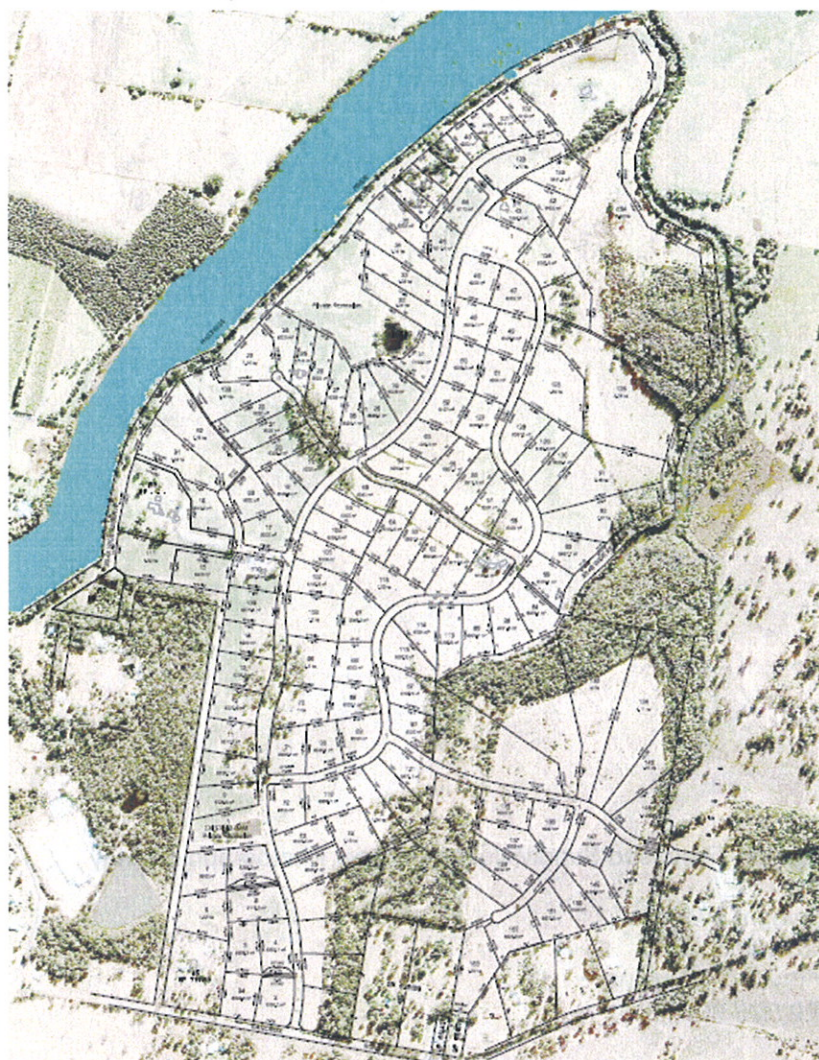




**PORT MACQUARIE  
HASTINGS**

**MAJOR PROJECT ASSESSMENT:  
MP06-0212**

***Le Clos Verdun 2 lot Torrens Title and  
142 lot Community Title Rural Residential  
Subdivision, Sancrox Rd, Sancrox***



Director-General's  
Environmental Assessment Report  
Section 75I of the  
*Environmental Planning and Assessment Act 1979*

September 2010

## ABBREVIATIONS

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CIV	Capital Investment Value
Department	Department of Planning
DGRs	Director-General's Requirements
Director-General	Director-General of the Department of Planning
EA	Environmental Assessment
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	Environmental Planning and Assessment Regulation 2000
EPI	Environmental Planning Instrument
MD SEPP	State Environmental Planning Policy (Major Development) 2005
Minister	Minister for Planning
PAC	Planning Assessment Commission
Part 3A	Part 3A of the <i>Environmental Planning and Assessment Act 1979</i>
PEA	Preliminary Environmental Assessment
PFM	Planning Focus Meeting
PPR	Preferred Project Report
Proponent	Le Clos Pty Ltd
RtS	Response to Submissions

Cover Photograph: Proposed Subdivision with Aerial Photograph Overlay

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## EXECUTIVE SUMMARY

This is a report on a concept plan application by Le Clos Pty Ltd to carry out staged torrens title subdivision (2 lots) and a 142 lot community title rural residential subdivision with associated infrastructure works and community buildings ("the proposal") on land comprising Lot 51 DP775871, Lots 1-13, 15-66, 68, 70-72, 74-80, 83-84, 86-88 DP791199 and Lots 90-95 DP805549, Sancrox Road, Sancrox.

The proposal is a Major Project under *State Environmental Planning Policy (Major Projects) 2005* (as in force at the time), being the subdivision of land in a sensitive coastal location into more than 2 lots that is not connected to a reticulated sewage system. Pursuant to Section 23(1)(d) of the Act, Port Macquarie-Hastings Council (PMHC) was delegated assessment functions in relation to the assessment of the concept plan application on 25 January 2007. The Minister remains the approval authority.

The proponent requests that the Minister determine that no further application, assessment or report is required when giving approval to the torrens title boundary adjustments, 142 lot community title subdivision (and associated infrastructure) of the concept plan and to determine those aspects of the project under Section 75P(1)(c) of the Act. The applicant acknowledges that the proposed community buildings and facilities will require a further separate application.

The estimated project cost of the development is \$5.5 million. The proposal will create 10 full time equivalent construction jobs.

During the exhibition period of the original Environmental Assessment (EA), the Council received a total of ten (10) submissions from public authorities and six (6) submissions from the public. A Preferred Project Report (PPR) was submitted to Council on 27 February 2009 incorporating amendments to the proposal. A Voluntary Planning Agreement (VPA) was subsequently negotiated with the proponent and Council. Both the PPR and VPA were exhibited on 7 May 2010 for a period of 30 days. Key issues considered in the Council's assessment included:

- Provision of infrastructure
- Flora and fauna
- Flooding and climate change
- On-site effluent disposal
- Agricultural resources
- Bushfire management
- Traffic and access
- Water cycle management
- Riparian and foreshore access
- Indigenous Heritage
- Mineral Resources
- Contamination and remediation

The Council has assessed the merits of the project and is satisfied that the impacts of the proposed development have been addressed via the Proponent's Statement of Commitments and recommended conditions of approval, and can be suitably mitigated and/or managed to ensure a satisfactory level of environmental performance. On these grounds, the Council is satisfied that the site is suitable for the proposed development and that the project will provide environmental, social and economic benefits to the region and is therefore in the public interest. The Council recommends that the project be **approved**, subject to conditions.

