

Preferred Project Report

Sanctuary Villages

Submitted to
Department of Planning
On Hardie Holdings Pty Ltd

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This report has been prepared by: Stephanie Ballango

Signature

A handwritten signature in black ink, appearing to read 'Ballango', with a large loop at the end.

Date 23/01/09

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1.0 Introduction

The Sanctuary Villages Concept Plan and Project Application Environmental Assessment Report (EAR) was publicly exhibited for a period of 4 weeks between 3 September 2008 and 6 October 2008. A proposal to list the site as a State Significant Site and introduce new planning controls was exhibited at the same time. In response to the public exhibition, the Department of Planning has advised that it has received 149 submissions.

The proponent, Hardie Holdings Pty Ltd and its specialist consultant team have reviewed and considered the submissions and, in accordance with clause 75H(6) of the *Environmental Planning and Assessment Act 1979*, this Preferred Project Report sets out Hardie Holdings Pty Ltd's response to the issues raised, provides new traffic and heritage management plans, updates the existing planning, environmental and infrastructure studies, and provides a revised Statement of Commitments.

Background

In January 2006, Hardie Holdings Pty Ltd submitted a request to the Minister for Planning that the Sanctuary Villages proposal be considered as a State Significant Site and Part 3A Major Project. The initial proposal was to develop the site for mixed uses comprising:

- An expansion of the existing Paxton Village, including 295 residential lots, approximately 4,000m² of commercial / retail space, a 100 room hotel, and 24 tourist lots;
- An expansion of the existing Millfield Village, including 396 residential allotments;
- Construction of three new precincts, being:
 - "Vineyard Hamlet" accommodating 471 residential lots and 7,000m² of commercial space;
 - "Woodland Hamlet" accommodating 227 residential lots and 5,400m² of commercial space; and
 - Lagoon Tourism accommodating 193 residential tourist lots upon completion and supporting cafes, food facilities, an education centre and short stay hotel facilities.

Following discussions with DoP, it was agreed that the proposal be deferred and reviewed pending the finalisation of the Lower Hunter Regional Strategy. This review involved detailed discussions with the DoP, the then Department of Environment and Conservation (DEC) and the community and resulted in Hardie Holdings Pty Ltd significantly revising the project. Since then, the proposed urban footprint has been reduced in size and an environmental offset strategy has been developed that identifies significant areas of high conservation value that will be dedicated to the NSW Government upon rezoning of the land. A Memorandum of Understanding to this effect was agreed between Hardie Holdings Pty Ltd and the Government prior to the release of the final Lower Hunter Regional Strategy in October 2006.

On 22 December 2006, the NSW Government entered into a Deed of Agreement with Hardie Holdings Pty Ltd for the implementation of an 'Environmental Land Offset Scheme' to complement and support the Lower Hunter Regional Strategy (DoP) and the Lower Hunter Regional Conservation Plan (DEC).

The Environmental Land Offset Scheme aims to:

- increase public ownership of certain land in the Lower Hunter Region for dedication as a conservation reserve; and
- recognise the development potential of certain other land in the Lower Hunter Region.

To implement the Offset Scheme, the Minister for Planning has agreed in the Deed of Agreement to:

“use reasonable endeavours to allow the Landholder to achieve development that is consistent with the Development Potential of Schedule 1 Land by either:

- (a) rezoning the land through an amendment to State Environmental Planning Policy 2005 (Major Projects) and approval of any concept plan submitted under Part 3A of the EP&A Act; and/or*
- (b) facilitating the Rezoning of the land through the gazettal of a Local Environmental Plan prepared by the relevant local government authority and made by the Minister for Planning and approval of any concept plan submitted under Part 3A of the EP&A Act; and /or*
- (c) any other means that achieves or encourages more intensive use of the land in accordance with the Lower Hunter Regional Strategy and the Lower Hunter Regional Conservation Plan.”*

Under the terms of the Deed, the development potential of the Sanctuary Villages is for residential development covering of around 78 hectares to achieve 700 residential dwellings.

Once rezoning of the land to achieve the above development potential is gazetted, environmental offsets including 533 hectares of land will be dedicated to the Government for conservation purposes upon rezoning of those lands and in accordance with the terms of the Deed of Agreement. A copy of the Deed of Agreement is included at **Appendix A**. The Deed (signed by DoP, DECC and the proponent) includes an aerial map identifying the 533ha of land that is to be dedicated as Conservation Lands.

Submissions (Section 2.0 and Appendices A & B)

The following breakdown of submissions were received from Cessnock City Council, State Government agencies and authorities and the general public in response to the public exhibition of the Concept Plan, Project Application and State Significant Site Study documents:

- State Authorities and agencies 10
- Cessnock City Council 1
- Community 141

(individuals and interest groups, many of which included ‘form’ letters)

The agency and Council’s submissions required clarification on a number of matters including traffic and transport assumptions, infrastructure provision and funding, buffer and interface impacts between the proposed development and existing development and conservation offset lands, future mining activities, and the environmental offset strategy.

Cessnock City Council’s submission focused on issues regarding the future zoning and development controls, provision and funding of community infrastructure, traffic management and appropriate road works, provision and quality of public open space, housing affordability, heritage, risk of subsidence, flooding impacts, servicing and utilities provision, odour buffer distances associated with the nearby wastewater treatment works, and bushfire impacts and management.

Public submissions raised a variety of issues including traffic generation and management, existing infrastructure capacity and future provision, biodiversity impacts and conservation offsets, village amenity, odour buffer impacts, heritage, employment and flooding.

Overall the key issues raised in the submissions have been grouped in the following categories:

- Biodiversity and conservation off-sets;
- Traffic and transportation;
- Infrastructure provision and funding;
- Mine subsidence and contaminated land;
- Odour buffer distances;
- Heritage conservation;
- Flooding and riparian zones;
- Bushfire management;
- Residential amenity; and
- Rural subdivision

Hardie Holdings Pty Ltd's response to these key issues is provided at Section 2 of this Report. A detailed summary of issues raised by State Government agencies, and Cessnock City Council together with Hardie Holdings response, is at **Appendix B**.

New and updated studies (Section 2.0)

During public exhibition of the EAR, Hardie Holdings Pty Ltd and its consultant team facilitated the second of the three meetings with the community reference group established by the former Minister for Planning. At that meeting, the community called for further investigations to be undertaken to determine the potential traffic impacts to Ellalong and the proposed measures that will be implemented to protect the existing heritage items at Paxton. Several agency and community submissions reiterated these requests, in addition to identifying other studies / investigations that needed to be prepared.

In response to these requests, the traffic study prepared by Parsons Brinckerhoff has been revised to incorporate the most recent traffic data available and consider the impacts on the village of Ellalong. ERA Heritage, Urban Design and Planning has also been commissioned to prepare a heritage management plan to guide the management of the former mine structures at Paxton until an appropriate future use is determined for them.

Both heritage and traffic reports are summarised in Section 2 and are attached in full at **Appendix C** and **Appendix D** respectively.

Additional Levies

As part of the Preferred Project Report, the proponent is willing to commit to an additional \$8,000.00/per lot for the delivery of additional infrastructure associated with the demand generated by the new development. This levy will be in addition to the Section 94 Contributions payable to Cessnock Council within the Statement of Commitments.

For Stage 1 (200 lots), which forms the Project Application (PA), this will provide an additional \$1.6 million in levies, which can be used to cover contributions to regional roads, contributions to local roads, the future provision of bus services (if a nexus is determined), and contributions to local public open space. These levies would provide a generic pool of funds towards providing additional local infrastructure with concurrent regional and local benefits.

Specifically it would be used to cover the roundabout intersection upgrade of Middle - Millfield and Congewai Roads, Paxton (estimate construction cost of \$735,000.00). A detailed cost estimate of this upgrade is provided at **Appendix E**.

In light of the local contributions payable under Cessnock City Council's existing Section 94 plan (\$3,940/lot), the additional levy of \$8000/lot (overall representing an additional \$5.6 million dollars offered by the proponent), and a further service agreement being entered into with Hunter Water, it is not considered that a Voluntary Planning Agreement (VPA) is necessary or warranted in addition to these arrangements.

We also note that in the NSW Government's recent mini-budget, the Government announced its intentions to reduce development levies, and in particular has abolished levies for bus subsidies, to encourage the release of affordable housing packages. In light of this policy development, the proponent has agreed to redirect the monies requested to be contributed towards bus levies to other local and regional infrastructure over the life of the project. This initiative and the offer from the proponent to voluntarily provide an \$8,000 per lot community and infrastructure contribution is more than reasonable.

Revised Statement of Commitments (Section 3.0)

In response to the issues raised in submissions, the draft Statement of Commitments has been revised to clarify and strengthen future planning and management actions. The revised Statement of Commitments is in Section 3.0 of this report.

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2.0 Response to Key Issues

This section provides a summary of the key issues raised in the submissions and a general response to those issues. Responses to the issues raised in the submissions are presented in table format in **Appendix B**.

The key issues raised in submissions are as follows:

- Biodiversity and conservation offsets;
- Traffic and transportation;
- Infrastructure provision and funding;
- Mine subsidence and contaminated land;
- Odour buffer distances;
- Heritage conservation;
- Flooding and riparian zones;
- Bushfire management;
- Residential amenity;
- Land use and zoning; and
- Rural and residential subdivision.

2.1 Biodiversity and Conservation Offsets

2.1.1 Conservation Off-Set Areas

Issue – Extent of proposed conservation offset areas

The Department of Environment and Climate Change (DECC) has advised that portions of the conservation offset areas west of Congewai Road (and depicted in Figure 1) are unsuitable for transfer to the NSW Conservation Reserve System and should be retained as local open space. DECC's position is on the basis that:

- the configuration of land will result in narrow linear riparian corridors which will be susceptible to edge effects;
- the land exhibits limited ecological value;
- the EAR proposes services, infrastructure, bicycle paths and viewing platforms within this land which will lead to further reduction of biodiversity values and ecological integrity;
- the proposed rural subdivision will result in multiple rural allotments adjoining these lands without the provision of perimeter roads buffering the conservation lands from development.

