



NSW GOVERNMENT
Department of Planning

Contact: Ray Lawlor
Phone: 02 9228 6216
Fax: 02 9228 6540
E-mail: ray.lawlor@planning.nsw.gov.au

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Mr Dan Croft
Port Macquarie Hastings Council
PO Box 84
PORT MACQUARIE NSW 2444

Dear Mr Croft

'Le Clos Verdun' Rural Residential subdivision , Sancrox Road Sancrox – MP06_0212

I refer to the Environmental Assessment (EA) for the rural-residential subdivision of the 'Le Clos Verdun' Estate, which is currently being publicly exhibited. To assist Council in its assessment of this proposal the Department has reviewed the EA. Some key issues in relation to the EA are outlined in the attachment to this letter.

Should you wish to discuss any of these matters, please contact Ray Lawlor of the Coastal Assessments Branch on 9228 6216 or via email to ray.lawlor@planning.nsw.gov.au.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'H. Warton', with a long horizontal flourish extending to the right.

Heather Warton
Director, Coastal Assessments

23.5.08

MP06_0212 - Le Clos Verdun Estate – Rural Residential Subdivision

Attachment 1 – Department of Planning – Key Issues in relation to the Environmental Assessment

1. Effects of Climate Change

Impacts of climate change and sea level rise have not been adequately addressed. It is noted that the discussion of this matter in the Environmental Assessment (Section 6.3.2, p43) relies upon modelling undertaken in 2006 by Patterson Britton and Partners on behalf of Council. The EA refers to sensitivity factors used in the modelling for possible ocean rises due to climate change, and that Council is currently investigating a brief for the preparation of a Flood Management Plan for the Hastings River. In the absence of any recent Flood Management Plan having been undertaken, further consideration and assessment of the hydraulic impacts of climate change on the proposed subdivision over the next 100 years should be undertaken by the proponent. The proponent should refer to Department of Environment and Climate Change (DECC) document '*Floodplain Risk Management Guideline – Practical Consideration of Climate Change*' (contact Doug Lord or Duncan McLukie of the DECC). Contrary to the statement in the EA (p.43) that relevant climate change data is not presently available; these guidelines have regard to recent relevant data which is publicly available, and particularly the findings of the IPCC 2007.

Consideration of climate change impacts should also have regard to matters such as potential for increased bushfire risk.

2. Community Title Management Statement - Access and Services

The proposed Community Management Statement has classified internal roads and pathways as private accessways rather than open access ways. This means that the Community Association could restrict public access and the subdivision could be made into a gated or security estate. The internal road system and the pathway access to the foreshore areas should be classified as open access ways to ensure that public access is provided and maintained. While the proposed By-Laws (proposed By-Law 43 - 'Rules') would allow the Community Association to make rules to provide public access these could be altered and therefore would provide no guarantee that public access is maintained.

Provision of open access ways over the internal roads and foreshore access paths would be consistent with the aims of *State Environmental Planning Policy 71 – Coastal Protection* under clause 2 and the matters for consideration under clause 8, related to protection, improvement and enhancement of foreshore access. It would also be consistent with the claims within the EA that the proposed subdivision incorporates opportunities to formalise and enhance public access opportunities to both Hastings River and Haydons Creek (p.30) and that the accessways will allow for unrestricted public access to the foreshore areas (p.55).

Similarly public access should be considered to the recreation area (excluding facilities such as the proposed tennis courts) to be located adjacent to the river and to the rear of proposed lots 38 and 39.

The EA (p. 13 and p. 53) indicates that it is intended to 'return' assets, such as services and internal roads, to public ownership once fully completed, which is at the completion of proposed phase 6 of the subdivision staging. The EA also indicates that services and access roads are to be provided to a standard suitable for public dedication. This should be reflected in the statement of commitments and/or conditions of any approval. Council will need to assess whether it is able manage these services and therefore ensure that construction standards are in accordance with Council's general requirements. The proponents should also provide a list of indicative community management levies so that the potential costs for lot owners related to

community ownership and management of these services (and all other facilities) can be considered.

3. Staging of the Subdivision and the Development Contract, p12 & App G

The EA indicates that there will be a single 'linen' registration for entire subdivision at the first stage or phase of the development (Section 3.3 'Development Contract', p12). This is not favoured as this would lead to the creation of some lots prior to the construction of access and services for these lots. Staging of the release of the proposed lots should be by means of a staged approval or a staged release of subdivision certificates and not by means of the Community Title Development Contract as the proponent proposes. This would ensure that all of the proposed lots are provided with adequate access and services before they are registered.

It is noted that Council has been made a party to the draft Development Contract, Appendix G. It is suggested that Council obtain its own advice regarding this matter and any implications arising from endorsement of this contract by Council.