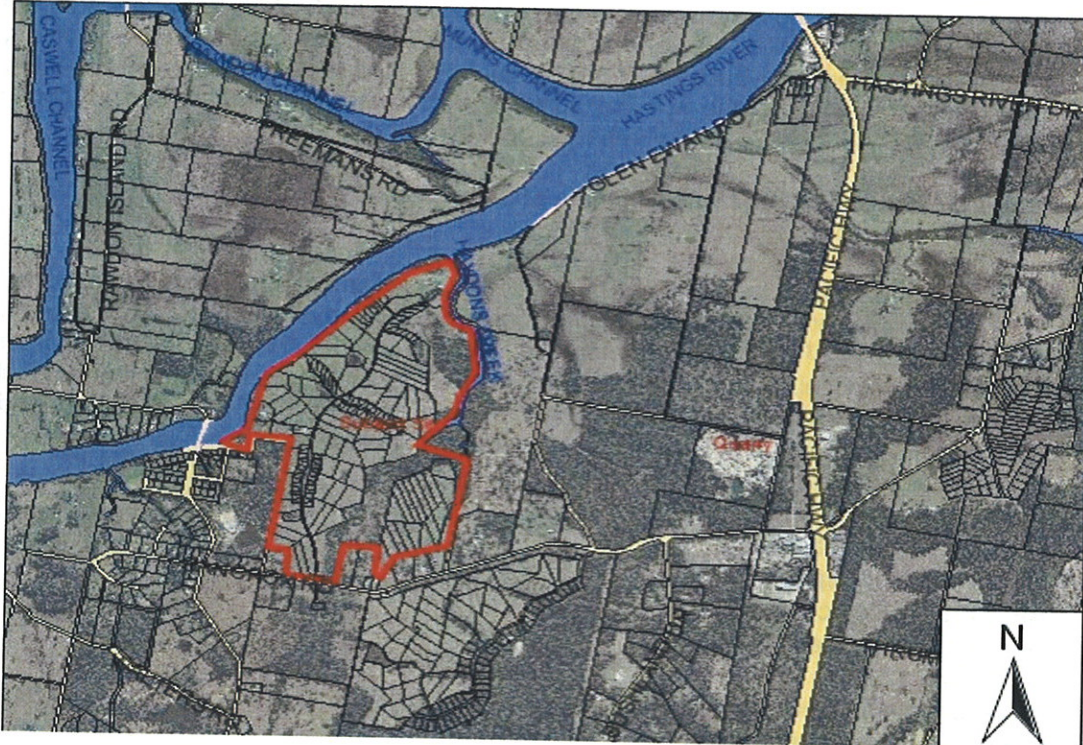


# 1. BACKGROUND

Le Clos Pty Ltd propose to undertake a staged development involving torrens title subdivision (2 lots), 142 lot community title rural residential subdivision and construction of community facilities (requiring separate approval) Project Title, on land comprising Lot 51 DP775871, Lots 1-13, 15-66, 68, 70-72, 74-80, 83-84, 86-88 DP791199 and Lots 90-95 DP805549, Sancrox Road, Sancrox. The site has frontage to Sancrox Road, River Bend Road, Bengal Street, Ferry Street and Wharf Street in the rural locality of Sancrox. Sancrox is largely bound by the Oxley Highway to the south, Pacific Highway to the east and Hastings River to the north and west. A narrow band of Crown foreshore reserve separates the site from the Hastings River to the north. The township of Wauchope is approximately 5 kilometres to the west and the regional centre of Port Macquarie, 10 kilometres to the east of the site.

The project location is shown in Figure 1.

**Figure 1: Project Location**



The site has an undulating landform rising from the floodplain of the Hastings River. The lower parts are associated with physiographic region of the Gladstone Alluvial Plains with the rises characterised by the Kempsey Low Hills.

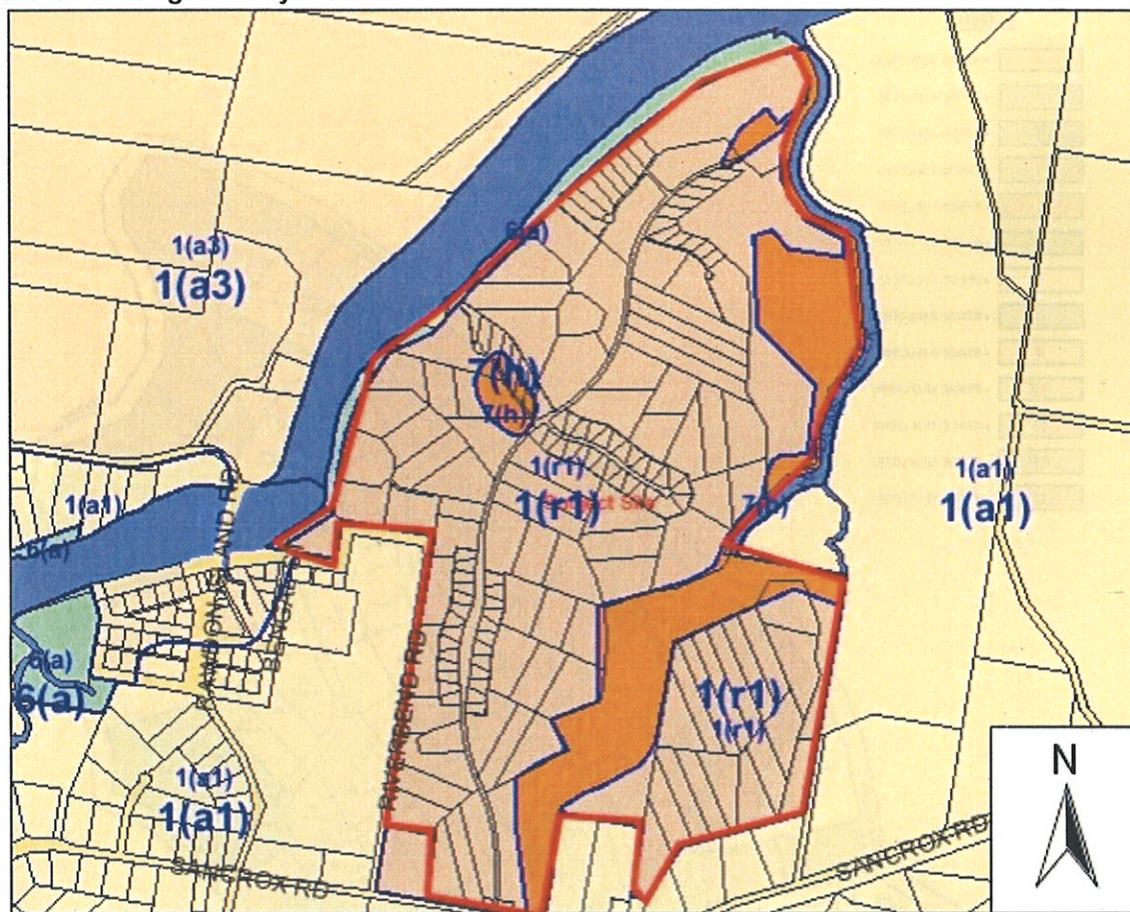
The site is largely cleared and comprises agriculture pasture for grazing. Vegetated areas are generally associated with swamp oak floodplain forest along Haydens Creek with smaller communities of open forest and rainforest sparsely occupying the site.

The site was developed in the 1980's for the purpose of a community viticulture farming and residential enterprise. The venture subsequently failed and the site currently comprises three (3) dwellings, a rural tourist facility, agricultural buildings and cattle grazing land. Surrounding land uses are predominately characterised by small rural residential allotments with other uses including agricultural activities and a plant nursery operation.

The land was identified as rural residential investigation area in Council's *Rural Residential Strategy 2004*. A rezoning application to rezone the land to 1(r1) Rural Residential and 7(h) Environmental Protection – Habitat under the *Hastings Local Environmental Plan 2001* was lodged in 2006, with gazettal occurring in January 2007. The current subdivision configuration and land zoning is depicted in Figure 2 below.



