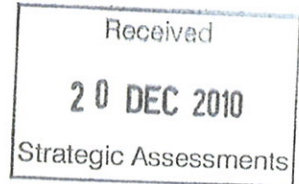


Catherine Hill Bay Progress Association And Dune Care Inc



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14 December 2010

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

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

- **MIDDLE CAMP RESIDENTIAL DEVELOPMENT (SOUTHERN ESTATES): CONCEPT PLAN (MP10_0089)**
- **MIDDLE CAMP RESIDENTIAL DEVELOPMENT (SOUTHERN ESTATES): POTENTIAL STATE SIGNIFICANT SITE (2010)**
- **MIDDLE CAMP RESIDENTIAL DEVELOPMENT SOUTHERN ESTATES: MIDDLE CAMP SOUTHERN ESTATES (VPA)**

This is an objection by the Catherine Hill Bay Progress Association and Dune Care Inc (Progress Association) on behalf of the Catherine Hill Bay (CHB) community to all of the above.

The Progress Association objects to the proposed Concept Plan (MP10_0089) as it has significant concerns with key components of the Application. We are of the opinion that the Concept Plan and Application fails to adequately address the heritage significance of Catherine Hill Bay and the relevant controls being Lake Macquarie Local Environmental Plan 2004 ("LMLP 2004"), Lake Macquarie Development Control Plan No.1 ("DCP"), Lake Macquarie Heritage Guidelines and Lifestyle 2020 Strategy (2020 Strategy). Furthermore it fails to address the significant ecological, heritage, visual impact, traffic and other site specific constraints which limit development.

The Progress Association is of the opinion that there are a number of inconsistencies throughout the Application documentation, furthermore the Progress Association is of the opinion that the *Phase 2 Mine Subsidence Risk Assessment Proposed Residential Subdivision Catherine Hill Bay* prepared for Coal and Allied Industries Ltd by Douglas Partners is not a "true" risk assessment as per the Australian / NZ Standards AS/NZS 4360:2004 and therefore should not be read as suggested by the title, i.e. "Mine Subsidence Risk Assessment".

It is our understanding that significant urban expansion at Catherine Hill Bay has not formed part of Council's

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long term planning, or the State Government's settlement strategies, until the release of the Lower Hunter Regional Strategy (LHRS) in 2006. Catherine Hill Bay has not previously been identified as a suitable location for urban growth due to its isolated location, the lack of community facilities and infrastructure, and the potential impacts on heritage, scenic/landscape and biodiversity values and significance of the area.

The Progress Association has recorded a comprehensive chronology of the attempts over decades by previous successive State Governments and the Lake Macquarie City Council to protect the Wallarah Peninsula and Catherine Hill Bay from inappropriate development and to create a green buffer zone between Newcastle and the Central Coast. Refer to attachment 1

We are of the opinion the proposal does not fully address the objectives set down in its own document and that the proposal is lacking detailed controls in relation to future management and development of the site. For all these reasons (which are detailed below) the proposal fails to adequately address the requirements laid down by the Director General.

We understand the proposed Concept Plan seeks to facilitate residential development that is not permissible under the existing planning provisions and therefore a State Significant Site listing/rezoning is proposed under Schedule 3 of State Environmental Planning Policy (Major Development) 2005 (Major Development SEPP), which will provide the statutory mechanism for approval of the Concept Plan and associated future Development.

The Progress Association has significant concerns with the proposed listing of Catherine Hill Bay (Middle Camp) as a State Significant Site ("SSS") pursuant to Schedule 3 SEPP (Major Projects) as we feel the listing would undermine the conservation values assigned to Catherine Hill Bay provided by its existing zonings. The land is zoned 7(1) Conservation (Primary) and 7(4) Environmental (Coastline) pursuant to LEP 2004. These zones provide a high level of protection for the site, particularly when the proposed development does not comply with the objectives of these zones.

Coal and Allied argue that the listing of the site on Schedule 3 of the SEPP (Major Projects) will facilitate the orderly use, development and conservation of regionally important sites of environmental and social significance.

However, we are of the opinion that the existing zones already provide a high level of protection for the site and that the significance of Catherine Hill Bay has been acknowledged through its inclusion on the State Heritage Register and has been identified as a Heritage Conservation Area pursuant to LMLEP 2004 and LMCC DCP No.1 Section 2.4. In addition the expert Independent Hearing and Assessment Panel (IHAP) regard the Middle Camp village and its setting as representing "a precinct of exceptional aesthetic, landscape, social and cultural landscape heritage significance..."

Furthermore the Progress Association has significant concerns with the proposed draft Schedule 3 listing as detailed in Appendix B of the CHB SSS Listing prepared by Urbis on behalf of Coal and Allied. We are of the opinion that the draft Schedule 3 listing is lacking detailed controls particularly in relation to design controls of future development.

Specific concerns with the proposed SSS listing and applicable controls are now detailed below.

The Progress Association is of the opinion the proposed VPA is inadequate as it fails to take the remediation obligations into account and presumes a 'right' to develop and profit from despoiled land despite unacceptable impacts.

SPECIFIC OBJECTIONS

CONCEPT PLAN (MP10_0089)

1. Justification

The Concept Plan continually states *"the proposed development of 28.2ha of Catherine Hill Bay (Middle Camp) for residential and proposed dedication of 528.87ha of lands at Catherine Hill Bay (Middle Camp) for conservation purposes is crucial in achieving the State Government's objective of securing major conservation corridors identified in the Lower Hunter Regional Strategy (LHRS) and Lower Hunter Regional Conservation Plan (LHRCP), most notably the Wallarah Peninsula Corridor"*.

The Concept Plan continually refers to the conservation of the 528.87ha (93%) of the site, however this does not adequately consider the impact on what is proposed. **The justification that the proposed development should progress because of the conservation of 93% of the site is not agreed.** The land is zoned 7(1) Conservation (Primary) and 7(4) Environmental (Coastline) pursuant to LEP 2004. These zones provide a high level of protection for the site, particularly when the proposed development does not comply with the objectives of these zones.

The objectives of the 7(1) zone are to preserve areas of significant vegetation and habitat and conserve, enhance and manage corridors to facilitate species movement. Another objective of this zone is to protect the land from impacts from development on adjoining zones. The zone excludes activities which would prejudice the ongoing conservation of the land and encourages activities that meet the conservation objectives. This zone applies to the site due to its regional environmental significance and conservation values. This current zoning would only permit 5 or 6 dwellings on the entire Coal and Allied site not the currently proposed 222 dwellings. It is relevant to note that a SEPP 1 Objection would only allow for a 10% variance to existing controls. Where as the Coal and Allied development proposes an exceedance of over 3500%.

The objectives of the 7(4) zone are to provide and conserve areas for natural coastal processes, conserve and enhance the scenic values and natural, Aboriginal and European heritage associated with the coastline and ensure that development is sympathetic in design, bulk and scale with the coastline. Another objective of the zone is to protect, enhance and manage corridors to facilitate species movement, and the dispersal and interchange of genetic material.

The development proposed in the Concept Plan is contrary to the objectives of the 7(1) and 7(4) 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*.

While the current proposal involves rezoning the land, the Environmental Assessment ("EA") report does not assess the proposal against the current zone objectives applying to different parts of the site or justify non-compliance with the zone objectives.

Offsets for the proposed development are predominantly located in the 7(1) zone of LMLEP 2004, which has limited subdivision potential. This zone is the most secure land use zone in LMLEP 2004. Coal and Allied emphasise throughout their report the proposal will allow the dedication of land and therefore *"provide and enhance important conservation corridors identified in the LHRS, LHRCP"* however, the Progress Association is of the opinion this land was substantially secured by the land use zone that was endorsed by Council in 2002 and the Department of Planning in 2004.

2. Proposed Zoning

The proposed rezoning of the 7(1) Conservation (Primary) to E1 National Parks and Nature Reserves, E1 easements, E2 Environmental Conservation, E4 Environmental Living, R2 Low Density Residential and RE1

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Public Recreation is largely contradictory to the objectives of the 7(1) Conservation (Primary) and 7(4) Environmental (Coastline). The proposed developable areas for residential purposes are confined to the 7(1) zoned portion of the Coal and Allied lands.

Furthermore, we have been advised verbally by Andrew Donald (Senior Strategic Planner) Lake Macquarie City Council that although the draft LEP 2011 will not be on exhibition until early 2011, Council are proposing that the majority of Catherine Hill Bay (with the exception of the Cemetery and some community facilities) be zoned E2 Environmental Conservation with the exception of that land already developed which will be given the R2 Low Density Residential Zoning.

The rezoning proposed by Coal and Allied contradicts both the existing and proposed zoning of the site as given by LMCC. It is relevant to note the DoP endorsed the 7(1) Conservation (Primary) and 7(4) Environmental (Coastline) zoning with the gazettal of LM LEP 2004.

3. Lake Macquarie Lifestyle 2020 and LEP 2004

Section 5.17 of the Environmental Assessment addresses the relevant controls of the LM LEP 2004 and states that the Concept Plan is in accordance with the relevant statutory considerations.

Clause 16 of the LEP identifies that consent must not be granted for development unless the consent authority has had regard to the vision, values and aims of the *Lifestyle 2020 Strategy* expressed in Part 2. As detailed in the Schedule of Issues prepared by LMCC for the Proposed Draft SEPP, State Significant Site Listing, Concept Plan and Project Application – Catherine Hill Bay (MP 07_0095) Lake Macquarie City Council Submission – February 2008:

"The 2020 Strategy has been developed to provide the long-term strategic direction of the local government area. It focuses on a Hierarchy of Centres to ensure sustainable development within growth centres to support adequate services and infrastructure for the community.

The 2020 Strategy does not identify Catherine Hill Bay as an area for significant urban expansion. The Green Systems Map in the 2020 Strategy identifies the proposed development areas to contain remnant vegetation and high value habitat.

The draft Lifestyle 2020 – A Strategy for our Future states that the coastline, the lake and its foreshore, the District's wetlands, the Wallarah Peninsula and significant areas of bushland will be maintained as an important element of the Planning District's character. It also states that, Catherine Hill Bay will remain as a unique "hideaway" village on the ocean. As a result, no further development has been identified at Catherine Hill Bay due to the significant heritage values of the existing township and the conservation values of the surrounding bushland.

The proposed development does not meet the aims of the 2020 Strategy as it facilitates the expansion of the existing village of Catherine Hill Bay, which is isolated from the other Centres in the LGA offering employment and services. Community facilities are limited in the area and the development is not proposing any additional facilities or an addition or expansion of public transport, which will increase car dependency."

The initial clearing of approximately 28 hectares of conservation land is also inconsistent with the aims of the 2020 Strategy to conserve and enhance the natural environment.

Whilst the 2008 submission prepared by LMCC was for a different proposal (300 dwellings) which has since been withdrawn the Strategic Directions outlined in the 2020 Strategy remain the same and are therefore largely relevant to this new proposal. For these reasons we agree with LMCC that the Concept Plan for the site does not meet the Strategic Directions outlined in the 2020 Strategy for the following reasons:

- *Protecting and enhancing the City's biodiversity*

The proposal will clear remnant vegetation and high value habitat and will adversely affect an area with

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ecological and visual significance.

- *Focusing activities at Centres to maximise accessibility*

The site at Catherine Hill Bay is not located in proximity to established or emerging Centres and does not propose to develop any additional community facilities. This development will increase car dependency by residents wanting to access services and employment.

- *Facilitating the supply of adequate land and housing*

The proposed development does not propose housing that is supported by public transport and Centres. The 2020 Strategy encourages infill opportunities for medium density housing within a 5 and 10 minute walk of Centres and public transport nodes. The proposed development is unsustainable due to the clearance of bushland, its isolation from established Centres and its impact on heritage values.

- *Ensuring the provision of adequate infrastructure, services and facilities associated with new development*

The proposed development will not adequately provide for the provision of services, which will result in a major increase in traffic generation as residents travel by car for employment, services and facilities. The number of dwellings in Middle Camp will increase six fold on the existing population. This substantial increase, with no identification of additional provision for facilities, will have a significant impact on the local area.

- *Providing a wide range of high quality and interconnected public open spaces that meet the needs of the community and the natural environment*

The development proposes some additional parkland within the development footprint; however given the six fold increase of dwellings, effort should be made to upgrade existing facilities, where possible at Catherine Hill Bay. The dedication of conservation land should not be considered the total offset for open space as the community utilises a range of open space facilities.

- *Protecting the scenic amenity of the City*

The proposed development is located within a Heritage Conservation Area recognised in the Hunter Regional Environmental Plan 1989 (Heritage). The addition of 222 lots on the existing population of 153 residents will have a significant impact on the heritage values of the area. The high scenic significance and visual amenity will be adversely impacted by the additional lots, which are to be created in four distinct precincts increasing the development footprint.

- *Maintaining and enhancing the character, amenity and sense of place of urban areas, centres and neighbourhoods*

The development proposes an additional 222 dwellings, with only 50 existing dwellings in Middle Camp. The lots are to be spread to the north, south, east and west of the existing settlement. The development is not a logical extension of the established area and will affect its existing visual amenity. There has been inadequate provision for retail and business services, community facilities and accessible public places to foster social interaction and cultural activities. This is particularly pertinent when considering the six-fold increase of lots to the area.

- *Enriching and fostering the character, heritage and cultural values within the City*

As previously mentioned, Catherine Hill Bay has been listed in Schedule 5 of the Hunter Regional Environmental Plan 1989 (Heritage) in recognition of its importance as an historic village. The six-fold

increase of lots within the Heritage Conservation Area will have a significant impact on the character and style of the historic village and natural environment in which it is locating.

- *Promoting an efficient, accessible and environmentally responsible pattern of development*

The development does not propose any extension or addition to the public transport system (bus service only) and is isolated from the established Centres of the LGA. Walking and cycling to facilities and services is limited and there is no proposal to improve linkages other than within the development footprint. The development footprint itself is scattered around the existing Middle Camp residential dwellings, which increases the impact on the environment and existing residents. Residents will remain dependent on cars for access to employment, services and facilities.

