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Department Generated Correspondence (Y)

## DEPARTMENT OF PLANNING

### *Major Projects Assessment*

#### **142 LOT COMMUNITY TITLE RESIDENTIAL SUBDIVISION** **SANCROX ROAD, SANCROX (06 0212)**

### **1. PURPOSE**

To determine an application by Le Clos Pty Ltd Australia (the Proponent) to carry out a 142 lot community title rural residential subdivision of land at Sancrox Road, Sancrox (Application No. 06\_0212) in the Port Macquarie-Hastings Local Government Area.

### **2. BACKGROUND**

The site is legally described as Lot 51 DP775871, Lots 1-13, 15-66, 68, 70-72, 74-80, 83-84, 86-88 DP791199 and Lots 90-95 DP805549 and comprises a rural residential estate known as Le Clos Verdun. It is located in Sancrox, which is 15 minutes drive west of Port Macquarie.

The site was developed in the 1980s as a community viticulture and residential enterprise and comprised 84 residential lots each of which had their own separate viticulture lot. The average residential lot was upwards of 1,520m<sup>2</sup> in area, with the viticulture lots generally between 1.3 – 1.8 hectares. The viticulture venture subsequently failed and the estate development was never fully realised. Remnants of this development include 4 dwellings, a rural tourist facility containing 6 units and various agricultural buildings. Existing infrastructure includes roads, water mains, two dams and electricity and telecommunication infrastructure.

Apart from the above the site is largely cleared and generally comprises agriculture pasture for grazing. Remaining vegetated areas are generally located along Haydons Creek, with smaller communities of open forest and rainforest dispersed across the site.

Surrounding land uses are predominately rural in nature and include small rural residential allotments, a plant nursery operation, while another viticulture farming estate lies just south east of the site.

### **3. PROPOSED DEVELOPMENT**

The Proponent is seeking approval for a 142 lot concept plan residential subdivision. The concept approval comprises:

- torrens title boundary adjustment between Lot 51 in DP 775871 and neighbouring parcels (Lots 22, 28, 52, 53, 56 and 86 in DP 791199 and Lot 92 DP 805549) and Lot 91 DP 805549;
- staged (13 stages) subdivision into 142 rural residential lots under community title;
- provision of access, landscaping and associated stormwater drainage infrastructure;
- provision of lot for future community facilities (community buildings, amenities block, recreation areas etc); and
- retention of existing dwellings and tourist facility.



Pursuant to Section 75P(1)(c) of the Act, the Proponent requests that the Minister determine that no further environmental assessment is required for the torrens title boundary adjustment, community title subdivision, or the associated roads, landscaping and stormwater drainage infrastructure. The applicant acknowledges that the community facilities will need to be the subject of a further application under Part 4 (or Part 5) of the *Environmental Planning and Assessment Act 1979*.

The proposal has an estimated capital investment value (CIV) of \$5.5 million and will create up to 19 construction jobs and 4 permanent and casual operational jobs.

#### **4. STATUTORY FRAMEWORK**

##### **Part 3A Declaration & Delegation to Council**

On 10 November 2006, the then Minister for Planning declared the project as one to which Part 3A of the *Environmental Planning and Assessment Act 1979* (the Act) applied being 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).

On 25 January 2007, the Director-General agreed to delegate his assessment functions to Port Macquarie-Hastings Council (Council). This delegation allowed Council to undertake exhibition and assessment of the project.

The attached Director-General's report was prepared by Council. The Department has reviewed the report and generally supports Council's recommendations, with the exception of the recommendation to impose conditions requiring removal of an existing tourist facility and provision of a walkway on public land. These matters are discussed later in this briefing note. The remaining recommended conditions of approval have been jointly prepared by Council and the Department.

##### **Statement of permissibility**

The site is zoned 1(r1) Rural Residential and 7(h) Environmental Protection – Habitat under the *Hastings Local Environmental Plan 2001* (HLEP). Subdivision within the 1(r1) zone objectives is permissible with consent. There is no minimum lot size requirement in this zone, subdivision is permissible if the area of each lot created, in the opinion of Council, is sufficient to accommodate on-site disposal of effluent and any relevant asset protection zone identified under the *Rural Fires Act 1997*.

Council has assessed the proposal against the objectives and aims of the relevant environmental planning instruments and is satisfied that subject to the implementation of the recommended conditions of approval and the Proponent's Statement of Commitments, it is generally consistent with the objectives and provisions of these instruments.

##### **Strategic Framework**

###### *NSW State Plan 2010*

The project will contribute towards achieving the State Plan priority to protect the State's native vegetation and biodiversity and meet state-wide targets for natural resource management. This would be achieved through protection of native flora and fauna within the existing pockets of woodland and riparian areas along Haydons Creek.