Figure 2: Existing Site Layout



## 2. PROPOSED PROJECT

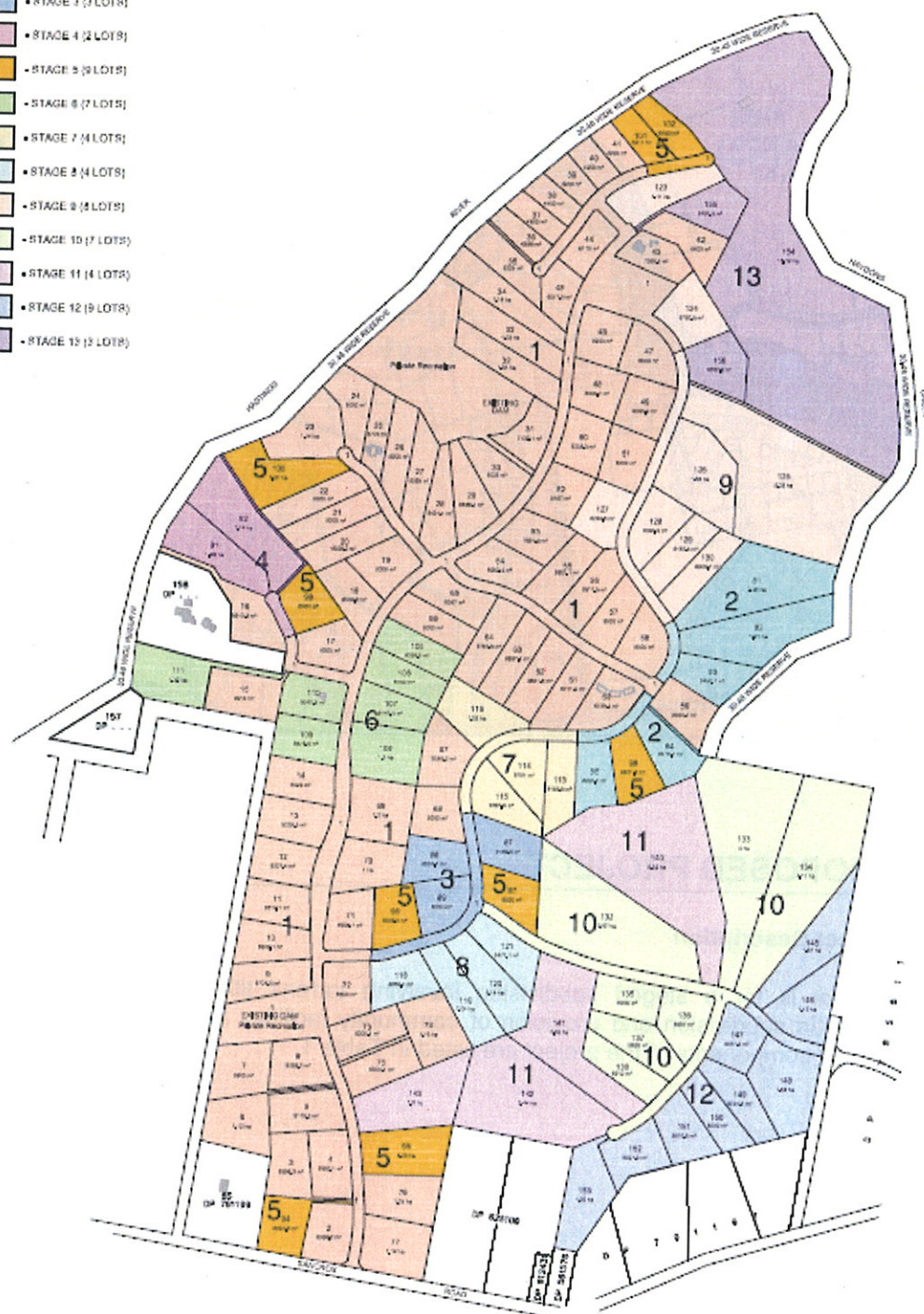
### 2.1 Project Description

The proposal is for a staged subdivision involving torrens title boundary adjustments, 142 lot community title subdivision and provision of community facilities lot. The project layout is shown in Figure 3. Key components of the project are listed in Table 1.

**Figure 3: Project Layout**

**LEGEND**

- 1 - STAGE 1 (75 LOTS)
- 2 - STAGE 2 (5 LOTS)
- 3 - STAGE 3 (3 LOTS)
- 4 - STAGE 4 (2 LOTS)
- 5 - STAGE 5 (9 LOTS)
- 6 - STAGE 6 (7 LOTS)
- 7 - STAGE 7 (4 LOTS)
- 8 - STAGE 8 (4 LOTS)
- 9 - STAGE 9 (8 LOTS)
- 10 - STAGE 10 (7 LOTS)
- 11 - STAGE 11 (4 LOTS)
- 12 - STAGE 12 (9 LOTS)
- 13 - STAGE 13 (5 LOTS)





**Table 1: Key Project Components**

<i>Aspect</i>	<i>Description</i>
<b>Project Summary</b>	<ul style="list-style-type: none"> <li>• <b>Torrens Title Boundary Adjustment</b></li> <li>• <b>Staged Community title subdivision and associated infrastructure</b></li> </ul>
1	Boundary adjustment between Lot 51 in DP 775871 (containing an existing dwelling) and the neighbouring parcels (Lots 22, 28, 52, 53, 56 and 86 in DP 791199 and Lot 92 DP 805549), under Torrens Title. Proposed Lot 151 (the present Lot 51) in the preferred project layout is not to form part of the Community Title subdivision, nor does it form part of the Community Association;
2	Minor boundary adjustment and re-registration of Lot 91 DP 805549 (as proposed Lot 157) under Torrens Title prior to registration of Stage 1. Proposed Lot 157 is not to form part of the community title scheme;
3	<p>Re-subdivision of the remaining Le Clos Verdun estate into a total of 142 rural residential lots under Community Title as per the following staging schedule;</p> <ul style="list-style-type: none"> <li>- <b>Stage 1: 80 Lots</b>      <b>Lots 1 – 77 which includes common property Lot 1, + 3 Development Lots 78 – 80. Refer to Stage 1 plan in Sheet 9B.</b></li> <li>- <b>Stage 2: 5 Lots</b>      <b>- Lots 81 – 85</b></li> <li>- <b>Stage 3: 3 Lots</b>      <b>- Lots 87 – 89</b></li> <li>- <b>Stage 4: 2 Lots</b>      <b>- Lots 91 – 92</b></li> <li>- <b>Stage 5: 9 Lots</b>      <b>- Lots 94 – 102</b></li> <li>- <b>Stage 6: 7 Lots</b>      <b>- Lots 105 – 111</b></li> <li>- <b>Stage 7: 4 Lots</b>      <b>- Lots 113 – 116</b></li> <li>- <b>Stage 8: 4 Lots</b>      <b>- Lots 118 – 121</b></li> <li>- <b>Stage 9: 8 Lots</b>      <b>- Lots 123 – 130</b></li> <li>- <b>Stage 10: 7 Lots</b>      <b>- Lots 132 – 138</b></li> <li>- <b>Stage 11: 4 Lots</b>      <b>- Lots 140 – 143</b></li> <li>- <b>Stage 12: 9 Lots</b>      <b>- Lots 145 – 153</b></li> <li>- <b>Stage 13: 3 Lots</b>      <b>- Lots 154 – 156</b></li> </ul> <p>Lots range in size from 4200m<sup>2</sup> to 15.5Ha.</p> <p>(N.B. 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 156, while only 142 'residential', or developable lots under Community Title are being created).</p>
4	Retention of existing single dwellings within the estate (noting rural tourist facility will require demolition prior to stage 1 linen release)
5	Retention and augmentation of existing roads, water mains, telecommunication lines and electricity cables which currently service the estate, and construction of new infrastructure as necessary;
6	<p>Establishment in Stage 10 of the Project of a future vehicular access link to the adjacent rural land to the east identified under Council's Rural Residential Strategy for future investigation;</p> <p>Minor filling for Lots 76, 77, 95 &amp; 143, and Lots 87, 114 &amp; 115 in the community title subdivision. Clearing of approximately 8000m<sup>2</sup> of Swamp Oak Floodplain Forest will also occur over Lots 76, 77, 95 &amp; 143 and Lots 87 &amp; 115;</p>
7	Landscaping works which include the management of existing landscaping within the estate and re-planting within access and drainage routes, ridge-lines, gullies and the revegetation and rehabilitation of disturbed sections within the Haydons Creek Riparian Zone;

