

APPENDIX B CONSIDERATION OF ENVIRONMENTAL PLANNING INSTRUMENTS

State Environmental Planning Policy 71 – Coastal Protection

Provision	Comment	Complies
Part 2 – Matters for Consideration		
(a) the aims of this Policy set out in clause 2,	Having regard for the matters of consideration below, the proposal is considered to be consistent with the aims of the policy. Environmentally sensitive areas have been largely conserved and mechanisms put in place to ensure the ongoing management of such areas. Access to the foreshore will be significantly improved and indigenous heritage issues have been appropriately investigated.	Y
(b) existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved.	The proposal will not adversely affect any existing access to and along any coastal foreshore, and will not affect any water based activities. With proposed conditions of approval access along the foreshores of the Hastings River will be significantly improved.	Y
(c) opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability,	Whilst the existing terrain prohibits fully compliant disabled access along the foreshore, the proposal will significantly improve current access arrangements for persons with a disability.	Y
(d) the suitability of development given its type, location and design and its relationship with the surrounding area,	The development is considered to be suitable given its consistency with the rural residential context in the area. Impacts on other land uses are considered to be manageable and not adverse.	Y
(e) any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore,	The proposal will not adversely affect the visual amenity of the surrounding coastal environment due to the location and distance from the foreshore and coast. The proposal will not result in any overshadowing of any nearby existing coastal foreshore.	Y
(f) the scenic qualities of the New South Wales coast, and means to protect and improve these qualities,	Significant environmental features and vegetation on the site is being preserved. Building envelopes are adequately setback from the Hastings River and future development of the allotments will not be out of character with other existing rural residential development in the locality.	Y

(g) measures to conserve animals (within the meaning of the <i>Threatened Species Conservation Act 1995</i>) and plants (within the meaning of that Act), and their habitats,	Significant habitat is being maintained and improved on the site. Proposed conditions of approval will ensure security of the habitat and its on-going maintenance in the long term.	Y
(h) measures to conserve fish (within the meaning of Part 7A of the <i>Fisheries Management Act 1994</i>) and marine vegetation (within the meaning of that Part), and their habitats	DPI have not raised any objection to the proposal with respect to the impact on fish. On-site effluent disposal is capable of being managed on the site without polluting sensitive receiving waters.	Y
(i) existing wildlife corridors and the impact of development on these corridors,	The proposal includes improved management of the Haydons Creek habitat corridor. Significant areas of vegetation have been appropriately conserved and mechanisms put in place for long term management.	Y
(j) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,	The proposal will be unlikely to be affected by any existing coastal processes or compromise any coastal management initiatives. Proposed conditions of approval have incorporated a requirement to factor in climate change and sea level rise with future dwelling construction.	Y
(k) measures to reduce the potential for conflict between land-based and water-based coastal activities,	The proposal is considered to provide adequate buffers to the Hastings River so as to limit impacts on water-based activities.	Y
(l) measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals,	The site has been comprehensively surveyed for items of indigenous heritage having regard for best practise guidelines. Whilst no significant items have been identified on site, precautionary conditions have been recommended to be included in the approval.	Y
(m) likely impacts of development on the water quality of coastal waterbodies,	Supporting investigations have determined that on-site effluent disposal and stormwater is capable of being managed on the site so as not to result in adverse pollution of coastal waterbodies.	Y
(n) the conservation and preservation of items of heritage, archaeological or historic significance,	The site does not contain any identifiable historical or heritage value.	Y
(o) only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities,	N/A	N/A

