

Concept Approval

Section 75O and 75P of the *Environmental Planning and Assessment Act 1979*

The Planning Assessment Commission of New South Wales (the Commission) under the *Environmental Planning and Assessment Act 1979* ("the Act") determines:

- (a) pursuant to section 75O of the Act, to grant concept plan approval for the proposal referred to in Schedule 1, subject to the modifications set out in Schedule 2;
- (b) pursuant to section 75P(1)(a) and 75P(2) of the Act, the further environmental assessment requirements (as specified in Schedule 2, Part D) for subsequent development applications associated with the concept plan;
- (c) pursuant to section 75P(1)(c) of the Act, that the subdivision of land that gives effect to the transfer of lands to a public authority or a Minister of the Crown requires no further environmental assessment and approve the development under section 75J of the Act (subject to the conditions set out in Schedule 3 of this approval); and
- (d) pursuant to section 75P(1)(b) of the Act, that all development associated with the concept plan be subject to Part 4 (excluding exempt and complying development) or Part 5 of the Act, which ever is applicable.

Member of the Commission

Member of the Commission

Member of the Commission

Sydney,

2012

The Department has prepared a consolidated version of the consent which is intended to include all modifications to the original determination instrument.

The consolidated version of the consent has been prepared by the Department with all due care. This consolidated version is intended to aid the consent holder by combining all consents relating to the original determination instrument but it does not relieve a consent holder of its obligation to be aware of and fully comply with all consent obligations as they are set out in the legal instruments, including the original determination instrument and all subsequent modification instruments.

CONSOLIDATED CONSENT

SCHEDULE 1

Application No: 10_0088

Proponent: Coal & Allied Industries Pty Ltd

Approval Authority: Minister for Planning & Infrastructure

Land: Land at Nords Wharf comprising part Lot 6 DP 746007, part Lot 5 DP 736170, and part Lot 12 DP 854197 in the Lake Macquarie Local Government Area

Concept plan: Concept plan for Nords Wharf, comprising: ~~a 90 lot~~ subdivision **with the total number of lots to be provided to the satisfaction of Council prior to the determination of any future subdivision modification application**, with conceptual lot layout, density and urban design (developable area 10.18 hectares); and dedication of 116.6 hectares of conservation land.

SUMMARY OF MODIFICATIONS

Application Number	Determination Date	Decider	Modification Description
MP 20_0088 MOD 1	12 March 2020	IPC	The modification includes an amendment to the road layout and internal residential footprint.
MP 10_0088 MOD 2	17 JUNE 2021	Director, Regional Assessments	Modification to amend Future Environmental Assessment Requirement 1.25 to require the Awabakal Drive and Pacific Highway intersection to be upgraded from a signalised seagull to a full traffic control signal.

CONSOLIDATED CONSENT

SCHEDULE 2

PART A – DEFINITIONS

Act, the	<i>Environmental Planning and Assessment Act 1979</i>
APZ	Asset Protection Zone
Council	Lake Macquarie City Council
OEH	NSW Office of Environment and Heritage
Department, the	NSW Department of Planning and Infrastructure
Director-General, the	Director-General of the Department of Planning and Infrastructure (or delegate)
EA	<i>Nords Wharf Environmental Assessment Report</i> (including accompanying appendices prepared by Urbis dated November 2010)
Minister, the	Minister for Planning and Infrastructure
Proponent	Coal and Allied Industries Pty Ltd, or its successors in title
PPR	<i>Nords Wharf Preferred Project Report</i> , prepared by Urbis dated 11 March 2011 and Addendum dated 16 June 2011.
RFS	NSW Rural Fire Service
RMS	NSW Roads and Maritime Services
Site, the	Land to which concept plan application 10_0088 applies

