



23 December 2008

Our Ref: 6096
Your Ref: MP06--212

Port Macquarie Hastings Council
PO Box 84
PORT MACQUARIE NSW 2444

Attention: Mr Dan Croft

Dear Dan,

Re: Response to Planning Issues - Rural Residential Subdivision
MP06-0212 - "Riverpark Estate Sancrox" Sancrox Road

I refer to our recent discussions and meetings with Department of Environment and Climate Change, Department of Planning, and technical officers of Port Macquarie Hastings Council regarding the abovementioned project.

Specifically, I refer to the letter from Port Macquarie-Hastings Council dated 13 June 2008 which summarised the submissions received during public exhibition and identified key issues for which more information was sought by the various authorities.

Accordingly, please find attached our formal response to the outstanding key issues. The attached Subdivision sheet-set, correspondence and various reports are referenced in the following text as relevant.

1. Development Contract and Staging – As intimated in our various meetings, we have accepted the concerns of Port Macquarie Hastings Council and the Department of Planning in relation to the original single-linen release strategy. As a result, a staged subdivision is now proposed.

Accordingly, please refer to the amended staging plan for the subdivision, which is contained in Sheet 9A of the attached subdivision sheet-set, and the Draft Development Contract relating to the staged release of the community title subdivision.

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The principles behind the community-title staging plan can be summarised as:

- 90 Community Title Lots are sought in the initial Stage 1 release (refer Stage 1 plan shown in Sheet 9B of the attached sheet set). All lots are to be provided with sealed, private road access and connection to all essential services;
- Stage 1 also serves to create seven (7) development lots in which future stages of subdivision are accommodated (illustrated as Lots 92-98 on Sheet 9B). Each development lot is to have full access to services and road frontage. However, the erection of dwellings thereon is to be restricted until such time as that respective stage is to proceed;
- Importantly, Stage 1's linen release also establishes all the community land in the one title up front (proposed Lot 1). This includes the existing sealed access roads, the existing infiltration dams, the community reserve, the cluster effluent irrigation area servicing Lots 44 to 49 (refer Sheet 7), and the future alignment of the private roadways to service the latter stages of the subdivision.

This is a particularly important feature of this first stage linen release. It serves to define and lock-in the final location of future roadways. It also averts the logistical difficulties in constantly amending the community management scheme during each subsequent stage of development due to the need to transfer new community land back into the scheme.

2. Water Supply – We note that our initial offer to enter into a VPA to address future water supply issues has not been followed up on by Council officers. We further note that water servicing plans for the future Sancrox water supply are still in the very early stages of formulation (Council report item 16 – Ordinary Meeting of 17/12/08 referred to).

Given the relatively large existing credit enjoyed by the existing Le Clos Verdun estate, and the in-principle approval of the site's intended re-subdivision (via the rezoning documentation supporting its gazettal), we again question the need for such a measure.

Our understanding during pre-lodgement discussions was that sufficient capacity existed for the entire 144-lot subdivision in the conservative estimates of the existing supply. While supply may be limited at the time that later stages were to be released, this would be determined via arrangements for supplementary supply (if necessary) at that time.

We are prepared to accept contributions against the current Water Supply Administration Levy for those lots above and beyond the existing credit that the Le Clos Verdun estate presently enjoys. We would prefer to accept same as conditions of the project approval. However, should PMHC consider that a VPA is required (as per our invitation dated 8th August 2008), we would request that this matter be progressed immediately by Council's technical officers to ensure a timely determination of the project.

3. Traffic and Access – As detailed in our discussions with Council's Infrastructure Section, the anticipated traffic generation of this re-subdivision has been factored into the current investigations being undertaken by PMHC and RTA for the Sancrox Investigation Area. The 144-Lot yield has been known to both authorities since the rezoning process was commenced prior to its gazettal in 2006.

The intersection of Sancrox Road with the Riverpark Estate's entry road has also been discussed with Council's engineering technical staff. It is understood, as expressed in Council's correspondence of 13th June, this staged upgrade can be conditioned.

PMHC's Engineer's have indicated that a longer term reconstruction of this intersection is to be planned to facilitate the regional development of the Sancrox Rural Residential Precinct. Details of such a scheme are still too premature for plans of any detail to be prepared by PMHC, or accurate costs determined.

As per our comments in point 2 above, we are accepting of contributions for those lots above the existing credit the Le Clos Verdun estate enjoys against the Major Roads contribution plan. We would prefer to accept same as conditions of the project approval. However, should PMHC consider that a VPA is required (as per our invitation dated 8th August 2008), we would request that this matter be progressed immediately by Council's technical officers to ensure a timely determination of the project.

