



Contact: Sally Munk  
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Mr Darryl Anderson  
Director  
Darryl Anderson Consulting  
Suite 7 Corporate House  
8 Corporation Circuit  
TWEED HEADS SOUTH NSW 2486

Dear Darryl

**Subject:: Cobaki Estate Residential Community Development - Modification to Concept Plan (06\_0316 Mod 1) and Project Approval (08\_0200 Mod 1)**

I refer to your letter dated 4 December 2012 and associated correspondence in support of a modification application for the Cobaki Estate Concept Plan approval (06\_0316 Mod 1) and Central Open Space Project Approval (08\_0200 Mod 1).

The department has reviewed your application and consulted with relevant agencies and Tweed Shire Council on the proposed modifications. A copy of all the submissions received is enclosed with this letter. A number of issues have also been raised by the department.

You are requested to review and respond to all of the issues raised in submissions prior to the department making its determination on the modification application.

Please note that the department will respond to Leda's request to assess and approve the winning of fill from Precincts 1 and 2 under separate correspondence, following receipt of the information requested by our letter dated 8 January 2013 to Mr Reg van Rij of Leda Developments. Both aspects of the modification will be assessed and reported for determination within the same assessment report as discussed with and agreed to by Mr van Rij.

Should you have any questions regarding any of the above, please contact Sally Munk, Senior Environmental Planner, on the contact details above.

Yours sincerely,

15/1/13

Cameron Sargent  
A/Director  
Metropolitan and Regional Projects North

cc. Mr Reg van Rij, Leda Developments



**COMMENTS ON MODIFICATION TO COBAKI ESTATE CONCEPT PLAN (06 0316 MOD 1)  
AND CENTRAL OPEN SPACE PROJECT APPLICATION (08 0200 MOD 1)**

**Modification to Concept Plan Approval**

**Background to Proposed Modifications**

- It is proposed to amend the type of vegetation to be regenerated to the east of Precinct 4 from wet sclerophyll forest to Lowland Rainforest on Floodplain. The intention of the proposed wet sclerophyll forest vegetation was to provide a link/fauna corridor from Mount Woodgee to the SEPP14 wetland. It is stated that “it is likely that replacement of the wet sclerophyll forest with rainforest species would still provide the required link/fauna corridor.” The words – “it is likely that” indicate that this is only an assumption and has not been thoroughly investigated or assessed. Please clarify what analysis has been undertaken to confirm the intended function of the corridor will remain as a result of the change in vegetation type.

**Revised Ecological Assessment (November 2012)**

**Table 8 – Proposed EEC Offsets on the Subject Site**

- This table would benefit from an additional column that shows the offsite offset areas. This table will then provide a clear indication of the total offsets to be provided.
- The approved Ecological Assessment states that there will be a proposed onsite offset of 23.74ha of Swamp Sclerophyll forest on coastal floodplain. The Revised Ecological Assessment states only 7.30ha onsite offset. Please clarify where / how the remaining 16.44ha offset will be provided.

**Table 9 – Potential Loss of Threatened Fauna Habitat from the Proposed Development**

- The approved Ecological Assessment states that there is 2.33ha of Large Footed Myotis habitat on site of which 1.9ha will be removed. The Revised Ecological Assessment states that there is no habitat on site and as such, none to be removed. Please clarify why there is now no habitat on the site.

**Table 11 – Proposed EEC Offsets on the Subject Site**

- This table would benefit from an additional column that shows the off-site offset areas. This table will then provide a clear indication of the total offsets to be provided.
- The approved Ecological Assessment states that there will be a proposed onsite offset of 23.74ha of Swamp Sclerophyll forest on coastal floodplain. The Revised Ecological Assessment states only 7.30ha onsite offset. Please clarify where / how the remaining 16.44ha offset will be provided.

**Figure 9 – Development Concept Plan**

- The approved Concept Plan shows a breakdown of the development footprint, including the location of the Town Centre, schools and residential areas. The revised Development Concept Plan only shows the Development Footprint. Please amend the plan to show the various uses within the Concept Plan as per the approved plan.
- There are a number of changes to the areas shown as open space and environmental protection areas. Please explain the reasons for each of these changes, including the following:
  - Change from open space to development area between Precinct 1 and Precinct 2
  - Change from open space to environmental protection area on the eastern and western sides of Piggabeen Road
  - Change from open space to environmental protection area on the eastern side of Cobaki Parkway
  - Change from open space to environmental protection area between Precinct 10 and Precinct 11

- Change from open space to environmental protection area in the north of the central open space area (U-shaped)
- Change from open space to environmental protection area in the north of Precinct 9
- Change from environmental protection area to open space between Precinct 12 and Precinct 15 and also through the centre of Precinct 6.
- The above changes affect the approved Open Space Network Plan and other approved plans. These should be submitted to the department for approval.