CONSOLIDATED CONSENT

PART B – ADMINISTRATIVE CONDITIONS

- 1.1 The Proponent shall ensure that all development on site is carried out generally in accordance with the:
- a. Concept plan application 10_0088;
 - b. *Nords Wharf Concept Plan Environmental Assessment Report* (including accompanying appendices) prepared by Urbis dated November 2010;
 - c. Correspondence, with attachments, titled *Preferred Project Report Submission - Coal & Allied Southern Estates: Nords Wharf (MP 10_0088)* prepared by Urbis and dated 11 March 2011;
 - d. Correspondence, with attachments, titled *Preferred Project Report Submission - Coal & Allied Southern Estates: Nords Wharf (MP 10_0088)* prepared by Urbis and dated 16 June 2011;
 - e. **Nords Wharf S75W Planning Report (including accompanying appendices) prepared by Urbanise Consulting dated 10 May 2017;**
 - f. **Response to Submissions prepared by ADW Johnson Pty Ltd, dated May 2018**
 - g. **Updated Response to Submissions prepared by ADW Johnson Pty Ltd, dated 19 March 2019**
 - h. **Additional information Letter prepared by ADW Johnson Pty Ltd, dated 19 February 2019**
 - i. **Amended Concept Plan, 239566-ESK-008-A dated 18 February 2020**
 - j. **Bushfire Threat Assessment prepared by Anderson Environment and Planning, dated June 2019;**
 - k. Statement of Commitments **dated June 2011** (see Appendix 1); and
 - l. this approval.
- 1.2 In the event of an inconsistency between:
- a. The modifications of this approval and any document listed from condition 1.1a to 1.1e) inclusive, the conditions of this approval shall prevail to the extent of the inconsistency; and
 - b. Any document listed from condition 1.1a to 1.1f) inclusive, the most recent document shall prevail to the extent of the inconsistency
 - c. **The Statement of Commitments and the conditions of this approval, the conditions of this approval shall prevail to the extent of any inconsistency.**

1.2A MP 10_0088 MOD 1 approves an Amended Concept Plan layout, with the total number of lots to be provided to the satisfaction of Council prior to the determination of any future subdivision or modification application. The proposed changes to intersection upgrades are not approved.

Limits of Approval

- 1.3 This concept approval shall lapse five years after the date on which it is granted, unless an application is submitted to carry out a project or development for which concept approval has been given.
- 1.4 To avoid any doubt, this concept plan approval does not permit the subdivision or construction of any aspect of the proposal which will be subject to separate approvals/consents.

Determination of Future Applications

- 1.5 The determination of future applications for development on the Site under Part 4 of the Act, which Council is the consent authority, is to be generally consistent with the terms of this approval.

CONSOLIDATED CONSENT

Note: in accordance with the transitional provisions for Part 3A, under Section 75M of the Act, this concept plan approval satisfies the obligation to prepare a development control plan as required for the site, subject to compliance with the modifications in Part C.

PART C – MODIFICATIONS TO THE CONCEPT

Urban Design & Built Form

1.9 ~~The indicative lot layout and indicative road layout are not approved as part of the concept plan.~~

- ~~d. Prior to the first application for subdivision, the proponent shall revise the urban design guidelines in consultation with council to address the matters outlined below. The final urban design guidelines are to be in a format which could be adopted as site specific controls within council's development control plan at some stage in the future.~~
- ~~e.~~
- ~~f. consistency with State Environmental Planning Policy (Nords Wharf) 2012, but having regard to the potential for mine subsidence and implications for the height of buildings;~~
- ~~g. details on how cut and fill is to be minimised and requirements for retaining structures including maximum heights and design approach, acceptable materials, and associated landscaping;~~
- ~~h. private open space and landscaping requirements, including specific requirements for deep soil zones and a detailed plant species selection list;~~
- ~~i. requirements for retention of vegetation within individual lots, having regard for any requirements of Planning for Bushfire Protection 2006;~~
- ~~j. site fencing requirements;~~
- ~~k. set backs for secondary frontages on corner lots to be consistent with or greater than the requirement of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008;~~
- ~~l. controls to ensure that garages are located behind the front building line, and to restrict garage widths to be consistent with those allowed under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008;~~
- ~~m. site cover controls to be equal to or less than the controls outlined in State Environmental Planning Policy (Exempt and Complying Development Codes) 2008; and~~
- ~~n. demonstrate how necessary storm water infrastructure can be accommodated on individual lots, in particular small lots.~~
- ~~o.~~
- ~~p. The revised Guidelines must be prepared in consultation with council, and to the satisfaction of the Director-General. The final approved copy is to be submitted to council prior to lodgement of any development application for a dwelling on the site.~~

The Proponent shall revise the Urban Design Guidelines to be consistent with the approved indicative subdivision layout. The final version must be submitted to and approved by Lake Macquarie Council prior to the lodgement of any subdivision application for the site.