Local community groups including Congewai Catchment Incorporated, Congewai Valley Landcare Incorporated and Ellalong Residents Wetlands Protection Group Incorporated also requested reconfiguration of the conservation lands to exclude the gully between Millfield and Paxton from the conservation lands in exchange for transfer of the following areas to DECC:

- the "primary" wildlife corridor (between the causeway at Congewai Road and Hunter Water's Wastewater Treatment Works (WTW) property boundary) at a width of at least 100 metres;

- land west of Congewai Creek; and
- the wildlife corridor located between WTW boundary and Hayes Road in the south west.

However, the above two positions are clearly in conflict, with the Congewai Catchment authority requesting the transfer of lands that DECC considers unsuitable for transfer to the NSW Conservation Reserve System (i.e. land west of Congewai Creek). The community representatives serving on the Community Reference Panel placed a high importance on the environmental values of the Congewai Creek.

Response

The Sanctuary Villages site is identified as an urban release area in the Lower Hunter Regional Strategy (LHRS). The Strategy and the Deed of Agreement entered into between Hardie Holdings Pty Ltd and the State Government provides for the site to be developed in a responsible manner that allows for up to 700 residential dwellings and the dedication of 533 hectares of conservation lands to the State Government.

Hardie Holdings Pty Ltd is committed to fulfilling the objectives and requirements of the Deed. Accordingly, the conservation lands identified in the exhibited EAR were located to be entirely consistent with scope and extent of conservation lands as mapped in both the LHRS and the Deed (Figure 1).

Modifications to the proposed conservation areas as suggested by DECC are not supported by Hardie Holdings Pty Ltd and the community groups and do not warrant a redesign of boundaries. DECC's suggestion to modify the project to exclude land west of Congewai Road from the conservation offset lands would result in an overall reduction of 93.11 ha at Sanctuary Villages, from 533 ha to 439.89 ha. Hardie Holdings Pty Ltd considers that a 93.11 ha reduction in conservation lands (or the equivalent of 20% of the total conservation lands) is inconsistent with the objectives of the LHRS and Deed.

We request the Department of Planning to insist that DECC revise its submission and request DECC to honour its commitments.

In terms of the community group's request to exclude the gully between Millfield and Paxton we note that this land contains a watercourse, is flood prone land and provides a riparian corridor. This land is therefore not developable and should be kept within the agreed conservation lands to be transferred.

Inclusion of land west of Congewai Creek and the primary wildlife corridor (as identified by the local community groups) are partially outside the land captured by the LHRS, and the Deed and are not owned by Hardie Holdings Pty Ltd making transfer to the State Government difficult. Similarly, exclusion of the gully between Millfield and Paxton would be inconsistent with the Deed.

Alternatively, if DoP accepts DECC's position and wish to be in breach of the MOU and Deed of Agreement signed, then the proponent would be willing to accept the land being retained in Hardie Holdings Pty Ltd ownership subject to:

- the gully land being zoned E2 Environmental Conservation;
- no further studies of the land be required, in consideration of RPS Harper Somers O'Sullivan's extensive audit of the lands (refer to Section 2.1.2 and 2.4.2); and
- the proponent managing the land as they have been managing the land to date with no additional requirements imposed.

2.1.2 Impacts on Biodiversity

Issue – Future Management of Conservation Offset Lands

Submissions received from the Department of Environment and Climate Change (DECC) and individual members of the community raised concern that the EAR did not provide adequate details of the proposed future management of the conservation offset lands and the interface between those areas and the proposed urban areas.

DECC has also requested Hardie Holdings Pty Ltd arrange an independent site audit prior to transfer of the conservation lands as well as the preparation of conservation area management plans for local open space areas not transferred to the State Government.

Response

The Deed between Hardie Holdings and the NSW Government maps in detail the conservation areas proposed to be transferred to the DECC, which will take over responsibility for the future management of those lands (**Figure 1**). Whilst the Deed prescribes certain obligations placed upon Hardie Holdings Pty Ltd between execution of the Deed and transfer of the conservation off set lands, it does not require the preparation of any Plans of Management for the offset or local open space lands.

With regard to the interface between the conservation lands and the urban areas (including rural lots), the Sanctuary Villages Design Statement and Design Code (Appendix A of the exhibited EAR) includes principles and controls specifically related to minimising buffer and interface issues including provision of adequate dwelling setbacks, appropriate dwelling siting, and consideration of the character of the adjacent rural and conservation lands. To further supplement the Design Statement and Design Code, Hardie Holdings Pty Ltd has included a commitment to work with DECC in the preparation of its management plan for the conservation lands. In particular, Hardie Holdings will liaise with DECC in managing the interface between the development lands and the conservation lands

Issue – Assessment of ecological attributes of conservation lands

DECC has formed the view that the flora and fauna assessments undertaken by RPS Harpers Somers O'Sullivan do not adequately consider the impacts the development will have on biodiversity and particularly the implications of locating infrastructure such as stormwater detention facilities within conservation areas.

Response

This issue is addressed in Sections 7.3 and 9.8 of the EAR, and specifically within the four individual flora and fauna reports prepared by RPS Harper Somers O'Sullivan (HSO) for Sanctuary Villages (Appendix I). Further studies are not required due to the extensive studies undertaken by HSO previously, the fact that there has been no change in the existing situation on site, and therefore further studies will not add any value. All of the offset lands have been surveyed. DECC had conducted their own surveys when deeming the land had conservation values in 2005. In total 533 hectares are proposed to be dedicated to offset the development. These offsets had been agreed to by the DECC in the Deed of Agreement.

RPS Harper Somers O'Sullivan's reports collectively address the impacts of the Concept Plan proposal in relation to the Concept Plan, including consideration of ecological implications of the development (Section 6 of *Flora and Fauna Assessment for Rezoning for Sanctuary Villages*), consideration under the relevant legislation including the Environmental Planning and Biodiversity Conservation Act, and DECC's Draft Guidelines for Threatened Species Assessment for Part 3A Applications. All reports conclude that the proposed development, including potential location of infrastructure within the conservation areas, is unlikely to significantly impact on threatened species.

In fact, the transfer of 533 ha of high ecologically valuable land is considered a very positive ecological outcome post development.

Notwithstanding this, to further ensure the impacts on biodiversity are minimised, RPS Harper Somers O'Sullivan has recommended the following measures:

- The proposed conservation areas will be maintained and protected until formally dedicated to the Department of Environment and Climate Change. No clearing or disturbance will be undertaken within the proposed conservation areas during this time.
- Maintenance of existing habitat areas outside of the urban footprint, and particularly those that contain extant populations;
- Preparation and implementation of management strategies prior to construction to ensure potential sedimentation and nutrient increases to Ellalong Lagoon are prevented;
- Preparation and implementation of a site specific weed management plan to outline best removal practices for weeds, their habitat and appropriate disposal methods;
- Preparation of a feral animal control plan to outline management measures for pest species whilst not impacting native fauna;
- Regeneration works either side of Quorrobolong Creek in the north east corner of the site;
- Placement of restrictions on public access to the more sensitive portions of the conservation areas and the public to be encouraged to use those areas where tracks already exist;
- Preparation and implementation of a site wide plan of management (within the developable footprint) that incorporates the feral animal control plan and weed management plan and also addresses bushfire management and / or threat assessment, water quality run off, and the like.

Whilst the exhibited EAR generically committed Hardie Holdings Pty Ltd to undertaking the development in accordance with the EAR and supporting reports, the exhibited Statement of Commitment did not outline each specific recommendation above. The Statement of Commitments has now been revised to incorporate each individual recommendation.

2.2 Traffic and Transportation

2.2.1 Traffic Management

Issue – Existing Traffic Assumptions

Cessnock City Council and several community submissions questioned the assumptions upon which the exhibited traffic assessment has been prepared. Of particular concern are the alternate routes to the site including Millfield Road and Sandy Creek Road.

Community submissions and the Department of Planning (DoP) also raised that the EAR had not assessed the cumulative impact of the development on traffic, taking into consideration the approval of 400 other lots in Millfield.

DoP has also requested up to date traffic counts, details of improvements for Wollombi Road and an assessment of the impacts of the proposal on traffic signals on Wollombi Road.

Response

An updated Traffic Analysis has been conducted by Parsons Brinckerhoff and is included at **Appendix D**. Whilst an updated report has been commissioned to address the issues raised in submissions, there have been no major land releases in the area to affect the assumptions on which the assessment is based and therefore the existing numbers provided are current and relevant.

Notwithstanding this, the report assesses the impact of likely traffic generated by Sanctuary Villages on the village of Ellalong, as well as conducting a sensitivity analysis (i.e. hypothetical worst case scenario). This analysis concludes that under each scenario there will be no unreasonable traffic impacts on Ellalong or Sandy Creek Road.

With respect to the cumulative impact and consideration of the approval of 400 other lots in Millfield, it is noted that the proponent has undertaken a search of Cessnock Council's records and there is no record of such an approval. Notably, Cessnock Council did not raise this as an issue within their submission.

With respect to impact on Wollombi Road (including traffic signals), we note that the proposed Sanctuary Villages development constitutes 700 lots in a total of approximately 5,000 lots to be developed on the western side of Cessnock, pursuant to the Lower Hunter Regional Strategy.

Having regard for the likely regional impacts of the total volume of development under the Hunter Regional Strategy, it is appropriate that a regional traffic impact study be conducted. It is noted that Sanctuary Villages would generate less than 15% of the regional increase in traffic volumes. Hence, regional traffic measures proposed to accommodate Sanctuary Villages would likely be made redundant by other measures that will need to be implemented on a regional scale to accommodate all other developments.

Accordingly, it is suggested that a regional approach that involves all development on the western side of Cessnock is required.

