



NSW GOVERNMENT
Department of Planning

Contact: Sally Munk
Phone: 02 9228 6498
Fax: 02 9228 6540
E-mail: sally.munk@planning.nsw.gov.au

Our ref: 06_0212
File: S06/00402

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 – 06_0212

I refer to the Preferred Project Report (PPR) dated February 2009, for the rural-residential subdivision of the 'Le Clos Verdun' Estate. The Department has reviewed the PPR, particularly in relation to those issues raised in our previous letter to Council dated 23 May 2008. Outstanding issues in relation to the PPR are outlined in the attachment to this letter.

It is noted that Council has not yet formally accepted the PPR due to unresolved issues relating to water and road infrastructure. Please advise the Department when Council accepts the PPR as the deemed refusal period of 60 days (as specified in the Director-General's Environmental Assessment Requirements for this project issued on 12 January 2007) commences from this date.

Should you wish to discuss any of these matters, please contact Sally Munk of the Coastal Assessments Branch on 9228 6498 or via email to sally.munk@planning.nsw.gov.au.

Yours sincerely,

Heather Warton
Director, Coastal Assessments

31/3/09

MP06_0212 - Le Clos Verdun Estate – Rural Residential Subdivision

Attachment 1 – Department of Planning – Key Issues in relation to the Preferred Project Report

1. Effects of Climate Change

Impacts of climate change have now been addressed in correspondence included as Appendix B to the PPR. However, the Department is concerned that the proposed 800mm recommended freeboard will be insufficient to adequately protect future residents from the effects of flooding. While it is acknowledged that a freeboard of 800mm was adopted for a nearby site 10 years ago, the predictions for sea level rise have significantly increased since this time. It is understood that there is the potential for levels to increase by up to 400mm at the site as a result of climate change. It is therefore considered more appropriate for a freeboard of 900mm to be adopted across the site. This would allow for the standard 500mm freeboard as per the Floodplain Management Manual plus 400mm to allow for climate change.

It is recommended that advice from the Department of Environment Climate Change (DECC) be sought in relation to this issue.

2. Flooding

Correspondence from Council to the proponent dated 18 November 2008 in Appendix B of the PPR states that the current 1 in 100 year flood level at the site varies from about 4.3mAHD at the northern end of the site to around 4.8mAHD at the southern end. The subdivision plan has been based on a 1 in 100 year flood level of 4.5mAHD across the entire site. This underestimates the extent of flooding in some parts of the site.

All relevant plans should be updated to reflect the current correct flood levels across the site. It should be demonstrated that all lots can still achieve an acceptable building envelope. The extent of fill required on flood affected lots will need to be reassessed and the fill plan updated accordingly.

3. Community Title Management Statement – Public Access

The proposed Community Management Statement and Access Way Plan still classify internal roads and pathways as 'private accessways' rather than 'open accessways' as noted in our previous correspondence. This means that the Community Association could restrict public access within the subdivision and the subdivision could be made into a gated or security estate. Provision of public access via Bengal Street is insufficient. As previously advised, the internal road system and the pathway access to the foreshore areas should be classified as 'open accessways' to ensure that public access is provided and maintained. This does not mean these roads have to be dedicated to Council, however, normal traffic regulations do apply. Even though open accessways are not considered to be public streets they do have many features of a public road. The *Road Transport (General) Act 1999*, *Motor Accidents Compensation Act 1999*, *Roads Act 1993* and *Summary Offences Act 1988* all apply to open accessways as if it was a public street. [see s.116 *Community Land Management Act 1989*]

Open accessways are private roads maintained by and vested in the Community Association that allow the wider community to access a public place. In this case, it would allow the community to access the Crown foreshore reserve.

While the proposed By-Laws (proposed By-Law 43 - 'Rules') would allow the Community Association to make rules to provide public access over private accessways, these could be altered and therefore would provide no guarantee that public access is maintained. Similarly, an easement does not satisfy this requirement.

Provision of open accessways 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 PPR that the proposed subdivision will provide and improve on public access opportunities to coastal foreshore areas for the benefit of future residents and the wider community (p57).

As previously requested, public access should also be considered to the recreation area (excluding facilities such as the proposed tennis courts) to be located adjacent to the river on the western side of the proposed subdivision.

4. Staging of the Subdivision

The Department is generally satisfied with the proposed staging of the subdivision. However, the Department considers that public access to the foreshore reserve should be provided via open accessways across the site as part of Stage 1.