<p>(p) only in cases in which a development application in relation to proposed development is determined:</p> <p>(i) the cumulative impacts of the proposed development on the environment, and</p> <p>(ii) measures to ensure that water and energy usage by the proposed development is efficient.</p>	<p>The proposal is not considered likely to result in adverse cumulative impacts on the environment. Sensitive environmental features on the site have been appropriately conserved and measures put in place for long-term management.</p> <p>Future dwellings on the allotments will be required to achieve compliance with BASIX.</p>	Y
Part 4 – Development Control		
13 Flexible zone provisions – A provision of an environmental planning instrument that allows development within a zone to be consented to as if it were in a neighbouring zone, or a similar provision, has no effect.	Flexible zoning provisions not proposed to be used.	N/A
14 Public access – A consent authority must not consent to an application to carry out development on land to which this Policy applies if, in the opinion of the consent authority, the development will, or is likely to, result in the impeding or diminishing, to any extent, of the physical, land-based right of access of the public to or along the coastal foreshore.	Public access is considered to be improved with the requirement for the development to include 'open accessways' and improve public pedestrian access to and along the foreshore'.	Y
15 Effluent disposal – The consent authority must not consent to a development application to carry out development on land to which this Policy applies in which effluent is proposed to be disposed of by means of a non-reticulated system if the consent authority is satisfied the proposal will, or is likely to, have a negative effect on the water quality of the sea or any nearby beach, or an estuary, a coastal lake, a coastal creek or other similar body of water, or a rock platform.	The site is considered capable of supporting on-site effluent disposal systems without adversely impacting on water quality of the Hastings River and its tributaries (Section 5.4).	Y
16 Stormwater – The consent authority must not grant consent to a development application to carry out development on land to which this Policy applies if the consent authority is of the opinion that the development will, or is likely to, discharge untreated stormwater into the sea, a beach, or an estuary, a coastal lake, a coastal creek or	The proposal proposes to incorporate stormwater treatment. Detailed design will be required to be provided with application for Construction Certificate. Given the rural low density residential nature of the development, sufficient area exists on site to appropriately treat and manage stormwater.	Y

other similar body of water, or onto a rock platform.		
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SEPP 62 Assessment Table (NB: only relevant clauses to Oyster Aquaculture included)		
Requirement	Proposed	Complies
<p>Clause 3 Aims</p> <p>The aims and objectives of this Policy are:</p> <ul style="list-style-type: none"> (a) to encourage sustainable aquaculture, including sustainable oyster aquaculture, in the State, namely, aquaculture development which uses, conserves and enhances the community's resources so that the total quality of life now and in the future can be preserved and enhanced, and (b) to make aquaculture development permissible in certain zones under the Standard Instrument, as identified in the NSW Land Based Sustainable Aquaculture Strategy, and (c) to set out the minimum site location and operational requirements for permissible aquaculture development (the minimum performance criteria), and (d) to establish a graduated environmental assessment regime for aquaculture development based on the applicable level of environmental risk associated with site and operational factors (including risks related to climate change, in particular, rising sea levels), and (e) to apply the Policy to land-based aquaculture development and oyster aquaculture development in the State and to include facility for extension of the Policy to natural water-based aquaculture. 	<p>The proposal is not considered to compromise the aims of the policy. On-site effluent disposal and stormwater is capable of being managed on the site and conditions of approval have been recommended to ensure compliance with best practise standards. DPI have not raised an objection to the proposal with respect to impact on the Oyster Aquaculture industry.</p>	Y
<p>15B Consultation with Director-General of Primary Industries</p> <p>(1) Before determining a development application for any development, a consent authority:</p>	<p>The development is considered to involve minimal disturbance to the waterway in constructing the subdivision. Erosion and sediment controls will be required to be implemented during construction and it</p>	Y

<p>(a) must consider whether, because of its nature and location, the development may have an adverse effect on oyster aquaculture development or a priority oyster aquaculture area, and</p> <p>(b) if it suspects that the development may have that effect, must give notice of the application to the Director-General of the Department of Primary Industries.</p> <p>(2) In determining a development application for any development, a consent authority must consider any comments received from the Director-General of the Department of Primary Industries pursuant to subclause (1), including, in particular, such comments as identify:</p> <p>(a) any adverse effect that the development may have on, or ways in which the development may impede or be incompatible with, any oyster aquaculture development or priority oyster aquaculture area, and</p> <p>(b) any measures to avoid or minimise any such adverse effect, impediment or incompatibility.</p> <p>Note. Development may be incompatible with or impede oyster aquaculture if, for example, the development will limit access to oyster leases or have an impact on water quality and, consequently, on the health of oysters and of consumers of those oysters.</p> <p>(3) This clause does not require a consent authority to consider any comments received more than 21 days after notice was given as referred to in subclause (1) (b).</p> <p>15C Development consent may be refused if development adversely affects oyster aquaculture</p> <p>A consent authority may refuse to grant consent to development:</p> <p>(a) if it is satisfied that the development will have an adverse effect on, or impede or be incompatible with:</p> <p>(i) any oyster aquaculture</p>	<p>has been satisfactorily demonstrated that effluent and stormwater can be effectively treated on site.</p> <p>DPI provided comment on the application and have raised no objection to the development, subject to the imposition of conditions/standards, which have been incorporated into recommended condition schedule.</p> <p>Council has also considered the NSW Oyster Industry Sustainable Aquaculture Strategy and considered that the proposal will not compromise the oyster aquaculture industry in the Hastings River.</p>	
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<p>development that is being carried out (whether or not within a priority oyster aquaculture area), or</p> <p>(ii) any oyster aquaculture development that may in the future be carried out within a priority oyster aquaculture area, or</p> <p>(b) if it is not satisfied that appropriate measures will be taken to avoid or minimise any such adverse effect, impediment or incompatibility.</p> <p>15D NSW Oyster Industry Strategy to be considered</p> <p>In exercising their functions under this Part, a consent authority and the Director-General of the Department of Primary Industries must each take into consideration the NSW Oyster Industry Sustainable Aquaculture Strategy.</p>		
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State Environmental Planning Policy No. 55 – Remediation of Land

