritage significance of the land from both a European and an Aboriginal perspective and conclude that the land is high in European and Aboriginal significance. However, despite these previous assessments, Clause 6.9 is very specific in its requirement – Council MUST consider a heritage impact statement that explains how the development will affect the conservation of the site and any relic or Aboriginal object known or reasonably likely to be located at the site. JPG also draws Council and the applicant's attention to the Part 3A Statement of Commitments that outline certain heritage	

requirements prior to determination of any development applications within the Blighton precinct – one of which includes the preparation of a Heritage Interpretation Plan (which is separate to a Heritage Impact Statement). The scant response from the applicant in regard to this Clause is nonsense and should be given no weight. Council should insist that the applicant provide a Heritage Impact Statement and that, because of the importance, this Heritage Impact Statement should be made available for public comment during this re-notification period and, particularly, it should be referred to the Aboriginal communities for comment as to satisfy Clause 6.9 2(b). Being an adjoining neighbour, with an interest in heritage (after having spent in excess of $2.5million on heritage conservation in Pitt Town alone), we welcome the opportunity to review the applicants Heritage Interpretation Plan and separate Heritage Impact Statement. We take the opportunity to also draw attention to the Notation in Clause 6.9, being, Before the development is carried out, it may also be necessary to obtain an excavation permit under the Heritage Act 1977 and consent or permission under the National Parks and Wildlife Act 1974. Due to the expected location of former Governor Bligh's farm on this existing Lot 12, and also the underlying Aboriginal importance of the land, it is expected that permits under both the Heritage Act 1977 and also Section 90 of the National Parks and Wildlife Act 1974 would need to be issued prior to the commencing this subdivision. Similar to the conditions imposed on JPG controlled projects by Council in relation to these separate permits, it would be expected that Council will place similar conditions of consent on this	

subdivision requiring permits to be issued prior to any subdivision works	
Pitt Town Development Control Plan The Statement of Environmental Effects has made no specific assessment of this proposal against the provisions of the Pitt Town Chapter of the Development Control Plan (Part E Chapter 4). Whilst it has made an assessment against the Subdivision Chapter of the comprehensive DCP, this Chapter is not really relevant. An assessment of the proposal against this specific chapter of the DCP should be provided to ensure that is complies with the DCP controls. As the applicant is proposing modification to the entire Blighton precinct Part 3A layout, they should be asked to give consideration to the impact of their revised layout on the adjoining land (Lot 11) with respect to building setback requirements and lot controls.	The provisions of Council's Development Control Plan will be assessed in any future development application to Council for subdivision. If the modification application is approved then at a future time Council will alter their LEP and DCP to be consistent with the modified Part 3A approval that may be granted. This has been discussed with Council who are not concerned as there is no urgency to alter the LEP or DCP as a subdivision application can still be approved resulting from an approved Part 3A modification application (as now applied for). What is required is to show that each lot (Lot 11 and 12) can be developed independently with no adverse impact from one to the other. No additional lots are proposed and in fact each owner (including JPG) is greatly advantaged as they can develop independently.
Former Farming Activities Scattered throughout the land at Pitt Town are irrigation pipes for the former farming/orchard activities conducted on the land. Historically these irrigation pipes are made from asbestos material. JPG have gone to significant consultant and construction expenses in finding and safely discarding these old irrigation pipes on land that JPG have developed. Being a former orchard, It's with some high probability that these asbestos pipes will also exist on the subject land.	Given that the previous land use was farming it is possible that there could be buried asbestos pipes as part of the previous irrigation system. Investigations into the location and potential recovery of any pipes need to be carried out during any excavation activities on Lot 12. However, this modification proposes no excavation or land disturbance. It would therefore be prudent to include asbestos investigation conditions as part of any successful dwelling development applications.

