

ASSESSMENT REPORT

Section 75W Modification

Le Clos Verdun Estate - Sancrox Road, Sancrox, Port Macquarie-Hastings Local Government Area (MP06_0212 MOD 1)

1. BACKGROUND

This report is an assessment of a request to modify the Concept Plan and Project Approval for the 2 lot torrens title and 142 community title lot residential subdivision at Sancrox known as the 'Les Clos Verdun Estate' (Major Project 06_0212) (See **Figure 1**) pursuant to Section 75W of the *Environmental Planning and Assessment Act 1979 (EP&A Act)*. The modification includes amendments to the subdivision layout, staging, relocation of the entry road, voluntary planning agreement condition, Statement of Commitments (SoC), and minor administrative amendments.

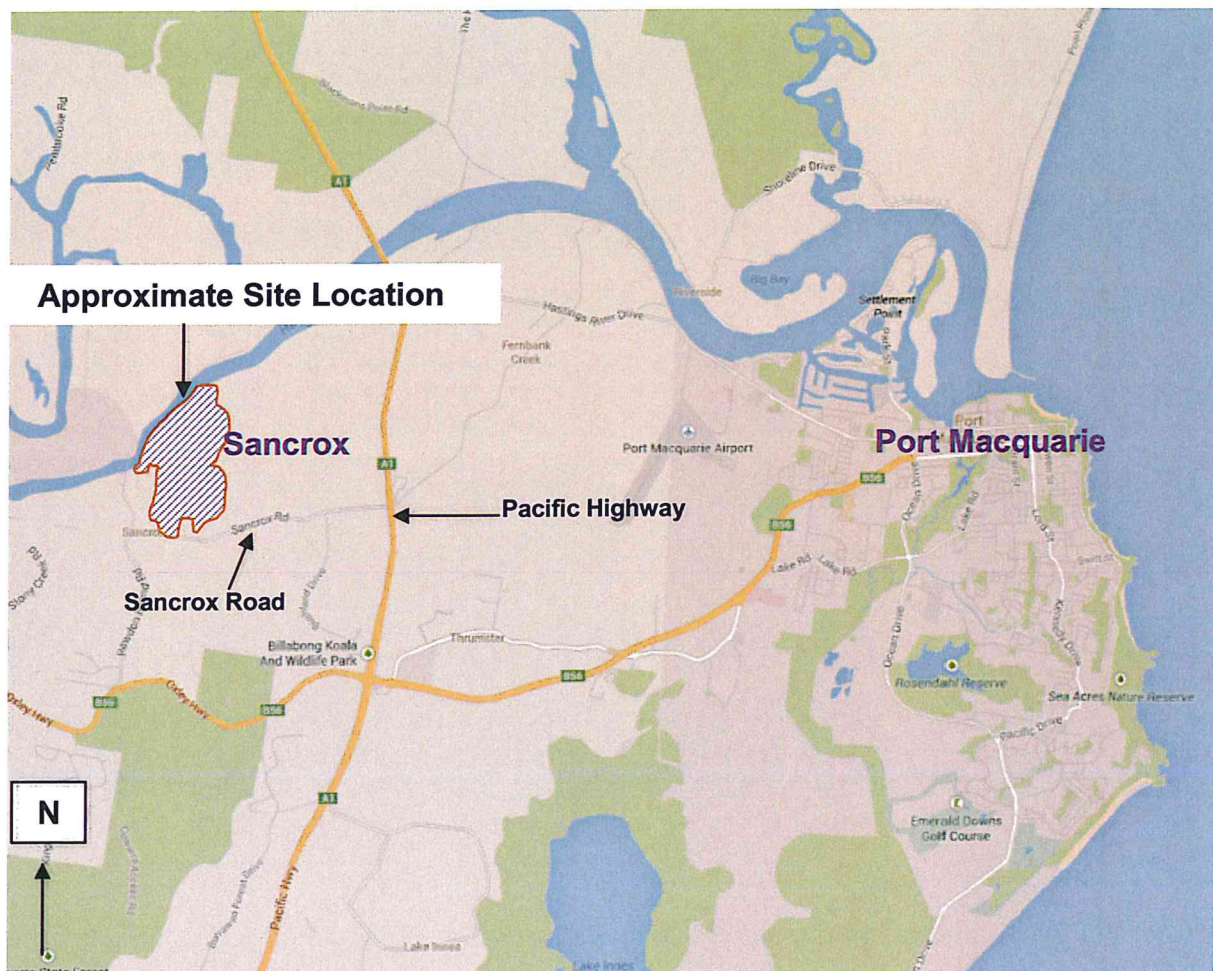


Figure 1: Site Location

1.1 Subject Site

The site is located approximately 380km north of Sydney and 10km to the west of Port Macquarie within the Port Macquarie-Hastings Local Government Area. The site has frontage to Sancrox Road and the Hastings River.

The site was developed in the 1980's for the purpose of a community viticulture farming and residential enterprise, and comprised of 84 residential lots each with their own separate viticulture lot. The average residential lot was upwards of 1,520 m² in area, with the viticulture lots between 1.3 – 1.8 hectares. The viticulture venture subsequently failed. Remnants of the development include 4 dwellings, a rural tourist facility containing 6 units and various agricultural buildings. Existing infrastructure includes roads, water mains, two dams, and electricity and telecommunication infrastructure.