- *Integrating land use and movement systems*

The development proposes new roads with new access to each precinct, and this may result in a significant change in visual landscape between the "old" and the "new" Middle Camp. Some of the roads have been indicated to be narrower than Council's requirements. This could have potential pedestrian and vehicle conflict.

- *Facilitating the provision of a public transport system capable of meeting the needs of the City's residents*

The clearance of 7(1) land for residential subdivision at Catherine Hill Bay (Middle Camp) does not facilitate a more compact urban form for the North Wallarah Peninsula. The additional 222 lots on the existing 50 will substantially impact on transport flows; however there is no provision to increase public transport systems. There has also been no provision to upgrade public transport facilities such as shelters and lighting.

The site is identified in the 2020 Strategy as remnant vegetation with high value habitat adjacent to the north, south, and west of the site. As outlined in the 2020 Strategy, remnant vegetation parcels are often of a size necessary to provide viable habitat and may support threatened flora and fauna. These areas complement high value habitat areas and corridor links.

As a result of the abovementioned inconsistencies with Lifestyle 2020 we feel the proposal should not be supported. However if the proposal were to be supported we request that the Concept Plan should not be approved until such time that the Lifestyle 2020 report be updated accordingly and adopted by Council prior to the Minister granting approval. Refer to the precedent set by the Dora Creek rezoning. It is our understanding that Lake Macquarie City Council will be updating Lifestyle 2020 in preparation for a new comprehensive LEP and that this will be required to be publically exhibited.

Clause 17 of the LMLEP 2004 outlines the provision of essential infrastructure required for development. This has been addressed within the Concept Plan however the consideration of the impacts of the provision of infrastructure, under Clause 17(b) has not been addressed. Such services (water, sewer etc) cause long linear disturbances to native vegetation that further fragment and disturb many hectares of bushland. These impacts and will need to be discussed in order to comply with this clause.

4. Environmental Concerns

It would appear that very little information within the Ecological Assessment Report (EAR) prepared by RPS dated November 2010 has changed to that previously contained within the EAR prepared by Harper Somers O'Sullivan (now RPS) dated 2007 which accompanied the Project Application for development proposals at Catherine Hill Bay 'Middle Camp' site (MP07_0095).

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A review of the Ecological Assessment contained within the previous submission was undertaken by Mr John Travers of Travers Environmental on behalf of the Progress Association. This review found:

"There are a number of deficiencies both in the level of ecological survey undertaken on the site and the interpretation of the survey results.

...

The application does not provide sufficient ecological conclusions to determine if this development is suitable for this sensitive coastal landscape

...

In summary the ecological report, whilst having a perceived depth to its documented structure, did not provide a depth of understanding and in particular provide simple statements about the ecology of the area – for example, the importance of the species, populations or communities and whether the retained conservation lands would adequately compensate for the loss of the development lands.."

Whilst the abovementioned review is based on the 2007 EAR, it is evident a large portion of information contained within the EAR dated November 2010 (we estimate 99%) is identical and therefore we are of the opinion many of the findings of the review prepared by Mr John Travers are also relevant to this project. An example of the similarities is as follows:

The literature review on Page 14 and subsequent pages states:

"Notably several specific investigations into the existing environment within the vicinity of the site have been undertaken in recent times."

This is identical to the statement made on page 14 of the 2007 EAR and the list which follows is absolutely identical in both reports. Again in the list at 3.1 Preliminary (Desktop) Assessments, all the references and processes are identical except for one change in which a date of website access of May 2007 is changed to January 2010. In relation to fauna, apart from the very small surveys and single night survey done for the 2007 EAR, the most recent reference on fauna listed in the bibliography is 2001. Either no relevant work at all has been done in the years since, or the company providing the report has made no attempt to update using all available information.

A serious issue with the Concept plan is the overemphasis on quantum of dedication of offset lands versus quality of dedication, particularly the shape of conservation land at the corridor west of Estate B. The word *corridor* is used many times in the EAR in stating how *vitally important* the area is for the ecology of the Wallarah Peninsula. In other words, the shape of the conservation lands offsets is the key value, supporting a contiguous wildlife area.

In contrast, the ecological assessment almost exclusively discusses only the quantum and the individual species impacts, not the shape of what is left after development, nor the impact of 222 houses on the adjacent conservation lands. The plan gives no criteria by which the maintenance of an effective corridor can be judged. The report is deficient in repeatedly asserting without evidence or rational argument, that because much of each foraging area, habitat, suitable soil etc., exists elsewhere in the conservation lands, the risks to wildlife can generally be dismissed. The reader is left uninformed about exactly how the vital contiguity will be preserved in the face of development, notwithstanding the reassuring tone of the ecological assessment.

It is plain when looking at the Concept Plan maps, that Estate B forms a wall east to west extending half way across the middle of the presumed Wallarah national park corridor towards the Pacific Highway's western barrier. The Estate B development will change the shape of the adjacent national park and cut the essential wildlife corridor by more than half, from about 900m wide to under 300m wide and maybe less. In exclusively framing its

argument on the basis of quantum not shape, the plan is quite deficient in not showing how the offsets will maintain the corridor which is recognised as the key value.

There is a continuous assumption through the EAR that the quantum, not the shape of the conservation lands is important. In summary, we refer to the EAR's outcome statements:

These outcomes:

- *Conserve in perpetuity key strategic parcels of land that complete long sought after regional biodiversity conservation corridors and buffer areas;*
- *Provide large intact areas of conserved habitat that will function as regional biodiversity gene pools; (EAR p108 Section 6 Development and conservation outcomes)*

Both statements are strongly contestable and unlikely to be sufficiently robust when the impacts we have noted are fully researched and considered.

The CHBPA position is that insufficient information is provided so that the Director-General could estimate the value of the conservation lands once all impacts of development and roads are assessed. This leaves the minister uninformed about whether the offset lands will actually be of benefit to the state. The proposal is seriously deficient in this fundamental issue and should be rejected. Refer to attachment 2.

4.1 Bushfire Threat

In the Bushfire Threat Assessment, page 13 shows that the Development Estate B site is actually more than one quarter covered by forest and that forest extends to the proposed APZs on almost all sides of the Estates.

The conclusion requires considerable ongoing protective measures and ends by saying:

Finally, it is believed that the implementation of the measures and recommendations forwarded within this report would contribute to the amelioration of the potential impact of any bushfire upon the development estate, but they do not and cannot guarantee that the area will not be affected by bushfire at some time. (BTR page 31)

In terms of meeting the state's urban strategy requirements, it is surely unwise to approve bushfire-prone developments while other strategies which do not include such bushfire threat are available in the broad land use policies of the state. The precautionary principle should also question the wisdom of approving this location for medium density housing when it is well known that climate change is markedly increasing the risk of bushfire.

5. Concept Plan and Heritage

The significance of Catherine Hill Bay has been acknowledged through its inclusion on the State Heritage Register and has been identified as a Heritage Conservation Area pursuant to LMLEP 2004 and LMCC DCP No.1 Section 2.4. In addition the expert Independent Hearing and Assessment Panel (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 19th 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 is in direct conflict with this recommendation as the object of E4 zoning is to enable residential subdivision and development in an area which historically has been an open public common and green space dotted with a few unfenced miners cottages. We believe that this area should be zoned E2 as described in the Standard LEP Template. This would provide appropriate environmental protection and could be tailored to enable the retention of existing dwellings. Refer to attachment 3.

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 dwellings 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" indicate that future development is anticipated that will directly impinge on the setting of the historic village.

In their previous findings, the IHAP repeatedly confirmed that there should be no development in the area formerly identified as Area D and historically 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.

Much of the area proposed to be zoned E4 ('Slack Alley') played an important part in the coal-mining history of the Hunter. It was the site of a large coal dump that resulted from the use of 'scab' labour during the coal strike. These 'miners' had been landed by ship at the Jetty, taken under guard by police to a camp near the mine and worked the mine while the coalminers were on strike. After the strike ended and the miners returned to work, the coal that had been dug by the scab labour was dumped at Slack Alley. The miners refused to touch it. Unfortunately the dump used to spontaneously combust and a few children were burnt falling into the dump as they played (it also affected the colour of clothes hung on the washing lines in Middle Camp). For a more detailed outline of the historic significance of Slack Alley, refer to attachment 4.

It is absolutely necessary that this 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, its future is uncertain. Clearly C&A is not a conservation land management organization 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 could include a Trust established under the Nature Conservation Trust Act or a Voluntary Conservation Agreement with NPWS.

From their reports, it appears that Coal & Allied regard the heritage significance of the State Listed Heritage Township only in terms of streetscape and fails to understand the relational nature of heritage places and their settings. Diagram A2.1 of the Allen Jack and Cottier Report proposes a 'curtilage' around Middle Camp. It is unclear exactly to what this 'curtilage' relates. It 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 heritage context. As such, the proposed 'curtilage' is in direct conflict with the values established by the State Heritage Listing.

Furthermore, it is readily apparent that the proposed fragmented precincts A and B will impact on the historic village of the Heritage Conservation Area. At very least a Conservation Management Plan for the Heritage Conservation Area should be requested as this would provide guidance on how new development could be accommodated on and around the vicinity of the Catherine Hill Bay Heritage Conservation Area.

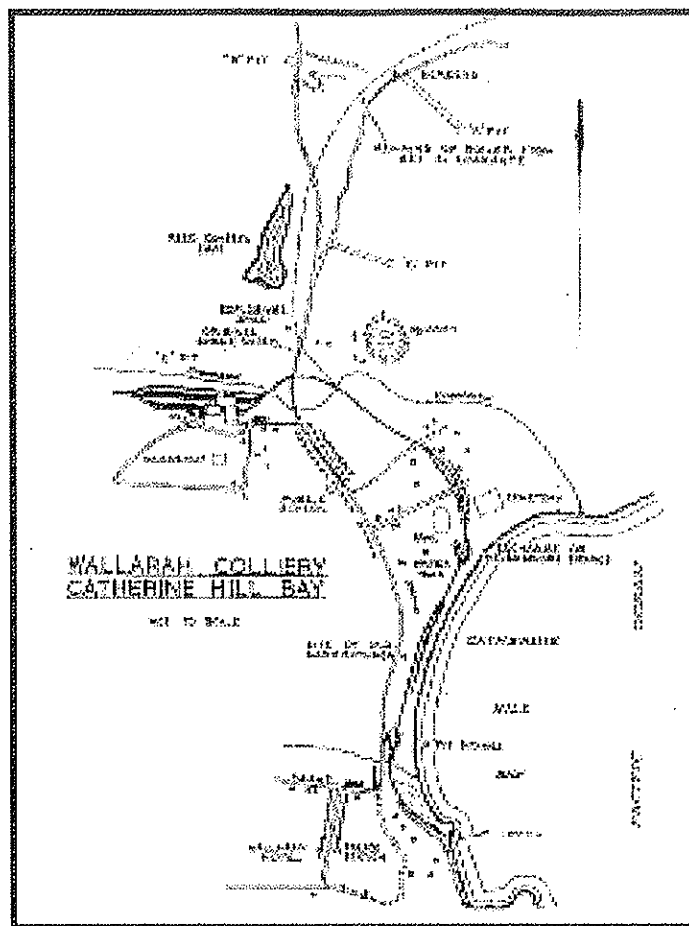


Figure 1: The above plan of the Wallarah Colliery Railway system [source: Wright 1973:30] shows the extent of the railway system, Catherine Hill Bay and Middle Camp. As recommended by the IHAP, the open grassed and coastal heath north of the cemetery should be retained as an open space landscaped buffer between the Catherine Hill Bay beach and dunes and the historic Middle Camp village.

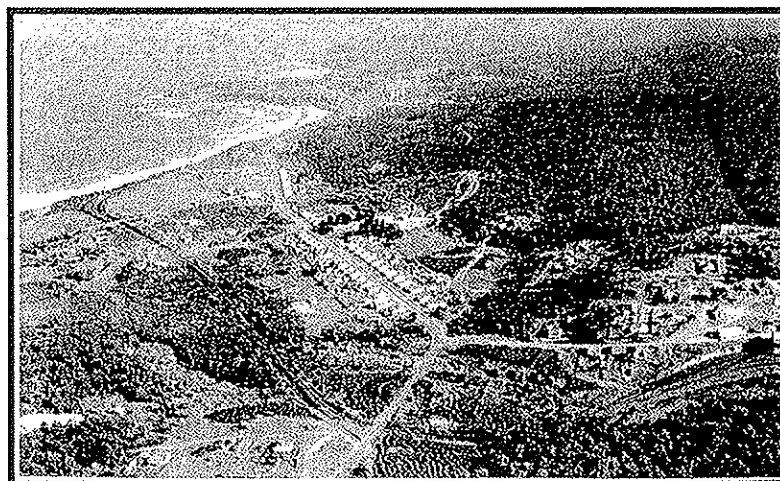


Figure 2: Aerial photo taken in 1952 from the north showing the relational nature of space and places that comprise the historic significance of Middle Camp and its setting.

6. Urban Design and Built Form

The Concept Plan and Urban Design Guidelines for Catherine Hill Bay prepared by Allen Jack + Cottier for Coal and 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 early cottages as seen from all significant views and be subservient rather than dominating. The site coverage proposed is in conflict with Council's DCP No. 1 which sets a 35% maximum site coverage for the standard housing lots within the Catherine Hill Bay Conservation Area.

The Urban Design Guidelines proposed in the application are totally inadequate. They provide limited guidance for the design of roads but even less information or commitment to deliver design excellence in the built form. The development of land adjacent to Middle Camp requires a robust design review process and more detailed controls if a sympathetic built outcome and appropriate streetscapes are to be achieved. A detailed Development Control Plan is required to set higher standards not only for design of roads and parks but also for buildings. Furthermore, the Progress Association is of the opinion any future Development Applications ("DA's") should be reviewed by a Design Review Panel similar to the assessment process in place for DA's within the Vintage Development in the Cessnock LGA.

