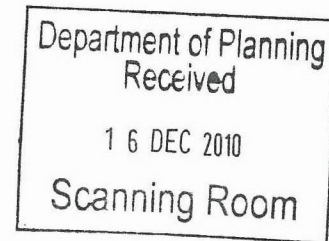


5 Clarke Street
Catherine Hill Bay, 2281



Director, Strategic Assessments
Department of Planning
GPO Box 39
SYDNEY NSW 2001



14th December, 2010

RE COAL & ALLIED SOUTHERN ESTATES PROPOSAL FOR MIDDLE CAMP AT CATHERINE HILL BAY, specifically:

- **MIDDLE CAMP RESIDENTIAL DEVELOPMENT (SOUTHERN ESTATES): CONCEPT PLAN (MP_0089)**
- **MIDDLE CAMP RESIDENTIAL DEVELOPMENT (SOUTHERN ESTATES): POTENTIAL STATE SIGNIFICANT SITE (2010)**
- **MIDDLE CAMP RESIDENTIAL DEVELOPMENT SOUTHERN ESTATES: MIDDLE CAMP SOUTHERN ESTATES (VPA)**

I object to all of the above Coal & Allied Southern estates proposals in relation to Middle Camp at Catherine Hill Bay.

The reasons for my objection are as follows:

The application does not address the heritage significance of Catherine Hill Bay and if approved will undermine the heritage values of this town. The government of NSW has acknowledged the importance of the heritage of this township by listing it on the State Heritage Register. It is only the second time that a town has been given this status in NSW.

The large area in Catherine Hill Bay known as Slack Alley is proposed to be retained by Coal & Allied and zoned E4. This area lies between the cemetery and the houses that border the eastern side of Flowers Drive and Northwood Road. It is within the curtilage of the State Listed Heritage Township of Catherine Hill Bay.

Catherine Hill Bay has been listed on the State Heritage Register partly because it is a fine example of the key role played by 19th century company towns in the development of Australian resources.

Company towns, such as Catherine Hill Bay, existed in isolated areas. Distance from urban areas such as Newcastle meant that it was too far for miners to travel daily to the mine. In 1889 the Wallarah Coal Company built the jetty; the railway that joined the jetty to the mine, two and a half miles north; a sawmill and "14 cottages occupied and others in progress"

The early days of coal mining were labour intensive and more miners worked in the pit than could be accommodated in the housing provided by the Wallarah Coal Company. Some of the miners lived under canvas while others requested permission from the Mine Manager to build their own shacks on company land and paid a small ground rent.

When Coal & Allied bought the coal leases in the 1960s they did not wish to continue to run the town along 'company town' lines. Most of the miners now owned their own transport and technological improvements in mining meant a much smaller workforce was needed. The company owned housing stock was in a scandalous condition. Rather than fix the houses Coal & Allied sold the houses that lined Flowers Drive, Northwood Road, Clarke and Lindsley Streets to the miners and adopted a policy of demolishing all the other houses as soon as they became vacant. The 4 remaining houses in Slack Alley were never put on title; the coal company still owns the land and has previously tried to evict the occupiers. Coal & Allied has informed these households that their houses can never be sold or passed onto family members.

The railway embankment dissected Slack Alley. Prior to 1908 a series of 6 small houses lined the eastern side of the railway embankment. Only one of these houses remains. There were 12 other small dwellings in Slack Alley, some were 'batches', occupied by single men and others were occupied by families. All were built by the miners with company approval. Val Darcy who lived in one of these houses told me that her father "built the house with a hammer and an adze".

Slack Alley had its own supply of fresh water. There still exists a well from which the Bowling Club draws its water. Fresh water was a constant problem for Catherine Hill Bay. It was difficult to gather enough water from the roofs of the houses as the roof areas were so small. Fresh water from the Moonee Stream was never available to the miners. This water was only connected to the mine and to staff houses. This was a source of contention between the miners and the company and reflected the stratification of society in Catherine Hill Bay. The staff houses in what is now known as Colliery Road were connected to the Moonee Water supply and this area was known as "Snob Hill".