5. Aboriginal Cultural Heritage Assessment

Section 6.6 of the Aboriginal and European heritage Cultural Heritage Assessment states that a detailed assessment of cultural significance of the subject area has not been carried out. In addition, there is no evidence that letters were sent to all relevant bodies listed in the *Interim Community Consultation Requirements for Applicants*. An assessment of both archaeological and cultural significance is required.

Advice should be sought from the DECC regarding the adequacy of the assessment in relation to the assessment of Aboriginal cultural heritage, particularly the community consultation procedures.

6. Subdivision Design and Lot Layout

It is still not clear that proposed Lot 24 will have sufficient area for a building envelope. This lot is not only constrained by the existing vegetation, but is also constrained by the extent of the 7(h) zone. Sufficient area is required outside the 7(h) zone on all lots for building envelopes and effluent disposal areas. The PPR refers to Sheets 7A-7C to illustrate that 7(h) affected sites have suitable building envelopes. These plans do not show proposed Lots 24-27 or 31-34.

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.

Standard 3.3 - Site of Buildings of the *River Park Estate Development Standards* should also refer to building above the flood line, the requirement for the appropriate freeboard and building outside the 7(h) zone.

Standard 4.7.3 of the *River Park Estate Development Standards* would seem to contradict the requirement for finished floor levels to be 800mm above the 1 in 100 year flood level. It is recommended that this standard be removed or amended accordingly.

7. Ecological Assessment

Figure 4 of the Flora and Fauna Impact Assessment by Keystone Ecological (December 2008) indicates that there are four types of Endangered Ecological Communities (EECs) present on the site. However, this figure only shows the general location of these communities and not the actual ground-truthed extent. All EECs should be clearly mapped based on ground-truthing and a vegetated ecological buffer of 50 metres provided around each community. Ecological buffers should be retained within open space areas and not within private residential lots.

EECs should be clearly mapped on the Sample Building Envelope plans to demonstrate that building envelopes can be achieved on all lots affected by ecological buffers.

If a reduced buffer is sought in any location, sufficient justification must be provided having consideration for the following:

- The *NSW Coastal Design Guidelines* specify that setbacks may need to be marked and their vegetation preserved. Setbacks should where possible be increased to 100m or more where they are adjacent to ecologically sensitive areas or in situations where the coastal erosion hazard requires greater distance.
- DPI's policy with regard to aquatic habitat buffers outlined in *Policy and Guidelines Aquatic Habitat Management and Fish Conservation 1999* requires a buffer of at least 50 metres wide, increasing to 100 metres or more where they are adjacent to ecologically sensitive areas;
- The "*North Coast handbook for avoiding and reducing rural land use conflict and interface issues*" (Final Draft) 8 October 2007 prepared by Rob Learmonth, Rik Whitehead, Bill Boyd, Stephen Fletcher, in consultation with the North Coast Land Use Conflict Project Working Group, sets a minimum buffer distance of 100 metres between residential areas and wetlands and 50 metres between residential areas and native vegetation / habitat.

It is noted that there are no proposed offsets for the loss of 0.6ha of Subtropical Coastal Floodplain Forest in one lot at the western side of the site on the edge of the Hastings River. Advice should be sought from DECC about the proposed removal of this community and its proposed location within a private residential lot. It would be the Department's preference that this community be protected in an environmental protection area and rehabilitated.

It is recommended that all hollow bearing trees on the site be protected via a positive covenant using a Section 88B Instrument on title.

8. Statement of Commitments

Refer Item No.45 and Item 63 of the Statement of Commitments (SoC). Section 75U of the *Environmental Planning and Assessment Act 1979* (EP&A Act) states that an activity approval under section 91 of the *Water Management Act 2000* is not required for a Part 3A project. The General Terms of Approval provided by the Department of Water and Energy (DWE) should be included as conditions of the approval. Consultation with DWE should confirm that they are satisfied with this. Conditions could be made to DWE's satisfaction if they are happy to accept this responsibility.

Items 55 and 56 of the SoC should specify which Department and which guidelines are being referred to.

9. Bushfire

The Bushfire Hazard Assessment at Appendix L notes that the proposal is integrated development and will require a Bushfire Safety Authority (BSA) from the *Rural Fires Act 1997*. In accordance with section 75U of the EP&A Act 1979, a BSA is not required for a Part 3A project.

All lots that contain an Asset Protection Zone (APZ) should be burdened with a section 88B Instrument that requires these areas to be maintained as APZs.

Figure 5 of the Bushfire Hazard Assessment does not clearly show where the APZs start and finish. This figure should be provided at a minimum A3 size with all APZs clearly shown to scale in the required locations. Building envelopes should be located outside the APZs. APZs must not form part of an ecological buffer.