The draft SSS Listing proposes to enable the application of the Complying Development Codes SEPP. The Complying Code (Residential) was developed largely to facilitate the building of project homes in metropolitan Sydney. 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.

Furthermore if Coal and Allied consider the site so important as to be listed as a State Significant Site then one would expect that they would want any future development on the site to achieve design excellence and to go through the development assessment process, not the 10 day complying development process. The site is important and we believe that 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..."

7. Transport and accessibility

The application incorrectly addresses the impact of traffic on the Heritage village and on the safety and amenity of its residents. Our concerns in relation to traffic volumes created by the proposed developments and the associated safety and noise impacts on residents have previously been brought to your attention in earlier submissions and our letter of 16 May 2009. This current application has not resolved the matters raised.

The Traffic Report states that the estimated traffic flows are based on counts taken in winter (17 – 23 July). Forecasts in Table 3.8 are based on weekday (Friday) traffic flows. We believe that this approach has underestimated the increase in traffic as it does not take into account the significant seasonal variation in traffic flows (summer flows are more than 10% higher than winter flows) and weekend flows are some 30% to 40% higher than weekday flows (Parsons Brinkerhoff, November 2007). We believe that the traffic analyses should be based on the peak conditions when impacts are most severe as opposed to assuming conditions that prevail on winter weekdays. This is particularly important as it relates to traffic noise (discussed further below). We note 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 taking the summer and weekend conditions into account.

We also note that the traffic reports have defined Flowers Drive as a Collector Road. Road hierarchy criteria have generally been formulated for use in urban areas and are not appropriate for roads through rural residential areas (such as Flowers Drive through Catherine Hill Bay). Flowers Drive clearly has the characteristics and purpose of a local road (see Table 1.2.5 of RTA Design Guide – Factors for Implementation of Road Hierarchy).

When analysed on the basis of Flowers Drive categorised as a Local Road, the RTA environmental goals for traffic and appropriate acoustic standards are exceeded.

Furthermore, Section 3.6 of the Traffic report prepared by Hyder addresses key access points and internal roads within the subdivision, however, does not address the impact of the proposal on access to existing properties as required in the Director General Requirements.

8. Noise Impacts

As noted above, the estimated traffic flows established by Hyder in the Traffic and Transport Report underestimates the increase in traffic as they are based on the flow over a winter weekday despite weekend traffic flows being up to 40% higher and summer flows being 10% higher than winter. The Renzo Tonin Noise Assessment inappropriately adopts the low estimate provided by Hyder. We maintain that the average summer weekend traffic flows should have been used as the basis for noise assessment. Refer to attachment 5 that provides expert advice from John Wasserman.

The acoustic study by Renzo Tonin is not only based on an assumed traffic flow that is an underestimate, but that underestimate was then further reduced (Hyder Table 3-11) on the assumption that Local Area Traffic Management ("LATM") measures would be in place and that a 40km speed limit would prevail. However, 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. The Statement of Commitments does make scant mention that LATM would be implemented "if required", however, both traffic and acoustic reports incorrectly argue that nothing is required.

Further, they compare the existing noise levels taken and the acceptability of predicted future traffic noise levels relative to an inappropriate category of Development Type (namely impacts on collector road), as referenced in the NSW Environmental Criteria for Road Traffic Noise (ECRTN). 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.

Flowers Drive is a rural road with intermittent traffic flows and the 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.

It should be noted, that even despite the inaccurate forecast of traffic volumes, the predicted noise levels resulting from the Coal & Allied development quoted in the Renzo Tonin report exceed the standards set by the EPA (DECC) and Table 4 contained in that report should read:

Table 4: Predicted Future 2012 Road Traffic Noise Levels

Receiver	Day Period			Night Period		
	Criteria	Noise level	Comply?	Criteria	Noise level	Comply?
R1	55	56	no	50	47	yes
R2		56	no		47	yes
R3		60	no		51	no

The ECRTN criteria also state that 'In all cases, traffic arising from the development should not lead to an increase in existing noise levels of more than 2dB.' Even the predicted noise levels reported show exceedances of 3dB and do not meet this requirement.

The results indicate that road traffic noise levels would not comply with the relevant criteria stipulated in the ECRTN for both the day and night periods. If the revised traffic volumes were accurately assessed, then the degree of non-compliance would be significantly greater.

9. Mines

Expert opinion provided to CHBPA suggests 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 and therefore should not be read as suggested by the title, i.e. "Mine Subsidence Risk Assessment". Refer to attachments 6 and 7 that outline specific concerns: letter of 29.11.2010 from Damien Hawcroft and reviewed by Dr William Laing. Hawcroft concludes that *"it appears very doubtful as to whether building of permanent residential houses is appropriate for this Area [B]"*. Dr Laing also queries how residential development can safely take place in the described Estate B, with its building substrate in "very poor condition" both in the natural rock/soil and from its 60% mined cavities. He recommends that the development must be suspended until such an explanation is provided.

10. Visual

Severe visual impacts result from the inadequacy of buffer between the Flowers Drive and the development in precinct A. The beauty and character of the meandering, heavily treed entry road to the historic village will be destroyed as the proposed two storey townhouses will be clearly visible. The proposal does not comply with LMCC Scenic Protection Guidelines 2004.

In relation to the visual intrusion of development in Precinct A, the application is confused and misleading. It quotes figures varying of between 15-30m for such a buffer zone. While the SSS Listing Report commits to a 15m buffer zone on page 37, other experts suggest that the landscaped buffer is 23 – 30m wide (refer p32). The Concept Plan refers to a 20m buffer zone (A2.3). It is important that the buffer zone along Flowers Drive be at least 30m wide in order to retain the existing mature trees and the rural character of the treed entry into the heritage township. Anything lesser could not screen the proposed new 2-storey housing with native plant species that are endemic to the location.



Figure 3: The scenic rural entry road to the historic village will be destroyed by inadequate width of landscaped buffer and visual intrusion of proposed 2-storey townhouses beyond

In addition, Development Control Plan No 1 – Principles of Development (DCP1) identifies Catherine Hill Bay within 'Scenic Management Zone A'. This category is assigned to areas of the highest scenic quality which are of critical value to the scenic image of the City and the most vulnerable to loss through development. Development in these areas should be designed to complement, maintain, and enhance the scenic value of the area and its features.

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The Concept Plan remains inconsistent with numerous Local Planning Policies as it proposes to locate significant urban development:

- within the coastline protection zone and highest scenic management zone; and
- in an area which has not been strategically identified as suitable for urban expansion.

11. Future Public Land

It is absolutely necessary 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 either DECCW, NPWS or the Lake Macquarie City Council. While this land is retained by Coal and Allied, its future is uncertain. Coal and Allied is a mining company, not an organisation capable of the management of sensitive conservation lands. It is only a question of time until C&A come back with the proposal to develop the area zoned E4 for housing. Other viable alternative land management options include a Trust established under the Nature Conservation Trust Act or a Voluntary Conservation Agreement with NPWS.

Over many decades, C&A have drawn very substantial profits from mining the land at Middle Camp. It can reasonably be concluded that they have an obligation to remediate the land both underground and above ground at their own cost. The current development proposals aim to reduce their remediation expenditure via returns on residential development. This is an unreasonable expectation of the company.

12. Statement of Commitments

The Statement of Commitments inadequately addresses the need to remediate the despoilt land that has resulted from their mining operations. They have not proposed a commitment to ameliorate the traffic 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'.

Furthermore, it is relevant to note at Catherine Hill Bay in the next few years, unless the conservation controls on village, coast and catchments prevails, the local population will increase ten-fold within a few years. The effect on the area's catchments and wetlands of such a population increase has not been addressed at all in the project application or Statement of Commitments.

An additional consideration is the accumulation of different effects on the local scale. The Australian Government's 2009 report *Managing our Coastal Zone in a Changing Climate*, Recommendation 28 recognises this need to address the cumulative effects of coastal development on coastal systems covered by the Environment Protection and Biodiversity Conservation Act 1999.

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.

POTENTIAL STATE SIGNIFICANT SITE (2010)

13. State Significant Site (2010) Contradictions

The proposed listing of Catherine Hill Bay (Middle Camp) as a State Significant Site ("SSS") pursuant to Schedule 3 SEPP (Major Projects) undermine the conservation values assigned to Catherine Hill Bay provided by its existing zonings. The land is zoned 7(1) Conservation (Primary) and 7(4) Environmental (Coastline) pursuant to LEP 2004. These zones provide a high level of protection for the site, particularly when the proposed development does not comply with the objectives of these zones.

The Progress Association has significant concerns with the proposed SSS listing. We are of the opinion that the existing zones already provide a high level of protection for the site and that the significance of Catherine Hill Bay

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has been acknowledged through its inclusion on the State Heritage Register and has been identified as a Heritage Conservation Area pursuant to LMLEP 2004 and LMCC DCP No.1 Section 2.4. In addition the expert Independent Hearing and Assessment Panel (IHAP) regard the Middle Camp village and its setting as representing "a precinct of exceptional aesthetic, landscape, social and cultural landscape heritage significance..."

Furthermore the Progress Association has significant concerns with the proposed draft Schedule 3 listing as detailed in Appendix B of the CHB SSS Listing prepared by Urbis on behalf of Coal and Allied. We are of the opinion that the draft Schedule 3 listing is lacking detailed controls particularly in relation to design controls of future development.

The documentation suggests 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 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".

If the few quantitative controls embodied in the Urban Design Guidelines were to be relied upon in a case of 'loose' interpretation of the more generic objectives, then an inappropriate development could certainly prevail.

MIDDLE CAMP SOUTHERN ESTATES (VPA)

14. VPA Inadequacies

Coal & Allied have drawn very substantial profits over many decades from mining the land at Middle Camp. The VPA is inadequate as it fails to take the remediation obligations into account and presumes a 'right' to develop and profit from despoiled land despite unacceptable impacts. The Statement of Commitments inadequately addresses the need to ameliorate the traffic impacts on existing residents and the conservation of common land behind houses on the eastern side of Flowers Drive and the land around 'Slack Alley'.

CONCLUSION

In conclusion as outlined in our submission above and as detailed in the attachments the Progress Association confirm that the Concept Plan and Application, fails to adequately address the heritage significance of Catherine Hill Bay and the relevant controls being Lake Macquarie Local Environmental Plan 2004 ("LMLEP 2004"), Lake Macquarie Development Control Plan No.1 ("DCP"), Lake Macquarie Heritage Guidelines and Lifestyle 2020 Strategy (2020 Strategy). Furthermore it fails to address the significant ecological, heritage, visual impact, traffic and other site specific constraints which limit development.

Furthermore The Progress Association is of the opinion that there are a number of inconsistencies throughout the Application documentation. Furthermore the Progress Association is of the opinion that the *Phase 2 Mine Subsidence Risk Assessment Proposed Residential Subdivision Catherine Hill Bay* prepared for Coal and Allied Industries Ltd by Douglas Partners is not a "true" risk assessment as per the Australian / NZ Standards AS/NZS 4360:2004 and therefore should not be read as suggested by the title, i.e. Mine Subsidence Risk Assessment".

As concluded by Hawcroft "*it appears very doubtful as to whether building of permanent residential houses is appropriate for this Area [B]*". Dr Laing also queries how residential development can safely take place in the described Area B, with its building substrate in "very poor condition" both in the natural rock/soil and from its 60% mined cavities. Dr Laing recommends that the development must be suspended until such an explanation is provided. The Progress Association concur with Dr Laing's recommendation.

The information contained within the Ecological Assessment Report is outdated, inaccurate and ignore key impacts which would damage the value of the conservation lands. As such the Progress Association calls for its

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rejection and replacement with an assessment that provides information on which the Director General could make judgements in relation to the environmental values of the proposal.

Furthermore The Progress Association is of the opinion the proposed SSS listing is contradictory in relation to what is actually being proposed. The proposed listing undermines the conservation values assigned to Catherine Hill Bay provided by its existing zonings. The land is zoned 7(1) Conservation (Primary) and 7(4) Environmental (Coastline) pursuant to LEP 2004. These zones provide a high level of protection for the site, particularly when the proposed development does not comply with the objectives of these zones. This current application does not "provide a robust long-term outcome".

As detailed in this submission The Progress Association is of the opinion the proposed VPA is inadequate as it fails to take the remediation obligations into account and presumes a 'right' to develop and profit from despoiled land despite unacceptable impacts.

We request that the Director General require Coal and Allied respond to the issues raised in this submission, and revised documentation be provided in response to the abovementioned issues. Furthermore, in light of the December 13th 2010 Media release which states:

"The Independent Commission Against Corruption (ICAC) recommends that the NSW Minister for Planning refer private sector applications under Part 3A of the Environmental Planning and Assessment Act 1979, which exceed development standards by more than 25%, to an independent quasi-judicial body for determination.

The Commission recommends that this role be assumed by the Planning Assessment Commission (PAC). In view of the important functions the PAC would assume, the Commission makes recommendations to strengthen its independence and to ensure that it is composed of appropriate persons, on a full-time basis but with a limited tenure."

We now request the Planning Minister refer the Coal and Allied project application to the Planning Assessment Commission ("PAC") (formerly called an independent hearing and assessment panel under s 75G: since repealed). This request is based on the fact that the Coal and Allied Concept Plan and Project Application proposes a development which would exceed the current permissible development pursuant to the Schedule 2 of LEP 2004 by far greater than 25%

We request that Coal and Allied's application for the listing of Catherine Hill Bay as a SSS be refused for the various reasons outlined in this submission.

The Progress Association remains opposed to inappropriate development and SSS listing of the land subject to the Coal and Allied Project Application for the reasons outlined within this submission.