"The Catherine Hill Bay Cultural Precinct is state significant for its associations with coal mining, organised labour, and early maritime industry in NSW. It is located on the oldest coal mining lease in NSW, Consolidated Coal Lease 706. It is associated with the earliest examples of industrial action in NSW and with the evolution of unionised labour in the state". Slack Alley played an integral part in this. The mine at

Catherine Hill Bay was kept in production during strikes by the introduction of “scabs” brought in by ship and moved to camps under police protection. There were strikes in 1933 and a nationwide strike in 1949. All the coal mined by these scabs was left in huge dumps in Slack Alley because the miners when they returned to work refused to touch this coal or load it onto ships. These dumps would spontaneously catch fire and were a trial to the women whose lines of washing would suffer and to the children who fell into them while playing.

It shows a lack of understanding on the part of Coal & Allied about the nature of heritage to assert that the heritage value of Catherine Hill Bay is about “streetscape”. It is about the setting within the landscape and relationships that existed between each of these. It is also about people, the miners, their families, the Mine Manager and the staff and the complex ways in which these groups related to each other and their surroundings.

The Independent Hearing and Assessment Panel did understand the relational aspect of heritage and said that there should be no development at Slack Alley. To make sure that this does not happen the zoning must be E2.

The documentation on exhibition suggests that the current application is likely to be only the first of a series of development proposals; the first is for 222 houses on two sites A and B which the proponent argues are outside the heritage curtilage. However the height of building Map, which gives the E4 area in question a building height of 6.5m, and the SSS Listing CI 8, which proposes that additional residential development in E4 zone should have an allotment area “of not less than 6000sqm” indicates that future development is anticipated that will directly impinge on the setting of the historic village.

The Environmental Defender’s Office has given legal advice confirming the zoning of E4 as inappropriate and stating that E2 zoning should be applied. (attachment 1)

It is critical that the land behind the houses that line Flowers Dr on the eastern side and the area known as Slack Alley be owned and managed by DECCW, NPWS or the Lake Macquarie City Council. While this land is retained by Coal & Allied, its future is uncertain. Clearly C&A is not a conservation land management organisation and it is only a question of time until they come back with the proposal to develop the area for housing. Other viable alternative land management options include a Trust established under the Nature Conservation Trust Act or a Voluntary Conservation Agreement with the NPWS.

The proposed new residential housing in precincts A and B will diminish the heritage values of the historic village. Area B is where “E” pit was located for 60 years and where the staff houses were located. To build new houses on top of this area will be to lose a significant segment of the town’s history. The Progress Association, Lake Macquarie City Council and the National Trust all maintain that this area should be within the State listed heritage curtilage.

Any future residential development at Catherine Hill Bay should have no visual impact on the heritage town. Part of the experience of visiting Catherine Hill Bay is the tree lined rural entry into the town. The buffer zone needs to be at least 30m of natural bushland in order to screen the proposed 2 storey new housing in area A. New housing will be clearly visible on the hill when leaving the town to the north.

The Concept Plan and Urban Design guidelines for Catherine Hill Bay prepared by Allen Jack + Cottier for Coal & Allied lack specific design approaches for proposed development within the visual curtilage of the existing settlement. No consideration has been given to Section 2.4 of DCP no. 1- Catherine Hill Bay Heritage Conservation Area and the LMCC Heritage guidelines. The height, scale, bulk and massing of any infill development has to be relative to the existing cottages as seen from all significant views and be subservient rather than dominating. The site coverage proposed is in conflict with the Council's DCP No 1 which sets a 35% maximum site coverage for the standard housing lots within the Catherine Hill Bay Conservation Area (areas "A" and "B" are within this Conservation Area).

The draft State Significant Site Listing proposes to enable the application of the Complying Development Codes SEPP. This SEPP was developed for the building of project homes in metropolitan Sydney. The Complying Codes SEPP should not be applied in a heritage village that has been placed on the State Heritage Register. To do so would be inappropriate and would prejudice the historic and aesthetic values of this heritage township.