CONSOLIDATED CONSENT

- 1.10 The landscaped buffer along Branter Road is to be offered for dedication to council. The relevant subdivision application must demonstrate that the future ownership and management arrangements for the landscaped buffer have been negotiated with council. Should council not accept the dedication of the landscape buffer, these areas are to be incorporated into the neighbouring residential lots.

PART D – FURTHER ENVIRONMENTAL ASSESSMENT REQUIREMENTS

Urban Design and Built Form

- 1.11 Each subdivision application must include a Landscape Management Plan that includes:
- strategy for retention of trees on the site;
 - proposed public domain treatments;
 - proposed landscaping of swales, detention basins, roadside verge and other public domain areas, including species selection; and
 - proposed management arrangements for public domain areas, including maintenance of all public domain planting for a 5 year period.

Any such details would be carried into landscaping plans and public domain plans to be completed in consultation with council prior to commencement of subdivision works on site.

Contributions

- 1.13 An updated staging plan prepared in consultation with council ~~and to the satisfaction of the Director-General is to~~ **must** be submitted ~~and approved by Council prior to the lodgement of any development application or modification application (pursuant to MP 10_0088 as modified). The updated staging plan must include a detailed schedule that details the schedule~~ for delivery of (and dedication where relevant) the following contributions:
- provision of roads, stormwater and other service infrastructure;
 - items identified for Nords Wharf in the \$5 million allocated to the Coal & Allied Southern Estates;
 - section 94 contributions **(as outlined in Further Environmental Assessment Requirement 1.14A)** and
 - State Infrastructure Contributions.

Note: In relation to section 94 contributions any works in kind or dedication of land in lieu of monetary contributions required under council's Section 94 Plan must be negotiated with council.

- 1.14 In preparing the staging plan identified in condition 1.13 as it relates to the \$5 million allocation, the proponent ~~is to~~ **must:**
- consider revising the proposed footpath to the Nords Wharf school to provide access to Gathercole Park.
 - update the schedule to note that the upgrade of parking could be for the Branter Road and/or Cams Wharf Road boat ramp.**

Note: The schedule of contributions outlined in the Statement of Commitments is subject to final approval by Lake Macquarie Council, and the initiatives, funding and staging may be altered.

- 1.14A Notwithstanding the Revised Statement of Commitments in Appendix 1, future development consents of modification approval(s) (relating to MP 10_0088 as modified) shall include the requirement for the Applicant to pay development contributions for all residential lots in accordance with the Council's contributions**

CONSOLIDATED CONSENT

plan in force at the time of determining the development application(s) or modification application.

Flora & Fauna

- 1.15 Whilst it is recognised that the biodiversity impacts associated with the proposal have been offset through dedication of 116.6 hectares of conservation lands to the NSW Government, any subdivision application shall provide:
- details on strategies to minimise clearing and retain mature and/or hollow bearing trees where possible, including through design of roads and stormwater devices, having regard to the recommendations of the Ecological Assessment Report (RPS 2010);
 - management measures for minimising impacts on fauna during subdivision works including the employment of an appropriate qualified ecologist to advise and supervise any clearing of vegetation;
 - management of *Phytophthora cinnamomi* during subdivision works; and
 - details regarding the management of the interface between the development area and conservation lands, including the foreshore area, and appropriate environmental controls to minimise any potential impacts on the conservation lands. Management procedures should be prepared in consultation with OEH. Information provided should include, but not be limited to, boundary establishment, sediment controls, and location and management of construction materials.

Any procedures and strategies identified should be carried into a Vegetation and Habitat Management Plan to be completed prior to commencement of any works on the Site.