<b>Aspect</b>	<b>Description</b>
8	Preparation of a Vegetation Management Plan for the rehabilitation and ongoing management of the Hastings River and Haydons Creek riparian zones;
9	Preparation of an Integrated Surface and Stormwater Management strategy incorporating existing inter-allotment drainage, proposed bio-retention systems, culvert crossings for the Haydons Creek road access, and sediment control/detention dams to be located within community land;
10	A 'Cluster System' for the treatment of effluent from proposed Lots 36-40 via a shared effluent disposal site located approximately 75m to the south-east (within the community property - proposed Lot 1);
11	An integrated system of fire-trails within the rear of bushfire prone sites, acting as linkages within the proposed internal road system for emergency vehicle access;
12	Provision of a pedestrian public accessway along the Hastings River and Haydons Creek foreshores connecting to Bengal Street. Such access to be managed via the Vegetation Management Plan to be prepared for Stage 1 and will incorporate an Access Permit from Department of Lands for access to establish weed management, riparian zone protection and rehabilitation, and regularly mown pedestrian access;
13	Creation of a system of pathways establishing practical access to the Hastings River and Haydons Creek Foreshore Reserves at Stages 1, 2, 4 and 9 of the Project;
14	The establishment of Community Amenities including a future tennis court, community building, amenities block, children's playground and associated passive and active recreation areas within the Community Open Space lot (will require development consent under Part 4);

## 2.2 Project Need and Justification

The proposal is justified for the following reasons:

- The existing lot configuration is inefficient with lots unable to adequately accommodate on-site effluent disposal. The reconfigured subdivision pattern will enable each lot sufficient area to dispose of effluent, resulting in an improved environmental outcome.
- The proposal contributes to the range of housing options in the Port Macquarie-Hastings Local Government Area (LGA). The site is identified in Council's Rural Residential Strategy and is zoned for rural residential use under the *Hastings local Environmental Plan 2001*.
- The proposal is considered to be consistent with the *Mid North Coast Regional Strategy*. The site is adequately serviced by the Regional Centre of Port Macquarie and township of Wauchope. Primary production (Section 5.8) and biodiversity (Section 5.4) values have been satisfactorily addressed.
- The proposal improves access to the foreshore through provision of formalised pathways.
- The proposal will improve management of Haydon's Creek and Hastings River Riparian zones.
- The proposal will generate employment during construction.

## 2.3 Concept Plan

Le Clos Pty Ltd has applied for approval of a concept plan under section 75M of the EP&A Act. The proponent subsequently seeks the Minister's declaration under Section 75P(1)(c) of the Act that no further application, report, studies or assessment is necessary for all aspects of the development (other than community buildings). This will enable the project to proceed directly to construction certificate and/or subdivision certificate without further approvals being required under Parts 3A, 4, or 5 of the Act. For the community buildings, the proponent seeks the Minister's determination as to the environmental assessment requirements for approval to carry out construction of community buildings pursuant to Section 75P(1)(a) of the Act.



### 3. STATUTORY CONTEXT

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#### 3.1 Major Project

The proposal is a major project under Part 3A of the *Environmental Planning and Assessment Act 1979* (EP&A Act) because it is development for the purpose of a 'subdivision of land where the future development created by the subdivision will not be connected to an approved sewage treatment work or system: into more than 2 lots, if wholly or partly in a sensitive coastal location', under clause 1(h)(i) of Schedule 2 of *State Environmental Planning Policy (Major Projects) 2005* (as in force at the time). Therefore the Minister for Planning is the approval authority.

Pursuant to Section 23(1)(d) of the Act Port Macquarie-Hastings Council (PMHC) was delegated assessment functions in relation to the assessment of the concept plan application on 25 January 2007. The Minister remains the approval authority.

#### 3.2 Permissibility

The site is zoned 1(r1) Rural Residential and 7(h) Environmental Protection – Habitat under the *Hastings Local Environmental Plan 2001*. The project is consistent with the zone objectives and is permissible in the zone with consent having regard for the minimum lot size requirements of Clause 17 of the HLEP (refer to Appendix D). However, during assessment of the EA it was identified that the site contains an existing 6-unit tourist facility on a 4.3Ha parcel of land, being Lot 39 DP 791199. This development was approved under the *Hastings Local Environmental Plan 1987*. A development standard under the HLEP 1987 was that rural tourist facilities be located on allotments no less than 4ha. The proposed community title subdivision would result in the tourist facility buildings being on an 8739m<sup>2</sup> allotment. Such an allotment is considered unable to support a rural tourist facility and satisfy the definition contained in HLEP 2001, being:

*rural tourist facility means:*

- (a) *tourist educational or tourist recreational facilities which may include ancillary accommodation and are based on the rural, scenic or natural attributes of the locality, or*
- (b) *tourist accommodation associated with the dwelling and farm buildings on a property principally used for primary production.*

Retention of the rural tourist facility in the proposal is considered to represent a prohibited development and hence a condition of approval has been recommended to require demolition of the rural tourist facility prior to release of the Subdivision Certificate for stage 1 of the Community Title subdivision.

#### 3.3 Environmental Planning Instruments

Under Sections 75I(2)(d) and 75I(2)(e) of the EP&A Act, the Director-General's report for a project is required to include a copy of, or reference to, the provisions of any State Environmental Planning Policy (SEPP) that substantially governs the carrying out of the project, and the provisions of any environmental planning instruments (EPI) that would (except for the application of Part 3A) substantially govern the carrying out of the project and that have been taken into consideration in the assessment of the project.

The Council's consideration of relevant SEPPs and EPIs is provided in Appendix D.