There has been no geotechnical or contamination -assessment to determine if these pipes exist in the Blighton precinct and, if they do, commentary on consultation with independent contamination auditors to determine how they are to be safely disposed of.	
Proposed Lot 12 Public Reserve The Statement of Environmental Effects comments that "Each lot is equal to or greater than the requirements within the Lot Size Map". This statement is not incorrect. Proposed Lot 12 is within land that has a minimum lot size of 10ha on the Lot Size Map. Proposed Lot 12 is significantly less than 10ha in size. Whilst we don't object to Proposed Lot 12 being created because it is a residue lot, and a lot approved in the Part 3A Concept Plan, the fact remains that consideration to vary the development standard is required (pursuant to Clause 4.6 of Hawkesbury LEP 2012) and Director-General concurrence may be required. The application fails to address this matter at all. We note that Council, prior to determining DA0456/09 and DA0081/11, required JPG to secure a SEPP 1 concurrence from Department of Planning for residue lots being created less than the minimum lot size. Whilst we note that SEPP 1 no longer applies to land in which the Hawkesbury LEP applies, the principle of still giving due consideration to varying the development standard still applies and, for consistency, Council should insist that it be thoroughly addressed.	It is acknowledged that the area of the proposed Lot 12 is less than the minimum lot size on the Lot Size Map. The proposed Lot 12 was recommended in the original Part 3A approval and can be created using the appropriate planning instruments if desired. This matter has been discussed at length with Council who have expressed a preference for not establishing a Public Reserve due to the cost of establishment and ongoing maintenance. The river bank at this location is also erosive and unstable and presents an unnecessary public safety hazard should a Public Reserve be established. The applicant is therefore prepared to absorb the proposed Lot 12 into the proposed Lot 1 to resolve these issues. Linkages and access to proposed Public Reserve areas to the east of the proposed Lot 12 Public Reserve could be maintained if the proposed Lot 12 were to be absorbed into the proposed Lot 1. Access to the Public Reserve areas to the east could be gained via Hawkesbury St and/or the lower end of Hall St. Ultimately this should be a matter for Council to resolve as to whether they require the Public Reserve and if so how it should be provided. Public Reserve lots are not constrained by LEP minimum allotment provisions due to other legislation.

Public Domain The applicant has provided commentary pm [age 25 of the Statement of Environmental Effects stating that we are of the view that the Public Reserve should not be separate lot and should be included within proposed Lot 1. This is because if included within Lot 1 then the landowner will be able to maintain the site along with Lot 1. If not included than it is presumed that the land will in some way become into Council's ownership with the concomitant costs involved by Council for its maintenance. Additionally we understand that Council is not in a position to use or maintain of additional public use or maintain of additional public reserve in this vicinity. We suggest that, as stated, the Public Reserve be included within Lot 1 until such time as Council knows what it wants to do with the land. This could be covered by an appropriate condition of consent concerning later acquisition or dedication or, if it comes to pass that Council does not require the land, a formal indication by Council to this effect. The applicant has failed to recognise that this land is to be acquired by Council as outlined in the Section 94 Contributions Plan. Council should insist that is not be amalgamated as part of Lot 1 as suggested by the applicant as this provides an important recreational link. It is our opinion that Council should place a condition on the consent that requires the applicant to prepare a Vegetation Management Plan for Council approval prior to developing the land and that the applicant be required to conduct ongoing maintenance of this land and embellish this land prior to the acquisition.	See response to comment Proposed Lot 12 Public Reserve above

Comments submitted by Gwen Day	**Responses to Gwen Day**
I have given much thought and asked local residents about the project and the consensus that I have found is that "please, no more development should be approved in Pitt Town/Vermont area unless the amenities promised by the Johnson Group come to fruition.	We assume that Gwen day means the Johnson Property Group when she refers to the "Johnson Group"
I can see by the information provided by the Council that the development appears not to be part of the Johnson Group but the local opinions are that once the developers (whoever they might be) have sold their blocks it will be left up to the council and ultimately the ratepayers to provide the amenities for ratepayers that were promised by the developers. By amenities, I mean walking paths, bike paths and playgrounds for children.	The Proponent supports the view that amenities should be provided as soon as possible. However, the Proponent has no control over the timing for construction of amenities promised by the "Johnson Group".
The breakup of the land looks a bit distorted anyway. I think a better plan could have been provided by the consulting Surveyors with better access to the proposed blocks of land.	The lot layout for Lot 12 complies with all zoning requirements and is more similar to the lot layouts of the lots to the east of Lot 12.
I hope the Hawkesbury Council, who have the final say, looks unfavourably at the planned development.	