**Figure 26 – Endangered Ecological Communities & Figure 33A – Ecological Buffers**

- In Figure 26 the extent of Freshwater Wetland (Degraded) is shown through the central open space area and saltmarsh areas in green, however, in Figure 33A, the extent of Freshwater Wetland (Degraded) is shown as a green grid. This is not shown on the plan. Please review the legend/mapping of this plan.
- Figure 33A does not show Lowland Rainforest to the east of Precinct 4 or the proposed U-shaped Swamp Sclerophyll offset in the north of the central open space area. Please amend this plan to be consistent with the proposed modified offset areas.

**Figure 28 – Endangered Ecological Communities Offset Areas**

- It is proposed to locate 2ha of Freshwater wetland EEC offset on the eastern side of Cobaki Parkway, adjacent to the saltmarsh rehabilitation area. This area was previously identified as Swamp Sheoak Floodplain Forest / Saltmarsh in the approved Ecological Assessment (refer Figure 28) and included within the saltmarsh rehabilitation area. It is not clear how this wetland will function as a freshwater wetland considering its location and in an area potentially subject to tidal inundation. It is shown as being within the saltmarsh rehabilitation area on Figure 28. Further details to justify the proposed location of this offset are therefore required.

**Revised Assessment of Significance (November 2012)**

**Table 2 – Proposed EEC Offsets in Accordance with Relevant Management Plans**

- This table would benefit from an additional column that shows the offsite offset areas as well.
- The approved Assessment of Significance states that there will be 15.29ha of proposed onsite offsets for the Swamp Sclerophyll forest on coastal floodplain. The Revised Assessment of Significance states only 7.3ha of onsite offsets will be provided. Please clarify where / how the additional 7.99ha of offsets will be provided.
- The approved Assessment of Significance states that there will be 5.45ha of proposed onsite offsets for Lowland Rainforest. The Revised Assessment of Significance states only 3.71ha of onsite offsets will be provided. Please clarify why the area of onsite offsets has been reduced.

**Table 4 – Potential Loss of Threatened Fauna Habitat**

- The approved Assessment of Significance states that the existing area of habitat for many of the listed species is slightly greater than that stated in the Revised Assessment of Significance. Please clarify why these areas have changed.
- The approved Assessment of Significance states that there will be a loss of 43.7ha of Wallum froglet habitat and 6.82ha of Wallum sedge frog habitat. The Revised Assessment of Significance states that there will be a loss of 66.47ha and 24.12ha respectively for these species. Please clarify why there has been such a significant increase in the loss of habitat. It is understood that it is simply the offsetting arrangements that have changed, not the impacted areas on site.

**Revised Site Revegetation and Regeneration Plan (November 2012)**

- Refer comments on Figure 28 above.
- The extent of the saltmarsh rehabilitation area mapped in Figure 5 is inconsistent with mapping in Figure 28 of the Revised Ecological Assessment (November 2012). Figure 28 therefore needs revision.

## **Revised Saltmarsh Rehabilitation Plan (November 2012)**

### Figure 5 – Development Concept Plan

- Refer to comments above for Figure 9 – Development Concept Plan in the Revised Ecological Assessment (November 2012).
- The approved Saltmarsh Rehabilitation Plan states that 46.93ha of retained saltmarsh community will be regenerated. The Revised Saltmarsh Rehabilitation Plan states there will be 54.63ha of retained saltmarsh community regenerated. The mapping between both plans appears to be consistent. Why do the actual calculated areas differ by 7.7ha??

### **Condition C1 – Plan of Development**

- The department does not agree to remove the requirement for the APZs to be shown on the Plan of Development. It is important that the developer and prospective purchasers understand where these areas are for maintenance purposes.
- The department agrees to remove the requirement for noting the level of construction on bushfire affected lots, however, this should be replaced with a notation on affected lots that development is subject to the requirements of *Planning for Bushfire Protection 2006* and AS3959 Construction of Buildings in Bushfire Prone Areas.

### **Condition C4 – Management and Restoration Plans**

- The department agrees in principle to modify the condition to defer the finalisation of stage-specific management plans to the construction certificate stage. However, the condition will be modified to require the submission of draft stage-specific management plans at the DA stage and final plans to be submitted prior to the issue of the relevant construction certificate.