With respect to the anticipated construction standards for all roads in the community title subdivision, it is confirmed that roads are to be designed and constructed in accordance with Councils AUS-SPEC Design and Construction Standards. While roads are intended to remain in private ownership in the early stages of the community-title subdivision's development (as proposed Lot 1 in the community scheme), it is intended to construct all future roads to the standard necessary for future dedication should that become a realistic option.

We would anticipate conditions relating to this construction standard for new roads to be imposed in the project approval.

4. Public Access – we acknowledge that much of the Council's and Department's earlier concerns which were related to the timing of public access provision within the site related to the subdivision being proposed under Community Title with private roads and infrastructure.

As discussed in our various meetings however, it is an unreasonable expectation for the land-owners to provide for full and free public right of access via the private roads at the inception of Stage 1. As would be the case for any 'staged' subdivision of this scale, access suitable to public standard can only be progressively constructed as funds become available (e.g. a staged 'greenfields' subdivision of this site would progress from Sancrox Road and not reach the public foreshore until the latter stages of the development). In this respect, Stage 1 serves to cater for existing land-owners' demands for house sites. There are no significant sales, and therefore realistic funds resulting from the release of Stage 1.

As detailed in our numerous consultations, Council staff have consistently advised they are not willing to accept ownership of the private roadways until such time as they are re-constructed to public road standard. This cannot occur until later stages of the subdivision's development due to these funding limitations.

Notwithstanding, un-restricted pedestrian access to the Hastings River foreshore exists at present from Bengal Drive. We also note that it is a rare occurrence for non-residents to utilise the existing access in this location as there are more viable access alternatives in the immediate vicinity, such as Rawdon Island, Sancrox Reserve, and from the river itself.

However, we have consulted with the Department of Lands on this issue to determine their requirements for the establishment and improvement of public access for this site. Our letter to the Department follows the specific requests by both PMHC and Department of Planning to undertake these consultations and is dated 27th October 2008. The Dept. Lands' response is dated 18th November 2008. Both letters are annexed to this correspondence.

In summary, the Department advises that:

"The proposed staged development of the freehold land within DP 791199 will not deny access to the foreshore reserve land. Access is presently available via Council public road, Bengal Street, Hastings River and Haydons Creek."

We consider therefore, that the proposed Stage 1 access arrangements, and longer term staged provision of public access within the subdivision satisfies the objectives of State Environmental Planning Policy No. 71.

5. Foreshore and Riparian Corridor Management – we discussed this issue with officers of the Department of Environment and Climate Change on-site on who suggested it would be preferable to receive a Vegetation Management Plan prior to project approval. We contend with this request however.

It is our opinion that this level of detail should not be required up-front with this project approval. In this respect, we have not sought to clear or otherwise disturb any significant area of vegetation. The entirety of the site zoned 7(h) Habitat Protection will remain undisturbed, with the only minor (<8000m²) clearing proposed along the rear of lots 140-142 within 1(r1) zoned land (refer to points 6 & 7 of this correspondence). The Haydons Creek road crossing does not require the clearing of existing vegetation.

We recognise the value of a staged and thorough revegetation of the vegetated areas of the site, and have reflected this in our original landscape principles plan with suggested locations for rehabilitation works. Recommendations for the formulation of a final revegetation plan have also been made in the new ecological study referred to in point 7 of this letter. In this regard, we respectfully request that this requirement form a condition of the Project Approval.

The advice from the Department of Lands in respect to the foreshore areas of Hastings River and Haydons Creek indicates that revegetation work in these locations is not a priority. The foreshore areas are functioning well in their natural state, and while a regular weed eradication & mowing schedule has been suggested, we are happy for this to be conditioned.

6. Subdivision Design – The site inspection of 20 August 2008 with Port Macquarie Hastings Council and Department of Environment and Climate Change officers clarified, and alleviated a number of concerns with respect to the overall subdivision design.

Taking those original concerns in turn, we note the following:

- Lots 26 – 29, 33 – 35

As illustrated in the subdivision sheet-set, these lots are provided with a relatively large depth-to-width ratio to provide for more than ample building potential beyond the 7(h) zone boundary that partially affects the lots. There is no intention for any trees to be removed from this 7(h) zone and nor would it be required to establish driveway access to any of the lots.

