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Director, Strategic Assessment  
Department of Planning  
By email

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

- **MIDDLE CAMP RESIDENTIAL DEVELOPMENT (SOUTHERN ESTATES): POTENTIAL STATE SIGNIFICANT SITE (2010)**
- **MIDDLE CAMP RESIDENTIAL DEVELOPMENT (SOUTHERN ESTATES): CONCEPT PLAN (MP10\_OO89)**
- **MIDDLE CAMP RESIDENTIAL DEVELOPMENT SOUTHERN ESTATES: MIDDLE CAMP SOUTHERN ESTATES (VPA)**

I object to the above Coal & Allied Southern Estates proposals in relation to Middle Camp at Catherine Hill Bay for the reasons outlined below.

I am not opposed to development per se but am firmly of the view that the impacts of the proposed Coal and Allied development and the cumulative impact of this and Rosegroup development proposal will undermine the heritage significance of Catherine Hill Bay. It will inappropriately change the character of the town and its setting, have detrimental impacts on traffic safety and exceed noise goals for residential areas. Further, the proposals referred to above fail to adequately protect the environmental attributes of the site and do not ensure a "robust long-term outcome".

#### **CREDENTIALS**

I have worked as an architect in the field of urban design and planning for over 25 years. During that time I have held senior positions in state government (NSW Department of Urban Affairs and Planning) and private sector and have extensive experience in strategic and statutory planning and development assessment. I am experienced in providing independent design and planning advice and conducting project reviews. Through my previous role as Executive Director at the Department of Urban Affairs and Planning, I am well versed in the planning strategies required to effectively manage the NSW coastline and our State Heritage. I make this submission as a private individual.

#### **SPECIFIC OBJECTIONS:**

##### **POTENTIAL STATE SIGNIFICANT SITE (2010)**

- 1.1 The strategic justification for the project cited in the State Significant Site Listing Report is inadequate. Contrary to the statement on page 2 of the SSS Listing Report (Nov 2010), the proposed development is not "crucial in achieving the State Government's objective of securing

major conservation corridors". The justification that the proposed development should progress because it conserves 93% of the site is not agreed. The **land is currently zoned 7(1) Conservation (Primary) and 7(4) Environmental (Coastline)** pursuant to Lake Macquarie LEP 2004. These zones provide a high level of protection for the site. It should be noted that the **proposed development does not comply with the objectives of these zones**. The Concept Plan proposes the clearance of 7(1) land that houses a threatened flora species (*Tetratheca juncea*) and two Endangered Ecological Communities: *Swamp Sclerophyll Forest in Coastal Floodplains and Themada Grasslands on Seacliffs and Coastal Headlands*.

- 1.2 Further, the current application proposes to construct 222 dwellings in Areas A & B which are zoned 7(1) Conservation (Primary). It should be noted that this proposal exceeds current controls for this area by a significant amount. The 222 dwellings is some 37 times greater than the maximum (5 or 6 dwellings) currently allowable by development controls established by LMCC, with State Govt endorsement. Current controls in zone 7(1) permit up to 1 dwelling per 100ha. This application proposes an exceedance of LEP controls by over 3500%.
- 1.3 Claims that the proposed listing will "provide a robust long-term outcome" and that development of new housing in CHB is necessary to address the housing needs of the Hunter region are also not agreed. Department of Planning reports have acknowledged that Catherine Hill Bay is unsuitable for residential development as the area is remote from services, jobs and will rely on private car ownership. The increase in population will not sustain viable public transport.
- 1.4 In 2006, publicly available documents record advice from senior staff of the Department of Planning that Catherine Hill Bay is not suitable for development. The May 2006 Draft Cabinet Report titled *Review of Major Hunter Landholders Development and Conservation Proposals* reviews the proposal from C&A (and others) for development potential on their lands. "The Wallarah Peninsula is rich in biodiversity, as well as providing keystone conservation landscape that link two sets of coastal habitat (littoral and estuarine). The proposed development areas expand on the existing settlements of Catherine Hill Bay, Moonee, Nords Wharf and Gwandalan. In the case of Catherine Hill Bay the proposed development dwarfs the existing coastal village....The development areas proposed for Catherine Hill Bay are not appropriate to the scale or location of existing settlements...the Coal and Allied lands are of such significance that even without dedication the Department of environment and Conservation will seek acquisition using funds raised through infrastructure levies." Other documents made available through the Upper House call-in show that the Department of Planning had analysed 92 sites in relation to their suitability for residential development in order to address the housing needs of the Hunter region. Catherine Hill Bay was ranked one of the two least suitable.
- 1.5 Much of the application is misleading. It is contradictory in relation to what is actually being proposed. In the Executive Summary and on p2, the Report states that the proposal is to develop 28.2ha for residential purposes with a maximum yield of 222 lots and that the balance of the site is proposed to be dedicated to NSW Government for conservation purposes. However this is contradicted. Elsewhere in the Report, reference is made to other future uses: 1.6ha is to be dedicated to Lake Macquarie City Council for recreation purposes; and a substantial area of land is to be retained by Coal & Allied, with zoning proposed as E4. The E4 zoning is intended to 'provide for low impact residential development...' albeit on min. 6000sqm allotments with a building height limit of 6.5m. This type of development is arguably the worst