Groundwater impacts

- 1.16 Any subdivision application should outline details and depth of excavations and any impact on groundwater. The proponent should also outline the proposed management of any impacts on groundwater and groundwater dependent ecosystem communities including potential infiltration from stormwater detention basins to groundwater.

Note: If future development requires excavations that intercept groundwater, a licence under Part 5 of the *Water Act 1912* is required and this will need to be considered as part as any future application.

Stormwater management

- 1.17 Detailed design of all stormwater management devices is to be submitted with any application for subdivision to the satisfaction of council and accordance with any relevant council policies.
- 1.18 Any subdivision application must outline management arrangements for public stormwater facilities during and after construction, and prior to being dedicated to council. These arrangements are to be negotiated with council.
- 1.19 A water quality and hydrological monitoring program is to be provided as part of any application for subdivision. The program shall include:
- monitoring of data against relevant water quality standards and the baseline data collected prior to commencement of works;
 - monitoring of changes in hydrology caused by the development to ensure no detrimental impact on the water quality in Crangan Bay, seagrass communities in Crangan Bay, and Swamp Mahogany Paperbark Forest which adjoins the development area;
 - details on mechanisms and responsibilities for the management and reporting of the results;

CONSOLIDATED CONSENT

- d. identification of remedial actions to be implemented in the event of a discrepancy between the actual and predicted performance of the water quality controls and/or any adverse impacts on seagrass beds communities or Swamp Mahogany Paperbark Forest; and
- e. a program to report monitoring results to council and NSW Office of Water.

Flooding

- 1.20 Each subdivision application must demonstrate that each lot would be able to accommodate a dwelling above council's relevant flood planning level.

Acid Sulphate Soils

- 1.21 Any subdivision application must include an assessment of the extent and disturbance of acid sulphate soils in accordance with the NSW Government's *Acid Sulphate Soils Manual* (ASSMAC 1998). In the event that the assessment identifies that actual or potential acid sulphate soils will be disturbed during subdivision works, an Acid Sulfate Soils Management Plan must be lodged with the application. The Plan must:
- a. be consistent with the NSW State Government's *Acid Sulphate Soils Manual* (ASSMAC 1998); and
 - b. include details of measures to be implemented in relation to the management and handling of any acid sulphate soils identified during construction works.

Contamination

- 1.22 Any subdivision application must include a remediation action plan, which includes:
- a. characterisation of the nature and extent of contaminated material;
 - b. details of the proposed remediation process, including treatment methodologies and processes;
 - c. justification of the proposed treatment and remediation criteria;
 - d. details of proposed remediation management measures;
 - e. a site validation plan; and
 - f. details of compliance with the *Contaminated Land Management Act 1997*.

Mine subsidence

- 1.23 Any subdivision application must demonstrate compliance with requirements of the Mine Subsidence Board including:
- a. geotechnical investigations to demonstrate that there is no risk of mine subsidence affecting the site and the appropriateness of the strata to support the development;
 - b. the plans for subdivision works including services have taken into account the geotechnical conditions of the site; and
 - c. the measures required to remove the risk of subsidence.

Bushfire hazard

- 1.24 Any subdivision application must:
- a. demonstrate that the development complies with *Planning for Bushfire Protection 2006* and is to the satisfaction of the Rural Fire Service;
 - b. demonstrate that all APZs are located within the approved development area and outside the conservation lands;
 - c. demonstrate that the location, layout and management arrangements for APZs has been negotiated with council and the RFS;
 - d. provide a map showing the composition of APZs, including the inner and outer protection zones, and their relationship to the proposed building footprints; and
 - e. outline proposed arrangements for management of bushfire hazard and APZs during the development process

CONSOLIDATED CONSENT

- f. require a restriction on lots burdened by APZs under Section 88 of the Conveyancing Act 1919:
 - a. prohibiting buildings other than class 10b structures within the APZs
 - b. requiring the ongoing management of APZs
- g. provide plans showing a perimeter road connecting the development to Branter Road and Government Road, or demonstrate that an alternative solution has been agreed to in writing by Lake Macquarie Council and RFS
- h. demonstrate that an 8m carriageway width kerb to kerb with roll top kerbing on the hazard side of the road, including the proposed road will be provided.