The site is largely cleared and comprises of agriculture pasture for grazing. Vegetated areas are generally associated with swamp oak floodplain forest along Haydons Creek with smaller communities of open forest and rainforest sparsely occupying the site.

1.2 Previous Approvals

On 22 December 2010, the Deputy Director-General, as delegate of the then Minister for Planning granted Concept Plan and Project Approval for Major Project 06_0212 (the 'Le Clos Verdun Estate') which includes a staged torrens title subdivision (2 lots) and a 142 lot community title for a rural residential subdivision with associated infrastructure works and community buildings. A summary of the approvals is provided below (See **Figure 2**).

The Concept Plan approval includes:

- boundary adjustments to reshape the 2 existing torrens lots (Stage A);
- staged subdivision (13 stages) and implementation of associated infrastructure and community buildings for 142 lot rural residential subdivision;
- re-registration and re-ordering of various lot numbers; and
- provision of community open space (lot 1) for community facilities.

The Project Approval includes:

- boundary adjustments to the torrens title subdivision (2 lots, Stage A);
- staged subdivision (13 stages) into 142 rural residential lots under community title and associated infrastructure and community buildings;
- retention of existing site structures;
- provision of access, landscaping and associated stormwater drainage and infrastructure;
- vehicular access link;
- a cluster effluent treatment facility;
- integrated fire trails for emergency vehicle access;
- nature walkways on the site perimeter; and
- construction of a tennis court, community building, amenities block, playground and associated recreation areas.