possible outcome for such a significant site. Note that the proposed E4 development is in direct contradiction to the recommendations of the Independent Hearing and Assessment Panel (IHAP) that clearly and repeatedly stated that this area (then 'Precinct D') should **not** be developed.

- 1.6 From the application, it can readily be inferred that the current application is likely to be only the first of a series of development proposals. The first is for 222 dwellings on two sites A & B but subsequent applications are likely to be the development of the proposed pocket parks and the E4 environmental zone. This current application does not "provide a robust long-term outcome".

### CONCEPT PLAN (MP10\_OO89)

2.1 The significance of Catherine Hill Bay has been widely acknowledged, most recently through its inclusion on the State Heritage Register. The expert IHAP regard the Middle Camp village and its setting as representing "a precinct of exceptional aesthetic, landscape, social and cultural landscape heritage significance... it is unique, representing a largely intact 19<sup>th</sup> Century mining village characterized by development along a single street with single storey cottages sited on either side. In addition to the cottages themselves the spaces between the cottages and the landscape setting are also significant." They also recommend that "any development in the vicinity of Middle Camp should not prejudice the scenic, aesthetic and cultural heritage qualities of the area..." The large area on the eastern side of Middle Camp proposed to be zoned E4, with a minimum lot size of 6000sqm and a building height limit of 6.5m is in direct conflict with this IHAP recommendation. The object of E4 zoning is to enable residential subdivision in an environmentally sensitive zone. This area which has been an open public common and green space dotted with a few unfenced miners cottages is essential to the historical interpretation and understanding of Catherine Hill Bay itself. **The E4 zoning is in direct conflict with both Heritage Act and IHAP.** I believe that this area should be zoned E2 which would better preserve its environmental qualities. According to the Standard Template, E2 would conserve environmental values and at the same time, the existing dwellings could still be legal uses.

2.2 In their previous findings, the IHAP repeatedly confirmed that there should be no development in the area formerly identified as Area D and known as Slack Alley. It should also be noted that on page 10 of the IHAP report it states "*the proponent has verbally advised that it accepts the Panels recommendations ...*". The current application directly contradicts previous undertakings and expectations.

2.3 Further, it is important that the land known as Slack Alley and the common land behind the houses on the eastern side of Flowers Drive be owned and managed by DECCW, NPWS or the Lake Macquarie City Council. While this land is retained by Coal & Allied the future use of the land is uncertain. C&A is not a land management organization and it is highly probable that their undertaking to manage the conservation lands will be unsustainable over the medium and long term. There are a number of viable alternative land management options (such as a Conservation Trust) that should be required if development proceeds.

2.4 The AJC report, which forms part of the application, deals with heritage significance only in terms of the Middle Camp streetscape. It fails to respect the relational nature of heritage places and their settings. Diagram A2.1 of their Report proposes a '**curtilage**' around Middle Camp which **clearly disregards the landscape setting of the village and the sequence of spaces from the grassed commons,**

**to the area known as Slack Alley, to the historic cemetery.** All of these are critical to the town's heritage context. As such, the proposed 'curtilage' is in direct conflict with the values established by the State Heritage Listing.

2.5 The application also incorrectly addresses the **impact of traffic** on the heritage character of the village and on the safety and amenity of its residents. The *Coal & Allied Industries Limited, Lower Hunter Lands Project Catherine Hill Bay (Middle Camp) – Traffic and Transport*, October 2010 by Hyder (the Hyder Traffic Report) categorises Flowers Drive as a 'Collector Road'. While Flowers Drive does connect to the Old Pacific Highway, it is the only street in the village other than two short culs-de-sac. Over its length of about 2 or 3km, it is a meandering rural road with low volume. It is a shared zone used by cars, cyclists and pedestrians as there are no footpaths and it provides direct access to residential properties. The houses that line the road are of light-weight construction and built directly to the boundary. However, the RTA categories have been developed in response to urban conditions and **this rural context does not fit the 'standard urban definition'**. The characteristics of Flowers Drive accord with a local road classification as defined within *Table 1.2.5 of RTA Design Guide – Factors for Implementation of Road Hierarchy*. As such, acceptable traffic numbers and acoustic standards are exceeded.