Traffic and transport

- 1.25 The detailed design for the upgrade of the Pacific Highway / Awabakal Drive intersection must be prepared in accordance with RMS's requirements **to the satisfaction of TfNSW requirements to a full signalised intersection** (~~outlined in the advice provided to the Department, Reference: 252DA144:1, dated 16 December 2010 and as amended by Condition 1.25A).~~ In designing the upgrade the Proponent should consider opportunities to provide a pedestrian phase in consultation with council and the RMS **TfNSW**.

1.25A Works Authorisation Deed

As road works are required on the Pacific Highway, the developer must enter into a WAD with Roads and Maritime, and:

- a. All road works under the WAD shall be completed prior to issuing any Construction Certificate for the development.
- b. All works associated with the subject development shall be undertaken at full cost to the developer and at no cost to Roads and Maritime or Council, and to Council's requirements.

Note: the Conditions of Consent do not guarantee Roads and Maritime's final consent to the specific road work, traffic control facilities and other structures or works, for which it is responsible, on the road network. Roads and Maritime must provide a final consent for each specific change to the classified (State) road network prior to the commencement of any work.

- 1.26 Any subdivision application must demonstrate that:
- a. all local roads have been designed in accordance with council requirements; and
 - b. intersections of Banter Road/Government Road and Awabakal Road/Government Road can safely and efficiently cater for the additional vehicular traffic that would be generated.
- 1.27 Any subdivision application must demonstrate that opportunities have been investigated to deviate the existing bus route to service the proposed development, and must provide details of the proposed location of bus stops and pedestrian access to bus stops. Where the bus route is proposed to travel through the development area the proponent is to demonstrate the associated roads are designed to accommodate bus movements. These requirements are to be carried out in consultation with council, Transport for NSW, and relevant bus companies.

Heritage

- 1.28 The first subdivision application must be accompanied by a heritage interpretation plan for the Scout Camp Kanangra that has been prepared in accordance with Heritage Council Guidelines.

CONSOLIDATED CONSENT

- 1.29 Any subdivision application must be accompanied by an Aboriginal Cultural Heritage Management Plan (ACHMP) for the Site that has been developed in consultation with Aboriginal stakeholders and to the satisfaction of the OEH.
- 1.30 The ACHMP is to be developed and implemented in full consultation with the registered local Aboriginal stakeholders. The plan is to include, but shall not be limited to:
- procedures for ongoing Aboriginal consultation and involvement;
 - details of the responsibilities of all stakeholders;
 - a statement of the Aboriginal cultural significance of the Site;
 - procedures for further archaeological investigation of the Aboriginal midden site referred to as site 45-7-0177;
 - stop work procedures for the identification and management of previously unrecorded sites (excluding human remains) discovered during development;
 - details of an Aboriginal cultural heritage education program for all contractors and personnel associated with construction activities;
 - identification and management of any proposed cultural heritage conservation area(s);
 - compliance procedures including for in the unlikely event that non-compliance with the ACHMP is identified;
 - details of an appropriate keeping place agreement with local Aboriginal community representatives for any Aboriginal objects salvaged through the development process; and
 - details of proposed Aboriginal cultural heritage interpretation strategies for the Site.
- 1.31 Any subdivision application must be accompanied by an Archaeological Research Design Strategy for the archaeological investigation of Archaeological zone 1 and 2, as outlined in the in the report prepared by ERM titled *Lower Hunter Lands Heritage Impact Assessment, Nords Wharf Estate for Coal and Allied* and dated 7 June 2011. The research design strategy should be in accordance with the regulated investigation works required under the NPW Act and the former DECCW's *Code of Practice for Archaeological Investigation of Aboriginal Objects (2010)* and should include:
- sampling using augur holes spaced approximately 10 metres apart across those parts of Archaeological Zone 1 and 2 to determine the extent, depth, composition and integrity of archaeological deposits;
 - hand excavation of an indicative sample of 1m² test pits based on the results of auguring, which are to be extended to 4m² should archaeological deposits be found to be concentrated and intact; and
 - analysis and interpretation of all excavated material in the form of a report that is to be provided to registered Aboriginal stakeholders.
- 1.32 Prior to the commencement of works, the proponent shall engage an appropriately qualified archaeologist to undertake archaeological investigations of the Aboriginal midden site in accordance with the Archaeological Research Design Strategy for the Site, and where necessary, obtain appropriate approvals under the *Heritage Act 1977*. Archaeological investigations must be undertaken in accordance with the regulated investigation works required under the NPW Act and the former DECCW's *Code of Practice for Archaeological Investigation of Aboriginal Objects (2010)* and should provide for the participation of registered Aboriginal stakeholders.