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Attachments

Attachment 1: Chronology 1969 – Present

Attachment 2: Deficiencies in the Ecological Assessment Report

Attachment 3: Correspondence from EDO dated 14 December 2010

Attachment 4: Heritage Significance of Slack Alley

Attachment 5: Correspondence from John Wasserman dated 12 December 2010

Attachment 6: Correspondence from Damien Hawcroft dated 29 November 2010

Attachment 7: Correspondence from Dr William Laing dated 1 December 2010

ATTACHMENTS

ATTACHMENT 1

Chronology 1969 – Present

CHRONOLOGY

1969 – PRESENT

Prepared for: The Wallarah Peninsula Alliance and the Catherine Hill Bay Progress Association and Dune Care Inc

Source of chronology 1969-2003: *Protecting The Wallarah Peninsula: A 35 year Journey From Vision to Implementation.*

Wallarah Peninsula

CHRONOLOGY

1969 – 1975: YEARS OF VISION

1969 State Park proposal for South-east Lake Macquarie (compiled at the instigation of the Minister for Lands by Hunter-Manning National Parks Assoc) recommends a "State Park" in the area from Lake Munmorah to Swansea, from Lake Macquarie to the coast, and west to include Point Wolstoncroft and Pulbah Island.

1972 "Hunter 2000" report by the National Trust identifies the area from Swansea to Nords Wharf and Frazer Park as Open Space of Regional Significance.

1972 "Prelude to a Plan – Hunter Region Growth and Change" (Hunter Region Planning Committee) set the scene to prepare the Hunter Environmental Plan No 1 (1980).

1975 – Dept. of Environment of Planning identifies significant areas on the Central Coast for acquisition as part of a regional open space acquisition program.

1977 – "Gosford-Wyong Structure Plan" prepared by the Department of Environment, identified areas of environmental significance for inclusion within conservation zonings and foreshadowed major growth in the Warnervale area, south-west of the Wallarah Peninsula.

1976 – 1980: YEARS OF PREPARATION

1976 Wran Government asserts "increasing emphasis on regional planning and development control in the Hunter Region."

1977 "Hunter Region – Problems and Proposals" (Hunter Region Planning Committee) identifies southern area of Lake Macquarie and the "east Lake Macquarie peninsula" as having outstanding significance and opportunity for conservation. It identifies "visual quality" as a major planning issue.

1978 Discussion Paper No 3: "Draft Planning Proposals" identifies a number of objectives for the regional environmental plan, including Objective 16 to protect areas of high landscape value and natural areas for conservation. It identifies sections of the coastline and Lake Macquarie foreshore and the Watagan Mountains. **It gives full support for an Inter-City Environmental Zone between Lake Macquarie and Wyong, and says the recommendations and proposals contained in Hunter 2000 should be fully supported.**

1978 Working Paper No 3: "Green Corridors – How and Why" identifies Lake Macquarie and the coast "including the eastern part of Wallarah Peninsula" as a "regional landscape unit".

1980 – 1983: THE PLANNING YEARS

1980 Draft Hunter Valley Environmental Plan No 1 (gazetted 1982).

The Plan's strategic requirements include

71. Take into account in the preparation of local environmental plans and in determining development applications the findings of the **Lower Hunter Landscape Improvement Study**.

77. An Inter-City Environmental Zone south of Wangi and Swansea should be established with development prohibited which would prejudice the function of the zone as a buffer between the Lower Hunter and Wyong urban areas.

79. Using the National Trust "**Hunter 2000**" report as a guide, zone appropriate lands "Rural Environmental Protection (Scenic)" and apply controls over development appropriate to their preservation and enhancement.

81. Refers to the protection of heritage buildings and places. (All of the Wallarah Peninsula east of the Pacific Highway in Lake Macquarie City LGA is included in a Heritage Conservation Area in the Lake Macquarie LEP 2002 draft).

1980 Lower Hunter Landscape Protection and Improvement Study commences, "with emphasis placed on broad areas recognised as having particular qualities...It provides a framework for practical landscape improvements based on a logical analysis of the existing situation including, topography, vegetation and visual values on a sub-regional scale."

1982 Department of Environment and Planning background paper on the department's activities in the Hunter Region to October 1982.

1982 Heritage protection for Catherine Hill Bay discussed by Lake Macquarie Council, with a recommendation that the Planning Department and Heritage Council become involved in a study "into Catherine Hill Bay and adjacent lands" for the preservation of its heritage significance.

1983 NSW Heritage Council's planning consultant addresses Lake Macquarie Council on Catherine Hill Bay's value as "one of the most outstanding examples of a mining village in Australia." **Council decides that undeveloped land around Catherine Hill Bay township be rezoned to Environmental Protection and Open Space Regional.**

1983 Lower Hunter Landscape and Protection and Improvement Study identifies Wallarah Peninsula as having high priority for preservation.

1984 – 1993 DECADE OF IMPLEMENTATION

1984 Lake Macquarie Local Environmental Plan completed to reflect the values of the Hunter Region Environmental Plan 1982. It identifies the entire Peninsula except for the urban area immediately south of the Caves Beach as an Environmental Protection Zone.

1984 "Hunter Region Landscapes – Conservation of Natural Areas, Parks and Reserves of Regional Significance, Rural Landscapes and Coastal Zones." (Prepared by the National Trust, following the Hunter Region Environmental Plan No 1). **The report proposes that virtually the whole of the Wallarah North, a**

development currently under consideration by Council be a State Recreation Area. It continued: "Further natural areas to the south between the ocean and Lake Macquarie should be investigated to determine the possibility of including them in this proposal or, alternatively adding them to the Munmorah State Recreation Area. This would create a continuous green belt between Munmorah and the built-up area south of Swansea. On Coastal zones generally the report said: "The coastal zone is one of the Hunter region's greatest assets and the full length of the coast within the Region requires special measures to protect its landscape and other conservation values."

1987 Newcastle – Lake Macquarie Open Space Study (prepared by Newcastle and Lake Macquarie Councils) identifies the coastal strip between Caves Beach and Catherine Hill Bay as potential regional open space.

1987 "Environmental Impact Statement – Expansion of Catherine Hill Bay Coal Preparation Plant" – Coal and Allied Operations Pty Ltd, which owns most of the peninsula between Swansea and Munmorah State Recreation Reserve. The EIS is unequivocal about the nature, value and future of the land once mining ends:

- a. the land is considered to be valuable open space
- b. it is strategically important to retain the rural and undeveloped character of the land
- c. Future land use: "On completion of filling operations and surface rehabilitation, the emplacement areas will be managed to become part of the open space and natural areas surrounding Catherine Hill Bay in accordance with planning objectives for the Region in Hunter Valley Regional Environmental Plan No 1 and the existing (Lake Macquarie) Local Environment Plan Zoning."

1987 – Draft Sydney Regional Environmental Plan (Wyang Development areas and Coal Mining) (Dept. of Environment and Planning): although not formally adopted it was used, in the absence of a more comprehensive regional plan, as the basis for broad planning decisions in Wyong Shire.

1989 Draft Hunter Region Environmental Plan No 2 suggests that the Department of Planning, in consultation with Lake Macquarie and Wyong Council, will further "investigate the feasibility of maintaining a buffer zone between the urban areas in the Lower Hunter sub-region and Wyong Shire." A Heritage Study for the REP identifies Catherine Hill Bay as one of three priority Conservation Areas within Lake Macquarie.

1990 Lake Macquarie Foreshore Park Proposal by The United Residents Group for the Environment of Lake Macquarie proposes an integrated park system for Lake Macquarie.

1991 Wyong Shire Council Environmental Plan zones colliery-owned land west of Munmorah State Recreation Area for high conservation value.

1992 Updating the metropolitan strategy – consultation with interest groups Lower Hunter and Central Coast (Bruce Callaghan and Associates for the Department of Planning): The consultation identified environmental preservation as the first principle of planning. The Workshop developed this Vision for urban structure and form: "retain and enrich regional identity of both Hunter and Central Coast (as distinct regions); development should be concentrated around existing centres (avoid amorphous sprawl)."

1993 Lake Macquarie Heritage Study (Suters, Turner and Doring). The study identified heritage items and ranked their importance; it also recommended extension of the existing Conservation Area at Catherine Hill Bay.

1993 Lake Macquarie Recreation and Open Space Plan Community Workshop to canvass interests and concerns in the community before undertaking the plan. Major issues were identified as

- population growth would put pressure on existing open space/recreation resources, requiring strategies to meet future needs.
- protection of the environment; retain existing natural bushland and wetlands
- on-going need for community consultation

1994 – 2003 DECADE OF CONFIRMATION

1994 Pinny Beach Local Environmental Study (Gutteridge Haskins and Davey) for a large residential development on a former colliery holding on the Wallarah Peninsula, extending south-west from Caves Beach to Lake Macquarie, and along the coast. The proposal drew extended community protest and Council resistance. This reaction led directly to Council's commissioning the Wallarah South Strategic Issues Study, and other additional technical studies.

1995 Wallarah South Strategic Issues Study (GHD) is an overview of the existing environment and a discussion of the linkages between north and south Wallarah. It concludes (inter alia)

- a. Wallarah South would primarily be suited to conservation, enabling the protection of the flora and fauna, the visual landscape and the coastal landforms...
- b. The potential for further vegetation and wildlife corridor linkages with the proposed Wattagans/Munmorah Environmental Link within Wyong LGA presents a unique opportunity to safeguard the future of the rare and endangered species and communities of the region and to provide a truly unique visual and recreational asset."

1995 "Greater Metropolitan Study: Cities for the 21st Century"

(Department of Urban Affairs and Planning) is a strategic planning document which gives a key role to open space management in maintaining separate regional identities, conserving ecological values and providing for recreational needs. Among its strategic principles are the following:

- a. to retain the separate and unique physical and community characteristics of each urban area.
- b. to establish and enhance green corridors between each urban area and to ensure a continuous conurbation does not develop
- c. to control the location, scale and character of urban expansion and urban support activities so that the impacts on the environmental quality of the region are minimised.

The strategy identified Warnervale as a major component of the Gosford-Wyong Strategic Plan.

1995 Pinny Beach Fauna Study (including Wallarah Peninsula South)

Identifies a number of protected species in the area that are absent or uncommon in Lake Macquarie's more urbanised areas. These include four bird species, five species of small to medium size terrestrial mammals, three species of large macropods, four bat species, eight reptiles and four frog species. Nine species of endangered fauna were recorded in the study area. The report makes specific recommendations for the Pinny Beach proposed development area.

1995 LMCC report on public workshops and submissions on the Pinny Beach LEP and Wallarah South Strategic issues Study shows overwhelming community concern over the proposed development and support for conservation values and policies.

1996 Review of Pinny Beach and the future of Wallarah South. (Report to Lake Macquarie City Council 8/10/96 reviewing the history of the Pinny Beach development, failure of the developer, Council planning requirements, Government policy and Planning Department strategic requirements).

a. Government Policy: *"Large areas of the Wallarah Peninsula are relatively undisturbed by human activity. The Peninsula also has special scenic value due to its location between ocean and Lake Macquarie. The locality has the potential to play a role as a natural barrier between the expanding Lower Hunter and Central Coast urban areas. ...In relation to (Walarah South)... the Government will not support development likely to compromise its natural visual qualities.*

"During October 1995... I wrote to Wyong Shire Council requesting a review of existing environmental protection zonings in this sensitive coastal area to ensure that environmental protection objectives are achieved and that the area is not degraded by extensive and inappropriate development. I request that your Council conduct a similar review. Preferably in conjunction with Wyong Shire Council, to ensure that consistent conservation and scenic protection policies are implemented throughout the Peninsula." – Craig Knowles, Minister for Urban Affairs and Planning, April 1996.

b. DUAP strategic overview: "Strategic Review of Coastal Development Wallarah Peninsula" (Department of Urban Affairs and Planning):
*Zone to provide clear definition between the Central Coast Region and the Lower Hunter, focuses on the Wallarah Peninsula in its application within the coastal area. (A report in 1989) concluded that a combination of public ownership of land and appropriate non-urban zoning of privately owned lands would provide the buffer between development areas within the two regions...
The two local environmental plans (Lake Macquarie LEP 1984 and Wyong LEP 1991) contain provisions which recognise the importance of the environmental character and role of the area...*

A report to Lake Macquarie Council in December 1995... *"assessed the findings of the Environment Study, the South Wallarah Peninsula Strategic Issues Study, and the Fauna Study... The assessment indicates that these studies confirm the important environmental character of the area, and therefore its appropriateness as part of an inner city environmental zone.*

DUAP's strategic overview also made these points:

Strategic Biological Conservation Value: *"It is evident (from specialist studies) that large portions of the area are in relatively good ecological condition when compared to other coastal localities. The lack of disturbance activities has enabled the flora and fauna characteristics to be maintained in near natural state, and as a result the area is of greater value for biological conservation than other coastal localities. The size and isolated character of the area enhances its ability to survive in its relatively natural state with minimal management. The area also provides a substantial link between the natural areas to the north and south, providing for wildlife movement and vegetation viability from Swansea to the Lake Munmorah State Recreation Area.*

Coastal Value: *"The major portion of land identified (for public acquisition) has already been acquired, and together with the remaining 70 hectares still to be acquired, represents a regionally significant natural resource."*

Landscape Value: *"Various landscape studies have documented the area's visual environment, and demonstrated that the visual amenity is of high visual significance because of the natural character of the landscape, reflected by its various vegetation communities. Ridgelines which are common throughout the area are particularly prominent and make a major contribution to the visual environment. Similarly the underdeveloped coastal headlands are significant components of the visual landscape."*

DUAP's recommended strategies for the Peninsula include:

1. **Lake Macquarie City Council and Wyong Shire Council provide a consistent "Conservation" zone over the non-urban lands on the Wallarah Peninsula and adjoining Lake Munmorah State Recreation Area so as to provide maximum protection to these lands which, together with Government owned lands, constitute the major portion of the Inter City Environmental Zone along the coast.**
2. **Councils advised that it would be unlikely for the Director-General to issue a Section 65 certificate for any local environmental plan proposing to extend urban development beyond the areas already zoned for such development in this locality.**

National Parks and Wildlife Service noted that a fauna study commissioned by Lake Macquarie City Council in 1995 "includes the Wallarah Peninsula south of Pinny Beach. However, due to the interrelationship between the two areas and the occurrence of similar habitat types, with the exception that particular habitat types may be more represented within one area, the Service is of the opinion that the results provide an adequate indication of the faunal diversity of the subject area..."