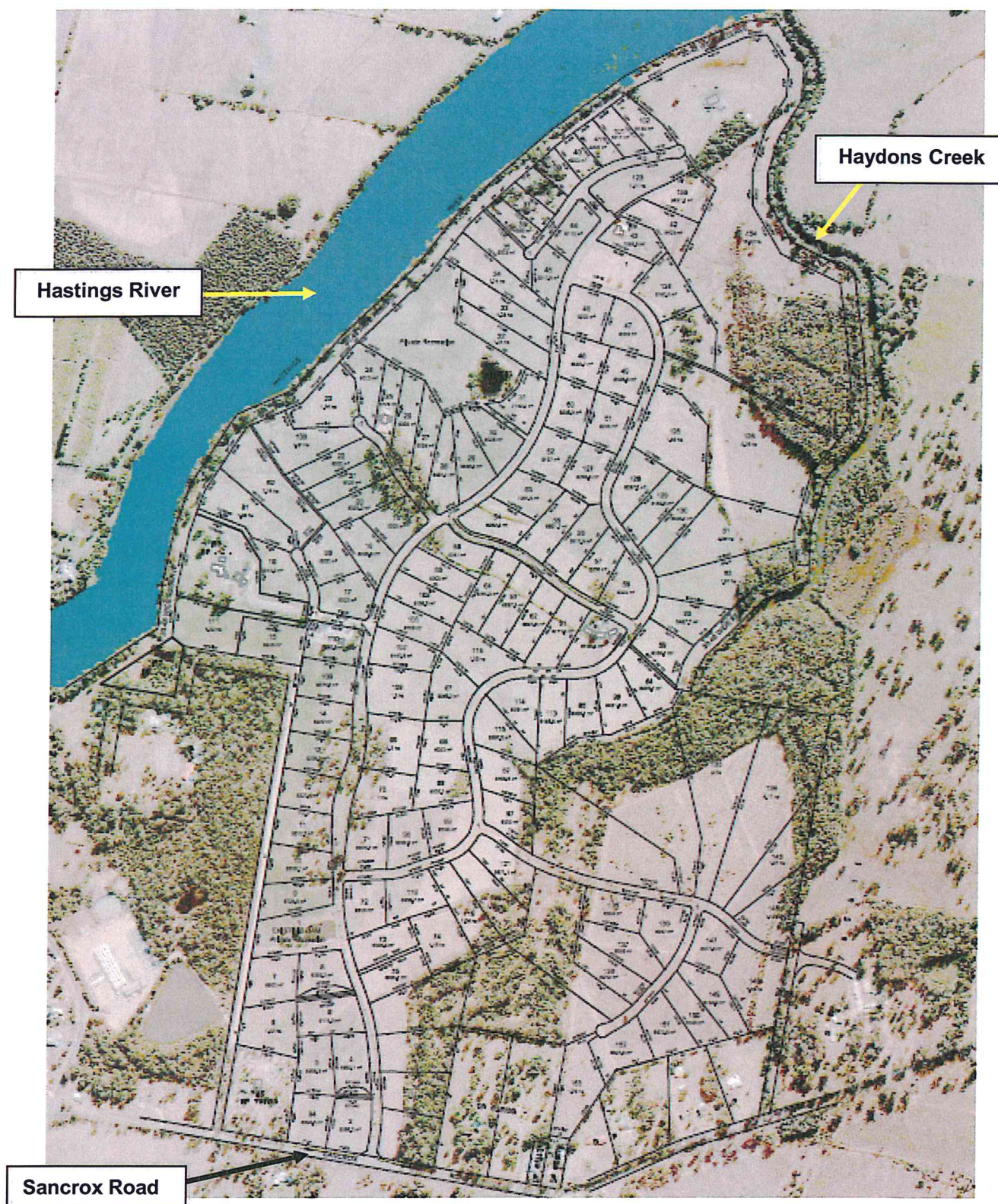


Figure 2: Approved Subdivision Layout

2. PROPOSED MODIFICATION

On 7 January 2014, Hopkins Consultants on behalf of Riverpark Sancrox Pty Ltd (previously Le Clos Pty Ltd) (the Proponent) submitted a Section 75W modification request to both the Concept Plan and Project Approval of Major Project 06_0212.

The proposed changes to the Concept Plan and Project Approval include:

- boundary adjustments to the torrens title subdivision (2 lots, Stage A);
- minor amendments to the subdivision layout (142 residential lots);
- re-ordering the lots being released at each stage;
- relocation of the entry road, 25m west of the currently approved entrance;
- amendments to lot numbering to accommodate numbering restrictions on community title lots;
- updating plan references;
- update of monetary contributions (Project Approval only);
- amendments to the voluntary planning agreement condition (Project Approval only);
- updating references in the conditions to reflect the latest environmental zones in the *Port Macquarie-Hastings 2011 Local Environmental Plan*; and
- update of the SoC to reflect the proposed lot and stage amendments.

No additional lots or roads will be created as a result of the proposal. The proposed modifications involve numerous administrative amendments to the terms and conditions of the approval to reflect the proposed subdivision layout and staging. The proposed amendments are set out in more detail in **Appendix E and F** of the Proponent's modification request. **Table 1** below demonstrates the approved and proposed staging and lot release.

Table 1: Approved and proposed staging.