To that end, with respect to appropriate developer contributions to fund improvements to Wollombi Road, the additional levies of \$8,000.00/lot outlined in the introduction to this report can be used to fund this infrastructure at the government's discretion (Refer Section 2.3 below).

2.2.2 Public Transport

Issue – Provision of Bus Services

The Ministry of Transport (MoT) is not convinced that public transport infrastructure and services have been adequately addressed by the EAR. Key concerns raised by MoT relate to the circuitous nature of the street network / layout, and dwellings being located outside the recommended 400m bus stop catchment. The Department has requested consideration of amendments to the subdivision design to allow for more efficient bus services. Likewise, MoT indicates that the staging of development should occur in a sequential fashion outward from Millfield Road to maximise the efficiency of future bus services. MoT has also recommended a monetary contribution be made towards the operation of local bus services. This matter is dealt with separately at Section 2.3.

Response

This matter is dealt with in Sections 5.3.5 and 7.4 of the EAR and Section 2.4 of Parsons Brinckerhoff's Traffic and Accessibility Assessment (Appendix J of the exhibited EAR). As outlined in those Sections, the local bus provider Rover Coaches, has indicated that the development will not provide the critical mass required to reroute bus services into the Paxton and Millfield expansions. Notwithstanding MoT's submission, Millfield and Paxton are not within an Outer Metropolitan Area, and therefore levels of service for this classification are not applicable and would be excessive. Notwithstanding this, Hardie Holdings Pty Ltd has ensured that the proposed road reserves are wide enough and the circulation pattern is efficient to accommodate future bus services when future stages come on board. Refer to Concept Plan MP07_0172 (Circulation Plan: Millfield) which demonstrates a road network which can accommodate a bus circuit around the site. We also note that the land is relatively flat and it would be an easy walk to a bus stop.

In response to MoT's concerns regarding dwellings within the 400 metre bus stop catchment, it should be noted that under 13% of the 700 allotments (i.e. 89 lots) proposed will be located outside the buffer (All lots within Paxton are within 400m, refer **Figure 2** for Millfield, which shows 89 lots outside the 400m from existing or proposed bus routes). Notably, all of Stage 1 lots are within the 400 metre bus stop catchment and those outside the catchment are within the later stages of development when a critical mass may be present to revisit bus services being extended into the site. To that end, the Statements of Commitment have been revised to acknowledge that Hardie Holdings Pty Ltd will approach the MoT prior to Stages 3 and 4 to discuss the demand and feasibility for extending bus services into the development and the appropriate means for delivering any necessary bus related infrastructure such as bus stops, signage and the like.

With respect to the staging of lots, the applicant disputes the recommended sequencing as the lots the applicant proposes in Stage 1 adjoin and connect to the existing village anyway. In addition, a second access from Millfield Road would be dangerous due to the steep topography at this point and would not meet RTA guidelines for sight lines.

2.3 Infrastructure Provision and Funding

2.3.1 Regional Infrastructure Funding

Issue – Funding for regional infrastructure

The Roads and Traffic Authority (RTA) and MoT emphasised the need for clear arrangements for the provision and funding of regional infrastructure. The RTA has requested the duplication of Maitland Road between Cessnock and Kurri Kurri as either a monetary contribution or as works-in-kind (the preferred option) to the value of \$10,000 per allotment and has suggested Hardie Holdings Pty Ltd be required to enter into a Voluntary Planning Agreement to formalise this arrangement. MoT has requested Hardie Holdings Pty Ltd make a monetary contribution of \$1,875,000 (or \$2,678 per dwelling) towards on-going bus services, and provision of bus facilities.

Response

Section 7.13 of the EAR has considered the impacts of the development against the Department of Planning's Circular PS 07-018 and concluded that regional contributions above and beyond the local contributions, the dedication of 533 ha and fulfilment of other obligations under the Deed, and proposed works-in-kind (i.e. road improvements) are not warranted for the scale of development proposed. This view has been reinforced through consultation with the Department of Education and Training and NSW Health.

The RTA's request for upgrading of a 10.4 km stretch of Maitland Road between Cessnock and Kurri Kurri is not supported on the basis that there is no nexus for the Hardie Holdings Pty Ltd to fund that particular portion of Maitland Road. The revised traffic assessment undertaken by Parsons Brinckerhoff has shown that of all traffic travels originating within the Cessnock Statistical Area (which includes Millfield, Paxton and Ellalong, approximately 70% of trips are to the Cessnock Town Centre (i.e. before Kurri Kurri Road). Only 11% of traffic travels to Maitland, and 5% to Newcastle and Lake Macquarie. Of these percentages, only a small part would be attributed to further traffic generated from Sanctuary Villages.

Furthermore, the nexus between the development site and that particular stretch of road, some 13km to the east is questionable. Hardie Holdings Pty Ltd notes that the RTA has identified Bellbird as a comparable precedent for justifying the \$10,000 / lot contribution, however Bellbird should not be considered as a precedent due to the different scale, impacts and different context associated with Wollombi Road.

The NSW Government's recent mini-budget announcements regarding the removal of bus levies supercedes MoT's request for regional contributions. Hardie Holdings Pty Ltd is however willing to redirect the monies that it would have been required to contribute towards regional bus levies towards other local infrastructure. With regard to Stage 1 in particular, Hardie Holdings Pty Ltd proposes to redistribute the \$535,600 requested for bus levies (ie: \$2,678 / lot x 200 lots) towards:

- embellishment of an nominated parcel of land (subject to agreement by Cessnock City Council) for the purposes of local open space at either Paxton or Millfield; and
- landscaping along the Millfield Road buffer at Paxton.

The Statements of Commitment have been revised to this effect.

Despite the abolition of regional bus levies by the NSW Government, Hardie Holdings Pty Ltd still intends to approach the MoT prior to Stages 3 and 4 to discuss the demand and feasibility for extending bus services into the development (see Statements of Commitment). At that time, the appropriate means for delivering any necessary bus related infrastructure such as bus stops, signage and the like will be discussed with MoT.

As outlined above, the proponent is willing to commit to an additional \$8,000.00/per lot over and above Section 94 Contributions, as reflected in the revised Statement of Commitments. At Stage 1 this would be used to:

- upgrade Millfield Road in front of the Paxton Village as 'works in kind'. Whilst this represents a local road upgrade it will have regional benefits as its upgrade will allow it to better link into the regional road network; and
- upgrade the roundabout intersection of Middle - Millfield and Congewai Roads, Paxton as 'works in kind' (estimate construction cost of \$735,000.00). A detailed cost estimate of this upgrade is provided at **Appendix E**; and
- provision of a cash contribution to fund other agreed local infrastructure works, including additional local open space in Paxton or Millfield (subject to agreement being reached with Cessnock City Council) and the upgrading of the Millfield Road landscaped buffer at Paxton (refer to Section 2.9).

Both the road upgrades have significant community support. There is also a community expectation that these upgrades will be provided in Stage 1.

Subject to the Government's discretion, the Stage 2 levies (500 lots x \$8000 = \$4 million) can be used to fund more regional infrastructure including bus services and road upgrades when the demand for this infrastructure arises.

In summary, there is no intention or a need to enter into a VPA to address regional infrastructure on the basis that:

- the Environmental Planning and Assessment Act, 1979 (EP & A Act) states that a VPA is an agreement that is entirely at the discretion of the developer;
- there are alternative appropriate mechanisms to deliver the required infrastructure generated by the Sanctuary Villages development; and
- the EAR has demonstrated the development does not create any additional demand on regional infrastructure.

We also note that in the NSW Government's recent mini-budget, the Government announced its intentions to reduce development levies to encourage the release of affordable housing packages. In light of this policy development, the offer from the proponent to voluntarily provide an \$8,000 per lot community and infrastructure contribution is more than reasonable.

2.3.2 Local Infrastructure Funding

Issue – Funding for local infrastructure

Cessnock City Council and several community submissions raised concern that Council's existing Section 94 Contributions Plan would not provide adequate funding for the provision of local community infrastructure and facilities. Council has also raised concern that a draft VPA had not been submitted for the proposal.

Several community submissions also raised concern regarding the payment of Section 94 contributions as required by an earlier development consent over part of the site for the Paxton Tourist Development. The Department of Planning has also requested that the proponent provide an in principle commitment to delivering community infrastructure under Stage 2 and provide the open space/sporting field within Stages 2-4.

Response

Council's justification for an increased local contribution rates on the grounds that existing baseline facilities in the locality are inadequate is strongly refuted. The provisions of the EP & A Act require the levying of contributions in accordance with an adopted Section 94 Contributions Plan, and prohibit the levying of contributions retrospectively.

The Statement of Commitments commits Hardie Holdings Pty Ltd to the payment of Section 94 Contributions consistent with Cessnock City Council's existing Section 94 Plan. This approach is consistent with the approach adopted by developers (and agreed to by the Department of Planning/Minister) elsewhere for other Part 3A proposals for urban development, and is also consistent with the provisions of the EP & A Act which allow the Minister to levy Part 3A applications for Section 94 contributions. The total value of contributions proposed to be paid by Hardie Holdings Pty Ltd is \$2,758,000.00, equating to \$3,940 per lot. The proposed Section 94 contribution has risen since the original EAR was lodged. The increased figure of \$3,940 per lot reflects Cessnock Council's latest Section 94 Contributions Plan (September 2008).

In addition to the proposed range of works-in-kind and regional contributions (including dedication of conservation off-set lands and the park/community oval as open space in Stage 3), it is considered that the \$3,940 per lot levy is more than suffice to fund local infrastructure. As outlined above, a VPA is as its name suggests "voluntary", and in any case it is not considered necessary for this development.

Due to the staging of the works and the layout of the subdivision it is not possible to bring forward the construction of the sports oval at Paxton. The proponent will commit to providing the oval in Stage 3. However, the land allocated to the sports oval will indeed be open space in Stages 1 and 2. The area is currently a cleared open paddock. Also note the comments in Section 2.3.1 about the new Government policy on levies that arose from the 12 November 2008 mini-budget and Hardie Holdings Pty Ltd's intention to voluntarily redirect a proportion of the contributions (it is no longer required to pay under the NSW Government infrastructure reforms) to the provision of additional local open space in the Paxton-Millfield area.