2.6 The Hyder Traffic Report (refer p17) estimates traffic flows based on counts taken in winter (17 – 23 July). Forecasts in Table 3.8 are based on Friday traffic flows. This significantly underestimates the increase in traffic by not taking into account the seasonal variation in traffic flows and weekend flows. Page 48 of the Hyder Report notes that the '*traffic profile on Pacific Highway for the year of 2006... [in November and December] were 10% higher than July traffic (when counts were taken)*'. Therefore they have applied a 10% uplift factor. However, it is inaccurate to assume that the increase in summer traffic flows on Flowers Drive mimics Pacific Highway. Catherine Hill Bay is a major recreational destination during summer and a significantly higher proportion of the Pacific Highway traffic turns off the highway into Middle Camp and to the beach. It is obvious to anyone who has spent time at Catherine Hill Bay that summer flows on Flowers Drive are more than the assumed '10% higher than winter flows'.

Further, the Hyder analysis fails to take into account the weekend peak traffic conditions which are 30% higher than weekday flows on Flowers Drive (refer Table 2-9) and 200% higher on Northwood Road. Traffic analyses should be based on the peak conditions when impacts are most severe. The Hyder report notes that traffic on Flowers Drive through Middle Camp will rise from 730 to 2130 vehicles per winter weekday (Table 3.8). This exceeds the RTA's Environmental Goal of 2000 for a local road, without even considering the summer and weekend traffic increases.

2.7 While Section 3.6 of the Hyder Traffic report addresses key access points and internal roads within the proposed subdivision, it fails to address the impact of the proposal on access to existing properties as required in the Director General Requirements.

2.8 Studies carried out for Coal & Allied show that there are significant increases in traffic flows along Flowers Drive on the weekends and in summer, yet only 10% has been allowed in their calculations. The **acoustic study by Renzo Tonin (letter dated 11 October 2010)** is based on an estimated 40km speed, but nothing in the application commits to any traffic calming measures. Indeed, current road configuration encourages the current 50km/hr speed limit to be frequently exceeded. While the Statement of Commitments does suggest that LATM would be implemented "if required", both traffic and acoustic reports incorrectly suggest that 'nothing is required'.

2.9 Further, the Tonin Report also compares existing noise levels and acceptability of predicted future traffic noise levels relative to an inappropriate category of Development Type (namely impacts on collector road), as documented in the NSW Environmental Criteria for Road Traffic Noise (ECRTN). However, the analysis should relate to the ECRTN criteria 13, 'Land use developments with potential to create additional traffic on local roads'.

The ECRTN criteria were developed to control traffic noise impacts on urban roads and are often unsuited to the classification of roads in rural areas. This issue is acknowledged by DECC and is currently being considered in a review of the ECRTN. In his letter of 18 May 2009 which was previously forwarded to the Department of Planning, John Wasserman, acoustics engineer, advised that *"the low volumes, characteristically intermittent traffic flows, proximity of residences on the road, road geometry, traffic speed would indicate a local road definition. In my experience it is appropriate to assign local road criteria to Flowers Drive where it passes through Middle Camp."*

2.10 As noted above, Flowers Drive is a local road in a rural context with intermittent traffic flows where dwellings are sited with zero setback to front boundaries, at a distance of 5m from vehicles on the carriage way. The historic miners' cottages are light-weight timber framed construction with little noise attenuation and bedrooms located at the street frontage. There is no possibility of increasing noise insulation of the structures and any change in traffic volumes will cause significant adverse noise impacts on residents. The noise impacts of the proposed development exceed recognised standards and would have a severely negative impact on the amenity of the village.

2.11 The proposal does not comply with **LMCC Scenic Protection Guidelines 2004** as it fails to protect the character of the scenic rural entry road coming from the north into Middle Camp. The proposed two-storey townhouse development in Area A is out of character with the bush context and the heritage setting of Middle Camp. Further, it is important that the **buffer zone along Flowers Drive** be at least 30m wide in order to adequately screen any development and to retain the significant rural character of the entry into the heritage township.