### **Condition C7 – Geotechnical Assessments**

- The department does not agree to modify the condition. It is critical to understand the geotechnical condition of the site at the DA stage to ensure subdivision (lot sizes, orientation and shape) and road design reflect the geotechnical constraints. The department agrees with Council that the condition be modified to require submission of a Preliminary Geotechnical Assessment at the DA stage with a final report submitted prior to the issue of the relevant construction certificate.

### **Condition C8 – Bushfire Assessment**

The department does not agree to modify the condition. Advice from the RFS supports this position.

### **Statement of Commitments**

- The modifications to Commitment No.4.7 and No.4.8 are agreed in principle.
- The modification to Commitment No. 8.1.1 is not agreed for the reasons stated above for Condition C7.

## **Amended Cobaki Estate Development Code**

### Section 5.4

- Proposed modifications to Section 5.4 of the Code are supported with the exception of Section 5.4, Control 10. The department does not support the addition of the words “or public footway” as it is not acceptable for the secondary frontage for terrace lots to be a footpath. The secondary frontage to a lane is necessary to provide rear vehicular access so as to minimise impact on the primary frontage.

### Section 5.6

- The department does not support the deletion of Section 5.6 Control 1(a) – location and width of Asset Protection Zones. It is important that the developer and prospective purchasers understand the constraints of the site and where these areas are for maintenance purposes.
- The department supports the deletion of the word “fill” in Section 5.6, Control 1(d).

- The department does not support the change of wording from “dwellings per lot” to “bedrooms per dwelling”. The department supports changing the wording to require “dwellings per lot and bedrooms per dwelling” as both of these figures are relevant for the calculation of s94 contributions.

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### **Modification to Project Approval**

#### **Schedule 1 – Part A – Table & Condition 1 – Project Description**

- The department does not support the deletion of the words “(Lot 801 and 803)” from the schedule and condition as these lots should still function as fauna corridors, despite now being nominated as open space, rather than environmental protection areas. However, the reference to “(Lot 808)” should also be inserted after the words “freshwater wetland” in both the table and the condition to clarify the location of the 2ha freshwater wetland offset in lot 808.

#### **Revised Saltmarsh Rehabilitation Plan (November 2012)**

- Refer to comments above.

#### **Revised Site Revegetation and Regeneration Plan (November 2012)**

- Refer to comments above.

#### **Revised Assessment of Significance – Cobaki Parkway “Missing Link” & Realignment of Sandy lane (southern portion)**

#### **Figure 6 – Development Concept Plan**

- Refer to comments above for Figure 5 of the Revised Saltmarsh Rehabilitation Plan.

#### **Condition 8 – Certification**

- The department has no objection to the proposed modification to Condition 8 to allow an Accredited Certifier to issue a subdivision certificate. However, this matter will be further discussed with Council. Refer to Council’s comments for further advice.

#### **Condition 38 – Biodiversity Offsets**

- The department does not object to the proposed modification to Condition 38(1).
- The department does not object to the proposed wording of Condition 38A(2), but does not support the deletion of Condition 38(2) requiring information regarding Wallum Froglet compensation as the application still proposes to provide a total of 9.3ha of Wallum Froglet habitat offsets on site (2ha of Freshwater wetland plus 7.3ha of Swamp sclerophyll forest). The department therefore objects to the deletion of Condition 38(2), with the exception of the wording – “as per section 4.3 of the Revised Freshwater Wetland Rehabilitation Plan prepared by James Warren and Associates, dated October 2010”.
- Modified Condition 38A would therefore read as follows:

#### **Condition 38A. Biodiversity Offsets**

- 1) No works shall be undertaken within the central open space area that may impact upon (or contribute to an impact upon) the freshwater wetlands and associated Wallum Froglet habitat area until an appropriate agreement is entered into between the Proponent and ~~DECCW~~ OEH that offsets (either on site and/or off site) the project’s impacts on biodiversity. This agreement shall include provision for alternative offsets to be delivered should monitoring indicate that an appropriate wetland environment is not achieved after an appropriate time. Evidence of such an agreement shall be forwarded

to the Director- General no later than 5 working days prior to works commencing in those areas.