### *Mid North Coast Regional Strategy*

The project will support the key aims of the Mid North Coast Regional Strategy which seek to guide sustainable growth of the region for the period 2006–2031. The development will assist in satisfying housing demand in the region without compromising high value environments including riparian environments.

### *State Environmental Planning Policy (Rural Lands) 2008*

The project will support the aims of the SEPP which seeks to assist the proper management, development and protection of rural lands for the purpose of promoting the social, economic and environmental welfare of the state. The development is consistent with the dominant land use being rural residential and does not compromise agricultural resources. Adequate protection measures are provided for the environmental protection zone.

## **5. ASSESSMENT**

### **Public consultation**

The proposal was exhibited for a period of 31 days from 30 April 2008 to 30 May 2008. There were 6 public submissions received, which consisted of 1 objection and 5 submissions which did not object but raised concerns. There were 10 submissions received from public authorities including the Department of Primary Industries, Department of Environment and Conservation, Roads and Traffic Authority, Rural Fire Service, Northern Rivers Catchment Management Authority and the Department of Lands.

The Preferred Project Report and draft Voluntary Planning Agreement were exhibited from 7 May 2010 to 9 June 2010. There were 4 submissions received from public authorities including the Department and 1 submission was received from the general public.

### **Key Issues**

Key issues considered in Council's assessment include the following:

#### Removal/Demolition of existing rural tourist facility

The site contains a rural tourist facility which comprises 6 units in 3 buildings. The Proponent wishes to retain this facility and incorporate it within Lot 60. Council has recommended that a condition be imposed (condition E10) requiring it to be removed prior to the issue of a subdivision certificate. The Department does not support Council's recommendation and considers that the tourist facility can be incorporated within the subdivision. This is discussed in detail below.

The tourist facility was approved by Council in 1989 under the Hastings LEP 1987. The approval (89/0079) included a condition (condition 3) requiring the facility to be located on land having a minimum area of 4 hectares. This requirement was achieved by combining the area of the main accommodation lot and a separate viticulture lot located some distance away. In June 2010, Council refused a s.96 application which sought to delete condition 3, on the basis that it would have created a substantially different development to that which was approved.

Council's reasons for recommending removal of the tourist facility maybe summarised as follows:

- that the tourist facility does not satisfy the definition of a 'rural tourist facility' under the HLEP 2001, would be a prohibited development and is inconsistent with the zone objectives;
- that condition 3 of 89/0079 requires a minimum 4 hectare lot for the rural tourist facility, while the proposed lot is 8,738m<sup>2</sup>;



- that the tourist facility does not satisfy the 'farm stay accommodation' or 'eco-tourist facility' definitions under the proposed *Draft Port Macquarie Hastings Local Environmental Plan 2010*; and
- that the standard template represents a clear shift of the Department to ensure that rural tourist facilities are subsidiary to the primary use of the land. If retained, the tourist facilities would not be an ancillary use to the primary use of the land.

The Departments views on the tourist facility are as follows:

- the facility operates under a consent issued under the Hastings LEP 1997 and is not required to satisfy the definition of a 'rural tourist facility' in the HLEP 2001;
- there is no minimum lot size under the HLEP 2001 in the 1(r1) zone, there are however performance requirements which must be considered. The Department is satisfied the proposed lot size meets these requirements; and,
- if the facility is to be retained, it should operate in accordance with the approval upon which it relies and should therefore be associated with a 4 hectare land parcel.

It is the Departments recommendation that Council's proposed condition E10 be deleted and that a new condition, condition B1, be inserted which requires the lot which contains the tourist facility to be a minimum of 4 hectares in area. The condition does not require an amalgamation of adjoining lots to satisfy the minimum area and as such separate lots could be identified to make up the 4 hectare lot. This is consistent with the 89/0079 consent.

#### Riparian and Foreshore Access

A key principle of SEPP 71 is to protect and improve public access to the coastal foreshore. Council considered that public access to the Hastings River foreshore reserve and to Haydons Creek was inadequate given that ownership of the internal roads and pathways, which provide access to the foreshore would be under private ownership. The Department also identified public access to the Hastings River foreshore as a priority during the assessment of the original Environmental Assessment in 2008.

To ensure public access to the foreshore is legally available in perpetuity, Council has recommended a planning condition that requires that the internal roads and pathways be classified as 'open access ways' under the provisions of the *Community Land Development Act 1989*. Open access ways are private roads maintained by and vested in by the relevant community association where public access is unimpeded and where normal traffic regulations apply. The Department is satisfied that such a condition would ensure public access to the foreshore to accord with SEPP 71 objectives.