Stage	*Approved Staging and Lot Release		Proposed Staging and Lot Release	
Stage 1:	80 Lots	Lots 1-80	8 Lots	Lots 1-5 and 20-22
Stage 2:	5 Lots	Lots 81-85	49 Lots	Lots 10-12,14,17-19 and 23-64
Stage 3:	3 Lots	Lots 87-89	29 Lots	Lots 15 and 68-95
Stage 4:	2 Lots	Lots 91-92	3 Lots	Lots 13, 98 and 99
Stage 5:	9 Lots	Lots 94-102	9 Lots	Lots 6 and 101-108
Stage 6:	7 Lots	Lots 105-111	7 Lots	Lots 113-119
Stage 7:	4 Lots	Lots 113-116	4 Lots	Lots 121-123
Stage 8:	4 Lots	Lots 118-121	4 Lots	Lots 126-129
Stage 9:	8 Lots	Lots 123-130	8 Lots	Lots 131-138
Stage 10:	7 Lots	Lots 132-138	7 Lots	Lots 140-146
Stage 11:	4 Lots	Lots 140-143	8 Lots	Lots 149-156
Stage 12:	9 Lots	Lots 145-153	3 Lots	Lots 157-159
Stage 13:	3 Lots	Lots 154-156	3 Lots	Lots 160-162

* There was a typographical error in condition A2 2) of the Concept Plan and Project Approval, the total number of residential lots approved is 142.

Note: It is noted that due to factors relating to Community Title registration and the requirement for sequential lot numbering, "Development Lot" numbers cannot be re-used with registration of subsequent stages. Hence, lots within the subdivision scheme run from Lot 1 to Lot 162 'residential', or developable lots under Community title are being created.



Figure 3: Proposed modified lot layout. Note: Approved layout (black) and proposed modified layout (red).

2.1 Modification Justification

The Proponent has stated that the proposed lot layout changes have resulted from detailed design works. As the project includes over 80 land owners, the re-ordering of the stages is necessary to meet the financial requirements of these land owners. The Proponent considers the modification to be minor and has emphasised that no additional lots or roads will be created. The Proponent contends that the amendments to the entry road 25m west of what is currently approved will reduce the need for clearing and fill in this locality.

3. STATUTORY CONTEXT

3.1 Approval Authority

Under section 23(1)(d) of the EP&A Act, the Minister delegated the assessment functions for the original Concept Plan and Project Approval to Port Macquarie-Hastings Council (Council). Notwithstanding, the determination of the Concept Plan and Project Approval remain with the Minister.

Approval of Major Project 06_0212 was granted under Part 3A, Sections 75O and 75J of the EP&A Act. Under Clause 3 of Schedule 6A of the Act, Section 75W of the Act as in force immediately before its repeal on 1 October 2011, continues to apply to transitional Part 3A projects. Consequently, the Minister for Planning is the approval authority for the proposed modification.

Under the Ministerial delegation of 14 September 2011, the Director – Industry, Key Sites & Social Projects may determine the modification application as Council did not object, there were no political donation disclosures, and there were no public objections.

3.2 Modification

The Department of Planning and Environment (the Department) is satisfied that the application can properly be characterised as a modification to the original Project Approval, and can therefore be assessed and determined under Section 75W of the Act.

In this respect, the Department notes that there is no change to the overall lot yield or any additional environmental impacts. Therefore, the application is within the scope of Section 75W.

4. CONSULTATION AND SUBMISSIONS

The modification application was made publicly available on the Department's website. The application was referred to Council and Rural Fire Service (RFS). Consultation with other agencies and adjoining landowners was not considered to be necessary owing to the limited reach of predicted impacts associated with the proposed modification.

No issues or concerns were raised by Council. The RFS stated that the Bushfire Hazard Assessment (BFHA), March 2008 had not been updated to reflect the proposed lot layout. The RFS recommended a condition which requires the BFHA to be updated to its satisfaction, prior to the issuing of a construction certificate. This condition is included in the Department's recommendation.

The Department requested additional information in regards to the justification for the project, lot size, on-site waste water treatment and filling requirements. The Proponent

provided a Response to Submissions which satisfied the Department's concerns (**Appendix D**). No public submissions were received.

5. ASSESSMENT

In its assessment of the modification application, the Department has considered the following:

- the proposed modification (see **Appendix B**);
- all submissions received by the Department (see **Appendix C**); and
- the Director-General's assessment reports for the original project application and earlier modification approvals.

The Department considers the key issues associated with the proposed modification to the Concept Plan and Project Approval include:

- amending the subdivision layout;
- relocation of the entry road; and
- timing of future environmental management requirements.

Other issues relating to minor administrative amendments, monetary contributions and the voluntary planning agreement have also been considered in **Table 2**.