- 2) Notwithstanding the above, the proponent shall prepare a Freshwater Wetland Compensatory Habitat Management Plan to address the rehabilitation of approximately 2 hectares of freshwater wetland on the eastern side of Cobaki Parkway. The Compensatory Habitat Management Plan shall be submitted for approval by the General Manager of Tweed Shire Council or his delegate prior to any works being commenced that may cause or contribute to the relevant impact.
- 3) The proponent shall also prepare a detailed Wallum Froglet Compensatory Habitat Plan ~~as per section 4.3 of the Revised Freshwater Wetland Rehabilitation Plan prepared by James Warren and Associates, dated October 2010. In addition to these requirements,~~ The Wallum Froglet Compensatory Habitat Plan must include the following information on the core breeding habitat areas:
  - i.) Detail on how Wallum Froglet core breeding habitat will be constructed and maintained;
  - ii.) Detail on the design of fauna crossings where the fauna corridor is bisected by a road to ensure Wallum Froglet movement between core breeding habitat ponds is available;
  - iii.) Measures to prevent the introduction of Chytrid fungus to the wetland, and control measures should Chytrid fungus be present;
  - iv.) Measures for the prevention and control of pest species/competitor invasion; and
  - v.) Maintenance of suitable water quality, vegetation and other habitat features
  - vi.) How threats to the survival of Wallum Froglet will be managed;
  - vii.) Monitoring and reporting requirements including monitoring of Wallum Froglet usage of the core breeding habitat area, usage of fauna corridors, Wallum Froglet population size and breeding success, water quality, habitat suitability and presence of exotic species (particularly Cane Toads and Gambusia);
  - viii.) A mechanism for on-going funding of this Wallum Froglet Habitat areas to ensure the long-term viability of the population; and
  - ix.) A contingency planning option in the case of system failure.

**Condition 65 – Saltmarsh Rehabilitation Works & Condition 68 – Site Regeneration and Revegetation**

- The department has no objection to the proposed modifications to Conditions 65 and 68.

**Statement of Commitments**

- The department does not object to the deletion of the reference to the Revised Freshwater Wetland Rehabilitation Plan (James Warren & Associates October 2010) in Statement of Commitment No.4. However, this commitment should instead refer to the Freshwater Wetland Compensatory Habitat Management Plan required by modified new Condition 38A(2). The revised wording of this commitment should therefore be as follows:

	Project Component	Environmental Outcome (Commitment)	Measure (Commitment)	Timing for Completion
4.	Freshwater wetlands	Freshwater wetlands are maintained	<u>Freshwater Wetlands on site are to be maintained in accordance with the Freshwater Wetland Compensatory Habitat Management Plan.</u>	<u>Rehabilitation works for both on-site and off-site offsets will commence prior to registration of a plan of subdivision for residential development of adjacent land,</u>



## Planning & Infrastructure

			<p><u>Wetlands to be maintained offsite as part of the Freshwater wetland offsite offsets are to be maintained in accordance with the terms of the Planning Agreement between the Proponent and OEH as required by Statement of Commitment 4.7 of the Cobaki Concept Approval No. 06 0316.</u></p>	<p>and be completed in accordance with the <u>terms of the Planning Agreement between the Proponent and OEH as required by Statement of Commitment 4.7 of the Cobaki Concept Approval No. 06 0316</u> until the land is dedicated to Tweed Shire Council.</p>
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Prepared by Sally Munk  
Senior Environmental Planner  
Metropolitan and Regional Projects North  
11 January 2013





Office of  
Environment  
& Heritage



Our reference: DOC12/50740; FIL07/11488-02  
Contact: Adrian Deville: (02) 6640 2509

Sally Munk  
Senior Environmental Planner  
Metropolitan and Regional Projects North  
NSW Planning and Infrastructure  
GPO Box 39  
Sydney NSW 2001



Dear Ms Munk

**RE: Modification Request for Cobaki Residential Development Concept Plan (06\_0316) and Central Open Space Project Application (08\_0200 Mod1)**

I refer to your letter dated 30 November 2012 inviting a submission from the Office of Environment and Heritage (OEH) in relation to the above proposal. The documentation to support the modification request was received by OEH on 5 December 2012.

OEH has reviewed the information provided and has determined that it is able to support the modification request subject to the matters outlined below.

**Project Approval No. 08\_200**

**Condition 38 – Biodiversity Offsets**

The proposed modification involves a significant reduction in the extent of freshwater wetland to be rehabilitated onsite. It is noted that this proposal is to comply with a requirement of Tweed Shire Council that the drainage path within the central open space area is to be maintained by Council for drainage purposes only and is not to be used for any environmental offsets.

The previously submitted "Revised Freshwater Wetland Rehabilitation Plan (October 2010)" indicated an intention to create approximately 24.27 hectares of freshwater wetland onsite. The current modification request proposes to reduce the rehabilitation to an area of two (2) hectares on the eastern side of the Cobaki Parkway.