#### 3.4 Objects of the EP&A Act

Decisions made under the EP&A Act must have regard to the objects of the Act, as set out in Section 5 of the Act. The relevant objects are:

- (a) *to encourage:*
  - (i) *the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
  - (ii) *the promotion and co-ordination of the orderly and economic use and development of land,*
  - (iii) *the protection, provision and co-ordination of communication and utility services,*

- (iv) *the provision of land for public purposes,*
- (v) *the provision and co-ordination of community services and facilities, and*
- (vi) *the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats, and*
- (vii) *ecologically sustainable development, and*
- (viii) *the provision and maintenance of affordable housing, and*
- (b) *to promote the sharing of the responsibility for environmental planning between the different levels of government in the State, and*
- (c) *to provide increased opportunity for public involvement and participation in environmental planning and assessment.*

The project is considered to be consistent with the objects of the Act for the following reasons:

- Significant agricultural resources are not considered to be compromised (Section 5.8). Biodiversity and water cycle values of the site are considered to be adequately conserved and capable of being managed (Section 5.4 and 5.6).
- With the provision of the proposed Voluntary Planning Agreement (Section 5.1), the project does not adversely burden the community with the provision of infrastructure to the site.
- The project provided for improved public access to the foreshore (Section 5.3).
- The project contributes to the range of housing options available in the Port Macquarie-Hastings Local Government Area.
- The project has been assessed taking into account extensive public and government agency consultation.

The EP&A Act adopts the definition of Ecologically Sustainable Development (ESD) found in the *Protection of the Environment Administration Act 1991*. Section 6(2) of that Act states that ESD requires the effective integration of economic and environmental considerations in decision-making processes and that ESD can be achieved through the implementation of:

- (a) *the precautionary principle - namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. In the application of the precautionary principle, public and private decisions should be guided by:*
  - (i) *careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and*
  - (ii) *an assessment of the risk-weighted consequences of various options,*
- (b) *inter-generational equity—namely, that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations,*
- (c) *conservation of biological diversity and ecological integrity—namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration,*
- (d) *improved valuation, pricing and incentive mechanisms—namely, that environmental factors should be included in the valuation of assets and services, such as:*
  - (i) *polluter pays—that is, those who generate pollution and waste should bear the cost of containment, avoidance or abatement,*
  - (ii) *the users of goods and services should pay prices based on the full life cycle of costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any waste,*
  - (iii) *environmental goals, having been established, should be pursued in the most cost effective way, by establishing incentive structures, including market mechanisms, that enable those best placed to maximise benefits or minimise costs to develop their own solutions and responses to environmental problems.*

The project is considered to be consistent with the ESD principles for the following reasons:

1. Precautionary principle – The project has been assessed having regard to best practice standards in the fields of flooding (Section 5.3), ecology (Section 5.2), on-site effluent disposal (Section 5.4) agricultural resources (Section 5.5), Indigenous Heritage (Section 5.10). The assessment concludes that the proposal will not have a significant adverse impact on the environment.
2. Inter-generational equity – the project is not considered likely to burden future generations with a compromised environment. Environmentally sensitive areas have been conserved and



with the implementation of recommended consent conditions, environmental impacts are considered to have been addressed or are manageable into the future.

3. The site's ecological values have been appropriately conserved and with implementation of recommended consent conditions are capable of being improved (Section 5.2).
4. Improved valuation, pricing and incentive mechanisms - the approach taken for this project has been to assess the environmental impacts of the proposal and identify appropriate safeguards to mitigate adverse environmental effects.

Detailed assessment of the economic and environmental issues associated with the project is provided in Section 5.

### **3.5 Statement of Compliance**

In accordance with Section 75I of the EP&A Act, the Council is satisfied that the Director-General's environmental assessment requirements have been complied with.

## **4. CONSULTATION AND SUBMISSIONS**

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### **4.1 Exhibition**

Under Section 75H(3) of the EP&A Act, the Director-General is required to make the environmental assessment (EA) of an application publicly available for at least 30 days. After accepting the EA, the Council publicly exhibited it from 30 April 2008 until 30 May 2008 (31 days) on the Department's website, and at the Port Macquarie-Hastings Council, The Department's regional office in Grafton, The Department's metro office in Sydney and the Nature Conservation Council's Sydney office. The Council also advertised the exhibition in the Port Macquarie News on 30 April 2008 and Hastings Gazette on 31 April 2008 and notified landholders, relevant State and local government authorities in writing.

The Council received 16 submissions during the exhibition of the EA - 10 submissions from public authorities and 6 submissions from the general public.

A summary of the issues raised in submissions during both exhibition periods is provided below.

### **4.2 Public Authority Submissions**

10 submissions were received from public authorities:

#### **NSW Department of Primary Industries (3 separate submissions)**

- No objections raised from fisheries and agricultural divisions but objection is raised from mineral resources division in relation to impact on mineral resources in the Sancrox precinct.
- Concern raised in relation to the potential for increased conflict between residential traffic and traffic from the Sancrox Quarry. Concern raised in relation to the lack of integrated planning on the Sancrox area to deal with traffic issues.
- Buffer to aquatic habitat of 30m acceptable in this instance provided an appropriate management plan is developed for the foreshore reserve.
- Satisfactory on-site effluent disposal report.
- Agricultural sustainability report is comprehensive and sound. There are no adverse agricultural impacts.

#### **NSW Department of Environment and Conservation (now DEECW)**

- Objects to the methodologies employed in the ecological and archaeological assessments.

#### **NSW Roads and Traffic Authority**

- No objections raised.
- Issues raised with the assessment undertaken on the Sancrox Rd intersection with the development.
- Road traffic noise to be addressed.
- Public transport and school bus service to be addressed.

#### **NSW Department of Water and Energy**

- No objections raised, recommended conditions provided.

**NSW Rural Fire Service**

- No objections raised.

**Northern Rivers Catchment Management Authority**

- No objections raised.

**NSW Department of Lands**

- No objections raised.
- Crown Lands Act processes identified.
- Erosion and sediment control recommended.

**NSW Department of Planning**

- Effects on climate change to be addressed.
- Inadequate public access provided throughout development.
- Objects to single stage linen release due to some lots being released without services.
- DECC to be consulted further with respect to Aboriginal cultural heritage assessment.
- Clarification sought on building envelopes to ensure constraints of flooding, bushfire, ecology and effluent disposal are addressed.
- Ecological assessment requires updating.
- Applicant to obtain consent from the Crown with respect to works proposed within reserve.
- Clarification sought on whether existing dwellings require on-site sewage management system to be upgraded.
- Administrative errors noted.

**4.3 Public Submissions**

6 submissions were received from the public. Of the 6 public submissions, 1 objected to the project and 5 did not object but raised concerns. The key issues raised in public submissions are listed in Table 2.

**Table 2: Summary of Issues Raised in Public Submissions**

Issue	No. of submissions referencing
Public Access to Hastings River and Haydons Creek	1
Small lot sizes	2
Management of Environmental lands	1
Crossing of Haydons Creek	1
Lack of community consultation	1
Traffic impact	2
Ecological impact	2
Impact on foreshore	1
Waterway traffic	1
On-site sewage management	1
Flooding and stormwater impact	1

The Council has fully considered the issues raised in submissions in its assessment of the project.



#### **4.4 Proponent's Response to Submissions**

The proponent provided a response to the issues raised in submissions (see Appendix C). The response included a Preferred Project Report which included additional ecological and archaeological assessments, a draft voluntary planning agreement to secure road and water infrastructure, revised staging plan and general additional supporting information in response to issues raised during exhibition.

The applicant's Preferred Project Report and a draft Voluntary Planning Agreement were exhibited from 7 May 2010 to 9 June 2010 on the Department's website, at the Department's Bridge Street Office and Port Macquarie-Hastings Council. The exhibition was advertised in the Port Macquarie news and Hastings gazette and neighbours were notified of the exhibitions. The Council received 5 submissions during the exhibition of the PPR - 4 submissions from public authorities and 1 submission from the general public.