The site is not identified in Council's records as being contaminated or potentially contaminated. Investigations outlined in Section 5.12 have found that no adverse contamination exists on site. Precautionary conditions of approval have been recommended to manage removal of the existing underground fuel tank on site.

State Environmental Planning Policy No. 44 – Koala Habitat Protection

SEPP 44 applies to the proposal as the land area exceeds 1 hectare.

The Flora and Fauna Assessment submitted with the EA and PPR found that the site does not qualify as potential koala habitat as the extent of koala food species listed in Schedule 2 of the SEPP comprise less than 15% of the site's vegetative cover.

No further investigation is required under the provisions of the SEPP.

State Environmental Planning Policy (Rural Lands) 2008

The aims of this Policy are as follows:

- (a) to facilitate the orderly and economic use and development of rural lands for rural and related purposes,*
- (b) to identify the Rural Planning Principles and the Rural Subdivision Principles so as to assist in the proper management, development and protection of rural lands for the purpose of promoting the social, economic and environmental welfare of the State,*
- (c) to implement measures designed to reduce land use conflicts,*
- (d) to identify State significant agricultural land for the purpose of ensuring the ongoing viability of agriculture on that land, having regard to social, economic and environmental considerations,*
- (e) to amend provisions of other environmental planning instruments relating to concessional lots in rural subdivisions.*

The proposal is consistent with the aims of the SEPP. The development is considered to be consistent with the dominant land use in the locality and does not compromise agricultural resources (Section 5.5)

Clause 10 of the SEPP sets out the matters to be considered in determining development applications for rural subdivisions or rural dwellings as follows:

(1) This clause applies to land in a rural zone, a rural residential zone or an environment protection zone.

Applies. Land is zoned 1(r1) Rural Residential and 7(h) Environmental Protection- Habitat.

(2) A consent authority must take into account the matters specified in subclause (3) when considering whether to grant consent to development on land to which this clause applies for any of the following purposes:

(a) subdivision of land proposed to be used for the purposes of a dwelling,

(b) erection of a dwelling.

Applies. Proposal is for a subdivision where each lot will have a dwelling entitlement.

(3) The following matters are to be taken into account:

(a) the existing uses and approved uses of land in the vicinity of the development,

Existing and approved uses consist of rural and rural residential zoned properties generally utilized for hobby farming and lifestyle. Adequate buffers are provided to the Sancrox Quarry and S.117 mineral investigation area.

(b) whether or not the development is likely to have a significant impact on land uses that, in the opinion of the consent authority, are likely to be preferred and the predominant land uses in the vicinity of the development,

The proposed subdivision is consistent with the locality and is unlikely to have any impact on adjoining land uses.

(c) whether or not the development is likely to be incompatible with a use referred to in paragraph (a) or (b),

The development is not considered incompatible with the surrounding development.

(d) if the land is not situated within a rural residential zone, whether or not the development is likely to be incompatible with a use on land within an adjoining rural residential zone,

Not applicable. Land is zoned for rural residential subdivision. Land that is not within rural residential zone will not be incompatible with adjoining rural residential zoned land. Mechanisms have been recommended to ensure the long-term management of environmental lands.

(e) any measures proposed by the applicant to avoid or minimise any incompatibility referred to in paragraph (c) or (d).

No incompatibility identified.

The land does not contain a significant amount of State Significant farmland under Part 4 of the SEPP.

The proposal is considered consistent with the SEPP.

North Coast Regional Environmental Plan

In accordance with clause 2, the proposal is consistent with the aims of this REP. The proposal is consistent with Council's Rural Residential Strategy and is not considered to compromise the Mid North Coast Regional Strategy.

Clause 12 relates to the impact of development on agricultural activities as follows:

The council shall not consent to an application to carry out development on rural land unless it has first considered the likely impact of the proposed development on the use of adjoining or adjacent agricultural land and whether or not the development will cause a loss of prime crop or pasture land.