As your Department is aware, the applicant has been liaising with OEH in relation to a planning agreement to satisfy condition 38 of the Project Approval (08\_200) issued on 28 February 2011. The condition required the provision of an alternative offset to compensate for the loss of freshwater wetland and Wallum Froglet habitat onsite. To date the proponent has been investigating the acquisition of off-site land containing freshwater wetland, although a suitable property has not yet been identified. The proponent has recently approached OEH to identify other options for the planning agreement and discussions regarding this issue are continuing.

It would appear from the modification proposal that the applicant is seeking to address the reduction in rehabilitation of freshwater wetland onsite through the same planning agreement

as referred to above. Given that no other areas onsite are likely to be available or suitable for creation of freshwater wetland, OEH has no objection to this approach although agreement will need to be reached on the additional compensation required.

OEH also notes and accepts the amended statement of commitment 4.7.2 to provide additional offsite offsets for the loss of Wallum Froglet habitat that was to be created onsite, in conjunction with the planning agreement to be entered into with OEH.

### **Concept Approval No. 06 316**

#### **Amendment to Site Revegetation and Regeneration Plan**

Section 4.1 of the modification application indicates that, due to bushfire hazard planning, it is proposed to amend the type of vegetation to be regenerated to the east of Precinct 4 from wet sclerophyll forest to Lowland Rainforest on Floodplain. While OEH accepts that this may provide a valid rationale for this amendment, a number of other issues need clarification.

The replacement of wet sclerophyll forest (above) with Lowland Rainforest on Floodplain accounts for the observed increase of proposed regenerated/revegetated Lowland Rainforest between regeneration plans dated October 2010 and November 2012. However, it is unclear as to why during this revision process, 15.73 Ha of proposed regenerated Swamp Sclerophyll Forest has appears to have been reduced to 7.30 Ha, a reduction of about 8 Ha. OEH requests that the applicant be requested to clarify this and, if appropriate, justify the amendment.

The proposal to now remove/reduce previously proposed offset habitat areas (Swamp Sclerophyll Forest and Freshwater Wetland) for Wallum Froglets from within the central open space area and to replace these with offset areas elsewhere (as discussed above and below) should take into some account the potential for connectivity impacts for this species across the site as a whole. The revised assessment of significance and other documents provided do not adequately address this issue. OEH recommends that the applicant be requested to provide additional information in relation to the significance of this impact.

Regarding details of the Swamp Sclerophyll Forest EEC offset areas, OEH notes that there are at least two very narrow fingers (<20m) of such forest that would be likely to be subject to significant edge effects (Figure 4, Revegetation and Regeneration Plan, and Figure 28 Ecological Assessment Report). In relation to the more northern U-shaped patch in particular, it is unclear how or why this patch is expected to function in isolation from other proposed regeneration areas that make up part of the "Environmental Protection Area" within the open space precinct (Figure 3). It is unclear what rational underpins this spatial arrangement, or what additional measures might be required to ensure that such areas will be able to be regenerated and maintained in perpetuity in this context. OEH recommends that the applicant be requested to provide additional information in relation to these issues.

Figures 33A and 35 (Revegetation and Regeneration Plan) indicate in hatching the "Proposed Development Area". This mapped area seems to be inconsistent with various other maps that illustrate the location of protected or to be rehabilitated areas, for example, the proposed U-shaped Swamp Sclerophyll offset and Lowland Rainforest patches (Figure 28, EEC Offset Areas, Ecological Assessment Report). OEH recommends that such inconsistencies be revised.

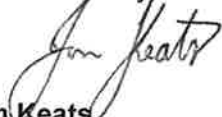
**Condition A3 – Project in Accordance With Documents - Deletion of Revised Freshwater Wetland Plan**

OEH has no objection to the deletion of reference to this plan given that it can no longer be wholly implemented onsite.

It is noted that the applicant has committed to preparing a "Freshwater Wetland Compensatory Habitat Management Plan" to address the two hectares of freshwater wetland that is currently the subject of a development application to Tweed Shire Council.

Should there be any other matters, or should DP&I be in possession of any further information of interest to the OEH associated with the proposed development, please contact Adrian Deville on (02) 6640 2509.