4. Aboriginal Cultural Heritage Assessment

Advice should be sought from the DECC regarding the adequacy of the Archaeological Sites Investigation in relation to the assessment requirements in the relevant guidelines, particularly the community consultation procedures set out in the *Interim Community Consultation Requirements for Applicants*.

The recommendations of the Archaeological Sites Investigation prepared by Lindsay J Moran of Birpai LALC regarding section 90 of the *National Parks and Wildlife Act 1974* (NPWS Act) (also referred to in commitment 7.6 of the Draft Statement of Commitments) are inconsistent with the provisions of section 75U(1)(d) of the Act. Authorisation or a permit under section 87 or section 90 of the NPWS Act is not required for an approved project or concept plan under Part 3A of the *Environmental Planning and Assessment Act 1979*. Therefore prior assessment and investigation of potential archaeological assets are required, in liaison and consultation with DECC. This will determine whether the proposal will impact on any significant archaeological deposits and features, and determine any required mitigation measures prior to determination of the application.

5. Subdivision design and lot layout

Proposed lots 27 to 29 and 33 to 35 will potentially result in adverse impacts on the existing stand of trees zoned Environmental Protection – Habitat 7(h), resulting from cumulative impacts from access and development of the total number of lots proposed. Consideration should be given to reducing the number of lots in this area.

The proponents should establish that there will be satisfactory building envelopes and effluent disposal areas for all lots, outside flood affected areas and also having regard to bushfire risk, APZs, land zoned 7(h), and buffers to areas of EEC and habitat protection. In this regard further consideration of the suitability of proposed lots 130 and 131 is required.

It is noted that proposed lot 142 (existing lot 91 DP805549) is accessed from outside the estate, and is essentially disconnected from the remainder of the estate. The adequacy and suitability of access from Bengal Street needs to be assessed.

6. Ecological Assessment

The Ecological Assessment is inadequate. The flora and fauna survey needs to be updated and should be undertaken in accordance with the draft DECC *Threatened Biodiversity Survey and Assessment Guidelines*, November 2004. Vegetation communities should be clearly mapped. The mapping provided in the report using aerial photographs is unclear and not acceptable. Relatively precise locations of Endangered Ecological Communities (EECs) and potential threatened species habitat need to be shown so that any buffers required for these

areas can be related to the subdivision layout, access roads, potential building envelopes, and asset protection zones.

It has not been specified whether the *Lowland Rainforest* EEC identified in the Ecological Assessment refers to *Lowland Rainforest in the NSW North Coast and Sydney Basin Bioregion* and/or *Lowland Rainforest on Floodplain in NSW North Coast Bioregion*. Apart from these areas of EEC identified in the Ecological Assessment, there are potentially other areas of EEC on the site based upon the plant species listed, such as *Subtropical Coastal Floodplain Forest on the NSW North Coast Bioregion* in Area J.

The proponent should consider providing one fully revised Ecological Assessment report, rather than providing the original report and addendum reports.

7. Proposed works within Crown reserves.

In accordance with clauses 8F (1) & (2) of the *Environmental Planning and Assessment Regulation 2000* the proponent should obtain the consent of the Department of Lands, prior to determination of the application, for the works proposed to be undertaken within the Crown Reserves along the Hastings River and Haydons Creek (walkways, cycleways, jetties and wharves). Proposed walking trails are shown on sheet 8 'Plan of Proposed Subdivision with Access Strategy' in Appendix D of the EA. Walkways or walking trails, jetties, boat ramps and picnic areas within the waterfront reserves are also referred to elsewhere in the EA (refer to Executive Summary, and to p. 55 and the letter dated 3 April 2008 in Appendix N).

8. Effluent disposal

The proponent should clarify whether the recommendations of the Effluent Disposal Assessment prepared by Coffey Geotechnics, Appendix J, requires that any existing effluent disposal systems servicing the existing dwellings need to be replaced or upgraded to comply with the recommendations of the report. This should be dealt with in the statement of commitments and /or approval conditions.

The Community Management Statement should make reference to the recommendations of the Effluent Disposal Assessment and proposed effluent disposal systems for particular lots. The Statement also refers to the EPA which has been superseded by the DECC.

9. Other Matters

- Appendix E – *Draft Landscape Concept Plan* - the text on concept plan maps is difficult to read particularly where it is placed across areas zoned 7(h) with existing vegetation. The mapping should be redrawn so that this information is clearly shown.
- Appendix H – *Ecological Assessment* – as mentioned above the vegetation communities should be clearly mapped. The mapping provided is unclear.
- Appendix I – *Phase I and II Environmental Site Assessment*. – this report is missing the annexures A to E.
- Appendix J - *Effluent Disposal Assessment* – this report is missing Figure 4 referred to on page 12. Coloured copies of Figures 2 and 3 should also be provided.