Given that these are large rural residential lots (>8000m²) and that for most lots so affected, the 7(h) zone makes up less than 50% of their area, we don't consider it necessary to identify specific building envelopes – other than to suggest that all land zoned 1(r1) within

Lots 26 – 29 and Lots 33 – 35 forms that 'envelope'. That is, no buildings are to be erected within the 7(h) zoned areas. The lots are not affected by flooding or bushfire hazards, or are otherwise constrained such as to warrant restrictive envelopes being created on their Title.

We hold no concerns about Port Macquarie Hastings Council, via the Minister, conditioning the project approval to prohibit the removal of trees within the 7(h) zone.

- Lots 130 – 131 (now proposed Lots 125 – 126)

These lots have been re-designed to avoid the need for the creation of building envelopes within the area of existing vegetation. While the area of vegetation in question had not been zoned 7(h) by Council, we nevertheless recognise the concerns of the DECC as expressed on site on 20th August 2008.

These lots have been amended such that potential building envelopes and necessary Asset Protection Zones can be established without the necessity for vegetation clearing. These Lots are also specifically referred to in the attached Ecological Report.

- Lots 139 – 142

These lots do require a minor amount of clearing along the western edge of the established vegetation (approx. 8000m²). This clearing however, is not located within the 7(h) Habitat Protection zoning (refer to the zoning plan in Sheet 3 compared against the aerial image in Sheet 4 of the subdivision sheet-set).

The differing boundaries were a deliberate initiative by PMHC in consultation with the land-owners at the time of the land's rezoning (gazetted in 2006). That is, it was recognised that potential envelopes for these lots were limited, and thus the minor clearing of the Swamp Oak Floodplain Forest was to be permitted.

The minor amount of clearing has no significance to the habitat attributes of the site, nor does the affected vegetation contain any threatened species or comprise an Endangered Ecological Community. The justification for the clearing is specifically addressed in Section 6.1.2 and Section 7 of the newly undertaken Ecological Assessment referred to in Point 7 of this letter (refer below).

- Lots 44 – 49

Clause 17(1)(e)(i)(A) of Hastings LEP 2001 is relevant to the assessment of these lots. This Clause establishes that there is

no set “minimum” development standard for the creation of lots within the 1(r1) Rural Residential zone. Rather, the Clause suggests that:

(1) Consent may be granted to the subdivision of land by a plan of subdivision, within the meaning of section 195 of the Conveyancing Act 1919:

(e) within Zone 1 (r1), only if:

(i) the area of each lot created is, in the opinion of the Council, sufficient to accommodate:

(A) on-site disposal of effluent

These six (6) lots range in size from 4200m² – 4557m² in area and are thus provided with sufficient area for the on-site disposal of effluent. Their sizes were determined at an early stage within the rezoning process, and are largely dictated by the location of the existing road which serves as their eastern boundary.

Notwithstanding these parcels’ manageable lot sizes, given their proximity to the Hastings River it was negotiated with PMHC’s engineers during rezoning discussions to explore options for the provision of a “cluster” system utilising a shared irrigation area located approx. 30-50m east of the lots in question. This area forms part of the community lot (Lot 1) and is more clearly illustrated in Sheet 7 of the subdivision plan set annexed.

The intention was to ensure that any concerns, such as those raised more recently by the Department of Primary Industries and Department of Environment and Climate Change regarding a potential failure of on-site systems close to the adjoining waterways could be avoided. This was felt to be a responsible design approach to the lots in question, and was not borne out of a physical constraint to the placement of on-site systems on each of the lots concerned.

For the purposes of Clause 17 of the Hastings LEP 2001 therefore, the size of the lots is not the determining factor for the adoption of the cluster infiltration area. Thus it is not considered that the subdivision proposal is contrary to the objectives of this Clause.

7. Ecological Assessment – We met with Department of Environment and Climate Change officers on-site on 20th August 2008 with the aim of introducing our newly contracted ecologist, Liz Ashby from Keystone Ecological. The purpose of the meeting was to familiarise DECC with the site, and to agree on a proposed methodology of site assessment by Keystone.