Yours sincerely



**Jon Keats**

**Manager, Biodiversity Management Unit North East  
Regional Operations Group  
Office of Environment and Heritage  
NSW Department of Premier and Cabinet**



All communications to be addressed to:

Headquarters  
15 Carter Street  
Lidcombe NSW 2141

Headquarters  
Locked Bag 17  
Granville NSW 2142



Telephone: 1300 NSW RFS  
e-mail: csc@rfs.nsw.gov.au

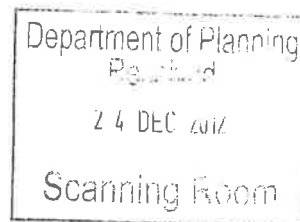


PCU040375

The Director  
Department of Planning & Infrastructure  
Metropolitan and Regional Projects North  
GPO Box 39  
SYDNEY NSW 2001

Your Ref: 06\_0316 &  
08\_0200  
Our Ref: S12/0027  
DA12120785806  
ID:85806/79429/5

Attention: Sally Munk



18 December 2012

Dear Madam

### **Cobaki Lakes Residential Development – Modification**

I refer to your letter dated 6 December 2012 inviting a submission on the proposed modification to the above development and advise that the NSW Rural Fire Service (RFS) has no objection.

In addition to our previous responses it is advised that large areas of site will be considered bush fire prone land. As such the final design of the proposed lot layout and any future development of those lots will be required to comply with the requirements of *Planning for Bush Fire Protection 2006 (PBP)*.

Developments that are considered to be special fire protection purpose developments under the *Rural Fire Act 1997* and *Rural Fires Regulations 2008* include schools, child care facilities, housing for seniors, tourist accommodation, and these types of development require a greater asset protection zone (APZ) than residential developments. Such developments may not be able to achieve the minimum APZ setbacks for those sites located on the bush fire interface.

Further to the above, secondary dwellings such as granny flats and dual occupancies are also required to meet the minimum APZ requirements that ensures they are not exposed to a radiant heat of greater than  $29\text{kW/m}^2$  in accordance with *PBP* and *Fast Fact 4/12 Increased Density on a Single Parcel of Land*. Some sites backing onto unmanaged vegetation or environmental conservation areas may not be suitable for the increase in density from erecting a secondary dwelling.

For any queries regarding this correspondence please contact Garth Bladwell.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M Streater', written in a cursive style.

**Michelle Streater**  
**A / Team Leader**  
**Development Assessment & Planning**

*For information on Planning for Bush Fire Protection 2006 visit the RFS web page [www.rfs.nsw.gov.au](http://www.rfs.nsw.gov.au)*



Ms Sally Munk  
Senior Environmental Planner  
Metropolitan and Regional Projects North  
Dept of Planning & Infrastructure  
GPO Box 39  
SYDNEY NSW 2001

Dear Ms Munk,

**Re: Modification request MP06\_0316 Mod 1 Cobaki Residential Development  
Concept Plan and Central Open Space Project Application MP08\_200 Mod 1**

Thank you for your letter of 6 December 2012 requesting Fisheries NSW, a Division within the Department of Primary Industries, provide comment on modification requests for approvals associated with the above mentioned Cobaki development.

A key interest of Fisheries NSW is the restoration of saltmarsh, a key fish habitat, at the site. The Department is generally satisfied with the content and strategy outlined in the *Revised Saltmarsh Rehabilitation Plan November 2012 (RSRP)*. Inclusion of the action to fill in the majority of existing agricultural drains as proposed in Fisheries NSW correspondence dated 1 September 2010 is acknowledged. In particular the Department supports lowering to 0.3m AHD the existing dredged bund of Cobaki Creek and filling to 0.0m AHD of drains as depicted in Figures 12A and 12B and outlined in section 6.2.2 *Tidal Exchange* of the RSRP.

To track the recovery of saltmarsh plant communities following these manipulations Fisheries NSW recommend that at least one of the 100m monitoring saltmarsh transects depicted in Figure 15 *Monitoring Transects* of the RSRP be positioned further south. The subject transect, or preferably an additional 100m transection, should commence immediately adjacent to Cobaki Creek directly north of the dredged bund levee to be lowered to a height of 0.3m AHD. Data collected by monitoring one or more transects commencing from Cobaki Creek and extending north would inform adaptive management strategies.

Consequently, as part of Section 7.4 *Adaptive Management* in the RSRP, Fisheries NSW recommends an additional option be considered. The additional option proposed is:

- Lowering the dredged bund levee adjacent to Cobaki Creek below 0.3m AHD.

This additional adaptive management strategy would ensure a range of options are available to achieve the successful rehabilitation of Saltmarsh communities on the subject site.

