

## ASSESSMENT REPORT

### Section 75W Modification

#### Le Clos Verdun Estate - Sancrox Road, Sancrox MP06\_0212 MOD 2

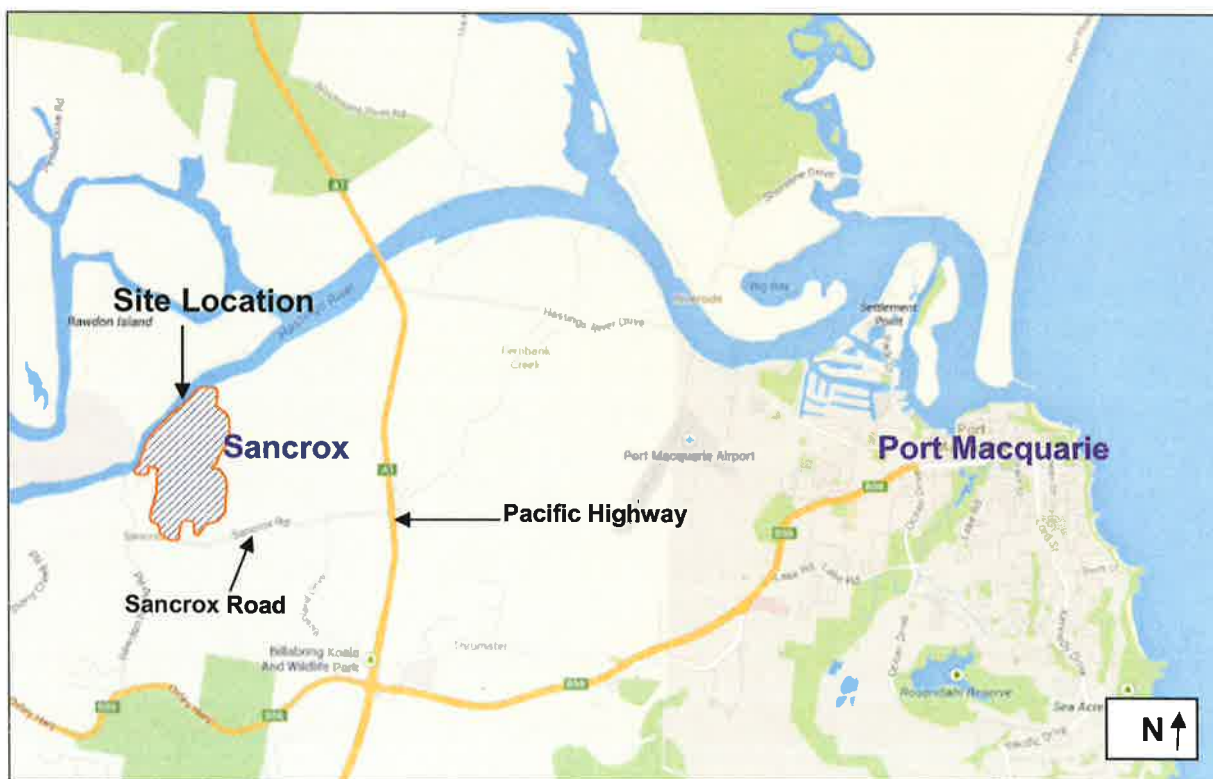
## 1. INTRODUCTION

This report is an assessment of a request to modify the Project Approval for a rural residential subdivision, at Sancrox Road, Sancrox within the Port Macquarie-Hastings local government area.

The request has been lodged by Hopkins Consultants pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act). It seeks approval to amend the beneficiary of a positive covenant over environmental protection lands required by Condition E4 of the Project Approval.

## 2. SUBJECT SITE

The site is located approximately 10 kilometres 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 (Figure 1).



**Figure 1:** Site Location

### **3. APPROVAL HISTORY**

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.

On 11 September 2014, the Acting Director Key Sites and Industry Assessments approved Modification 1 to the Concept Plan and Project Application. The modification included boundary adjustments and minor amendments to the subdivision and road layout, modifications to staging and developer contributions.