The application is confused and misleading. It quotes figures varying of between 15-30m for a buffer zone along this part of Flowers Drive. While the SSS Listing Report commits to a 15m buffer zone on page 37, the AJC Concept Report commits to a 20m buffer zone and elsewhere on p32 of SSS Listing Report, experts state that the landscaped buffer is 23 – 30m wide. In recent correspondence to CHBPA, C&A state that the buffer zone is 'effectively' 23m. Not only is this inadequate, it is very ambiguous. Does this mean that C&A are relying on private backyards to provide a landscaped buffer? Does it assume that private land owners will maintain a treed-buffer on their own properties? Experience shows how unreliable and ineffective this would be. What does 'effective' mean? I recommend that a 30m buffer zone is the minimum that could retain mature trees and sufficient native screening. This has been confirmed in submissions from other experts to C&A's previous proposals. Severe visual impacts would result from the inadequacy of a buffer of lesser width between Flowers Drive and the development in precinct A. The beauty and character of the meandering, heavily treed entry road to the historic village would be destroyed and the proposed two storey townhouses would be clearly visible. Furthermore,

2.12 The proposed **Urban Design guidelines lack adequate design controls** for any future development. 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 site coverage proposed for new development

is in conflict with Council's DCP No. 1 which stipulates 35% maximum site coverage. This would result in new dwellings being entirely out of character with the spatial configuration of the heritage village. Further, height, scale, bulk and massing of new development does not relate to the existing early cottages as seen from all significant views. Under the guidelines recommended in the application, the proposed future development would dominate the village and undermine the character and setting of the existing village.

2.13 The Urban Design Guidelines as proposed are unlikely to deliver outcomes which are sympathetic to the context or excellent in terms of built form. The development of land around Middle Camp requires a robust **independent design review process and more detailed controls** if appropriate streetscapes and buildings are to be achieved

2.14 The draft SSS Listing proposes the **application of the Complying Development SEPP and Codes**. The Complying Code (Residential) was developed largely to facilitate the building of project homes in metropolitan Sydney. It is surprising that while Coal and Allied regard the site sufficiently important to be listed as a State Significant Site under Pt 3a, they also wish to use the 10 day complying development process. Catherine Hill Bay and its setting are areas of major scenic, built and environmental heritage significance. The Complying Codes should not be applicable in the isolated, environmentally sensitive areas that are the setting for Middle Camp. The site is important and the quality of urban design and future built form should enhance this exceptional place. As stated by the IHAP "any development in the vicinity of Middle Camp should not prejudice the scenic, aesthetic and cultural heritage qualities of the area..."

2.15 It should also be noted that geotechnical experts have advised that *Douglas Partners Report: Phase 2 Mine Subsidence Risk Assessment for Proposed Residential Subdivision Catherine Hill Bay is not a "true" risk assessment as per the Australian / NZ Standards AS/NZS 4360:2004*. Dr William Laing is a well-recognised international expert in structural geology & drillcore analysis and in commenting on a review by Damien Hawcroft that says "*it appears very doubtful as to whether building of permanent residential houses is appropriate for this Area [B]*", he recommends that the development must be suspended until this is resolved.

#### **MIDDLE CAMP SOUTHERN ESTATES (VPA)**

3.1 Over many decades, Coal and Allied have drawn very substantial profits from mining the land at Middle Camp. It can reasonably be concluded that in changing the land use they will have an obligation to remediate the land both underground and above ground at their own cost and as an expense attributable to the coal mining operations. This cost should not set development expectations or be taken into consideration as part of the development assessment process. The two actions need to be addressed entirely independently.

3.2 The VPA is inadequate as it fails to address the amelioration of unacceptable impacts. C&A have not committed to ameliorating the traffic and noise impacts on existing residents and they have failed to provide a viable long-term solution to the ownership and management of the common land behind houses on the eastern side of Flowers Drive and the land around 'Slack Alley'. We request that the Director General require Coal and Allied provide a revised statement of commitments pursuant to s75(6) of the EP&A Act.

#### **IN SUMMARY**

4.1 As outlined above, the Concept Plan and associated applications fail to adequately address the heritage significance and to maintain the important characteristics of Middle Camp.

4.2 I support sympathetic development within the Middle Camp and Catherine Hill Bay area that does not negatively impact on the significance of the village and its setting, nor the amenity for residents and visitors. The character and attributes of Catherine Hill Bay are rare and hence it is critical that any development that takes place is sympathetic to the coastal location, historic context and environmental conditions. I believe that the intrinsic heritage and environmental values of the Catherine Hill Bay area must be retained for future generations and visitors to enjoy. New development that would spoil this unique place must not be permitted.