In summary, the discussions at our site meeting determined that:

- Initial concerns of DECC in respect to the open grasslands were unfounded;
- The small amount of clearing at the rear (eastern edge) of Lots 139-142 (now Lots 88-90) was not considered a concern;
- The previous lots 130 and 131 (now Lots 125 and 126) which included potential building areas within the vegetated corridor were not favoured. DECC officers recommended the layout be amended in this location;
- It was recognised that more than ample compensatory revegetation opportunities existed within the site;
- It was acknowledged that the parkland setting of the 7(h) zone atop the ridge-line (Lots 26-29 & 33-35) differs from the assumption of this area by DECC officers from aerial photos. It was recognised there was no need for vegetation clearing in this location;
- The remnant rainforest located within Lot 97 was to be preserved and rehabilitated;
- DECC would likely impose specific conditions relating to the revegetation of the 7(h) zoned areas of the site.

A comprehensive field assessment was then undertaken by Keystone, and a bound assessment report addressing the expected requirements of the Threatened Species Conservation Act and DECC guidelines is attached.

This investigation confirmed the understandings from the site inspection with DECC, and determined that:

“... the proposed works are unlikely to result in a significant impact on any listed species or communities and will satisfy the “improve or maintain” test for biodiversity values, principally by the removal of grazing, implementation of a landscape / vegetation management plan, control of nutrients and stormwater and construction of a formal crossing over Haydons Creek.”

A number of recommendations for the ongoing management of the rural residential estate are proposed by the ecological investigation, and are contained in the full report attached.

8. Archaeological Investigation – We engaged Harper Somers O’Sullivan to undertake further investigations and consultations in accordance with the Interim Community Consultation requirements for applicants. Their investigations included relevant AHIMS searches, local advertisements seeking Expressions of Interest within the Aboriginal community, direct contact with Local Land Councils, joint inspections and field assessment of the site with Land Council representatives, and

the formulation of a report of findings from these investigations.

In summary, these investigations and consultations concluded that:

“...there are no impediments, on Aboriginal or European cultural heritage grounds, to the proposed rezoning of the Le Clos Verdun development progressing.”

The Local Land Councils who were consulted on this project have provided their authorisation to the final report as an accurate and true representation of the site's cultural significance. A copy of this report, and a summary of all consultations is contained in the attached bound report.

9. Effluent Disposal and Fisheries Management – This issue was addressed in our original submission and its supporting technical report prepared by Coffey Geotechnics (refer Appendix J of our original submission). We note that all comments relating to the management of effluent disposal received via your letter of 13th June are concerned with the “potential” for failure of the on-site systems proposed.

Coffey's original report determined that each site is suitable, and capable of accommodating a modern effluent disposal system, all of which would (by virtue of current Australian Standards) be compliant with present regulations.

10. Effects of Climate Change – Further to the comments provided in our original submission, we re-examined the potential impact of climate change on the proposed re-subdivision of this existing estate. In doing so, we made specific reference to the Department of Environment & Climate Change's document, “*Practical Consideration of Climate Change (Oct 07)*”, and had regard to both the June draft, and September final copy of the 2008 Garnaut Climate Change Review.

We would stress that for all publications, the level of scientific certainty is still very guarded, and conservative estimates at best are being relied upon. We note for example that the Garnaut report acknowledges that prediction accuracy cannot always be supported by scientific data, namely:

“There are nevertheless large uncertainties in the science. There is debate and recognition of limits to knowledge about the times and ways in which the risk will manifest itself.”

We would also contend that as this media-friendly issue is under close investigation at present, and the degree of scientific uncertainty is so relatively inaccurate, new information will become available at an increasing rate. Given that lodgement of this application occurred in April this year, we submit it is unreasonable for this issue to be revisited and constantly re-assessed against newly published data while-ever

other issues are under various stages of assessment.

Notwithstanding, we consulted with Council's Environmental Engineer, Mr. Gordon Cameron and wrote to Council on the 25th September with a number of recommendations to address this issue (refer to attached correspondence dated 25th September 2008).

Primarily, it was our contention that further modelling to support the subdivision was both unreasonable and unnecessary given the large site area affected, the 'mid-way' location of the site from the upper catchment and the Hastings rivermouth, and the fact that the subdivision is compliant with current adopted flooding policy. In summary, we suggested:

"Any modelling of potential climate change impacts are, at present, a sensitivity check only and we have determined that the proposal is sensitive to possible minor increases. It is also contended that any expensive and time-consuming modelling exercise is unlikely to produce any more accurate results than the best estimates that Council has to hand at present.

Notwithstanding, to further counter potential impacts associated with the estimated 200mm – 400mm increase in 1 in 100 year flood levels for the Hastings catchment to 2100, we are offering to adopt a 800mm freeboard for all new dwellings in the proposed rural residential subdivision. We understand that this is 300mm above the state minimum level. We further understand that PMHC adopted the 800mm freeboard standard for land east of the Pacific Highway some 10 years ago for the specific purpose of accounting for possible sea level rise."