The Service's advice goes on to summarise the fauna study's findings:

The vegetation communities .. form a mosaic of habitats which in turn support a high faunal diversity including a minimum of 114 vertebrate ssp (69 birds, 32 mammals, 8 reptiles and 5 frogs).

Nine species of threatened species fauna recorded

Of these seven species are regarded as being regionally significant populations.

Loss or modification of this and adjoining habitat will significantly impact upon local populations of resident or migratory fauna dependant on this habitat.

1996 Lake Macquarie Coastline Management Study (LMCC) produced a detailed overview of the Lake Macquarie Coastline directly affected by coastal processes and of adjoining areas that are intrinsically linked through hydrological, ecological, geological, cultural, recreational and visual attributes. This work was further developed and updated in the Lake Macquarie Coastline Management Plan (1999)

1996 – 97 Heritage Assessment Conservation Plan (prepared for Lake Macquarie Council by Architectural Projects) presents a detailed history of Catherine Hill Bay, analyses the general landscape and built form, discusses and assesses cultural significance, reviews constraints and suggests policies for the heritage protection of Catherine Hill Bay.

1997 Coastal Policy, strengthened the Coastal Council, enlarged the coastal zone and gave new attention to the planning of new development, and to principles of an ecologically sustainable coast.

1997 Gazettal of heritage listings and conservation area at Catherine Hill Bay, and community workshops to develop conservation guidelines to retain the character of the built and natural environment.

1997 Lake Macquarie Estuary Management Plan (LMCC, Land and Water Conservation and WBM Oceanics). The plan identifies environmental and planning issues and options for their management. Among the issues are foreshore erosion and excessive sedimentation of the Wallarah Peninsula in Crangan Bay, in the vicinity of Nords Wharf.

1999 Lake Macquarie Task Force – Integrated Estuary and Catchment Management Framework. The NSW Premier established the Task Force in 1998 to review the Lake Macquarie estuary Management Plan and recommend a priority management plan. On Land Use Planning the Task Force report:

"Lake Macquarie is, and will remain, the most populous local council area in the Lower Hunter ... The urban design at the northern end of the Lake makes it difficult to rehabilitate the landform in a manner that allows compatibility between the littoral vegetation and nearshore marine flora and fauna. ... The southern, south eastern and south wester areas of the Lake catchment offer an opportunity to more effectively implement an urban design which is compatible with the long term sustainability of the Lake.... Such urban design objectives should be addressed by Local and State governments to ensure that the mistakes of the north in the past are not visited on future generations by a more knowledgeable government community."

1999 Lake Macquarie Coastline Management Plan (LMCC) used the NSW Coastal Policy (1997) as a framework for its findings, utilising its Goals to give direction and form to the plan's application in Lake Macquarie. Of the Wallarah Peninsula coastal area near Catherine Hill Bay, it said "careful consideration of the appearance of this unique area of the NSW Coastline is required to maintain and enhance its present attractions in the event of significant development occurring in this area. Visual quality issues are an important factor in maintaining the value of this significant cultural landscape."

On heritage: "The Catherine Hill Bay Conservation Area as a whole was assessed as having a "high" level of significance at the State level and a "high" and "very high" at the Regional and Local levels respectively. These are among the highest levels accorded to items in the Lake Macquarie Heritage Study and require careful consideration in framing management actions in the hazard zone."

On coal mining: "At present it is understood that coal operations will continue at the site for approximately the next 30 years however this may be reduced if it becomes no longer economically viable to mine coal at the site." (Coal mining ceased three years later in 2002.)

On ecological significance: "Middle Camp Lagoon and Middle Camp Gully.. are recognised as having ecological significance....the lagoon and wetland sedgeland areas. The existence of these categories of coastal wetland indicate that Middle Camp Lagoon wetland complex should be gazetted at SEPP 14 wetland."

Two Plans of Management have been produced for the coastal area by Lake Macquarie Council, for the southern end in 2000, and the northern end in 2002.

1999 "Shaping the Central Coast" (Wyang Shire Council, Gosford City Council, DUAP and other authorise worked together to elaborate on the broad objectives of the 1977 Gosford-Wyang). The document seeks to promote sustainable future development for the Central Coast region, including an inter-regional buffer system (i.e. open space) through the northern areas of Wyang Shire between Lake Munmorah and Lake Macquarie (the Wallarah Peninsula).

1999 Lensworth Local Environment Study for North Wallarah.

2000 North Wallarah Project – Conservation and Land Management Plan.

2000 Lake Macquarie Tetraodon Juncea Conservation Management Plan
(Robert Payne for LMCC)

2001 Coastal Protection Policy announced by Premier

2001 Wyong Council Interim Conservation Areas (Draft DCP No 13)

2001 Coastal Design Guidelines – NSW Coastal Council

2002 “Shaping the Central Coast Action Plan” a the key strategy of which is
“investing in the natural environment”

2002 Warnervale District Planning Strategy foreshadowed the development of
Warnervale as a district centre.

2002 Wyong Residential Development Strategy provides for residential
development in the Shire to proceed in accordance with growth needs and the over-
arching strategies contained in earlier reports, including Shaping our Cities.

2002 Wyong Council Draft Conservation Strategy (August 2003) is an exhaustive
review of the Shire’s ecological and environmental resources. It contains a draft
Local Environment Plan which proposes a new Zoning: 7(h) Primary Conservation
Areas, which encompasses vegetation communities that are of the highest
conservation significance in Wyong Shire. 7(h) is proposed to apply to the area
across the northern part of the Shire, including relevant parts of the Wallarah
Peninsula west around Crangan Bay.

2002 Coastal Protection Amendment Bill/ SEPP 71

**2002 Draft Lake Macquarie LEP: high conservation values for the Wallarah
Peninsula, enlarged Heritage Conservation area around Catherine Hill Bay.**

**2002: Coal mining ceases at Catherine Hill Bay; land adjacent to Munmorah
State Conservation Area sold to a development.**

**2002 Wallarah peninsula Alliance (30 community and environmental groups)
formed to protect the Peninsula from development.**

2003 Wallarah North development Master Plan. The Ecological Site Management
Plan component discusses the regional significance of the North Wallarah National
Park included in the development area:

*“The non-sedentary nature of the fauna complicates management initiatives as the
species are subject to influences beyond the site’s boundaries...”*

*“Successful conservation of the fauna at Wallarah Peninsula is therefore likely to be
somewhat dependant on the provision of habitat beyond the (development) site’s
boundaries in areas like the Munmorah State Conservation Area and the areas of
remnant bushland to the North-west.”*

2003 Community Survey at Catherine Hill Bay shows 98% of respondents want bushland on the Peninsula administered by NPWS, and 96% support its inclusion in Munmorah State Conservation area.

2003 - onwards YEARS OF DEVELOPMENT PROPOSALS

Rosecorp purchases 365ha of land from COAL Operations Australia and BHP Billiton

2004 Swansea RSL/Rosecorp lodge DA with Lake Macquarie City Council

June/July 2004 Development application rejected by LMCC on grounds that it failed to satisfy Schedule 1 of the Environmental Planning & Assessment Regulation 2000 (failed to provide minimum information specified in the legislation).

August/September 2004 Swansea RSL/Rosecorp lodge Development Application No 4467/2004 with LMCC

October 2004 Stop the clock issued by LMCC requesting amongst other things the need to submit a more detailed Social Impact Assessment Report

January 2005 Additional information received and DA re-exhibited to the community

March 2005 Deemed refusal lodged by Swansea RSL/Rosecorp in Land & Environment Court against LMCC

July 2005 LMCC formally refuses DA 4467/2004

July 2006 Land & Environment Court refuses DA on permissibility grounds. Judge Talbot concludes that "an integral part of the whole development is prohibited [and thus] the application is a nullity and cannot be considered."

Rosecorp lodge an appeal in the Court of Appeal against this decision.

January 2006 NSW Government's Draft Lower Hunter Regional Strategy is put on public exhibition. Draft Strategy proposes to protect heritage, villages and small towns.

2006 Publicly available documents record advice from Senior Department of Planning staff 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 area 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."

Negotiations between Minister Sartor and Rosecorp and between Minister Sartor and Coal and Allied commence.

16 October 2006 Memorandum of Understanding between Minister Debus, Minister Sartor and Rosecorp is signed. This proposes that the development potential of the Conservation and Coastal Acquisition-zoned Rosecorp land at Catherine Hill Bay is 60 ha / 600 dwellings.

17 October 2006 Memorandum of Understanding between Minister Debus, Minister Sartor and Coal & Allied is signed. This proposes that the development potential of the Conservation-zoned C&A land at Catherine Hill Bay is 50 ha / 300 dwellings.

October 2006 State Government launches Lower Hunter Regional Strategy. The strategy went from 'Draft' (without Catherine Hill Bay being identified for urban expansion) to 'Final' (without any further public consultation) to include parts of Catherine Hill Bay for urban expansion. Based on the numbers contained within the MoUs, the size of Catherine Hill Bay will increase from 100 dwellings to 1000 dwellings.

7 November 2006 Rosecorp formally request Minister's authorisation to submit a Concept Plan under Part 3A and seek Director General's requirements.

3 January 2007 Rosecorp's application is advertised by the NSW Department of Planning. Application proposes 600 dwellings, 152 tourism beds and 3000 sqm of commercial development for Catherine Hill Bay.

June 2007 Rosecorp's Concept Plan is set aside following the interim report of the Independent Hearing and Assessment Panel. 2545 submissions had been received against development at Catherine Hill Bay.

August 2007 Rosecorp's second Concept Plan is advertised by the NSW Department of Planning.

1 November 2007 Coal and Allied lodge application with the NSW Planning Department for Concept Plan approval under Part 3A of the Environmental Planning and Assessment Act 1979 for Middle Camp and seek Director General's requirements. Also lodged with the Department of Planning was an application for listing and rezoning of the Coal and Allied owned Middle Camp sites as a 'State Significant Site'. Under the MoU, residential development was proposed on 50ha of Catherine Hill Bay, with a maximum yield of 300 lots to be subdivided.

December 2007 Final Report by the Independent Hearing and Assessment Panel on Rosecorp's second Concept Plan. The panel advised that seven recommendations be implemented before approval be given by the Minister. Among these were recommendations that Hamlet 1 be redesigned to ensure public coastal access; a setback of 25m was required. visibility of the housing was an issue and roof heights should be lowered; public access to Moonee Beach needed to be ensured; retail space of no more than 750m² be allowed.

2 May 2008 Nomination for listing of the Catherine Hill Bay Heritage Conservation Area on the National Heritage List lodged by the National Trust (NSW)

2 June 2008 Independent Hearing and Assessment Panel delivers its interim report on the Coal and Allied Part3A application for Concept Plan at Middle

Camp. It was noted that there were 2280 submissions against this proposed development.

September 2008 305ha of private land owned by Rose Group at Catherine Hill Bay transferred unconditionally to public ownership.

2 September 2008 Approval given by the Minister for Planning for Rose Group Concept Plan. Gazettal of the change in land use zonings from primary conservation and coastal acquisition to other zones that allow for residential and commercial development of land owned by Rose Group at Catherine Hill Bay. The zones were R2, E1 and E2.

6 February 2009 Gwandalan challenge the validity of the Part 3A Concept Plan Approval for residential and retail development at Catherine Hill Bay and Gwandalan by the Minister for Planning in the Land and Environment Court.

February 2009 Federal Government determine that development of 60ha at Catherine Hill Bay is not 'controlled action' under the EPBC Act.

31 August 2009 Decision in the Land and Environment Court and approval overturned. Judgement notes that the Memorandum of Understanding constituted a 'land bribe'. The Rose group Concept Plan approval for Catherine Hill Bay was 'made void and of no effect'.

11 September 2009 Catherine Hill Bay Progress Association representatives meet with Minister for Planning, Kristina Keneally. The Minister confirmed that the government was not going to appeal the court decision nor bring in retrospective legislation. It was also confirmed that the environmental lands had been transferred unconditionally to NPWS and would not be affected by the Court decision. The Minister had a 'wait and see' approach to a retraction of the rezonings that had been put in place to enable the Rose Group development.

18 February 2010 Minister for Planning, Tony Kelly reaffirmed the Lower Hunter Regional Strategy. The NSW Government made amendments to the Lower Hunter Regional Conservation Plan removing references to MOUs in order to make clear the NSW Government's position that environmental offsets at development sites can be pursued through voluntary planning agreements. The Minister expected new development proposals for Catherine Hill Bay to be re-lodged in the coming months.

April 2010 Regular Community Survey at Catherine Hill Bay shows:
98% think that the bushland makes Catherine Hill Bay "a special place"
95% believe that the environment and the history of Catherine Hill Bay is an integral part of this character.
95% are in favour of protecting the style of the village much as it is today, in keeping with the heritage guidelines developed by the CHB community and LMCC.
92% think that if development was to take place it should not be visible from the township.
98% support the Progress Association's efforts to protect the Bay.

July 2010 Catherine Hill Bay listed on the State Heritage Register
The heritage significance of Catherine Hill Bay acknowledged by inclusion on State Heritage Register. The Progress Association supports the listing but also maintains that the area included in the listing is too small. Important areas such as the site of the "E" pit, Sawmill Camp, Moonee, and the headland should also have been included. The area listed was a fifth of that designated by the National Trust as needing to be included in the listing. The LMCC's *Catherine Hill Bay Heritage Conservation Area* also covers a much greater area than that listed.