5.1 Amended subdivision layout

The Proponent proposes to make minor boundary adjustments to the lot layout in regards to the torrens title subdivision (2 lots) and the residential lot subdivision (142 lots) along with re-ordering the release of lots for each stage. No additional lots or roads will be created by the amended layout.

The modified lots meet the requirements (lot size, building envelope and street frontage) of the *Port Macquarie - Hastings Local Environmental Plan 2011* (LEP) and *Port Macquarie - Hastings Development Control Plan 2013* (DCP).

The approval includes a number of fire trails, which would be slightly modified as part of the proposed lot layout. The RFS have requested that the BFHA be updated to its satisfaction, prior to the issue of a construction certificate to reflect the proposed lot layout. Council did not raise any concerns regarding the proposed layout.

The proposed lot layout would not result in any additional impacts to the flora and fauna, the on-site effluent disposal areas, public access to the coastal foreshore, fill requirements or flooding.

Department's Consideration

The Department notes that the proposed lot layout will not create any additional roads, increase lot yield or impact on any additional vegetation then what was previously approved. The primary function and purpose of the approved project would not change as a result of the proposed modification. The environmental impacts associated with the project would generally remain unchanged and would be appropriately managed through the existing or modified terms/conditions of approval. However, the Department agrees with the RFS that the BFHA should be updated to reflect the amended lot layout. The Department has therefore added a condition in the Project Approval requiring the BFHA to be updated to the satisfaction of RFS.

The Department is satisfied that the proposed modification will not result in any additional material environmental impacts and is considered minor, particularly as the number of lots remains the same and the urban footprint will remain generally unchanged.

5.2 Relocation of entry road

The Proponent proposes to relocate the entry road 25m west of the current proposed entrance (See **Figure 3**). The Project Approval requires that the existing intersection between the subdivision entry road and Sancrox Road be upgraded to Austroads standards. The relocated entry road would also require this upgrade. The new location of the entry road avoids the need to clear vegetation from building envelopes or the adjacent lots to the east. Additionally, the entry road relocation would reduce the need for clearing of the eastern riparian area and importation of fill. No bus stops would be affected by the entry road relocation. No concerns were raised by Council regarding the relocation of the entry road.

Department's Consideration

The Department considers that the relocation of the road 25m west of the site would improve road safety as the intersection of Sancrox Road and the access road would be upgraded to Austroads standards. The relocation of the entry road would also reduce impacts to flora and fauna and is therefore supported by the Department.

5.3 Timing of environmental management requirements

The project will be constructed over 13 stages, currently the bulk of the lots including the community lot (Lot 1) will be released in Stage 1. The Proponent proposes to re-order the stages and lot release (see Section 2) so that the bulk of the lots are released in Stages 2 and 3. The timing of a number of the environmental management requirements are linked to specific stages.

The Proponent has sought to modify the timing of a number of terms, conditions and SoC relating to future environmental management requirements from Stage 1 to Stage 2. The Proponent states no construction is required for the proposed Stage 1, as Stage 1 will include the release of the community lot (Lot 1) and lots which contain existing houses and infrastructure. Stage 2 will include construction, road-reconstruction and water-main replacement and therefore the environmental management requirements need not be imposed until the registration of subdivision for Stage 2 is sought.

In particular, the Proponent has sought to modify condition E5 'Stormwater Management' of the Project Approval which requires a stormwater maintenance plan/schedule to be prepared prior to the issue of a subdivision certificate for any stage, other than Stage A (2 lot torrens title subdivision, which is not part of the 142 community lot residential subdivision). The Proponent has sought to modify this condition from 'other than Stage A' to 'other than Stage A and Stage 1'. Stage 1 forms part of the community lot residential subdivision. The Proponent states that the lots in Stage 1 have existing drainage paths, which are essentially overland flow paths (grass swales). These drainage paths will continue to be maintained by the Riverpark Sancrox board who are managing the re-development project and therefore deferment to the timing of the maintenance plan/schedule is reasonable. The Department discussed this issue directly with Council, particularly whether Council was satisfied that the existing drainage for Stage 1 was sufficient and if the preparation of the stormwater maintenance plan/schedule for the entire site could be deferred to Stage 2. Council

confirmed that it was comfortable with this approach as the bulk of the lots will be released in Stages 2 and 3 and there are existing drainage paths in place for Stage 1.