The township of Catherine Hill Bay is isolated. It is car dependent. The reason why it exists is because of coal deposits and the ability to get these away by sea initially to Sydney and later to the port of Newcastle. To argue that residential development is needed at Catherine Hill Bay to fulfil requirements under the Lower Hunter Regional Strategy is not adequately justified. New residential development should be located near infrastructure like the railway, shopping centres, highways, schools etc. Lake Macquarie City Council does not want development at Catherine Hill Bay (and previous successive State Governments also did not want development to occur at CHB). The proposed Listing of Middle Camp Residential Development as a State Significant Site will not deliver "a robust long-term outcome". Catherine Hill Bay is remote from jobs and services and the increase in population will not sustain viable public transport.

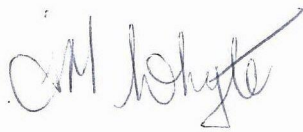
The narrow road that cuts through the town will be impacted by the increased traffic that will be a direct result of this development. The houses are set on their front boundaries and the road is too narrow to allow for cars to be parked on the side of the road. Earlier this year it was only the fortunate position of a telegraph pole that stopped a truck careering into the front bedroom of a house in Middle Camp. The studies on traffic volumes (Parsons Brinkerhoff in November 2007) were based on a Friday in Winter and as such have severely underestimated the traffic flows for Summer, especially over the weekend. The **only** road in Catherine Hill Bay is a rural

road, as well as local road and a collector road. To just determine levels of traffic based on it being only a collector road is disingenuous.

Another significant problem is the traffic noise levels. The building materials of the houses is lightweight and the report by Renzo Tonin is based on an assumed traffic flow that is an underestimate and also that the traffic will only be travelling at 40kph. This report delivers an incorrect finding. The Highway Patrol already has figures that show the traffic is travelling much faster than the present speed limit of 50 kph, and yet Coal & Allied argue that nothing is required on their part. At the very least Coal & Allied should commit to traffic calming measures in their Statement of Commitments.

I have found much of the application to be inadequate and misleading and request that this application be sent to the Planning Assessment Commission before any approval is given. The present zoning of the land in question would only permit 5 or 6 dwellings on this site not the currently proposed 222 dwellings. ICAC has recommended that the PAC become automatically responsible for all private significant development applications that exceed local development rules by more than 25%. This proposal far exceeds this figure.

Yours Faithfully

A handwritten signature in dark ink, appearing to read 'Suzanne Whyte', with a stylized flourish at the end.

Suzanne Whyte

Our Ref: Melissa Jolley

1/89 York Street
Sydney NSW 2000
Tel: (61 2) 9262 6989
Fax: (61 2) 9262 6998
email: edonsw@edo.org.au

14 December 2010

Office 1 Level 1
71 Molesworth Street
PO Box 868
Lismore NSW 2480
Tel: 1300 369 791
Fax: (61 2) 6621 3355
email: edonr@edo.org.au

Sue Whyte
President
Catherine Hill Bay Progress Association

web: www.nsw.edo.org.au

By email

Dear Sue

Catherine Hill Bay State Significant Site proposal – Coal & Allied Industries Limited

We refer to your email dated 12 December 2010.

You have requested advice as to whether a parcel of land contained within the Catherine Hill Bay (Middle Camp) State Significant Site proposal by Coal & Allied Industries Limited (C&A), currently on public exhibition, can legally be zoned "E2 – Environmental Conservation", as opposed to "E4 – Environmental Living".

Background

The subject parcel of land formed part of an earlier State significant site and Concept Plan proposal for Catherine Hill Bay (Middle Camp) under Part 3A of the *Environmental Planning and Assessment Act 1979* (NSW) by C&A, which were both withdrawn prior to determination by the Minister for Planning.

Prior to its withdrawal, the earlier Concept Plan for Middle Camp was the subject of an Interim Report by an Independent Hearing and Assessment Panel (**IHAP Report**), constituted to advise the Director General of the Department of Planning on 19 June 2007 on various impacts of the Concept Plan.

In relation to Middle Camp, the IHAP Report made the following findings:

Key Principles

Having regard to the above the Panel considers that any development at Middle Camp, Catherine Hill Bay shall comply with the following key planning principles:

...