The local community's concern regarding payment of Section 94 Contributions for the Paxton Tourist Development is not relevant to the assessment of the Sanctuary Villages Concept Plan and Project Application, and in any case it would be inappropriate for Hardie Holdings Pty Ltd to speculate how such funds may have been collected and spent. Notwithstanding this, the EP & A Act provides that Council must document and make publicly available any such collection and expenditure of Section 94 contributions. Council should be approached for further clarification regarding this matter.

2.4 Mining and Contaminated Land

2.4.1 Mining Resources and Subsidence

Issue – Existing coal resources

The Department of Primary Industries (DPI) has raised concern that the development may restrict future access to existing mine resources and hinder future mining. DPI has also advised that the site is subject to current mining leases and recommended Hardie Holdings Pty Ltd consult with Austar Coal (the mining lease holder).

Response

As outlined in Section 7.7 of the EAR and Section 5.3 of Parsons Brinckerhoff's Preliminary Geotechnical and Hydro geological Study (Appendix R), large portions of the site have undergone full extraction and present little value as a coal resource. Existing coal resources under the site are limited in that they are extremely deep (approx. 300m below surface), exhibit structural complications and are poor quality. Future mining is therefore likely to be unfeasible and economically unviable.

As recommended by DPI, the proponent has consulted with Austar Coal since the end of the public exhibition period of the proposal. The proponent has met with Austar Coal Mine and forwarded them all relevant information in relation to the proposal. Austar Coal is yet to provide the proponent with details of their concerns.

Potential future underground mining in the area will need to treat the proposed Sanctuary Villages development footprint the same as the existing Paxton and Millfield villages.

Issue – Mine Subsidence

Both DPI and Cessnock City Council advised that the Mine Subsidence Board needs to confirm whether the site is in a Mine Subsidence District.

Response

As outlined in Section 5.1 of the Preliminary Geotechnical and Hydro geological Study (Appendix R) the site is not within a Mine Subsidence District. Hardie Holdings Pty Ltd notes that the Mine Subsidence Board is reviewing Districts. Accordingly, the Statement of Commitments has been revised to commit Hardie Holdings Pty Ltd to confirming whether future stages are within a Mine Subsidence District at Project Application Stage. Stage 1 is not within Mine Subsidence District.

2.4.2 Contaminated Land

Issue – Remediation of Contaminated Land

DECC has recommended Hardie Holdings Pty Ltd be required to rehabilitate the proposed conservation off set lands prior to transfer of lands to the State Government. Cessnock City Council has advised that the site needs to be further investigated and rehabilitated to a standard suitable for its final use.

Response

The Deed entered into between Hardie Holdings Pty Ltd and the State Government states that the conservation off-set lands will be transferred in their current state without the carrying out of any remediation works. DECC as the future landowner will be responsible for the care, control and management of the conservation off-set lands including any required rehabilitation works.

Further, it is noted that the proponent has spent around \$1.8 million to date, rehabilitating the conservation lands and establishing the Palma Wallaby Sanctuary (as recognised in the Congewai Catchment Authority submission). The details of these works are contained in Section 2.3.7 on Page 26 of the EAR.

In response to Council's concerns, the exhibited Statement of Commitments already obligates Hardie Holdings Pty Ltd to the carrying out of a targeted Phase 2 Environmental Site Assessment prior to the commencement of any Stage 1 Project Application works. Any necessary rehabilitation / remediation works recommended as a result of the Phase 2 Assessment will be undertaken as prior to release of the subdivision certificate.

2.5 Odour Buffer Issues

Issue – Encroachment into the Wastewater Treatment Works Buffer

Hunter Water's initial submission advised that it does not support residential or commercial development within the 400m buffer zone of the Paxton Wastewater Treatment Works (PWTW). Since the time of the public exhibition the proponent has met with Hunter Water with new correspondence indicating that Hunter Water does not oppose Hardie Holdings proposal for the 'Sanctuary Villages' (**Appendix F**).

Response

Hardie Holdings Pty Ltd and its consultants consulted with Hunter Water during the preparation of the EAR and was advised by Hunter Water that it was satisfied for the 400m buffer to be measured from the upgraded WWTW (currently under assessment) rather than from the property boundary as is convention.

We also refer to Hunter Water's recently exhibited Review of Environmental Factors, and in particular the odour assessment undertaken for that project by Sinclair Knight Merz (SKM)(attached as Appendix O of the Sanctuary Villages EAR). That report concludes that there are minimal impacts even in the buffer zone. Notwithstanding this, Hardie Holdings Pty Ltd will maintain the position of not putting residential lots within 400 metres of the plant.

Notwithstanding the above, the proponent has recently met again with Hunter Water.

Hunter Water advised:

- They had never sighted the subdivision plans until that meeting. Their public submission was a general policy response, not a site specific response.
- They reconfirm that the 400m buffer is to be measured from the upgraded WWTW rather than the property boundary.

Since this time, Hunter Water have released further correspondence to Hardie Holdings (dated 28 November 2008) stating that they do *“not oppose Hardie Holdings revised proposal for the ‘Sanctuary Villages’ Development at Paxton on the grounds of the WWTW buffer zone. Regarding the area titled ‘Potential Future Commercial/Tourist Expansion’, Hunter Water reserves the right to comment on this area within the WWTW buffer zone when more information is known on the development.”*

2.6 Heritage Impacts

2.6.1 European Heritage

Issue – Need for a Heritage Management Plan

Local community groups have requested a heritage management plan be prepared to outline the protection and management of the former mine workings between Concept Plan approval and development of the proposed commercial centre within which the items are located.

The Department of Planning has also requested additional information regarding the status of heritage structure and their management.

Response

Since public exhibition of the EAR, ERA Heritage, Urban Design and Planning has been engaged to prepare a Heritage Management Plan for former mine workings located on the site (**Appendix C**).

The Heritage Management Plan’s proposed range of measures, include:

- retention of security fencing pre and during construction;
- retention of the full-time live-in caretaker within the Administration Building and on the adjoining property; and
- installation of warning and interpretation signage, and securing of the Winder House.
- maintenance of the current landscaping regime on the site (weed removal and fire isolation methods);
- annual inspections of the buildings by a heritage consultant; and
- upkeep and annual repair of site boundary fencing.

Provision of the Department’s requested information is addressed in the Heritage Management Plan. The Statement of Commitments has been revised to commit Hardie Holdings Pty Ltd to implementation of the Heritage Management Plan’s recommendations.

2.6.2 Aboriginal Heritage

Issue – Adequacy of Aboriginal cultural heritage assessment

DECC is of the view that the EAR did not adequately address community consultation, preparation of an Aboriginal Cultural Heritage Management Plan, or the proposed range of Aboriginal cultural heritage values within Congewai Creek and the floodplain. DECC also recommended Hardie Holdings Pty Ltd consider the Department of Planning’s Draft *Guidelines for Aboriginal Cultural Heritage Impact Assessment and Community Consultation*.

Response

DECC's assertions that the EAR does not adequately address Aboriginal heritage and that community consultation has not been undertaken is refuted.

Section 7.5 of the EAR and the Archaeological Survey and Constraints Study (Appendix K of the EAR) both address the potential impacts of the development on the site's Aboriginal heritage values. These sections of the EAR also articulate that the Mindarriba Local Aboriginal Land Council and Lower Wannaruah Aboriginal Land Council (having local jurisdiction and interest in the area respectively) were both consulted and involved in the preparation of the Archaeological Survey and Constraints Study.

The Aboriginal heritage values have clearly been assessed in Section 3 of the Archaeological Survey and Constraints Study in terms of its social, historic, scientific and aesthetic qualities. Based on these parameters and with the input of Aboriginal community consultation, the conclusion has been drawn that Congewai Creek and the floodplain are the most significant portions of the site from an Aboriginal perspective. Notwithstanding this, Hardie Holdings Pty Ltd has ensured the two scar trees will be located within public open space, and the exhibited EAR further recognises the Aboriginal significance of the site by committing to the preparation of a site interpretation strategy, and implementation of other recommendations as set out in the Archaeological Survey and Constraints Study. Notably, the Stage 1 Project Application has demonstrated that it raises no Aboriginal cultural heritage matters.

In response to DECC's recommendation that the *Guidelines for Aboriginal Cultural Heritage Impact Assessment and Community Consultation*, Hardie Holdings Pty Ltd can confirm that an advertisement has been placed in the local newspaper on 19 November 2008 (The Advertiser) inviting Aboriginal stakeholders to register an interest in the site for a period of 10 days,. DECC advises that registrations of interest can still occur post determination of the Concept Plan. This can be committed to as part of the Statement of Commitments.

Notwithstanding this, Hardie Holdings Pty Ltd intends to prepare an Aboriginal Heritage Management Plan in consultation with the relevant Local Aboriginal Land Councils to address the potential impacts to Aboriginal heritage items / relics prior to any construction works on the site related to future stages of the Concept Plan proposal. Ellalong Lagoon, which is part of the conservation off set lands, will need to be subject to a separate heritage management plan prepared by DECC following transfer of the lands to the State Government in accordance with the Deed.

2.7 Flooding and Riparian Zones

2.7.1 Flooding Impacts

Issue – Adequacy of flood assessment

Cessnock City Council has recommended the exhibited flood assessment (Appendix P of the EAR) be recalibrated to account for the June 2007 event. DoP indicates that a response to this is required in addition to demonstrating consideration of the potential impact of climate change on flood levels in relation to the proposal.

Response

Parsons Brinckerhoff's flood assessment has modelled the 100 year ARI event based on the most recent / available data, as is recommended by the NSW Flood Management Manual. As outlined in that report, the site was surveyed following the June 2007 event and it was confirmed that that event was less than a 1 in 100 year flood event. It is therefore considered that recalibration of the exhibited flooding study is a futile exercise. Notwithstanding the above, the extent of the June 2007 flood was pegged on the site. Its level never reached the height of the 100 year ARI flood level as shown on the plans.