Finally, Fisheries NSW appreciate the intent of the proposed fencing depicted in Figure 14 of the RSRP. However, realignment of the fence line along the eastern boundary and following the drain and tree line would provide for improved protection of the saltmarsh revegetation area, while reducing impacts on aquatic habitats.

Should you require further information please contact Fisheries Conservation Manager, Patrick Dwyer on (02) 6626 1397.

Yours sincerely



Marcus Riches  
Senior Fisheries Conservation Manager (North Region)

9 January 2013



**DRAFT**

14 January 2013

NSW Department of Planning & Infrastructure  
Metropolitan & Regional Projects North  
GPO Box 39  
**SYDNEY NSW 2000**

**Attn: Sally Munk**

Dear Sally

**Comments on the proposed modification of the Cobaki  
Residential Development Concept Plan (MP06\_0316 Mod 1)  
and Central Open Space Project Approval (MP08\_0200 Mod 1)**

## **1. Concept Approval 06\_0316**

### **Condition A3 – Project in Accordance With Documents**

No objection to the proposed referencing of amended ecological assessment and management plans (November 2012), as well as reference to the Modification Report November 2012, with exception the comments below:

- Deletion of the Revised Freshwater Wetland Rehabilitation Plan

The deletion of the Revised Freshwater Wetland Rehabilitation Plan (JWA October 2010) is proposed due to changes in the intended use of the Central Open Space area. The October 2010 Freshwater Wetland Rehabilitation Plan specified the provision of 24.27ha of offset area for Freshwater Wetland across the site. The proposed modification seeks to provide the majority of this offset offsite, with the exception of a 2.25ha area located to the east of Cobaki Parkway.

Council considers this modification appropriate and necessary in order to address the resulting inconsistency between plans, **provided that** there remains a commitment to manage the 2.25ha compensatory habitat area in accord with the new Freshwater Wetland Compensatory Habitat Management Plan (FWCHMP) and Wallum Froglet Compensatory Habitat Management Plan (WFCHMP) currently being prepared by the proponent (SMEC 2012) as discussed below.

- Revised Ecological Assessment (JWA 2012)

The Revised Ecological Assessment commits to the provision of offsets for the removal of areas of Endangered Ecological Community (EEC) associated with the proposed development. Whilst some of these offsets are achievable onsite, some of the required offsets will not be achievable in conjunction with the proposed development layout.

This revision proposes locating the balance of committed Freshwater Wetland and Swamp Sclerophyll Forest EEC offsets offsite rather than onsite.

Council has provided extensive comment and feedback regarding this issue in relation to the preparation of the Site Regeneration and Revegetation Plan (SRRP)

for the Central Open Space and Precincts 1, 2 & 6 (SMEC 2012), with EEC offsetting information changing between revisions and now differing considerably from that approved in the Concept Plan although these plans now appear to be consistent with regard to the location and area of proposed onsite offsets.

Given that the likely requirement for offsite offsets was identified during review of plans submitted with the Preferred Project Report in 2009, Council remains concerned that neither the required areas nor suitable locations of proposed offsite offsets have yet been specified nor is there evidence of the proposed Planning Agreement with the Office of Environment & Heritage (OEH) that demonstrates the proponent's commitment to offsite offsetting. Council considers that this issue must be resolved prior to approval.

The Revised Ecological Assessment proposes the offsetting of Coastal Saltmarsh and Swamp Oak Floodplain Forest EECs over the same area, in the southern portion of the subject site (Saltmarsh Rehabilitation area). **Council does not consider that this overlap of offsets is appropriate.**

Coastal Saltmarsh is a treeless community consisting of reed and grass species, whereas the Scientific Community Determination of Swamp Oak Floodplain Forest states that the community "...has a dense to sparse tree layer in which *Casuarina glauca* is the dominant species..." Whilst these two EECs typically occur adjacent to one another in the landscape and form small-scale mosaics within the intertidal zone, they are distinguished by their floristic composition and structure, fauna, hydrology, soil, position in the landscape and a range of other abiotic factors, the location of each being restricted by topography and incidence of inundation.

Council considers that the offsetting requirements for these two EECs should be treated separately and suitable offset locations identified and managed accordingly for each.

- Revised Saltmarsh Rehabilitation Plan (JWA 2012)

Similar to that noted above, the Revised Saltmarsh Rehabilitation Plan proposes the offsetting of Coastal Saltmarsh and Swamp Oak Floodplain Forest EECs over the same area, in the southern portion of the subject site (Saltmarsh area). **Council does not consider that this overlap of offsets is appropriate.**

Council considers that the offsetting requirements for these two EECs should be treated separately and suitable offset locations identified and managed accordingly for each.