The subdivision proposal involves highly fragmented rural residential land. The land is not considered prime crop or pasture land (Refer to Section 5.5).

Clause 29A relates to development control in natural areas and water catchment as follows:

(1) The council must not grant consent for the clearing of natural vegetation in environmental protection, scenic protection or escarpment preservation zones unless it is satisfied that:

- (a) the wildlife habitat will not be significantly disturbed by the proposed development, and*
- (b) the scenery will not be adversely affected by the proposed development, and*
- (c) an erosion and sediment control plan will be implemented which will successfully contain on the site any erosion or sediment caused by the proposed development.*

Natural areas have been zoned 7(h) Environmental Protection - Habitat. Development has been focused outside this zone. Conditions of approval have been recommended to ensure the on-going conservation of environmental lands, which will ultimately lead to improved habitat.

In accordance with clause 66, adequate community and welfare services will be available to the land with the nearby townships of Wauchope and Port Macquarie.

The proposal is considered consistent with the aims and provisions of the REP.

Hastings Local Environmental Plan 2001

In accordance with clause 9, the subject site has multiple zonings of 1(r1) Rural Residential and 7(h) Environmental Protection - Habitat. The proposed subdivision is permissible with development consent.

The objectives of the zone are as follows:

Zone 7(h) Environmental Protection - Habitat

- (a) To maintain natural habitats for native plants and animals within the local ecological subsystem.*
- (b) To maintain a network of natural or semi-natural habitats and to re-establish missing sections of natural habitats.*
- (c) To protect the environmental qualities and values of natural habitats (including creek lines).*
- (d) To permit roads and services to cross habitat areas in a manner that has minimal adverse impacts on habitat values.*
- (e) To enable appropriate development where allowed with consent.*

Zone 1 (r1) Rural Residential

- (a) To enable the development of land within this zone for rural residential purposes.*
- (b) To enable appropriate development where allowed with consent.*

The proposal is consistent with the subdivision pattern in the area and is considered to be consistent with the objectives of the zones for the following reasons:

- Agricultural and mineral resources are not being compromised.
- The proposal is not considered to give rise to adverse amenity or land use conflict issues.
- The land is currently highly fragmented and the re-subdivision proposal represents a more practical and efficient use of the site.
- The development is considered to be consistent with the predominate rural residential use in the locality.
- With proposed conditions of approval the proposal is considered likely to improve the native natural habitats on the site.
- Impact on the 7(h) zone has been minimised. Construction of the development will be required to employ best practise standards so as to minimise impacts on the 7(h) zoned land.

In accordance with clause 13, satisfactory arrangements via the Voluntary Planning Agreement are in place to provide water supply to the proposal. The VPA also includes additional contributions for local road infrastructure upgrading and it has been demonstrated that effluent and stormwater can be appropriately treated within the site.

Clause 17 sets out the development standard for lot sizes in Zone 1 (r1), 1 (u), 2 (a1), 2 (a4), 2 (t1), 2 (t2) or 2 (v). The proposed site is predominantly zoned 1(r1). Therefore, this Clause applies to the proposal and the relevant provisions have been assessed as follows:

(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, and

(B) any relevant asset protection zone identified in a bushfire risk management plan under the [Rural Fires Act 1997](#), and

Rather than having minimum areas, the 1(r1) Rural Residential zone has performance based lot sizes. The area of each site is sufficient to cater for on-site disposal of effluent (noting the cluster system for Group 5 lots with a common disposal area is considered to be a better option compared to disposal of effluent on each individual lot which is considered possible but poses higher risk) as demonstrated in the Geotechnical Report prepared by Coffey Geotechnics dated November 2007. Allotments provide adequate bushfire asset protection zones and comply with the requirements of the Rural Fire Service.

It is considered that the proposal is consistent with the aims and objectives of the LEP.

Draft Port Macquarie-Hastings Local Environmental Plan 2010

The draft PMHC LEP 2010 commenced exhibition from 8 March 2010, after receipt of this application.

It is proposed to zone the site R5 Large Lot Residential and E2 Environmental Conservation with a minimum lot size of 8000m² in R5 and 40 hectares in E2.

The proposal, although not meeting the proposed lot sizes, is considered consistent with the proposed zone objectives for rural residential areas, particularly by providing residential housing in a rural setting while preserving and minimising impacts on environmentally sensitive lands. The proposal is compatible with the subdivision pattern in the area and is not considered to undermine the integrity of the draft LEP in this instance.