Climate Change was addressed at Section 7.8 and Section 9.5 of the EAR, including consideration of DECC's Flood Plain Risk Management Guideline – Practical Consideration of Climate Change. The proposed villages are over 42 kilometres from the ocean and any potential sea level rise will not impact on the site. In any event, all finished floor levels in dwellings will be at least 500mm above the 100 year flood level.

2.8 Riparian Corridors and Bushfire Management

Issue – Location and Protection of Riparian Corridors and Associated Buffer Distances

The Department of Water and Energy (DWE) recommended the proposed corridors consider and be assessed against DWE's Guidelines for Controlled Activities – Riparian Corridors (February 2008). DWE and DoP have also questioned the proposed location of stormwater control measures within riparian corridors as well as clarifying the ongoing management of the periodic maintenance of this infrastructure.

Response

All Riparian Corridors in the proposal are located within the conservation lands. Riparian buffers will be defined as part of detailed project applications for each stage. Such buffers will be defined and located according to site specific characteristics, ecological factors, and stormwater engineering considerations and will be generally consistent with DWE's Guidelines for Controlled Activities - Riparian Corridors (February 2008) and associated Core Riparian Zones (CRZ) widths. It should be noted however that it is Hardie Holdings Pty Ltd's view that vegetation within riparian corridors is accounted for and may be removed under the offset agreement as part of the Deed with the NSW Government.

Similarly, it is Hardie Holdings Pty Ltd's view that stormwater infrastructure can be placed within riparian corridors / existing gullies in accordance with existing practices, particularly in light of the contents of the Deed (Appendix A). The Deed allows service easements for services, drainage and stormwater to be created over the Schedule 2 lands (i.e. the Conservation Lands) for the benefit of the Schedule 1 Land (i.e. the developable area). It is proposed that the stormwater infrastructure will be managed and maintained by Council. The stormwater infrastructure would have an easement in favour of Council and Council will be responsible for maintaining stormwater detention basins as is typical practice. This will be confirmed through future stages of the development when riparian buffers will be defined as part of detailed project applications according to site specific characteristics, ecological factors, and stormwater engineering considerations.

Issue – Bushfire Risk Management and Riparian Corridors

The NSW Rural Fire Service have commented that Asset Protection Zones (APZs) are required in the riparian corridor and proposed Conservation Area space between Stages 1 and 4 and 1 and 2 for Millfield and should be imposed as part of the conditions. However, the Department has highlighted that APZs are to be located within the developable footprint.

Response

The proponent notes the Rural Fire Service request for a condition of consent requiring APZs in the riparian corridor and proposed Conservation Area. Asset protection zones will be provided at the width and specification identified in the Bushfire Threat Assessment as noted in the Statement of Commitments. Given the Rural Fire Services acceptance of APZs within these lands, the Department's request for APZs not to be located outside of the developable footprint is an inherent contradiction.

2.9 Residential Amenity and Character

Issue – Loss of existing village character

The community is concerned that the proposal will compromise the existing character of the area; will result in Paxton lots backing onto Millfield Road and there is limited scope for existing trees along Millfield Road to be retained.

Response

Sanctuary Villages is identified as a land release area in the Lower Hunter Regional Strategy and includes 533 ha of high conservation value that will be dedicated to the Government as part of the project.

The urban design concept responds to the site's existing village character through the expansion of the existing Paxton and Millfield townships and significant tracts of open space and landscaping. The Concept Plan proposal will enhance the existing benefits for local residents in terms of employment, retail and recreation opportunities and is predicated on a small local centre to service the local community.

The Design Statement and Design Code includes detailed controls that have been informed by Cessnock City Council's existing LEP and DCP controls to ensure similar outcomes are achieved at Sanctuary Villages.

With the exception of the Mixed Use Terrace lots, which Hardie Holdings Pty Ltd notes Cessnock City Council supported and encouraged at the most recent Community Reference Group Meeting, the smallest of the standard lot sizes (i.e.: 700 - 799m² lots) are 1.5 times larger than Council's minimum subdivision requirements in the 2(a) and 2(b) zones (the current Paxton and Millfield zoning and equivalent of the proposed R1 General Residential zone). The larger sized lots (1,000m²) are more than double Council's requirements.

The proposed lot layout has been based on a thorough urban design analysis that responds to the site's topography and natural attributes. The allotments closest to Millfield Road (i.e.: backing onto Millfield Road) arise out of the road layout, location of proposed commercial centre and odour buffer associated with the Wastewater Treatment Works. Reconfiguration of these lots would result in an inefficient and dysfunctional subdivision layout as well as result in intolerable traffic and safety problems, which would occur if all the entrances were reconfigured to be accessed off Millfield Road.

The Design Statement and Design Code include detailed controls that require low profile timber fences similar in character to that found elsewhere in the Paxton and Millfield townships.

The Design Statement and Design Code also includes controls that encourage a physical relationship with the existing townships, standards consistent with Council's DCP, and maximum retention of on-site vegetation.

Issue – Urban Design

The Department of Planning has raised concerns that the Millfield subdivision design creates a 'gated community' and that reconsideration of the road network is required. Concurrently a request is made for a vegetated buffer strip between the main road and those residential lots with rear boundaries facing the road, so that fencing will be screened and the visual character of the existing rural outlook is preserved. Justification is required as to why future housing on these lots should not address Millfield Road as per existing housing.

Response

The one main entry/exit to the Millfield subdivision between Bennett Street and Irwin Close is readily able to be treated to prevent a gated community. The proposed entry is not dissimilar to countless other estate entries, is significantly wide enough to prevent a sense of enclosure and is capable of being landscaped to appear open from Millfield Road. In addition, a second access from Millfield Road would be dangerous due to the steep topography at this point and would not meet RTA guidelines for sight lines.

We note the Department's request for a vegetated wall along this frontage. There is an inherent contradiction in this request, in that such a buffer will result in a vegetation strip that appears as a larger monolithic 'gate' along the boundaries of this subdivision. Request has been made to confirm that the style of fencing will not consist of colorbond and masonry. The proponent therefore is willing to commit in the Statement of Commitments that fencing along Millfield Road provide natural products such as timber and brush fencing and ban the use of colorbond fencing. As outlined in Section 2.3.1, Hardie Holdings Pty Ltd also proposes to redirect a proportion of the abolished MoT bus levy towards landscaping and upgrading of the Millfield Road buffer to ameliorate the visual impacts of residential lots backing onto Millfield Road.

As stated above, reconfiguration of these lots to address Millfield Road would result in an inefficient and dysfunctional subdivision layout as well as result in intolerable traffic and safety problems.

2.10 Zoning and Land Use Controls

Issue – General zoning provisions

Cessnock City Council has recommended the proposed SEPP Amendment applying to the overall development, and particularly the proposed land use zones, should comply with draft Cessnock LEP 2008. The Department has requested that a specific digital file set is provided for in the SEPP Amendment.

Response

The Draft Cessnock LEP 2008 was considered during the preparation of the SEPP Amendment. Council's draft LEP was not adopted for the site on the basis that it simply seeks to "roll over" existing zones into the Department's Standard LEP Template zones and accordingly does not recognise the LHRS and Deed which provide for the development. Furthermore, that draft LEP departs from the Deed in terms of the proposed extent and location of conservation offset lands. We also note that Council's Draft LEP 2008 has not yet gone on public exhibition to become a formal matter for consideration.

Hardie Holdings Pty Ltd and its consultant team have instead chosen to pursue urban development zones, such as the R1 General Residential zone and B2 Local Centre Zone, which would best facilitate the LHRS and Deed.

Council's comments regarding an R2 Low Density Residential in place of the exhibited R1 General Residential Zone are not supported. The R1 General Residential Zone provides a greater range of mandated permissible uses than the R2 Low Density zone including core housing products such as shop top housing, attached dwellings that are proposed for Sanctuary Villages. Such uses will also promote flexibility, allow for emerging home/office and consulting arrangements (e.g.: acupuncturists, accountants, architects), and provide greater opportunity to provide affordable housing. Minor revisions have been made to the Draft SEPP Amendment to ensure all proposed uses are permissible within the R1 General Residential and RE1 Public Recreation zones.

The B2 Local Centre zone was recommended to ensure the Sanctuary Villages commercial centre remains a lower order centre in the Region's centre's hierarchy and was also informed by previous Departmental experience where similar rezoning proposals in regional areas encouraged the use of the B2 Local centre zone rather than the B4 Mixed Use zone. However, having noted Council's comments, Hardie Holdings Pty Ltd has revised the draft SEPP Amendment to zone the commercial centre B4 Mixed Uses zone.

The use of broad zones enables flexibility, and allows appropriate land uses to be planned as part of each detailed stage project applications in the future. To this end, Hardie Holdings Pty Ltd is of the view that the SEPP Amendment should not be required to mandate minimum lot sizes and other detailed development standards, for reasons of housing affordability, diversity in housing stock and sound modern design principles.

The SEPP amendment and revised zoning map is attached at **Appendix G**. The requested digital file input will be provided under separate cover.

Issue – Zoning of Conservation Offset Areas

DECC recommended that the dedicated conservation offset lands be zoned E1 – National Parks and Nature Reserves and has recommended only uses permissible under the *National Parks and Wildlife Act 1974* be permissible in that zone. Cessnock City Council has advised that the draft SEPP Amendment departs from Council's draft LEP 2008.

Austar Coal raised concern that the rezoning of the site for conservation purposes will limit Austar Coal's ability to potentially mine the area.

Response

It is proposed to zone the conservation areas within the Concept Plan area E1 – National Parks and Nature Reserves. These areas are to be dedicated to the Minister for the Environment in accordance with the Deed between Hardie Holdings Pty Ltd and the NSW Government. Only uses authorised under the *National Parks and Wildlife Act 1974* and a bushfire management plan prepared under the *Rural Fires Act, 1997* are permissible in this zone to reflect the conditions of the Deed.