ATTACHMENT 2

Deficiencies in the Ecological Assessment Report

DEFECENCIES OF ENVIRONMENTAL ASSESSMENT REPORT

1.0 The Ecological Assessment Report should be rejected.

The EAR is around 99% identical to the report submitted over three years ago for a development proposal which was substantially different in its footprint from the current proposal. The EAR uses information which is mostly at least 5 years old and has virtually no information about changes in the intervening three to eight years. As such it is outdated and should be rejected and replaced with an up-to-date assessment.

Apart from changes to one section – the background section on Page 1 of both the current assessment and the 2007 assessment – the entire EAR has only about 1% of its text figures and tables different from the 2007 report, which was for a different quantum of sites and included three significant portions which are not included in the current proposal. Therefore statements like

Seventeen native vegetation communities have been delineated and described for the Catherine Hill Bay site, including four listed EECs which collectively comprise approximately 5.5% of the study area (EAR page (ii):

and

Weeds and Cleared Areas

This vegetation community occurs within the central portion of the site and is the result of clearing for the underground mining operations, which were shut down in the 1960's. This community encompasses approximately 31.74ha of which 52% (16.35ha) occur within conservation lands under the proposal. (EAR page (v))

are clearly inaccurate in that the overall area of the site is now markedly different and certain areas which contained EECs or weeds may or may not be in the current development Estates A and B. The minister could not use any such data to make a decision because its inaccuracies are numerous and critical to consideration of KTPs.

In addition, because this area is all naturally regenerating at a rapid pace, the three years or more since the data were collected for the 2007 report could have seen significant changes in factors such as koala sightings, feral cat and fox predation, bitou and lantana invasion and occurrence of threatened species such as tetraheca juncea plants. In relation to the latter which are a subject of the federal ..., 8,042 were noted as present in the study area prior to 2007. That number of occurrences seen may have become quite inaccurate by 2010, up to four years after the survey.

The literature review on Page 14 and subsequent pages states:

Notably several specific investigations into the existing environment within the vicinity of the site have been undertaken in recent times.

This is identical to the statement made on page 14 of the 2007 EAR and the list which follows is absolutely identical in both reports. Again in the list at 3.1 Preliminary (Desktop) Assessments, all the references and processes are identical except for one change in which a date of website access of May 2007 is changed to January 2010. In relation to fauna, apart from the very small surveys and single night survey done for the 2007 EAR, the most recent reference on fauna listed in the bibliography is 2001. Either no relevant work at all has been done in the years since, or the company providing the report has made no attempt to update using all available information.

We give an example from the report to illustrate that this renders the whole EAR unacceptable. One update which is actually included by C&A is to insert a new KTP 12, *Predation by the European Fox*, in addition to the 11 KTPs addressed in the 2007 report:

12 Predation by the European Fox

The removal of vegetation and hence habitat for this species has the potential to increase habitat competition within retained areas and the Conservation Estates. As such this may contribute to an increase in the KTP "Predation by the European Fox". If appropriate management measures are employed by the land manager (currently Coal & Allied and DECCW in the long term) this KTP should not have a significant impact on the local wildlife.

The EAR gives no explanation of why this significant KTP was not in the 2007 report, what new research has led to its inclusion in the current report, nor what other parts of the current report should be similarly updated and/or revised.

The EAR makes no comment on whether this outdated EAR gives the minister sound information on which to decide if the report remains accurate this far down the track since C&A used it for a former proposal for a substantially different site. The EAR should be rejected.

2.0 SIMI is critical to the proposal because of edge effects and is unsupported by agreement from DECCW

Edge effects could greatly reduce the value of the conservation land offset. For example, in relation to condition B3 of the EPBC Act Approval 2008/4419, commented on in the EAR on the final page of the EAR:

The Proposal commits to the preparation of a Statement of Interim Management Intent (SIMI) in the "Environmental Management" clause of the Statement of Commitments. The SIMI will be prepared in consultation with DECCW and will be, to the extent possible, consistent with the plan approved by the Minister with respect to clauses (a), (b), and (g) of this condition B3.

Crucial future management processes to manage impacts of the residential development on the adjacent conservation lands are not adequately addressed:

1. The SIMI relating the condition B3 of the EPBC Act Approval 2008/4419 covers factors which could effectively result in the proposed residential Estate effectively blocking the wildlife corridor which this proposal is supposed to provide.
2. This SIMI is not detailed and merely commits to consult the DECCW.

By way of explanation, clause (a) is pedestrian impacts, b) is edge effects and g) is spread of exotic and invasive species. However this commitment is only an impact management plan while the threat posed by edge effects, pedestrians and pets could actually destroy the utility of the corridor.

3.0 Edge effects and the shape of the development impact seriously on the conservation lands

A serious issue with the Concept plan is the overemphasis on quantum of dedication of offset lands versus quality of dedication, particularly the shape of conservation land at the corridor west of Estate B. The word *corridor* is used many times in the EAR in stating how *vitaly important* the area is for the ecology of the Wallarah Peninsula. In other words, the shape of the conservation lands offsets is the key value, supporting a contiguous wildlife area.

In contrast, the ecological assessment almost exclusively discusses only the quantum and the individual species impacts, not the shape of what is left after development, nor the impact of 220 houses on the adjacent conservation lands. The plan gives no criteria by which the maintenance of an effective corridor can be judged. The report is deficient in repeatedly asserting without evidence or rational argument, that because much of each foraging area, habitat, suitable soil etc., exists elsewhere in the conservation lands, the risks to wildlife can generally be dismissed. The reader is left uninformed about exactly how the vital contiguity will be preserved in the face of development, notwithstanding the reassuring tone of the ecological assessment.

It is plain when looking at the Concept plan maps, that Estate B forms a wall east to west extending half way across the middle of the presumed Wallarah national park corridor towards the Pacific Highway's western barrier. The Estate

B development will change the shape of the adjacent national park and cut the essential wildlife corridor by more than half, from about 900m wide to under 300m wide and maybe less. In exclusively framing its argument on the basis of quantum not shape, the plan is quite deficient in not showing how the offsets will maintain the corridor which is recognised as the key value.

An example of this misrepresentation is the reference to clearing of vegetation as a KTP on page 102:

A number of threatened fauna potentially use these lands for foraging, including, Microchiropteran bats and particularly, nectivorous species such as flying-foxes, birds and arboreal mammals due to E. robusta within SSFCF EEC. As such removal of vegetation within the development estate has the potential to impact upon local populations of dependant species. Apart from hollow bearing trees, which are dealt with above, the development estate lands may represent foraging habitat for gliders (potentially Squirrel Glider), threatened Microchiropteran bats and Forest Owls. The loss of these relatively small areas of potential habitat for these threatened fauna species is not considered significant when compared with the much greater area of similar and greater quality habitat that will be secured as conservation lands within the current proposal.

This is framing of the quantum of dedication as the single important factor is deficient in neglecting to mention that while the area of the habitat may be retained, access to it and within it will be split by the Estate B block of housing into what may be virtually separate compartments. The language of the EA distracts from the real story. The EA has repeated key phrases as if they were established fact, when they are mere assertions; eg in pages 5-104, more than 50 times the phrase *...[existing flora/fauna] will be retained/conserved /protected/ reserved/ secured in the conservation lands...* is used, as if that protection is a given, which ignores issues that mean protection cannot be guaranteed.

The particular edge effect issue is the zone of proximity of the conservation areas to roads, housing, weed concentrations, human incursions and animals introduced by residents. Consider just the road effects on the remaining corridor, which are not quantified in the EA but this alternative opinion from Parks Victoria says they should be:

It is important to consider the contribution of roads to the increasing fragmentation of habitats, particularly for species that may react negatively to roads as physical, behavioural or sociological barriers. The associated possibility of genetic isolation of animal populations is also important. (Ecological Effects of Roads, Parks Victoria 2004, p 25)

The road effect zone is defined by the distance to which each different ecological road impact extends outward (Forman 1999). These distances differ for each impact, ranging from a few metres to over a kilometre from... the road

The road effects zone averages 600 m in width (Ecological Effects of Roads, Parks Victoria 2004, p 47.

Note that the worst-case road effect of 600 m, if applied to the C&A proposal, would more than completely bisect the "corridor". The AER does not even mention this effect let alone provide a response to it.

Additional to the road effect is the impact of humans, night light, weeds and pets on the corridor so that the cumulative effect is potentially devastating to the Wallarah NP. The diagram below is superimposed on a Google Earth image of the development Estate B. Middle Camp village is shown in the bottom right corner. The white area and lines are Estates A and B and the roads. The pink area is indicative of the effects zones unquantified by C&A in this proposal:



The possible closing off of the wildlife corridor particularly at the western side of the development, is obvious. C&A's concept plan does not address this possible complete closing-off of the Wallarah NP corridor by its development.

The one mention of supposed edge treatments, on page 95, is limited to retaining vegetation along ridges! The EAR however, mentions as a KTP the invasion by bitou and lantana on the edge of the development (p104) and recommends a weed management program, but no ongoing commitment to this is provided on page 112. On page 114 it says

...development at Catherine Hill Bay (Middle Camp) was undertaken through a reduction of the proposed development area via the removal of two development precincts following the aforementioned stakeholder consultation process, coupled with the commitment to mitigate unavoidable edge effects through best practice sensitive urban design.

This repeats the assumption that the quantum, not the shape of the lands is important.

A specific component of the halo effect of the development is the impact of pets and feral animals, which is not meaningfully addressed in the EA. The EA dismisses this in one paragraph which indicates an abrogation of responsibility for the conservation lands:

The increase of residential development within the area has the potential to increase opportunities for the KTP "Predation by feral cats". This KTP is unlikely to significantly impact upon local wildlife provided responsible pet ownership is adopted. (Ecological Assessment Report, Page 104)

C&A's bland reliance on *responsible pet ownership* to protect the Wallarah National Park from impact flies in the face of research evidence that responsible pet ownership is problematic in Australian life. Pets and pets gone feral are recognised as a serious problem in parks, exemplified in this NPWS Press release, 19/7/05:

The NPWS has invested considerable effort over the years into raising the conservation message regarding the inappropriateness of having dogs in national parks, however it is likely that some neighbours are unaware that their pets are roaming [into Ku-ring-gai Chase NP] at night.

Dogs and cats pose a threat to the conservation areas which is not addressed in the EA even though feral cats are a Key Threatening Process and the number of pets from 220 dwellings will be considerable. The size of this threat from the C&A development to the adjacent conservation areas and wildlife corridors can be estimated. The Population Survey Monitor of 1994 is the Australian Bureau of Statistics' most recent published assessment of numbers of pets in Australia (Australian Social Trends 4102.0 Special Feature, Household Pets). It is reasonable to use its data to predict the pet population of the C&A development.

In the C&A development with its likely population mix, an estimate of pets from the Australian figures for married couples with dependants, applied to the 220 households of the proposal:

Types of pets	% of households	Likely No. in proposal, with this demographic
Dogs	49.0	108
Cats	32.9	86

There is no mention of the impact of this possibly massive number of pets in the Concept Plan documentation. Residents walking up to 108 dogs daily in a confined residential area and its surrounding sensitive conservation lands is a likely scenario. Residents dealing with the litters of large numbers of possibly fertile female cats add to the scenario. The quantum of this pet risk makes the notion of responsible pet management ironically important to the core of the concept plan.

One of the key impact risks is from pets gone feral through uncontrolled reproduction. The Population Monitor Survey has details of this risk:

In 1994, three-quarters of the domestic cats in Australia had been neutered, compared to just over half of the dogs...Unless cats are neutered they have great potential for rapid increase in population numbers. Cats can have three litters a year, with an average of five kittens per litter. The rapid reproduction of cats in urban areas contributes to the large numbers of stray cats that are put down by animal welfare agencies each year.

From this data it is likely that the developments' estimated 86 cats would produce in just the first year, from the 25% of female cats not neutered, at least 2 litters of 5 kittens, or about 100 kittens in total. If only half of those survived and were retained in the settlement, that would add more than half the cat population again, in the first year. The number of unwanted kittens dumped in the bushland around the development is likely to be significant.

The other key risk is from cats hunting native fauna. The Survey states:

The Australian Nature Conservation Agency estimates that the average domestic cat kills about 25 native animals a year. ... One way to stop cats from hunting is to stop them from roaming. In 1994, only 26% of domestic cats were confined both during the day and night, compared to 88% of dogs.

With only 26% of cats on average confined, suppose 74% of the potential 86 cats were not confined at night and were roaming and thus killing native animals. On the ANCA estimates, they could kill up to 1500 native animals in the adjacent conservation areas and bush corridors in the first year, let alone in subsequent years and disregarding the litters of kittens gone feral.

As noted in Section 2.1 page 3 of the Concept Plan, the intention of the NPWS that the dedicated lands' forests will form a

contiguous forested link from Swansea in the North down the Wallarah Peninsula to Munmorah State Recreation Area in the South and Lake Macquarie State Recreation Area in the southwest.

This link could be neatly cut by the C&A development's pets, both owned and gone feral. These animals could make the supposed wildlife corridors past the developments into a slaughterhouse for native fauna.

The effects described above make it arguable that the offset values which are ascribed in the concept plan to the conservation areas and on which C&A's proposal depends, may be significantly destroyed within a few years.

In summary, we refer to the EAR's outcome statements:

These outcomes:

- *Conserve in perpetuity key strategic parcels of land that complete long sought after regional biodiversity conservation corridors and buffer areas;*

- *Provide large intact areas of conserved habitat that will function as regional biodiversity gene pools; (EAR p108 Section 6 Development and conservation outcomes)*

Both statements are strongly contestable and unlikely to be sufficiently robust when the impacts we have noted are fully researched and considered.

The CHBPA position is that insufficient information is provided so that the Director-General could estimate the value of the conservation lands once all impacts of development and roads are assessed. This leaves the minister uninformed about whether the offset lands will actually be of benefit to the state. The proposal is seriously deficient in this fundamental issue and should be rejected.