In response, we received the attached email advice from Mr. Cameron dated 18th November 2008. Essentially this advice confirms that:

- The impacts of flooding on this subdivision are relatively minor, with only 5 of the 144 proposed lots requiring any filling to achieve flood-free building sites. Moreover, that filling is of a minor nature in itself and constitutes less than 40% of the site area of the lots so affected (refer sheet 5 of Subdivision plan sheet-set);
- Current predictions of the 1:200yr flood event (peak flood level) indicate flood levels for the subject site could be 400mm higher than present 1 in 100yr levels to 2100;
- Hydraulic modelling of the location indicates the area is "...relatively insensitive to increases in sea level...";
- Council's technical staff have suggested that a 300mm increase in freeboard would be recommended for future policy documents for this location, subject to public consultation and further modelling;
- This 300mm increased freeboard above the State adopted

500mm has already been adopted by Port Macquarie-Hastings Council (for the last 10 years) for land east of the Pacific Highway. This additional 300mm was introduced specifically to have regard to possible sea level rise resulting from climate change;

- Council's technical officers have recognised that "...the site is not significantly sensitive to Climate Change and evacuation routes are reasonable."

In concluding, Council's Environmental Engineer stated that:

"Council's indicative information suggests that a 300mm increase in this area is reasonable and as such I would be comfortable for a 800mm freeboard to be applied to all dwellings in this area."

In this respect, we submit that it is unreasonable for the proponents' to undertake a re-modelling of the entire site to determine what at best could be described as conservative predictions on potential climate change impacts. By adopting a 300mm increase to the State-accepted freeboard for new residential dwellings on flood-affected sites, we have ensured consistency with PMHC's likely future flood controls for this location, and have provided a reasonable response to the potential flood impacts of climate change for a site which is "... not significantly sensitive to climate change."

In relation to potential climate change impacts to the site's Bushfire Risk, we note that we have received a Fire Safety Authority from the NSW Rural Fire Service for the re-subdivision project. Required APZ's, safe evacuation routes and appropriate access for emergency vehicles are provided for in the subdivision design, and no objections to the site's development have been raised by the Rural Fire Service.

The potential impacts of climate change on bushfire behaviour are still speculative, although it is likely that fire intensities and frequencies of occurrence will increase. Notwithstanding, given the compliance of the development with current standards, we do not consider that the proposal can be considered marginal, or at significantly greater risk of bushfire attack as a result of climate change effects.

11. Mineral Resources – while not featured as a specific concern of council's correspondence of 13th June 2008, the advice from the Department of Primary Industries dated 3rd June 2008 is acknowledged.

The first issue relating to Traffic management of the Sancrox Road and Pacific Highway intersection has been addressed previously in this correspondence.

The second point of the DPI's advice relates to the sustainability of

construction material in the Hastings region. This is considered a minor and conservative concern, particularly when related to the relatively low material-dependent development proposed by the rural residential re-subdivision. As acknowledged in the Department's letter, construction material in the Hastings is "...arguably well serviced...", and such levels would not prejudice the realisation of this development.

We trust that we have now supplied Council and the various referral Departments with sufficient information to enable the issuing of a conditional project approval. Given the extensive time that has elapsed since the original investigations into this land's re-development occurred (i.e. well before the re-zoning of this land), funds available to the re-development board are extremely limited. It is imperative therefore that we can move towards a determination as soon as possible to enable this re-development process to be realised.

The undesirable situation resulting from the current subdivision arrangement has been recognised by Council, and the objective to correct the present situation is shared by Senior Council staff we have consulted with. In that regard, it is requested that should there be the ability to condition certain works, actions or related matters on what is clearly a complicated project, we would be happy to discuss same with you.

Should you have any queries with respect to the above, please do not hesitate to contact me.

Yours faithfully,

Andrew Lister
Town Planner

cc	client
enc (x2)	Subdivision Plans Sheet-set (Sheets 1A – 10)
	Draft Development Contract – 18 th December 2008
	Draft Community Management Statement – 23 rd December 2008
	Letter to Gordon Cameron – 25 th September 2008
	Email from Gordon Cameron – 18 th November 2008
	Letter to Department of Lands – 27 th October 2008
	Letter from Department of Lands – 18 th November 2008
	Flora & Fauna Impact Assessment – December 2008
	Cultural Heritage Assessment – December 2008