In response to Austar Coal's concerns, the site is identified within the NSW Government's Lower Hunter Regional Strategy as proposed conservation lands. Further, the site is subject to the Deed of Agreement executed between Hardie Holdings Pty Ltd and the NSW Government. The rezoning proposal is entirely consistent with both the Regional Strategy and the Deed. The Department of Planning will need to consider the implications of the future zone on the ability to mine the area in the future.

Austar Coal's letter of 3rd October 2008 referenced a map showing the likely coal resources. The vast majority of this land is located in the proposed Conservation Lands with the largest proportion being located directly beneath Ellalong Lagoon.

As the ownership of the land in question will be transferred to DECC it is entirely appropriate the Austar Coals' concerns about accessing possible coal reserves be dealt with at the time DECC prepares a Plan of Management for the Conservation Lands.

Austar Coals' proposal is not to zone the site as State Conservation Lands. Hardie Holdings Pty Ltd rejects Austar Coals' proposal. Indeed not to zone the area Conservation Lands would put Hardie Holdings Pty Ltd and the Government in breach of both the Deed of Agreement and the Lower Hunter Regional Strategy.

The rezoning proposal as outlined in the PPR is entirely consistent with both the Regional Strategy and the Deed.

Issue – Exempt and Complying Development

Cessnock City Council has recommended that Council's draft Cessnock Local Environmental Plan 2008, Schedules 2 & 3: Exempt and Complying Development, be adopted to maintain consistency for the Cessnock LGA.

Response

The Exempt and Complying provisions in Cessnock's draft LEP have not yet been publicly exhibited and are not yet in force. Whilst the exempt and complying provisions remain in the draft SEPP, it is intended to request that the Minister enact an exempt and complying regime based on the Design Statement and Design Code through an Order under section 75P(2)(d) of the EP&A Act as part of the Concept Plan approval, which will override this clause.

2.11 Rural and Residential Subdivision

Issue – Detailed Subdivision Plans Access Details

The Department of Planning have requested that detailed subdivision plans are provided, including details of access/shared rights of carriageway and applicable easements. Details of indicative dwelling and farm building footprints, vegetation and topography are also requested on the subdivision plans.

Response

As correctly identified by DoP, it is proposed to secure consolidation and subsequent subdivision of the rural lots into the proposed configuration through the Minister's powers pursuant to Section 75P of the EP&A Act. Given this component of the proposal is largely a reconfiguration of existing lots, further detailed applications are not warranted.

The subdivision layout does not detail easements or legal right of carriageway required as a result of the subdivision. All easements will be identified as construction proceeds and will be identified on the plan of subdivision and Subdivision Certificate submitted for later approval. This approach is also considered optimal to ensure confirmation of the necessary requirements is obtained from the relevant utility providers and / or public authorities.

It is not considered that the detailed plans of subdivision are required to satisfactorily address Section 75P, and that final sign off of the subdivision plans (consistent with the Minister's approved boundaries) can occur at subdivision certificate stage (i.e. identified on the detailed linen plans). Likewise, a dwelling entitlement for each lot is proposed, however, details of the housing platforms would be provided once a development application for a dwelling house is lodged at a later stage. It is considered reasonable that the owners of the future lots should be afforded flexibility in deciding where their housing platforms will be located on such large rural lots.

Notwithstanding this, in order to assist in clarifying the proposed access arrangement **Figure 3** has been prepared to clearly demonstrate that orderly and efficient rights of carriageway will be available to service all of the proposed rural lots.

Issue – Boundary of Lot 1

The proposed boundary of Lot 1 (at the south west corner of the proposed subdivision) should be relocated away from the residential subdivision boundary by means of an open space buffer zone to reduce potential conflicts of land use, including weed spraying and machinery at dawn.

Response

Residential allotments on this southern boundary are buffered by either a 17 metre wide secondary road or proposed fire trails, which is considered to provide suitable separation between residential and rural lots (Refer Concept Plan Drawing No SK09 Circulation Plan – Millfield).

With regard to the interface between the conservation lands and the urban areas (including rural lots), the Sanctuary Villages Design Statement and Design Code (Appendix A of the exhibited EAR) includes principles and controls specifically related to minimising buffer and interface issues including provision of adequate dwelling setbacks, appropriate dwelling siting, and consideration of the character of the adjacent rural and conservation lands.

We note that it is common planning practice to locate residential zonings adjacent to rural zonings. It should be noted that every town and village in NSW does not have an “open space buffer” surrounding it at the rural interface. This requirement is therefore onerous and unreasonable.

Preferred Project – Rural and Residential Subdivision

The proponent seeks to extend the request to approve the subdivision of the rural lots under Section 75P(1)(c). It is requested that the Paxton development precinct, Millfield East development precinct (including island) and Millfield West precincts are approved and subdivided as separate residential super lots, which will assist in the future staging of the project. Noting the contents of the Deed and the significant environmental assessment undertaken to define the developable footprint it is considered that the additional super lot subdivision is satisfactorily considered by the Environmental Assessment Report and Preferred Project Report (PPR).

This plan of subdivision is included at **Appendix G**. Please note that rural Lots 6, 7, 8 and 9 within the Concept Plan are existing lots and therefore do not require approval on this subdivision plan.

3.0 Statement of Commitments

The following commitments have been compiled based on the environmental assessment undertaken in the preparation of this report and following review and consideration of issues raised in agency and community submissions. They provide a commitment by Hardie Holdings Pty Ltd indicating the responsibilities and timing to implement measures to prevent potential environmental impacts that have been identified through assessment to ensure that the project is environmentally, socially and economically sustainable, and to outline a program of works to take forward the staged development of the Hardie site under future project applications.

3.1 Concept Plan Statement of Commitments

Subject	Commitments	Approved by Whom	Timing
General	The development will be carried out in accordance with the Concept Plan Application Environmental Assessment Report (June 2008) and Preferred Project Report (November 2008) prepared by JBA Urban Planning Consultants and associated plans and supporting reports.	n/a	Ongoing
Urban Design Guidelines	Development will be undertaken in accordance with the Design Statement and Design Code to ensure design excellence is achieved in the architecture of private buildings and the public domain (streets, parks and commercial centre). The Code will address CPTED principles and Safer by Design best practice models. All future project or development applications will be in accordance with the Code. The design guidelines will be amended to include the requirement that fencing along Millfield Road provide natural products such as timber and brush fencing and ban the use of colorbond fencing.	Director General of Department of Planning	With the Concept Plan
Conservation Areas	Hardie Holdings Pty Ltd will dedicate 533 hectares of conservation lands to the Department of Environment and Climate Change (DECC). Prior to dedicating the subject conservation lands to DECC, Hardie Holdings will: Fence boundaries between rural lots and the conservation areas; Remove all internal fences in the proposed conservation lands; and Surrender the 100 mega litre (per annum) water licence currently issued for the Sanctuary Villages site. Hardie Holdings Pty Ltd will maintain existing habitat areas outside the urban footprint, and particularly those areas that contain extant populations until such time as the conservation lands are dedicated to DECC. Until such time as the conservation lands are dedicated to DECC, Hardie Holdings Pty Ltd will use its best endeavours to restrict public access to the more sensitive portions of the conservation areas and encourage the public to those areas where tracks already exist.	Department of Environment and Climate Change	Upon rezoning of the site and approval of the subdivision under Section 75P(1)(c)
Ecology	To ensure that current and future land uses recognise the importance of protecting and maintaining the ecological values of the site and minimise the potential impacts of urban development the following will be actioned:	Director General of Department of Planning	Prior to issue of the Stage 1 subdivision certificate

Subject	Commitments	Approved by Whom	Timing
	<p>The proposed conservation areas will be maintained and protected until formally dedicated to the Department of Environment and Climate Change. No clearing or disturbance will be undertaken within the proposed conservation areas during this time;</p> <p>Hardie Holdings will work with DECC in the preparation of its management plan for the conservation lands. In particular, Hardie Holdings will liaise with DECC in managing the interface between the development lands and the conservation lands</p> <p>Hardie Holdings Pty Ltd will prepare and implement management strategies for each project application prior to construction to ensure potential sedimentation and nutrient increases to Ellalong Lagoon are prevented; and</p> <p>Hardie Holdings Pty Ltd will undertake regeneration works as recommended in RPS Harper Somers O'Sullivan along either side of Quorrobolong Creek in the north eastern corner of the site.</p> <p>Future project applications will address the Department of Water and Energy's Guidelines for Controlled Activities – Riparian Corridors (February 2008). Future applications will also demonstrate the appropriateness of any stormwater infrastructure proposed within riparian corridors / gullies.</p>		
Traffic and Transport	<p>Re-engineering and rebuilding (including warning signs) of the intersection of Millfield Road / Middle Road / Sanctuary Road / Congewai Road.</p> <p>Adequate street lighting will be provided in accordance with Australian Standards for the Paxton and Millfield expansion areas.</p> <p>Prior to the lodgement of future project applications for Stages 3 and 4, Hardie Holdings Pty Ltd will approach the Ministry of Transport to discuss the demand and feasibility for extending bus services into the site and the appropriate means (if any) of funding bus-related infrastructure.</p>	Director General of Department of Planning	Prior to issue of the Stage 1 subdivision certificate
Heritage	<p>All former mine workings at Paxton will be protected and managed in accordance with the recommendations set out in the Heritage Management Plan prepared by ERA Heritage, Urban Design and Planning (October 2008).</p> <p>Prior to project applications being determined for Stages 2 – 4, Hardie Holdings Pty Ltd shall prepare an Aboriginal Heritage Management Plan in consultation with the relevant Local Aboriginal Land Council(s) to address the development's potential impacts to known Aboriginal relics.</p>	Director General of Department of Planning	Ongoing With relevant stages and development applications.
Bushfire	<p>Asset protection zones will be provided at the width and specification identified in the Bushfire Threat Assessment.</p> <p>A Fuel Management Plan for individual Stages will be developed to ensure progressive fire management is undertaken.</p> <p>Water pressure mains supply and fire hydrants will be provided in accordance with Australian Standard A.S. 2419.1, 2005 – Fire Hydrant Installations, System Design, Installation and Commissioning.</p> <p>Where necessary, future dwellings will comply with Australian Standards A.S. 3959 – 1999 – Construction of Buildings in Bushfire Prone Areas.</p>	Director General of Department of Planning	With relevant stages and development applications.