#### **Department of Environment and Climate Change and Water (2 submissions - both received subsequent to lodgement of PPR but prior to exhibition)**

- Object to proposal unless the following is resolved (preferably prior to consent)
  - Clarification of compensatory and offset areas.
  - Confirmation of mechanism to ensure conservation of environmental land in perpetuity.
  - Management plan for environmental lands.
  - Compensatory habitat provided for loss of Subtropical Coastal Floodplains Forest.
- Recommended conditions provided for Aboriginal cultural heritage values.
- Request that Council ensure on-site effluent disposal systems comply with the *Protection of Environment Operations Act 1997*.

#### **Department of Planning (2 submissions)**

- Clarification sought on mapping of EECs, APZs and ecological buffer areas.

The 1 submission received from the general public was a party to the application seeking clarification of proposed servicing arrangements for Lot 51 DP 77871 and confirmation that services for other allotments will not traverse this lot.

## **5. ASSESSMENT**

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The Council considers the key environmental issues for the project to be the provision of infrastructure, flora and fauna, flooding and climate change, on-site effluent disposal, agricultural resources, bushfire management, traffic and access, water cycle management, riparian and foreshore access, indigenous heritage, mineral resources and contamination and remediation.

### **5.1 Provision of Infrastructure**

The current Le Clos Verdun estate was approved by Council in the 1980's and is made up of 82 'approved lots' pursuant to the *Hastings Local Environmental Plan 2001*. As such, the land enjoys 82 Section 94 contribution credit. In terms of Section 64 (water) contributions, 83 credits are enjoyed as the original viticulture enterprise paid water contributions for an additional infrastructure/service allotment. Beyond this credit, Council has not undertaken contribution planning in the Sancroix locality to apportion the costs of necessary road and water infrastructure upgrading for any further development growth in the precinct. Existing water infrastructure is unable to provide the necessary level of service beyond the 82/83 lot credit.

To address the absence of suitable infrastructure to service the development beyond 83 lots, the applicant has offered to enter into a Voluntary Planning Agreement (VPA). The draft VPA proposes limitations on the release of allotments and development of dwellings on allotments until such time as water infrastructure upgrading occurs in the Sancroix precinct. Additional monetary contributions are proposed to be paid for road contributions that are not covered in Council's current S.94 Plan for Major Roads beyond 82 lots. The draft VPA is included in Appendix E.

Council is satisfied that the draft VPA will provide the necessary level of security for the provision of this infrastructure to service the development. Conditions of consent have been recommended to require the applicant to formally enter into the VPA prior to the release of any community title allotments.

## 5.2 Flora and Fauna

The subject site is currently managed as a grazing property and supports large areas of cleared grassland, pockets of woodland and riparian vegetation along Haydons Creek. Whilst being significantly disturbed from grazing activities and the invasion of weeds, the site still supports significant ecological features such as endangered ecological communities (EECs), threatened species and a number of mature hollow-bearing trees. The majority of the significant features are within land zoned 7(h) Environmental Protection Habitat pursuant to the *Hastings Local Environmental Plan 2001*.

EECs identified on site include Swamp Oak Floodplain Forest, Lowland Rainforest on Floodplain, Freshwater Wetlands on Floodplains and Subtropical Coastal Floodplain Forest on Coastal Floodplains. EECs are depicted in the PPR in Appendix H, page 67. Threatened fauna species recorded on the site included the Little Lorikeet, Eastern Freetail-bat, Little Bentwing-bat and Large-footed Myotis. A number of threatened flora and fauna species were also identified as potentially occurring on the site.

The proposal includes filling of lots 76, 77, 87, 95, 114, 115 and 144, resulting in the loss of approximately 8000m<sup>2</sup> of Swamp Oak Floodplain Forest. Additional isolated vegetation removal on Lots 10-14, 69 and 157 (which includes Subtropical Coastal Floodplain Forest) will be required to achieve building envelopes. Other isolated tree removal may be required to achieve driveway construction on lots 20-21 and 26-27. Conditions of approval have been recommended to minimise vegetation removal.

The proposal has the potential to place increased pressures sensitive environments through on-site effluent disposal and on riparian vegetation through foreshore use/access. These issues are discussed in Section 5.4 and 5.9 respectively.

Following exhibition of the EA, DECCW raised a number of concerns with the methodologies employed in the ecological assessment conducted by North Coast Forestry and Ecological Services. In response to these concerns, further ecological investigations were conducted by Keystone Ecological as part of the PPR.

Numerous discussions were subsequently held with DECCW, Council, the proponent and Keystone Ecological to resolve ecological issues associated with survey methodologies employed and ongoing ecology management post development. The latest DECC correspondence dated 1 September 2009 identifies three remaining areas of concern:

### 1. *Uncertainty regarding the location of Offset/Compensatory Habitat Lands*

DECCW essentially seek clarification that the 7(h) Environmental Protection – Habitat zoned land in the north/south corridor along Haydons Creek is the nominated offset area as recommended by DECC on site in July 2008. The proponent has indicated this is the case by virtue of the existing zoning. Conditions of approval have been recommended to clarify the offset area. The Council is satisfied this will address this issue.

### 2. *Confirmation of the mechanism to ensure conservation in perpetuity*

Whilst the existing 7(h) zoning does afford protection to the sensitive ecological areas, DECCW considers that this does not secure long term conservation and a Conservation Agreement under the *National Parks and Wildlife Act 1974*, Bio-banking Agreement under the *Threatened Species Conservation Act 1995* or a Section 88B-E instrument under the *Conveyancing Act 1919* is necessary. A condition of approval has been recommend to require a covenant under the *Conveyancing Act 1919*, with the Minister for Climate Change and Environment being a signatory. DECCW have requested that they approve the wording of the covenant. The Council is satisfied this will adequately address this issue.

### 3. *Vegetation Management Plan*

Whilst DECCW would prefer a vegetation management plan be developed for ecological offset areas prior to the issuing of any approval, they are satisfied with Council developing conditions of approval requiring submission of such a plan. The Council is satisfied that this will adequately address the issue and a number of conditions of approval have been recommended relating to the management plan.



The latest correspondence from DoP in July 2010 seeks clarification on the relationship of ecological buffers, bushfire asset protection zones and vegetation management plan. It is noted that proposed asset protection zones are adjoining, but located wholly outside, EECs. Buffers between on-site effluent disposal areas and EECs are largely provided by 1 in 20 year flooding constraints for disposal areas setbacks from intermittent and permanent water bodies. Notwithstanding this, conditions of approval have been recommended to require clear delineation of building envelopes, on-site effluent disposal areas and asset protection zones prior to release of subdivision certificate for the community title allotments. Council will additionally be required to approve the vegetation management plan prior to the release of any community title allotments.

Notwithstanding the impacts and issues described above, it is considered that through the recommendations contained in the proponents EA, PPR and Statement of Commitments along with recommended conditions of approval, the proposal will not have a significant adverse impact on threatened species or ecological communities, but rather, will provide for improved habitat resources on the site.

### **5.3 Flooding and Climate Change**

The NSW Government has recently released its policy on sea level rise (SLR) - *NSW Sea Level Rise Policy Statement (October 2009)*, which requires developments in NSW to adopt a 900mm SLR value for the year 2100.