Department's Consideration

The Department notes that in the approval the majority of lots were proposed to be released in Stage 1. As the community/public open space lots will be released within the first stage and the bulk of the lots will be released in the early stages of the development (Stages 2 and 3), similar to the current approval, the Department is satisfied that the amendments to the staging lot release plan are inconsequential.

Given that physical works will not commence until Stage 2, the Department considers the modification to the timing of environmental management requirements from Stage 1 to Stage 2 to be minor. In order to ensure no physical works will occur within Stage 1, the Department has included a condition which does not permit physical works to be carried out in the first Stage of the project unless otherwise agreed to by the Secretary.

Notwithstanding, the Department is of the view that whilst it is appropriate to amend the timing of the stormwater maintenance plan/schedule the plan should apply to the entire site. Accordingly, the Department has amended the condition to reflect this requirement.

5.5 Other Matters

The Department's assessment of other issues is provided below.

Table 2: Other Issues

Issue	Consideration
Concept Plan and Project Approval	
Amendments to lot numbering in the Concept Plan and Project Approval.	The changes are necessary to accommodate restrictions on lot numbering in the community title subdivision as development lot numbers cannot be reused.
Updating plan references within the development.	The Department considers the remaining changes to be inconsequential and are therefore supported.
Updating references to zonings for consistency with the <i>Port Macquarie-Hastings 2011 Local Environmental Plan</i> .	The Department agrees that the zoning should be updated for consistency purposes and is therefore supported.
Project Approval	
Condition B11 Voluntary Planning Agreement.	<p>Condition B11 states that pursuant to section 93I(3) of the Act, the Proponent must enter into a voluntary planning agreement prior to the release of the first Construction Certificate in accordance with the terms set out in the letter of offer dated 2 November 2010 to Port Macquarie Hastings Council.</p> <p>The Proponent has requested that any future amendments to the Voluntary Planning Agreement (VPA) which have been agreed to by Council should be adopted and not require the condition to be updated to reflect the new date of the letter of offer.</p> <p>Council is satisfied with this approach and accordingly the Department has recommended that the condition be amended as follows:</p> <p>Pursuant to section 93I(3) of the Act, the Proponent must enter into a</p>

Issue	Consideration
	planning agreement prior to the release of the first Construction Certificate in accordance with the terms set out in the letter of offer dated 2 November 2010 to Port Macquarie Hastings Council or as later amended through agreement with Port Macquarie Hastings Council and the Proponent.
Condition E7 Monetary Contributions.	<p>Condition E7 'Monetary Contributions' requires a monetary payment to Council prior to the issue of a subdivision certificate for the creation of the relevant lot.</p> <p>The Proponent has requested that condition E7 'Momentary Contributions' be updated as per Council's advice on the latest CPI adjustments.</p> <p>The Department notes that Condition E7 'Monetary Contributions' is subject to adjustment in accordance with the CPI increases (adjusted quarterly) and the provisions of the relevant plans. Therefore the monetary contributions are updated automatically in line with the CPI and the Department believes the modification is not necessary.</p>

6. CONCLUSION AND RECOMMENDATIONS

The Department is satisfied that the proposed amendments to the Concept Plan and Project Approval for Major Project 06_0212 will not result in any additional material environmental, social or economical impacts on the site or surrounding locality. Furthermore, it is considered that the relocation of the entry road will benefit the environment by reducing the amount of clearing and fill required for the site.


The Department generally supports the proposed amendments to the terms and conditions of approval.

It is recommended that the A/Director – Industry, Key Sites and Social Projects, as delegate of the Minister for Planning:

- a) approve the proposed modification under section 75W of the EP&A Act to the Concept Plan approval by signing the Instrument of Approval included at **Appendix A**; and
- b) approve the proposed modification under section 75W of the EP&A Act to the Project Approval by signing the Instrument of Approval included at **Appendix A**.


Chris Ritchie
Manager
Industry, Key Sites and Social Projects

10/9/14


Ben Lusher
A/Director
Industry, Key Sites and Social Projects

11/9/14

Kate Masters
A/Senior Planner
Industry, Key Sites and Social Projects