Subject	Commitments	Approved by Whom	Timing
Flooding	<p>All land developed for residential and commercial centre purposes will be filled to the minimum flood level.</p> <p>Flood affected lots will have covenants placed on them alerting future purchasers to potential flood risks.</p> <p>A dwellings will have a minimum freeboard of 500mm above the 1:100 ARI flood event</p> <p>A Flood Evacuation Plan will be prepared in consultation with the State Emergency Service and Cessnock City Council's flooding engineers and submitted to the relevant consent authority prior to issue of Construction Certificate.</p>	Director General of Department of Planning	Following issue of the subdivision certificate
Stormwater Drainage	<p>A Water Sensitive Urban Design (WSUD) Strategy will be prepared. The WSUD Strategy will conform to statutory and applicable Cessnock City Council and Department of Environment and Climate Change guidelines. It will provide detailed strategies for the management of stormwater, water detention and retention within urban area.</p> <p>Appropriate detention measures will be implemented during the Development Design Stage and through the future projects.</p>	Director General of Department of Planning	Prior to the release of the construction certificate for the relevant stage
Mining and Contamination	<p>A targeted Phase 2 Environmental Site Assessment will be undertaken prior to commencement of construction of future project applications.</p> <p>Future project applications will seek approval for any necessary rehabilitation / remediation works recommended by the Phase 2 Environmental Assessments.</p> <p>Future applications will verify whether the land to which they apply fall within a mine subsidence district.</p>	Director General of Department of Planning	During construction and prior to issue of subdivision certificate
Utilities	<p>A Utilities and Servicing Plan will be prepared to outline the provision and timing of:</p> <p>water supply;</p> <p>sewerage;</p> <p>telecommunications; and</p> <p>energy.</p>	Director General of Department of Planning	Prior to issue of construction certificate for the relevant project application
Additional Levies	<p>Additional Contributions of \$8,000.00/lot will be paid. For the overall development this amounts to a contribution of \$5.6 million.</p>	Director General of Department of Planning	Prior to release of the subdivision certificate for the relevant stage
Development Contributions	<p>Section 94 Contributions will be paid in accordance with Cessnock City Council's Section 94 Contributions Plan (Sept 08) at a rate of \$3,940.00 per residential lot.</p> <p>The proponent will commit to providing the oval in Stage 3</p>	Director General of Department of Planning	Payment will be made prior to the release of the subdivision certificate.

3.2 Stage 1 Project Application Statement of Commitments

Subject	Commitments	Approved by Whom	Timing
General	The development will be carried out in accordance with this Project Application and Environmental Assessment Report prepared by JBA Urban Planning Consultants (dated June 2008) and associated plans and supporting reports.	Director General of Department of Planning	Duration of the subdivision and infrastructure works
Legislative Controls and Approvals	<p>The following licences, permits and approvals will be obtained and maintained for the residential subdivision from Cessnock City Council:</p> <p>Construction Certificates for engineering works the subdivision. The application for Construction Certificate(s) will contain Design Drawings submitted indicating, where relevant, detailed designs relating to earthworks, drainage, soil erosion and sediment control and site rehabilitation, tree clearing and site stability, road works, footpaths / cycle ways, water supply (both potable and use of reclaimed water) and sewerage works, electrical reticulation and landscaping;</p> <p>Road Opening Permit;</p> <p>Section 138 approval for road works under the Roads Act, 1993;</p> <p>Subdivision Certificates for each stage.</p> <p>The following licences, permits and approvals will be obtained and maintained for the residential subdivision from Energy Australia, Telstra and Hunter Water Corporation as relevant:</p> <p>Design Certification and Notification of Arrangement; and</p> <p>Compliance Certificate(s).</p>	Various	Prior to issue of construction certificate or subdivision certificate as relevant
Development Contributions	Section 94 Contributions will be paid in accordance with Cessnock City Council's Section 94 Contributions Plan (Sept 08) at a rate of \$3,940.00 per residential lot.	Director General of Department of Planning	Payment will be made prior to the release of the subdivision certificate.
Additional Levies	<p>Additional Contributions of \$8,000.00/lot will be paid. For Stage 1, this amounts to contributions of \$1.6 million which will be spent on:</p> <p>a cash contribution / and or works in kind towards additional local open space in either Paxton or Millfield subject to Council and the proponent agreeing on a specific parcel of land and any proposed embellishment work;</p> <p>additional landscaping of the Millfield Road buffer at Paxton;</p> <p>upgrade of the intersection of Middle - Millfield and Congewai Roads, Paxton as 'works in kind' (approx \$735,000.00).</p> <p>upgrade of Millfield Road in front of the Paxton Village and Millfield part of the project as 'works in kind'. Works could include upgrading the footpath between Millfield and Paxton. Remaining funds being approx \$329,400.00.</p>	Director General of Department of Planning	Prior to release of the subdivision certificate

Subject	Commitments	Approved by Whom	Timing
Road Work, Access and Parking	<p>All roads shall be designed in consultation with Cessnock City Council and with the relevant requirements of Council and / or Roads and Traffic Authority as appropriate. Final road design plans shall be prepared by a qualified practising Civil Engineer and submitted to Council prior to the issue of a Construction Certificate.</p> <p>Parking will be restricted to 6 metres from any intersection so that parked cars do not obstruct sight distances or turning traffic.</p> <p>Raised kerbed bays or wheel stops will be provided at regular intervals to formalise parking lanes and to break up the number of cars parked in a row.</p>	Director General of Department of Planning	Prior to issue of the construction certificate
Ecology	Hardie Holdings Pty Ltd will prepare and implement management strategies for each project application prior to construction to ensure potential sedimentation and nutrient increases to Ellalong Lagoon are prevented.	Director General of Department of Planning	Prior to issue of the construction certificate
Stormwater and Drainage Works Design	Final design plans of the stormwater drainage systems will be prepared for the subdivision. The final plans will be prepared by a qualified practicing Civil Engineer and will be consistent with the stormwater management objectives and controls in Section 9.6 of the Environmental Assessment and Cessnock City Council's requirements.	Director General of Department of Planning	Prior to issue of construction certificate
Construction Management Plan	<p>A Construction Management Plan shall be submitted to Cessnock City Council that addresses:</p> <ul style="list-style-type: none"> vegetation management; soil erosion and sediment control measures; traffic and pedestrian management; noise and vibration; and waste management. 	Director General of Department of Planning	Prior to the issue of Construction Certificate
Contamination, Subsidence and Geotechnical Matters	<p>A targeted Phase 2 Environmental Site Assessment will be undertaken prior to commencement of construction associated with the Stage 1 Project Application. Future project applications will seek approval for any necessary rehabilitation / remediation works recommended by the Phase 2 Environmental Assessments.</p> <p>All filling and earthworks will be undertaken in accordance with Australian Standards AS 3798 Guidelines on Earthworks for Commercial and Residential Developments.</p>	Director General of Department of Planning	<p>Prior to issue of construction certificate</p> <p>During construction</p>
Utilities / Servicing	Details of the location and specification of all proposed utilities and servicing arrangements will be provided with the application for a Construction Certificate.	Relevant utility providers	With the construction certificate
Bushfire	<p>Fire hydrant spacing, sizing and pressure will comply with Australian Standard A.S. 2419.1 – 2005.</p> <p>Fire trails will be constructed in accordance with the Bushfire Threat Assessment.</p>	Rural Fire Service and the relevant consent authority	During construction
Consultation	Aboriginal Registrations of interest can occur post determination of the Concept Plan.	n/a	Ongoing

Subject	Commitments	Approved by Whom	Timing
Heritage	In the event that any indigenous items are discovered, construction works will be ceased immediately and the Department of Environment and Climate Change contacted.	n/a	During construction
Final Plan of Subdivision	A final plan of subdivision and Section 88B instrument will be obtained for the development in accordance with the recommendations of the Environmental Assessment and requirements of the Council and / or utility providers.	Relevant consent authority Relevant utility providers	Prior to the issue of Subdivision Certificate
Flooding	Localised filling within the Paxton Tributary will be undertaken to elevate any flood affected lots to above the 100 year flood levels with an additional allowance for a 500mm nominal freeboard.	Director General of Department of Planning	Prior to issue of subdivision certificate

4.0 Conclusion

The responses to issues and revisions to the Statements of Commitments outlined in this Preferred Project Report to the State Significant Site Study and Environmental Assessment Report (EAR) for the Concept Plan and Stage 1 Project Application at Sanctuary Villages follow careful consideration of submissions from State Government agencies, Cessnock City Council, and the local community.

Section 1.0 of this report outlines the process undertaken to date including public exhibition of the Concept Plan, review and consideration of all Government and community submissions, and a summary of updated and new studies prepared to support the proposal.

Section 2.0 provides a summary of the key issues raised in the submissions and a general response to those issues. Response to the issues raised in the submissions are presented in table format in **Appendix B** and are supported by updated and new heritage and traffic studies (also appended to this report).