The development proposes to adopt existing 100 year levels and apply 900mm freeboard to floor levels as advised by DoP (DoP, 31 March 2009). The applicant has rejected the notion that all infrastructure that would typically require a 100 year level of protection (eg. roads, bridges etc) should be designed for the new 100 year level + SLR. This approach is not supported and is not consistent with the *NSW Sea Level Rise Policy Statement (October 2009)*.

Council has undertaken preliminary modelling for the Hastings River Floodplain Management Study that indicates a 900mm SLR scenario with the existing 100 year flood may be in the order of 600mm higher than the current flood levels at this site. This results in a newly adopted 100 year level that ranges from 4.9 to 5.4m Australian Height Datum (AHD) for this site. The new FPL (with the standard 500mm freeboard) would range from 5.4-5.9m AHD.

It is noted that the above flood levels including SLR and FPL values are not consistent with previous advice, however the NSW SLR policy now specifies definitive requirements for flood, coastal and estuary assessments. In addition, Council adopted changes to its Interim Flood Policy in March 2010, to reflect the requirements of the State government policy to require all new infrastructure to be built to the new 100 year climate change adjusted level. As such, conditions of consent have been recommended to require road infrastructure at the new FPL of 4.9-5.4m AHD.

The 30m Crown Reserve from the title boundary to the Hastings River will be subject to riverbank erosion over the life of the subdivision. An allowance for riverbank erosion caused by water craft, loss of vegetation and climate change including SLR etc needs to be provided and the current 30m appears limited. As a contingency, and in line with recommendations made by DPI, a total vegetated width of 50m (ie. 30m regenerated EEC and a 20m vegetation buffer on private land) is considered more appropriate. This requirement will have limited impact on the use of the community title allotments given that the 20m buffer is located on flood prone land and not suitable for the construction of dwellings. A condition requiring a 20m wide vegetated buffer inside all lots fronting the Hastings River has been recommended.

### **5.4 On-site effluent disposal**

Reticulated sewer is not available to the site. Geotechnical investigations (appendix K of the PPR) have been undertaken and determined that effluent can be disposed of on site via a variety of on-site treatment systems, dependant on the constraints of each allotment. The lots have been divided into 5 groups, with Group 1 being the least constrained and Group 5 lots the most constrained. The most significant constraints relate to the proximity of allotments to the Hastings River and Haydons Creek and Flood inundation (i.e disposal areas required to be above 1 in 20 year flood event). For the Group 5 lots fronting the Hastings River (Lots 36-40) it is proposed to utilise a cluster system with common disposal area on Lot 1. Lots 35 and 41 have the option of utilising the cluster system or secondary treatment system.

DPI have advised that the site is within 1 kilometre of a Priority Oyster Aquaculture Area and that it is imperative that the development not have a deleterious effect on water quality in the estuary. DPI 'have no major objection to the recommendations made in the effluent disposal assessment described in Appendix K of the EA.'. However, go on to make the following recommendations/clarifications:

- All future systems are to incorporate a secondary level of effluent treatment.
- Lot Groups 3, 4 and 5 are to incorporate sub-surface disposal areas. For lot Group 4, the consultant has clarified that a higher level of disposal treatment is required by an amended soil system (higher level of performance than DPI's recommendation).
- Future landowners will be required to maintain systems so as to achieve optimum performance.

DECC have requested that operation of on-site effluent disposal systems comply with Section 120 of the *Protection of Environment Operations Act 1997*. Based on the submitted information it is considered that with appropriate maintenance of systems this is capable of being achieved.

It is considered that the effluent disposal assessment has been undertaken having regard for best practise standards. Sufficient disposal areas have been provided within each allotment, with Group 5 lots providing for the added precaution of a cluster disposal system. It is considered effluent is capable of being managed within the development so as not to have a significant adverse impact on sensitive receiving environments/waters. Conditions of approval have been recommended to require implementation of Appendix K of the PPR with a restriction as to user required for each future allotment.

### **5.5 Agricultural resources**

An agricultural sustainability report supports the application (Appendix L of the EA). DPI have raised no objection to the development and concur with the findings in the report. It is considered that the proposed development will not adversely compromise agricultural resources for the following reasons:

- As identified in the agricultural sustainability assessment, the site is only marginally suitable for viticulture and previous viticulture enterprises have failed on the site.
- DPI have previously mapped the land as comprising class 4 agricultural land, being land that is suitable for grazing. Subsequent mapping through the mid North Coast Farmland mapping Project has only identified small portions of the site as comprising significant farming land.
- The site is not adjacent to any significant agricultural activities that are likely to affect, or be affected by, future rural residential development. The proposed rural residential land use is consistent with the subdivision pattern in the locality.
- The site is currently made up of approximately 80 landowners. Consolidation of the land to be used for agricultural activities is unlikely.
- The land was recently rezoned for rural residential purposes in 2007.

### **5.6 Bushfire Management**

The site is identified as being bushfire prone on Council's bushfire maps certified by the Rural Fire Service (RFS). NSW RFS have not raised any issues in relation to the proposed bushfire protection measures as outlined in the Bushfire Hazard Assessment in Appendix K of the EA.

It is noted that all future dwellings will be subject to further assessment under Section 79BA of the *Environmental Planning and Assessment Act 1979*.

### **5.7 Traffic and Access**

The development is fronted by Sancrox Road which is a dedicated bitumen sealed local access road maintained by Council. Sancrox Road is constructed to a 2 lane rural road standard.

The total length of existing internal roads is approximately 3.29 kms with a sealed pavement of 19,275m<sup>2</sup>. Although the roads were constructed some 20 years ago, traffic usage has been much less than anticipated with only 4 residential dwellings on the estate. Some heavy vehicle traffic associated with winery production has caused some visible road pavement damage. In particular this has occurred on the short uphill stretches of the divided carriageway section where the narrow 3m one-way carriageway has contributed to the local failures by channellisation of the traffic.



Based on Councils calculated daily rate of 7 trips per lot, the ultimate development will result in 994 vehicle movements. The applicant submits that Sancrox Road AADT (SMEC projection for Y2036) is 5210 vehicles per day. Currently Sancrox Road volume is approximately 1000 AADT based on Councils 2006 traffic count figures. The anticipated traffic generation of this resubdivision has been factored into the current investigations being undertaken by Council and RTA for the Sancrox precinct.

The current intersection of Sancrox Road with the Riverpark Estate's entry road has been discussed with the applicant and Council's engineering staff. While the current intersection is adequate for the projected traffic volumes, a Rural Type AUR intersection is desirable on safety grounds and to minimise ongoing maintenance costs. Detailed design will be undertaken at Construction Certificate stage to determine if the pavement area needs to be extended to accommodate the storage area for turning vehicles.

Referring to RTA comments following exhibition of the EA, particularly with regard to the intersection of the development with Sancrox Road, the proponent will be required to upgrade to the 'ultimate' layout as per AUSTROADS CHR treatment when warranted under the guidelines for Right Turn lanes (as per AUSTROADS Guide to Traffic Engineering practice Part 5: Intersections at Grade - section 6.8). This shall be undertaken at the relevant stage of the development as supported by a traffic assessment following future growth of the development.

Other issues raised by the RTA relating to the provision of bus routes and impact of road traffic noise on future residents are considered to be adequately provided for. A bus route exists along Sancrox Road and the impact of road traffic noise is considered to be relatively minor having regard for the rural residential subdivision pattern and ability to manage noise and dwelling construction stage.