4.0 Bushfire Threat

In the Bushfire Threat Assessment, page 13 shows that the Development Estate B site is actually more than one quarter covered by forest and that forest extends to the proposed APZs on almost all sides of the Estates.

The conclusion requires considerable ongoing protective measures and ends by saying:

Finally, it is believed that the implementation of the measures and recommendations forwarded within this report would contribute to the amelioration of the potential impact of any bushfire upon the development estate, but they do not and cannot guarantee that the area will not be affected by bushfire at some time. (BTR page 31)

In terms of meeting the state's urban strategy requirements, it is surely unwise to approve bushfire-prone developments while other strategies which do not include such bushfire threat are available in the broad land use policies of the state. The precautionary principle should also question the wisdom of approving this location for medium density housing when it is well known that climate change is markedly increasing the risk of bushfire.

ATTACHMENT 3

Correspondence from EDO dated 14 December 2010

Our Ref: Melissa Jolley

14 December 2010

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President
Catherine Hill Bay Progress Association

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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



ATTACHMENT 4

Heritage Significance of Slack Alley

HERITAGE SIGNIFICANCE OF SLACK ALLEY

The area in Catherine Hill Bay known as Slack Alley 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".

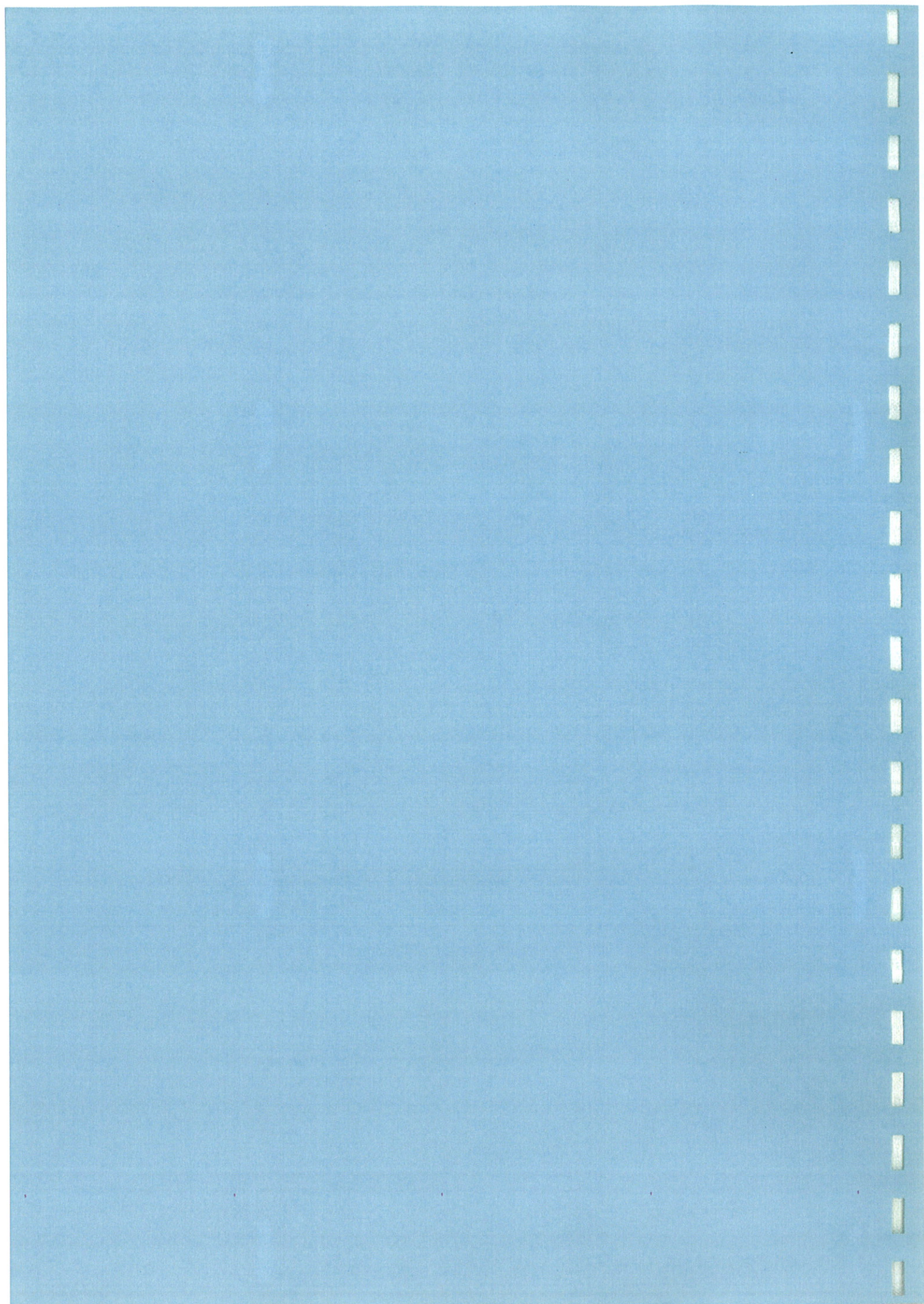
"The Catherine Hill Bay Cultural Precinct is state significant for its associations with coal mining, organised labour, and early maritime industry in NSW. It is located on the oldest coal mining lease in NSW, Consolidated Coal Lease 706. It is associated with the earliest examples of industrial action 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.

ATTACHMENT 5

Correspondence from John Wasserman dated 12 December 2010





12 December 2010

Ms Sue Whyte
President, Catherine Hill Bay Progress Association

Dear Ms Whyte,

**Re: CATHERINE HILL BAY DEVELOPMENT –TRAFFIC NOISE IMPACT
ASSESSMENT FOR EXISTING RESIDENCES AT MIDDLE CAMP**

PAEHolmes has been engaged by Catherine Hill Bay Progress Association to conduct a desktop review of the C&A Middle Camp Catherine Hill Bay (CHB) Development – *Road Traffic Noise Assessment for Existing Residences Report (RT Report)* prepared by Renzo Tonin & Associates with reference TD261-14F01 (rev 0) dated 11 October 2010.

The initial Catherine Hill Bay Residential Development proposal recommended that the Middle Camp be bypassed. The size of the proposal has been revised and as a result of changes to the proposal, the bypass for Middle Camp has been removed. The RT Report was conducted to assess the potential traffic noise impact from the proposed development on Middle Camp.

Middle Camp is a small group of homes along Flowers Drive. From aerial measurements, most homes are within 4 to 6 m of the nearside road kerb.

Following a detailed review of the Report, PAEHolmes has the following comments:

1. Flowers Drive Noise Criteria

The Report suggests that Flowers Drive is a Collector Road and as such has criteria of 60 dBA $L_{Aeq, 1hour}$ daytime and 55 dBA $L_{Aeq, 1hour}$ night time. No justification has been provided for this assumption.

In the PB report *Lower Hunter Land Development – Southern Estate – Catherine Hill Bay (Middle Camp) Traffic and Transport*, the functional category for Flowers Drive though Middle Camp is considered as being both local road and collector road.

The classification of roads in rural areas is often not straight forward. This issue is acknowledged by DECCW and is currently being considered in a review of the ECRTN.

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GOLD COAST

TOOWOOMBA

A PEL COMPANY

Currently Flowers Drive connects to a sub-arterial road (the old Pacific highway) which would indicate a collector road classification; however the low volumes, characteristically intermittent traffic flows, proximity of residences on the road (houses in Middle Camp are 4 to 6 metres from the edge of the road), road geometry and traffic speed (proposed traffic speed of 40km/hr) would indicate a local road classification. In my experience, it is appropriate to assign the local road classification and criteria to Flowers Drive where it passes through Middle Camp. The criteria therefore to be considered would be 55 dBA $L_{Aeq, 1\text{hour}}$ daytime and 50 dBA $L_{Aeq, 1\text{hour}}$ night time. These criteria are 5 dB lower than the collector road criteria.

2. Traffic Volumes and Speeds

Section 3.7 (Traffic forecast on Flowers Drive through Middle Camp for noise assessment) of the Hyder "Catherine Hill Bay Traffic and Transport" Report (Hyder Report) presents the traffic data used for the noise assessment. It is recommended that traffic management procedures be implemented, particularly a speed limit of 40km/hr. The noise impact assessment has been undertaken based on an assumed road traffic speed of 40km/h. It is therefore considered important that this be implemented by posting and enforcing as a speed limit as higher speeds will result in higher noise levels and corresponding greater noise impact.

3. Existing Traffic Noise Levels

Table 3 in the RT Report presents calculated existing traffic noise levels. Assumptions for the traffic noise predictions have not been provided; as such it is not possible to confirm the accuracy of the results. For example, noise model, exact traffic volumes, distance, façade reflection, etc

4. Predicted Future Traffic Noise Levels (2012)

Table 4 in the RT Report present calculated future traffic noise levels. Not all the assumptions for the traffic noise predictions have been provided; as such it is not possible to confirm the accuracy of the results. Some initial comparative calculations have been conducted by PAEHolmes and suggest that the noise levels may be under predicted.

We note that there is no calibration of the traffic noise modelling. However, given the sensitive of this project, PAEHolmes believes this should have been undertaken in order to minimise the risk of traffic noise exceedances and higher noise impacts.

A desktop review of the RT Report has determined a number of areas which require further justification and clarification. If you have any question or require clarification please do not hesitate to contact me.

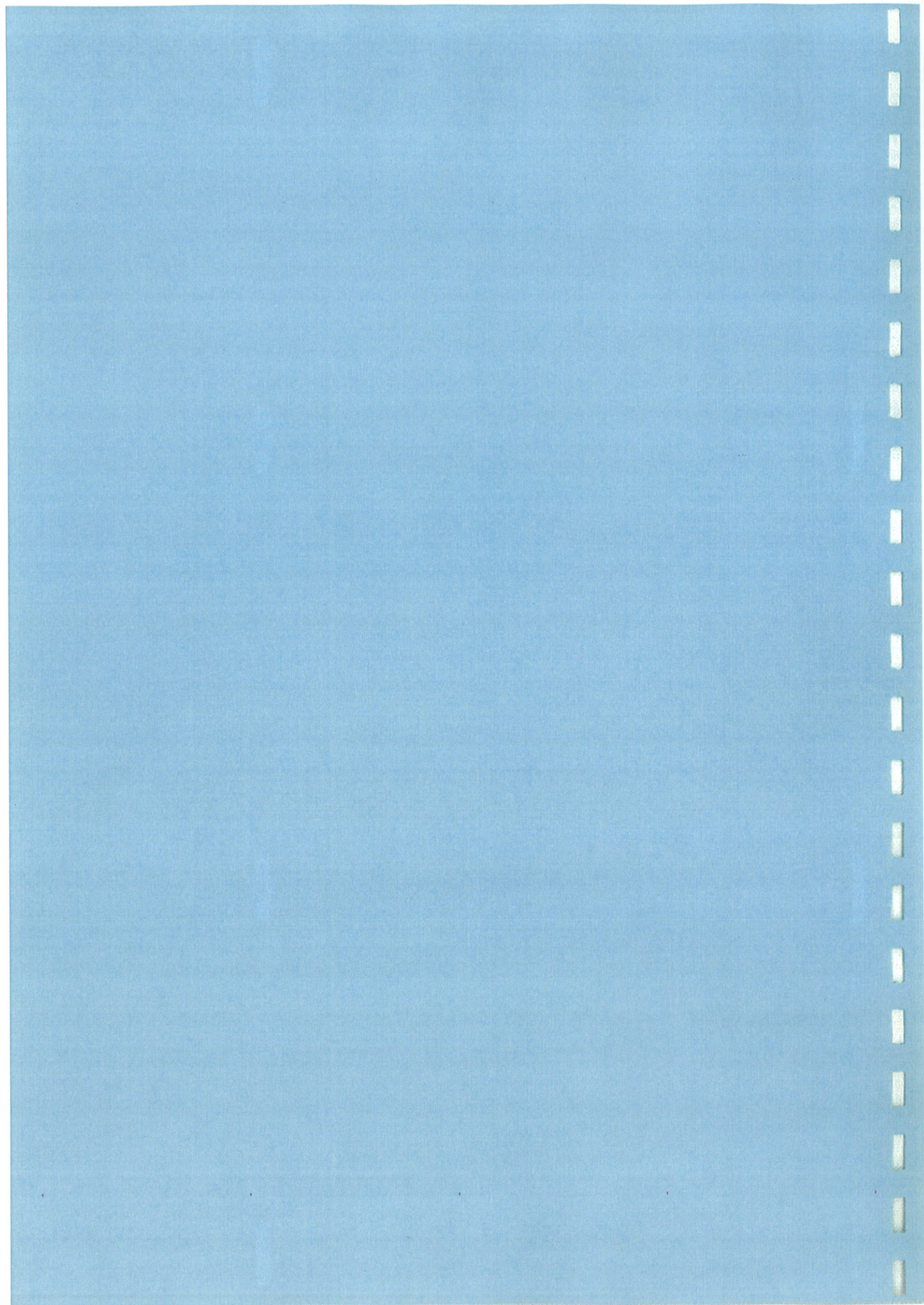
Yours faithfully,



John Wassermann
PAEHolmes
Manager Noise Practice

ATTACHMENT 6

Correspondence from Damien Hawcroft dated 29 November 2010



21 Clarke St
Catherine Hill Bay
29 November 2010
Ph: 0419263380

To whom it may concern

Reference : Douglas Partners Report
Phase 2 Mine Subsidence Risk Assessment
Proposed Residential Subdivision Catherine Hill Bay
Prepared for Coal and Allied Industries Ltd
Project 39662.07 of October 2010

With reference to the above report my comments and concerns follow:

1. This document is not a "true" risk assessment as per the Australian / NZ Standards AS/NZS 4360:2004 and therefore should not be read as suggested by the title, i.e. "Mine Subsidence Risk Assessment". Page 1 of 29 better reflects the nature of this report, i.e. "Mine Subsidence Assessment"
2. Consultations were undertaken with Mr Greg Cole-Clerk of the Mine Subsidence Board in January 2007. Mr Cole Clark indicated the following

Q. This consultation is almost 4 years old and as the subsidence standards or Act may have changed since January 2007, are these "indications" provided by Mr Greg Cole-Clerk of the Mine Subsidence Board the most current or do they need to be updated?
3. Consultations were undertaken with Mr Greg Cole-Clerk of the Mine Subsidence Board in January 2007 but the report's boreholes were drilled and logged from July 2007 to September 2007 that is after the consultations with Mr Greg Cole-Clerk.