Section 2.0 demonstrates that Concept Plan approval should not be delayed any longer on the basis that:

- The EAR and this Preferred Project Report comprehensively analyse the potential environmental impacts of the Concept Plan and Stage 1 Project Application provide detailed justification for the development including land use, urban design principles, traffic generation and management, infrastructure provision and funding, heritage and odour buffer issues;
- The proposal is specifically identified in the Lower Hunter Regional Strategy as a major urban release area able to accommodate up to 700 dwellings as part of the proposed Urban Development Program for the region;
- The Concept Plan and Draft SEPP Amendment are consistent with relevant strategic and statutory plans, including the Lower Hunter Regional Strategy;
- The ecological attributes of the proposal have been well documented and will be protected and enhanced through dedication of the conservation offset lands;
- Strategic and ongoing traffic investigations demonstrate that Sanctuary Villages will not generate any unreasonable traffic impacts on Ellalong Village;
- The contributions package offered by Hardie Holdings Pty Ltd satisfactorily caters for infrastructure funding and provision, generated by the development;
- The distribution and intensity of land uses responds sympathetically to Hunter Water's Wastewater Treatment Works and minimum odour buffer requirements;
- Hardie Holdings Pty Ltd has committed to detailed project applications complying with the Department of Water and Energy's Guidelines for Controlled Activities – Riparian Corridors (February 2008);
- Hardie Holdings Pty Ltd and its consultant team have prepared a heritage management plan to protect the former mining works at Paxton and outline the future management strategy (until an appropriate adaptive reuse is confirmed);
- The draft SEPP Amendment proposes a range of uses that will help realise the Lower Hunter Regional Strategy and Memorandum of Understanding whilst providing a quality planning outcome.

The measures outlined in the comprehensive revised Statement of Commitments (Section 3.0) describe the range of strategies, guidelines and plans that will be prepared to inform the Concept Plan proposal and Stage 1 Project Application. The revised Statements of Commitments also establish the framework for the future detailed design of further stages of the development and will guide the anticipated construction and on-going environmental impacts.

Approval for development as outlined in the EAR and further justified in this report is therefore clearly warranted without further delay.

Figure 1 – Conservation Lands as mapped in the Deed

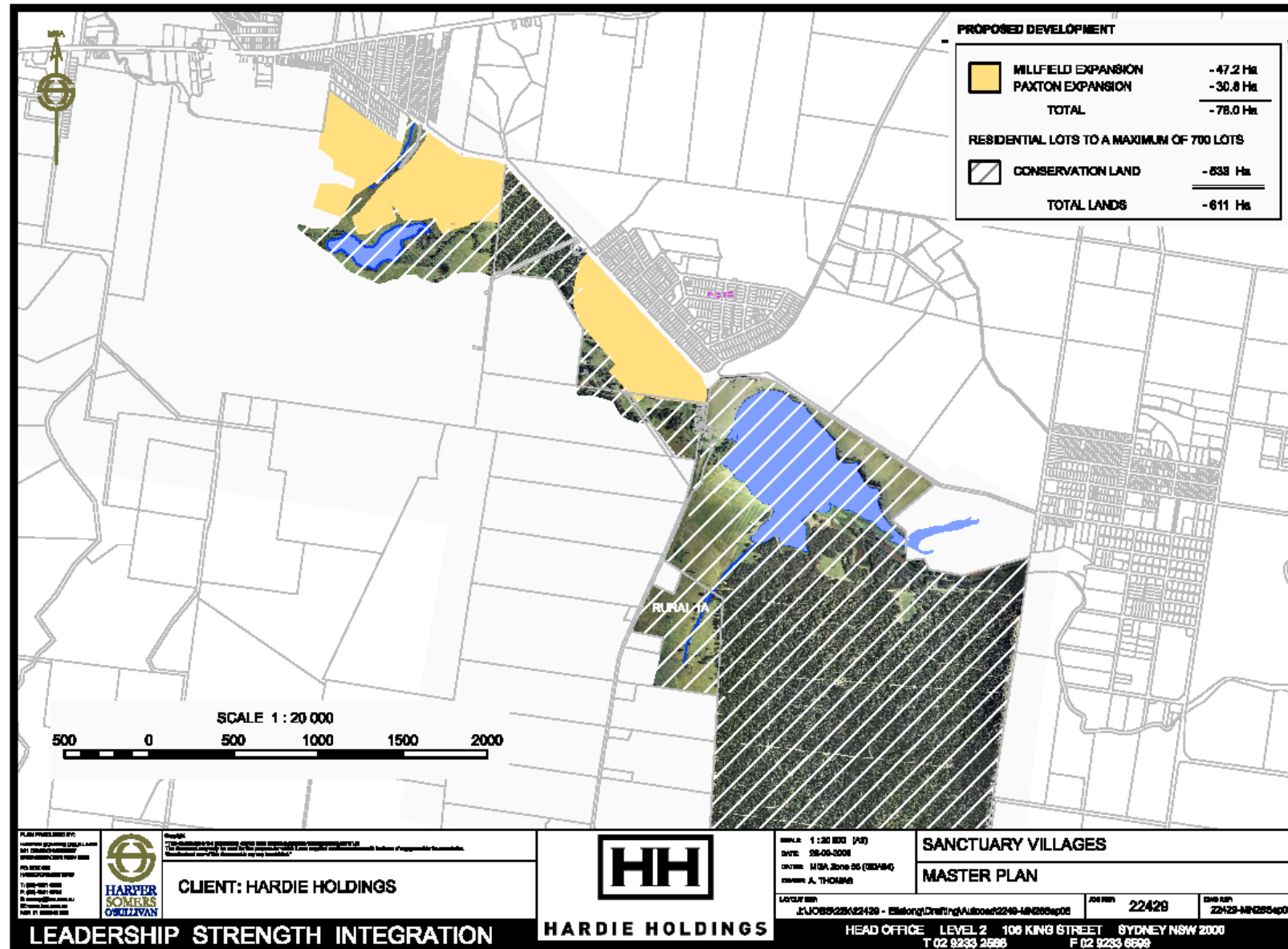
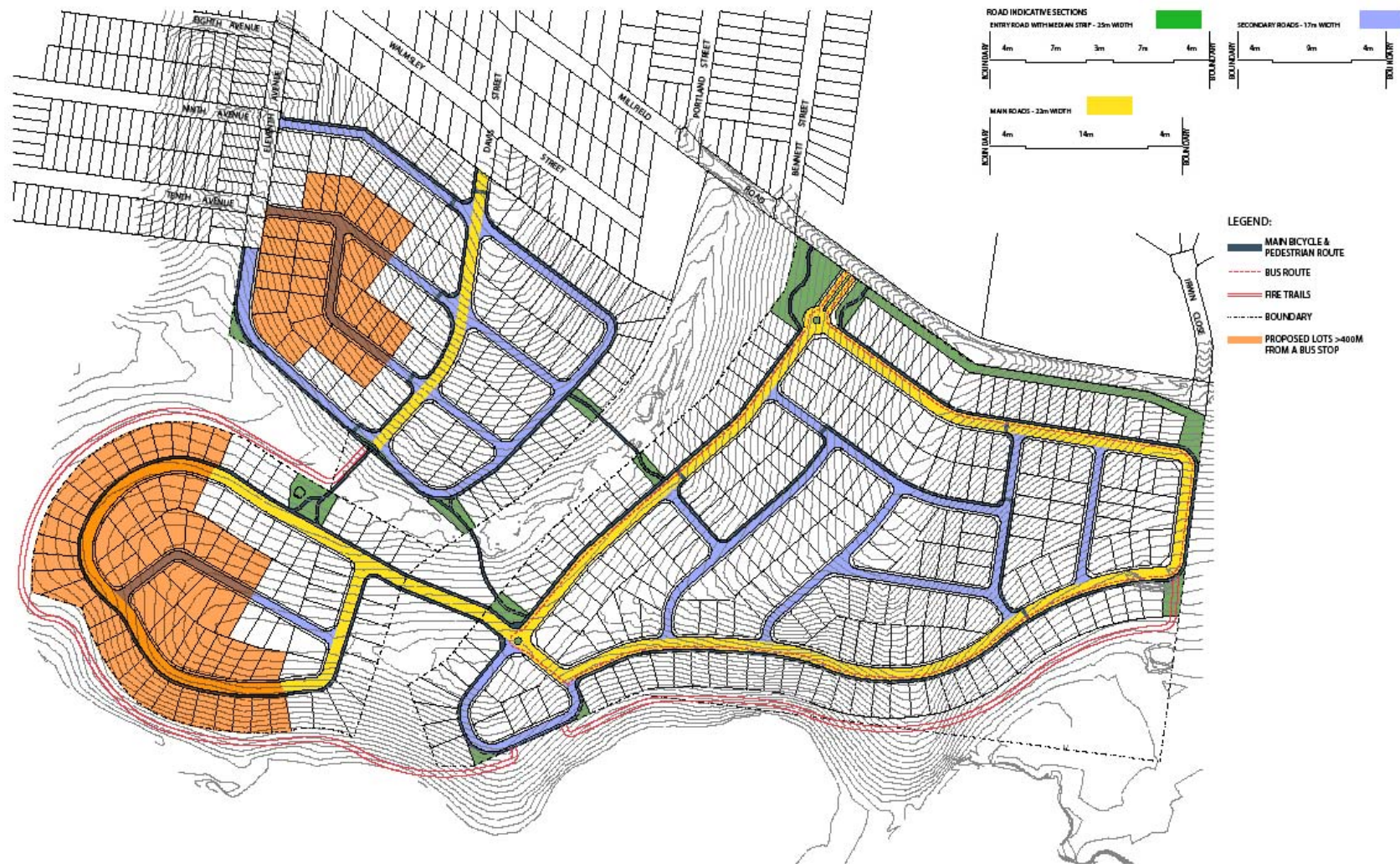


Figure 2 – Proposed Lots greater than 400m from a bus stop



HARDIE HOLDINGS

SANCTUARY VILLAGES
MILLFIELD P. AXTON GILLALONG NSW
MP07_0172

CIRCULATION PLAN - MILLFIELD



DATE	21.01.2009	DRAWN BY	PH	PROJECT NO.	7000
DESIGN	1.0000 & 2.0	REVIEW	PH	DATE	21.01.2009
REVISION	1.0000	NO	001	SCALE	1:1000



Figure 3 – Rural Lot Access Points