### **4. PROPOSED MODIFICATION**

Condition E4 of the Project Approval requires a positive covenant is to be created over certain environmental lands, and that the covenant is to be in favour of the Minister for Environment and Climate Change and Water and worded to the satisfaction of the Office of Environment and Heritage

On 20 September 2016, the Proponent lodged a section 75W modification application (MP 06\_0212 Mod 2) seeking approval to modify the condition to change the beneficiary and the entity approving the wording of the covenant to be Port Macquarie – Hastings Council.

No other changes are proposed to the approved development.

The Proponent seeks to modify the condition as the Minister for Environment and Climate Change and Water no longer has a vested interest in the environmental lands, and rather Port Macquarie – Hastings Council ('Council') is the relevant authority.

### **5. STATUTORY CONSIDERATION**

#### **5.1 Section 75W**

The Concept Plan was originally approved under Part 3A of the EP&A Act. Although Part 3A was repealed on 1 October 2011, the project remains a 'transitional Part 3A project' under Schedule 6A of the EP&A Act, and hence any modification to this approval must be made under the former section 75W of the Act.

The Department is satisfied that the proposed modification is within the scope of section 75W of the EP&A Act, and does not constitute a new application.

#### **5.2 Approval Authority**

The Minister for Planning is the approval authority for the application. However, the Director, Modification Assessments may determine the application under delegation as:

- the relevant local council has not made an objection; and
- a political disclosure statement has not been made; and
- there are no public submissions in the nature of objections.
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### **6. CONSULTATION**

The Department made the modification application publicly available on its website, consulted with Port Macquarie - Hastings Council (Council), and the Office of Environment and Heritage (OEH). Given the minor nature of the proposed modification, it was not notified by any other means.

**Council** advised it supports the proposed modification.

**OEH** did not respond directly to the notification of the modification, but the Proponent provided an email from the agency which advises that it supports the modification.

No **public** submissions were received.

## **7. ASSESSMENT**

The proposal seeks to modify Condition E4 of the Project Approval to change the beneficiary of a positive covenant over environmental protection lands from OEH to Council.

The condition creates a legal obligation on the Proponent and future landowners (via a positive covenant) to ensure the long-term management of vegetation on environmental protection lands on the site. The modification does not seek to change this legal obligation. It only seeks approval to change the authority which benefits from the covenant and has the authority to approve the wording of the covenant.

Council has advised it supports the modification and would like to be the beneficiary and authority which has input into the wording of the covenant. The Department also notes, OEH has advised the Proponent that it does not have an interest in benefiting from, or having input in to the covenant.

The Department considers it is appropriate for Council to be the authority which benefits from and approves the wording of the positive covenant as it already has a number of other environmental responsibilities in relation to the site including approving and enforcing a Vegetation Management Plan for the site. As such, the Department is satisfied Council is an appropriate authority to benefit from the positive covenant and is best placed to ensure vegetation on the site is appropriately managed.

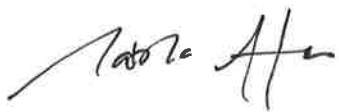
## **8. CONCLUSION**

The Department has assessed the modification application and supporting information in accordance with the relevant requirements of the EP&A Act. The Department's assessment concludes the proposed modification is appropriate as it would still maintain the intent of the condition, to ensure the long-term management of vegetation on the site.

## **9. RECOMMENDATION**

It is **RECOMMENDED** that the Director, Modification Assessments, as delegate of the Minister for Planning:

- **considers** the findings and recommendations of this report;
- **approves** the application under section 75W, subject to conditions; and
- **signs** the notice of modification (**Appendix A**).



Natasha Harras  
**Team Leader**  
**Modification Assessments**



Anthony Witherdin  
**Director**  
**Modification Assessments**

## **APPENDIX A: NOTICE OF MODIFICATION**

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A copy of the notice of modification can be found on the Department's website at:

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=7964](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7964)

## **APPENDIX B: SUPPORTING INFORMATION**

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The following supporting documents and supporting information to this assessment report can be found on the Department of Planning and Environment's website as follows:

1. Modification request

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=7964](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7964)

2. Submissions

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=7964](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7964)