It is considered that the development provides an integrated subdivision by linking existing cul-de-sacs within the road network to provide a continuous road layout. The applicant submits also (letter dated 20 April 2010 - clause 5 'Conclusion') that the development will provide for improved traffic linkages between the site, local traffic routes and adjoining lands identified for future development (east and west) to satisfy the Director General Requirements. Council concurs with this position.

If there is any intention to have the 'open access way' dedicated in the future, all road infrastructure will need to be constructed and certified compliant with Council's AUSPEC Specifications prior to dedication.

### **5.8 Water Cycle Management**

Stormwater and drainage infrastructure necessary for the development will be owned, maintained and managed by the community association. A Positive Covenant has been recommended to ensure maintenance occurs by the landowners to Council's satisfaction.

If in the future the developer sought Council to assume drainage responsibility (and in the event Council agrees) all drainage infrastructure must meet AUSPEC standards. This means all end-of-line bio-retention facilities including access tracks and major overland flow paths for drainage must be located in drainage reserves not easements.

The Department of Water and Energy have not raised any objections to the development and provided numerous recommended conditions for the construction work. These conditions and the requirement for a comprehensive stormwater management plan prior to release of Construction Certificate have been incorporated into the recommended condition schedule.

### **5.9 Riparian and Foreshore Access**

A key principle of SEPP 71 is to protect and improve public access to the coastal foreshore (Appendix D). It is considered the provision of public access to the Hastings River foreshore reserve via Bengal Street is insufficient. It is not considered appropriate for the proposal not to provide public access within the development and to the foreshore of Hastings River and Haydons Creek. 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. Open accessways are private roads maintained by and vested in the relevant association. Normal traffic regulations apply to these accessways. Conditions of consent have been recommended to require the classification of roads and pathways within the development leading to the foreshore to be open accessways so as they are legally accessible to the general public.

Having regard for the principles of SEPP 71 (Appendix D), a development of the scale proposed is considered to warrant an improved pedestrian access along the foreshore of the Hastings River. Conditions of approval have been recommended to achieve this. In November 2008, the Department of Lands advised they were willing to consider an application for an access permit over the Hastings River foreshore to improve pedestrian access but the permit would not be issued until such time as the development were approved. The recommended conditions of consent have included a requirement to negotiate with the Department of Lands on the level of access provided in the reserve and the ongoing maintenance.

#### **5.10 Indigenous Heritage**

Subsequent to exhibition of the EA, DECC raised significant concern with the methodologies employed in the Cultural Heritage Assessment, particularly in relation to consultation with the local Aboriginal community. A further Cultural Heritage assessment was undertaken and submitted as part of the PPR. This assessment was undertaken having regard for DECC Interim Community Consultation Guidelines and in consultation with the Birpai and Bunyah Local Aboriginal Land Councils.

The above consultation, site pedestrian surveys and a search of the Aboriginal Heritage Information Management System did not uncover any Aboriginal heritage items.

DECC requested a number of conditions be incorporated in any approval, all of which have been included in the recommended schedule of conditions.

With regards to European cultural heritage, records indicate that the Sancrox area was the early location of one of the early government farms of Port Macquarie, however the exact location is not known. The assessment did not locate any remnants of such farm and it was considered highly unlikely that such a remnant would remain on the study area given the temporary nature of the farm and the changing landscape of the Hastings River.

#### **5.11 Mineral Resources**

The site is not a mapped S.117 minerals area and no known significant mineral resource exists on site. The potential for the site to be further investigated for mineral sources is considered to be significantly compromised by the multiple ownership and surrounding subdivision pattern.

In response to exhibition of the EA, DPI's Mineral Resources Division raised the following concerns:

- The potential for landuse conflicts to result with residential development in the Sancrox area near the Sancrox Quarry.
- The potential conflict with residential traffic and heavy vehicle traffic associated with the quarry.
- Concerns regarding the sustainability of construction material supply in the North Coast due to population growth, depletion of existing (non-renewable) resources and increasing restrictions on access to potential replacement resources.

DPI recommends that the application be deferred until such time as integrated structure planning be completed in the Sancrox area.

Considering the above, it is noted that a 1.5km buffer is provided to the Sancrox Quarry and 350m to the western extremity of mapped S.117 minerals investigation area. These buffers are considered to provide adequate separation and it is not considered warranted to undertake detailed acoustic or vibration assessments. It is also noted that the RTA have not raised the intersection of the Pacific Highway and Sancrox Rd or potential conflicts with light vehicles and quarry vehicles as limiting factors to the development proceeding. It is further considered that the North Coast has adequate capacity to support the construction of such residential development and in any event it is considered that the market will dictate the timing and/or viability of construction.

DPI comments in relation to the need for integrated planning in the Sancrox are considered to have merit. However, the development site is the only area in the precinct zoned for rural residential development, minimising cumulative impacts. Council has been in consultation with DoP with respect to further development growth in the Sancrox precinct, with any further rezoning having to address infrastructure constraints as part of an integrated structure planning approach.

Based on the above, it is considered that concerns raised by DPI are not of sufficient weight to warrant refusal of the project.

### 5.12 Contamination and Remediation

Being a former viticulture enterprise, the site was investigated for the potential to contain any contaminants attributed to chemicals and pesticides associated with grape growing. A site assessment was undertaken having regard for DECCW criteria and it was determined that the vineyard area did not contain any organopesticides or inorganics above the relevant residential land use criteria. The location of an underground fuel storage tank on one of the proposed rural residential lots was also determined as not giving rise to any hydrocarbons or inorganics above residential criteria. Notwithstanding this, precautionary conditions of approval have been recommended to require the fuel storage tank to be appropriately decommissioned and the site further validated as being free of adverse contamination prior to release of the allotment.

## 6. RECOMMENDATION

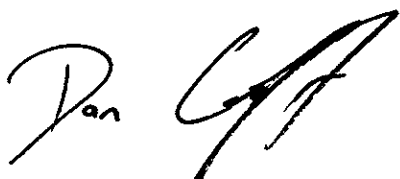
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Port Macquarie-Hastings Council has assessed the EA and PPR and considered the submissions in response to the proposal. The key issues raised in submissions related to provision of infrastructure, flora and fauna, flooding and climate change, on-site effluent disposal, agricultural resources, bushfire management, traffic and access, water cycle management, riparian and foreshore access, indigenous heritage, mineral resources, contamination and remediation. Council has considered these issues and a number of conditions are recommended in conjunction with the proponent's Statement of Commitments.

It is considered that the project will provide public benefit in the form of increased rural residential development, contributing to the range of housing options available in the local government area. The proposal will additionally improve the environmental values of the site through the on-going structured management of environmentally zoned land.

The proposal achieves compliance with relevant environmental planning instruments and is supported by best practice investigations.

On these grounds, Council considers the site to be suitable for the proposed development and that it is in the public interest. Council recommends that the Minister make declaration under Section 75P(1)(c) of the Act that no further application, report, studies or assessment is necessary for the project (excluding the community facilities) and the project be approved pursuant to Section 75J of the *Environmental Planning and Assessment Act 1979*.

A handwritten signature in black ink, appearing to read 'Dan Croft'.

**Dan Croft**  
**Manager**  
**Building and Development Assessment**  
**Port Macquarie Hastings Council**