Q. The drillholes were logged at least 6 months after consulting Mr Greg Cole-Clerk of the Mine Subsidence Board in January 2007. Can we therefore assume that no consultation with the Mine Subsidence Board has occurred subsequent to the collection of drillhole data to gain the Board's response to the findings of the drillholes?

4. Page 18 of 29 Groundwater

'The workings were generally drygroundwater levels are transient and can vary with climatic conditions"

Q. The drillholes were logged July to September 2007. NSW had experienced one of its worst drought periods in recorded history and 2007 formed part of that period. Groundwater plays a large part in strata control and requires careful consideration when determining the potential for mine subsidence given changing hydrological and hydrogeological characteristics. Even though the report is dated 10 October 2010 it appears that the amount of rainfall in the past 12 months (2009 / 2010) has not been taken into consideration in the mine subsidence assessment report, is this correct?

Also, it appears that worst case historical rain periods have not been taken into consideration in the mine subsidence assessment report, is this correct?

5. Section 4 Desktop Assessment – Consultations

Page 6 of 29

- a. With reference to Area B approximately 33% of this Area represents ground between the coal seam and the surface that has been mined on which houses are proposed to be built as having less than 20m of cover and therefore as written in this section "development in such areas would probably only be if grouting of the workings was undertaken".

Q. Is the proposed development in this area restricted to one storey brick veneer houses?

Q. Is this the most current control to address and / or prevent subsidence when the area is being developed and built on for residential use?

From the drillhole results it would appear that the 20m of ground between coal seam and surface is in very poor condition (i.e. moderate to high to extremely weathered / low to very low to extremely low strength / highly fractured / numerous discontinuities) making it very unstable for residential development?

Page 6 of 29

- b. With reference to Area B approximately 33% represents less than 20m of cover and therefore as written in this section "development in such areas would probably only be if grouting of the workings was undertaken".

Q. Is grouting the most current control to address and / or prevent subsidence in very poor ground conditions on which people's houses are proposed to be built ?

Q. Does this grouting compensate for moderate to high to extremely weathered / low to very low to extremely low strength / highly fractured / numerous discontinuities as indicated in the majority of boreholes drilled in Area B as summarised in Table 1 (Page 18 of 29) showing?

Page 6 of 29

- c. With reference to Area B approximately 33% represents ground between the coal seam that has been mined and the surface on which houses are proposed to be built as having between 20m to 50m of cover and therefore as written in this section "development in such areas would probably be restricted to one storey brick veneer. It may be possible to obtain a less onerous restriction subject to site investigation and detailed risk assessment."

Q. Is the proposed development in this area restricted to one storey brick veneer houses?

Q. For this proposed development has a "detailed risk assessment" been done?

Q. If the "detailed risk assessment" has been done, did it involve a cross section of the local community as well as external and independent specialists not associated with the proposed development?

Q. Does this "detailed risk assessment" take into account that the majority of boreholes drilled in Area B as summarised in Table 1 (Page 18 of 29) generally indicate extremely low strength to low strength to medium strength, fractured and highly weathered material on which people's houses are proposed to be built?

Q. Also, has this "detailed risk assessment" considered worst case historical rain periods, say a 1:100 year event when taking into account potential triggers for further mine subsidence in the proposed development area?

Page 6 of 29

- d. With reference to Area B approximately 33% represents ground between the coal seam that has been mined and the surface on which houses are proposed to be built as having more than 50m of cover and therefore as written in this section "would have allowed two storey brick veneer style development. However for this development, a detailed risk assessment would be required to support this."

Q. Does this control take into account that the majority of boreholes drilled in Area B as summarised in Table 1 (Page 18 of 29) generally indicate extremely low strength to low strength to medium strength, fractured and highly weathered material on which people's houses are proposed to be built?

Q. For the proposed development has a detailed risk assessment been done?

Q. If the "detailed risk assessment" has been done, did it involve a cross section of the local community as well as external and independent specialists not associated with the proposed development?

Q. Does this "detailed risk assessment" take into account that the majority of boreholes drilled in Area B as summarised in Table 1 (Page 18 of 29) generally indicate extremely low strength to low strength to medium strength, fractured and highly weathered material on which people's houses are proposed to be built?

Q. Also, has this "detailed risk assessment" considered worst case historical rain periods, say a 1:100 year event when taking into account potential triggers for further mine subsidence in the proposed development area?

- e. Page 6 to 29

Bullet states "for predicted subsidence parameters, exceeding the following, development would be restricted to single storey brick veneer or similar;

Max subsidence – 400mm

Strains +/- 3m/m

Tilts 4mm/m

Q. Have the above parameters been considered in the Douglas Partners Report Project 39662.07 October 2010?

- f. Page 10 to 29

States "several boresdid not coincide with the locations of bords and pillars shown on the record trace"

Q. Does this statement raise concern regarding recommended subsidence controls given the consequence of not ensuring ongoing safety to people living in their homes?

g. Page 22 to 29

States "it is recommended that for development in areas with less than 20m cover of residual soil and rock, development be restricted as follows "full grouting of workings would be required";

Q. Does this recommendation take into account that the majority of boreholes drilled in Area B as summarised in Table 1 (Page 18 of 29) generally indicate extremely low strength to low strength to medium strength, fractured and highly weathered material on which people's houses are proposed to be built? Not only "high risk pothole areas of workings" need to be grouted but the interburden between the surface and the coal seam also needs to be grouted given the interburden geological and geotechnical characteristics?

h. Page 23 to 29

States "it is recommended that for development in areas with less than 20m cover of residual soil and rock, development be restricted as follows "full grouting of workings would be required";

Q. Does this recommendation take into account that the majority of boreholes drilled in Area B as summarised in Table 1 (Page 18 of 29) generally indicate extremely low strength to low strength to medium strength, fractured and highly weathered material on which people's houses are proposed to be built? Not only "high risk pothole areas of workings" need to be grouted but the interburden between the surface and the coal seam also needs to be grouted given the interburden geological and geotechnical characteristics?

Q. Also, has recent rains as well as worst case historical rain periods been taken into account as potential triggers for further mine subsidence in the proposed development areas?

i. Page 28 to 29

Section 7. Limitations states "It is noted that the site is within a proclaimed mine subsidence district. This report outlines the potential risks associated with mine subsidence and presents guidelines for managing the risk and obtaining Mine Subsidence Board consideration for the proposed development. It is noted that the guidelines presented are not intended to fully prevent damage to property or person, rather reduce the risks and Douglas Partners accept no liability with respect to such damage."

Q. Will the public be made aware that the guidelines for this proposed development are not intended to fully prevent damage to property or person?"

Q. Has the proposed development met approval from the Mine Subsidence Board?

Q. If there is subsidence during construction, who wears the cost of fixing this subsidence, i.e. is it the developer's cost or the cost of the public as per the Mines Subsidence Act?

Q. If there is subsidence when the development has been completed and houses are damaged or destroyed and lives are lost, who wears the cost of fixing and compensating for loss of life, is it the developer's cost or the cost of the public as per the Mines Subsidence Act?

As per the above questions it would appear that the referenced Douglas Partners Report (Phase 2 Mine Subsidence Risk Assessment Proposed Residential Subdivision Catherine Hill Bay Prepared for Coal and Allied Industries Ltd Project 39662.07 October 2010) does not satisfactorily address mine subsidence in Area B particularly as:

1. the surface has been undermined and pillar extracted for at least 60% of Area B
2. the ground, via boreholes, is defined as moderate to high to extremely weathered / low to very low to extremely low strength / highly fractured / numerous discontinuities

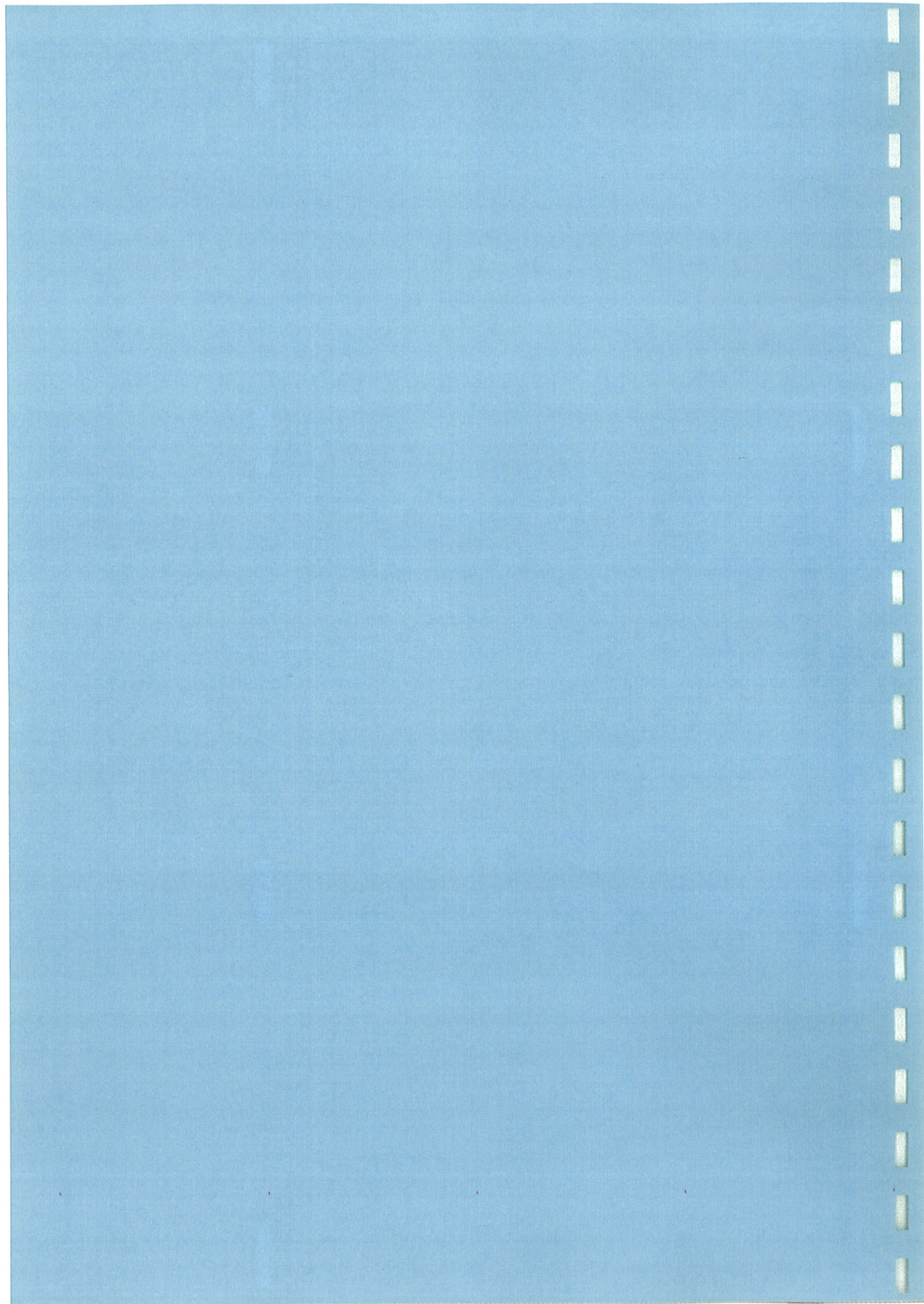
Given the above it appears very doubtful as to whether building of permanent residential houses is appropriate for this Area.

I look forward to answers to the above questions.

Regards
Damien Hawcroft

ATTACHMENT 7

Correspondence from Dr William Laing dated 1 December 2010



From: William Laing [mailto:bill@laingex.com]
Sent: Wednesday, 1 December 2010 2:52 PM
To: Sue Whyte
Cc: Barry Laing & Vanessa Morris
Subject: Hawcroft Assessment of Douglas Report

Dear Sue

Herewith my assessment of the Hawcroft review of Douglas Partners Report.

I have not seen the Douglas Report. I do not know Damien Hawcroft. However his commentary is clearly knowledgeable of geotechnical analysis, grouting policy, and the general workings of the Mine Subsidence Board. His questions are insightful, comprehensive, and persistent in asking the same (and valid) questions for each different overburden (cover) situation.

His questions 2-3 re the validity of MSB "indications" several years old, require answering by the MSB.

His question 4 is valid and requires an answer from MSB which extrapolates their finding to all ground situations including wet cover conditions.

His questions 5 a-i place - correctly - great emphasis on the poor stability of the cover soil and rocks, at all depths of cover from the surface to 50m which is the maximum depth considered by the Douglas Report. His observation (g) that grouting would need to include the interburden as well as the open space mine workings, is almost certainly geotechnically valid, and this would increase the grouting cost manyfold.

From Hawcroft's information and questions it would seem that his final summary assessment 1 and 2 at the end, are the correct view on present information in the Douglas report.

Hawcroft's conclusion is *"it appears very doubtful as to whether building of permanent residential houses is appropriate for this Area"*.

The next step must be an explanation from the Douglas authors and/or CAIL as to how residential development can safely take place in the described Area B, with its building substrate in "very poor condition" both in the natural rock/soil and from its 60% mined cavities. This explanation must address the comprehensive questions provided by Hawcroft. The development must be suspended until such an explanation is provided.

Dr Bill Laing
Principal Consultant
BSc(Hons) PhD FSEG FAusIMM(CP) FAIG MGSA MASEG

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