4. It is noted that the development at Middle Camp is proposed in four distinct precincts totalling a developable area of 50ha (300 lots) at an average dwelling density of 6 dwellings per hectare:

...

(iv) Precinct D "South East Hamlet" 7.4ha (22 lots) – the area is located to the



east of the existing Middle Camp settlement and is defined by Middle Camp Creek to the north, Northwood Road and its landscape buffer to the south and wetlands to the east.

Having regard to Principle 2 above it is considered that there is potential for residential development as generally detailed in the Concept Plan within Precincts A and B but that development should not proceed in Precincts C and D having regard to the significance of this land in providing a visual, cultural and landscape connection between Middle Camp Village in the north and Catherine Hill Bay Village in the south.

7. The Panel considers that Precinct D is highly sensitive given its location in close proximity to the beach, the cemetery and the old railway alignment. It is of the view that consideration should be given to the provision of a public recreational park in the location of the existing Precinct D on land not taken up by the existing 4 dwellings and their allotments (to be created). Further work is required to determine appropriate allotment boundaries for these existing dwellings given the sensitive nature of the area.

“Precinct D” referred to in the IHAP Report, now constitutes the parcel of land which is proposed to be rezoned “E4 - Residential Living” in the current State Significant Site Proposal which is on exhibition.

You have instructed us that a representative of C&A has advised that the area should be zoned “E4 – Environmental Living” and has challenged the Association to provide legal advice to the contrary.

You are concerned that the area is proposed to be rezoned as E4, to enable future residential development of the area.

Advice

In order for the rezoning proposed for Middle Camp to be effected, the Governor must amend Schedule 3 of the *State Environmental Planning Policy (Major Development) 2005 (Major Development SEPP)*, to make provision with respect to any matter that, *in the opinion of the Minister for Planning* is of State or regional environmental planning significance.¹

The Minister *may* require a State Significant Site study (SSS Study) to be prepared for this purpose.²

Pursuant to clause 8(2) of the Major Development SEPP, any such study is to assess:

- a) the State or regional planning significance of the site, and
- b) the suitability of the site for any proposed land use taking into consideration environmental, social and economic factors, the principles of ecologically sustainable development and any State or regional planning strategy, and
- c) the implications of any proposed land use for local and regional land use, infrastructure, service delivery and natural resource planning, and
- d) any other matters required by the Director-General.

Once a SSS Study has been publicly exhibited, the Director-General is required to provide a copy of the study and any recommendations to the Minister.³

There is no requirement for the Minister to convene a SSS Study, nor consider the contents of it, when forming the opinion that a matter is of State or regional planning significance.

¹ Section 37(2) of the *Environmental Planning and Assessment Act 1979* (NSW).

² Clause 8(1) of the Major Development SEPP.

³ Clause 8(3) and 8(5) of the Major Development SEPP.



On 16 August 2010, C&A was requested by the Director-General to prepare a SSS Study assessing the matters outlined in (a) to (c) above, as well as a number of additional matters, including the following:

(g) the recommended land uses and development controls for the site that should be included in Schedule 3 [to the Major Development SEPP].

The recommended land uses and development controls for the site are set out in Appendix B to the SSS Study dated November 2010, entitled "Proposed Listing in SEPP Major Development – Schedule 3".

Page 31 of the SSS Study states that the proposed land use zones "have been based upon the Department of Planning's gazetted Standard Instrument - Principal Local Environmental Plan."

The reference to the "gazetted Standard Instrument" is a reference to an Order by the Governor gazetted on 1 March 2006 (**Standard Instrument Order**) which prescribes the form and content of a principal local environmental plan, prepared by local councils. It refers to the Standard Instrument, a drafting template for local environmental plans which sets out a number of compulsory and optional provisions. The Standard Instrument Order (and therefore the provisions of the Instrument itself) is clearly expressed to apply only to the form and content of a local environmental plan.⁴

As stated above, the rezoning proposed by C&A in the SSS Study will, if approved, be effected by an amendment to Schedule 3 of the Major Development SEPP, which is dependant only on the Minister forming the opinion that the proposed rezoning is "of State or regional environmental planning significance".