Bulk Earthworks

- 1.33 Each subdivision application shall include an assessment of the proposed civil works including final contour plans. The assessment shall include details of the suitability of any externally sourced fill and any associated impacts. The assessment shall also give consideration to risk of mine subsidence due to past mining activities.

Construction Management

- 1.34 Any subdivision application must include a Construction Management Plan, which shall include (but not limited to):
- a. a construction noise and vibration mitigation plan;
 - b. an air quality and dust management plan;
 - c. a soil and water management plan, prepared in accordance with Landcom's *Managing Urban Stormwater: Soils and Construction guidelines*;
 - d. a vegetation management plan;
 - e. a waste management plan;
 - f. a construction traffic management plan;
 - g. a dilapidation report of public infrastructure in the vicinity of the site;
 - h. a complaints management plan detailing the procedures that would be implemented to receive, handle, respond to and record any complaints that are received;
 - i. an archaeological management plan which provides for the monitoring of works and contingency plans should previously unidentified archaeological deposits be discovered; and
 - j. any other plans that that may be required as a result of the environmental assessment of potential impacts.

CONSOLIDATED CONSENT

SCHEDULE 3

CONDITIONS OF PROJECT APPROVAL

PART A – ADMINISTRATIVE CONDITIONS

Development Description

Project Approval is granted only to carrying out the subdivision of lands specified in Schedule 1, to enable the transfer of lands to a public authority or a Minister of the Crown.

Development in Accordance with Plans and Documentation

The Proponent shall carry out the project generally in accordance with the:

- a. The *Nords Wharf Land Transfer Plan Revision F* prepared by Monteath and Powys dated 21 August 2008, provided as an attachment to correspondence titled *Preferred Project Report Submission - Coal & Allied Southern Estates: Nords Wharf (MP 10_0088)* prepared by Urbis and dated 16 June 2011, and included at Appendix 2 of this approval; and
- b. Conditions of this approval.

If there is any inconsistency between the above documents, the most recent document shall prevail to the extent of the inconsistency. However, the conditions of this approval shall prevail to the extent of any inconsistency.

Lapsing of Approval

This approval shall lapse if the proponent does not physically commence the proposed development associated with this approval within 5 years of the date of this approval.

PART B – PRIOR TO SUBDIVISION CERTIFICATE

Planning Agreement

The Proponent must enter into a planning agreement in accordance with the letter of offer dated 12 August 2011.

Easements

Easements for services, drainage, maintenance access or any other encumbrances and indemnities required for joint or reciprocal use of part or all of the proposed lots as a consequence of the subdivision, must be created over those lots pursuant to the *Conveyancing Act 1919*.

Documentary evidence of restrictions on title

Prior to the issuing of the subdivision certificate, the Proponent is to provide documentary evidence of the proposed easements to the accredited certifier or Council.

Costs to be borne by the Applicant

All costs associated with the preparation and registration of any covenant or restriction on title, whether directly or indirectly, will be borne solely by the Proponent.

PART C – ADVISORY NOTES

Requirements of Public Authorities for Connection to Services

The applicant shall comply with the requirements of any public authorities (e.g. Integral Energy, Hunter Water, Telstra Australia, AGL etc.) in regard to the connection, relocation and/or adjustment of the services affected by the development. Any costs in the relocation, adjustment or support of services shall be the responsibility of the applicant. Details of compliance with the requirements of any relevant public authorities are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Subdivision Certificate.