In order to improve ~~public~~ the existing access along the Hastings River foreshore, Council has recommended a condition requiring the establishment of a 2.1m delineated path along the Hastings River foreshore reserve (Crown Land) fronting the development. The Land and Property Management Authority have not given owners consent for any works on their lands and the Minister is therefore unable to determine a concept plan or project application which relates to them.

The Department recommends an alternative planning condition that requires an easement for public pedestrian access to be provided wholly within the site, unless owners consent or a licence permit is granted by the LPMA for works on their lands. Council is satisfied with this approach.

#### Provision of Infrastructure and Voluntary Planning Agreement

The land has the benefit of Section 94 and Section 64 (water) contribution credits from the earlier approval for the viticulture subdivision. Council has not undertaken contribution planning in the Sancrox area to apportion costs of necessary road and water infrastructure to inform further development in the area.



To address the absence of suitable infrastructure, the proposal is accompanied by a Voluntary Planning Agreement (VPA) which proposes a scheme of limitations on the release of allotments and development of dwellings on allotments until such time as water infrastructure upgrading occurs in the Sancroix precinct. Monetary contributions for Section 94 contributions beyond 82 lots will be sought as per the Council's current S.94 Plan. Council is satisfied that the draft VPA will provide the necessary level of security for the provision of this infrastructure to service the development.

#### Flora and Fauna

The site's significant ecological features including riparian vegetation, endangered ecological communities (EECs), threatened species and mature hollow bearing trees.

A number of mechanisms have been imposed by Council to ensure the conservation and protection of these ecological features. These include a requirement to place a covenant over the lands zoned 7(h) Environmental Protection – Habitat to ensure their long term conservation and a requirement to prepare a Vegetation Management plan to ensure that the ecological offset areas are appropriately managed.

The imposition of the recommended planning conditions would ensure that the proposal would not have a significant adverse impact on threatened species, EECs or habitats, but rather, would ensure improved habitat and ecological resources in the long term.

#### On-site Effluent Disposal

The site is within 1km of a Priority Oyster Aquaculture Area and the then Department of Primary Industries (DPI) advised that it is imperative that the development not have a deleterious effect on the water quality of the estuary.

Council considers that the Proponent has undertaken an adequate assessment of the proposed effluent disposal and treatment systems such that the effluent is capable of being adequately managed to the satisfaction of DECCW and so not to have a detrimental impact on the sensitive receiving environment.

To ensure appropriate implementation of the proposed disposal and treatment systems, Council has recommended stringent conditions.

#### Contamination and Remediation

A contamination assessment was undertaken to determine the presence of any contaminants related to the former viticulture enterprise. It was determined that the vineyard area did not contain any organic pesticides or in-organics above the relevant residential land use criteria.

To ensure a contamination free site, Council recommended appropriate planning conditions requiring the removal and appropriate decommissioning of an existing fuel storage tank.

#### Further Environmental Assessment

Pursuant to Section 75P(1)(c) of the Act the Department considers that sufficient information has been submitted such that no further assessment or report is required for the torrens title boundary adjustments, staged subdivision into 142 lots under community title, and the provision of access, landscaping and associated stormwater drainage infrastructure. The Community Facilities would be the subject of separate applications under Part 4 (or Part 5) of the Act.

### **5. CONCLUSION**

Port Macquarie-Hastings Council, as delegate for the Director-General, has assessed the proposal and considered the submissions received. In conjunction with the Proponent's Statement of Commitments, Council considers that the key issues resulting from the assessment can be satisfactorily addressed such that there are minimal impacts resulting from the proposal,



and subject to a number of recommended planning conditions, recommends that the project be approved.

The proponent has reviewed a draft set of conditions and requested the removal of condition E10 which requires demolition of the tourist facility, but accepts all remaining conditions recommended by Council.

The Department supports Council's overall recommendation for approval, but does not support the demolition of the existing tourist facility and as such recommends that Condition E10 be deleted and instead a condition be imposed requiring the tourist facility to be located on a 4 hectare site. It is considered that the proposal provides the following public benefits:

- Increased rural residential development;
- Increased range of housing options available in the Local Government Area; and
- Increased protection of environmentally sensitive areas through the on-going structured management of environmentally zoned land.

## 6. RECOMMENDATION

It is recommended that the Deputy Director-General:

- **consider** the information provided in this briefing note;
- **consider** Council's Environmental Assessment Report and recommended conditions (TAG A);
- **approve** the application by signing the attached instruments (TAG B & TAG C).

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