In our view the Minister is not bound by the Standard Instrument Order, nor the provisions of the Standard Instrument itself, in forming the opinion that the proposed rezoning is "of State or regional environmental planning significance". It is likely that C&A have adopted the provisions of the Standard Instrument to comply with the spirit and intention of the Standard Instrument, which was introduced to achieve consistency in land use and zoning across the State.

Even if C&A (and the Minister) were bound to comply with the Standard Instrument, there is nothing in that instrument to prevent the subject parcel of land from being zoned "E2 – Environmental Conservation".

The Standard Instrument contains 34 different zones, and the choice of zone should reflect the primary intended use of the land. Each zone also contains certain 'zone objectives'. Under the Standard Instrument, Councils are permitted to add additional objectives to a zone to reflect particular local objectives of development, but the added objectives must be consistent with the core objectives as set out in the Standard Instrument. Objectives are an important part of zoning as they provide a context that helps to interpret the rest of the zone's provisions. For example, it may be unclear as to whether a particular development is allowed in the zone and in such cases the objectives will help to decide the matter.

⁴ Clause 2 of the *Standard Instrument Order 2006*.

Councils can also add to the types of development that are permitted or prohibited in the zone. However, councils are not allowed to remove any types of development from the list contained in the Standard Instrument.

Even if the Minister were bound by the provisions of the Standard Instrument, on our examination of the zone objectives and development permissible in the “E2 – Environmental Conservation” zone, the subject parcel of land could potentially be zoned as such.

The Standard Instrument contains the following for E2:

Zone E2 Environmental Conservation

Direction.

The following must be included as either “Permitted without consent” or “Permitted with consent” for this zone:

Environmental protection works

1 Objectives of zone

- To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.
- To prevent development that could destroy, damage or otherwise have an adverse effect on those values.

2 Permitted without consent

3 Permitted with consent

4 Prohibited

Business premises; Hotel or motel accommodation; Industries; Multi dwelling housing; Recreation facilities (major); Residential flat buildings; Retail premises; Seniors housing; Service stations; Warehouse or distribution centres; Any other development not specified in item 2 or 3

E2 zoning is suitable for areas with high ecological, scientific, cultural or aesthetic values outside the reserve system. It allows for uses compatible with its ecological values. It can be seen from the above that although residential flat buildings and multi-dwelling housing are prohibited in this zone, a ‘dwelling houses’ are not listed in the ‘prohibited’ section, and accordingly it would be open to a Council (or the Minister in this case) to make dwelling houses permissible with consent in this zone. Dwelling houses could only be approved in the zone however if they were consistent with the zone objectives, which include to, “prevent development that could destroy, damage or otherwise have an adverse effect on those [high ecological, scientific, cultural or aesthetic] values.” In our view, such a zoning would be more appropriate given the recommendations of the IHAP Report for the subject parcel of land.

As stated above, the applicable zoning is selected to reflect the intended use of the land. It is clear that in designating the subject parcel of land as “E4 – Environmental Living”, C&A intend for the area to be more developed. This is illustrated by contrasting the zone objectives. The zone objectives for E4 in the Standard Instrument are:

- To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.
- To ensure that residential development does not have an adverse effect on those values.

Whilst development for dwelling houses can be made permissible with consent in either zone E2 or E4, obviously it would be easier to approve dwelling houses in the E4 zone, as they would more clearly be consistent with the zone objectives.

Summary of advice

In summary, the Minister is not bound by the zoning provisions of the Standard Instrument in forming the opinion that the rezoning of Middle Camp is of "State or regional environmental planning significance".

Even if the Minister were bound by the Standard Instrument, it would be open to him or her to rezone the subject parcel of land as "E2 – Environmental Conservation", as dwelling houses could be made permissible with consent in this zone. Development applications in this zone would be subject to more stringent environmental considerations, which would be consistent with the recommendations made in the IHAP Report in respect of this parcel of land.

Yours sincerely

Environmental Defender's Office (NSW) Ltd



Melissa Jolley
Solicitor