### **Condition C1 – Plan of Development**

- Deletion of C1(1) and C1(2) – Bushfire Requirements

The proponent wishes to delete Asset Protection Zone (APZ) setbacks and Bushfire Attack Level (BAL) requirements from the Plan of Development for development applications, stating that such requirements are redundant due to the adoption of AS3959-2009 and the ability for a BPAD Accredited Certifier to determine APZ and BAL at the Complying Development Certificate stage.

APZ setbacks and BAL ratings will vary according to location, proximity to bushland, slope etc and a "one size fits all" approach is not acceptable across an entire development site without allocation of sufficient setback for APZs.

APZ's also need to be established for long-term practical management. Determination of setbacks is required at the DA stage to ensure compliance with *Planning for Bushfire Protection 2006*.

The proposed modified Condition C1A (1) and (2) are **not supported**.

- Deletion of C1(4) – Flooding Requirements

Condition C1(4) currently reads as:

- (4) **Fill and** finished floor level requirements on flood prone lots in accordance with the requirements of Tweed Shire Council's Development Control Plan – Section A3 – Flood Liable Land (or any replacement document).

To remove any requirement to provide fill levels at the Plan of Development assessment stage, the applicant wishes to delete the words "Fill and" from the beginning of the condition. The proposed amendment is **not supported**.

At the completion of the earthworks and civil works associated with the subdivision the applicant will lodge a Subdivision Certificate for determination. At this stage no building activity has taken place and therefore no finished floor levels exist. Prior to the issue of the Subdivision Certificate, Council has a statutory obligation to ensure that the proposed new allotments are above the 1 in 100 design flood level. To do this the Applicant is requested to submit Work as Executed details which show the finished fill levels. This is the only control mechanism/hold point available to Council or the Department of Planning & Infrastructure to ensure that the new allotments are above the design flood level before title is issued.

Future owners of the proposed allotments have an expectation that the land they purchase is above the 1 in 100 flood level and that the regulatory Authority has ensured that this is in fact the case. They do not expect to be required to raise their finished floor level by more than 225mm which is the standard Building Code of Australia thickness for a concrete slab.

If finished fill levels are required in the Plan of Development for each future application it provides certainty that the finished land form is above the 1 in 100 flood level and consequently flood immunity does not need to be achieved via control of finished floor levels.

#### **Condition C4 – Management & Restoration Plans**

The proponent seeks to modify Concept Plan Condition C4 such that Management Plans for future stages are delayed until Construction Certificate (CC) stage rather than the earlier Development Application stage.

The proponent thus seeks to delay preparation of management plans until "*approval is secured*." Given that flora and fauna management and restoration requirements could influence detailed subdivision design and that preparation of adequate management plans is integral to the assessment process, this is **not considered appropriate**.

For reasons of transparency, accountability, the ability of future management plans to be formally assessed on their merits for adequacy of management intentions and to allow for the imposition of any required conditions, Council considers that the retention of Condition C4 in its current form is appropriate.

Development matters such as Site Regeneration and Revegetation, Freshwater Wetland Rehabilitation, Fauna Management, Vegetation Management, Scribbly Gum Management, Stormwater Management, Cultural Heritage, Construction Environmental Management Plans, Buffer Management, Restoration Plans and Acid Sulfate Soils Management are complex matters associated with the approval of a development and should not be deferred to the CC stage.

For these reasons this amendment is **not supported**.

However, as an alternative, draft Management Plans and Restoration Plans could be required with the DA. This would allow some certainty at the DA stage in terms of the subdivision design. More detailed / final Plans could then be submitted at CC stage.

### **Condition C7 – Geotechnical Assessments**

The Applicant is requesting that Geotechnical Assessment be deferred from the Development Application stage to the CC approval.

As an alternative solution it is suggested that a Preliminary Geotechnical Assessment be provided at the Development Application stage for each future application. This Preliminary Geotechnical Assessment must contain adequate technical information that clearly identifies any geotechnical constraints to the creation of residential allotments and if required recommendations for the rehabilitation of these constraints.

A Detailed Geotechnical Assessment could then be provided at the CC stage.

It is recommended that condition C7 be modified to require a **Preliminary Geotechnical Assessment at the Development Application Stage and a Detailed Geotechnical Assessment at the Construction Certificate stage.**

### **Condition C8 - Bushfire Assessment**

Condition C8 requires a detailed bushfire assessment and management plan to be prepared and submitted with each DA for a subdivision. The plans must clearly delineate APZ's on the Plan of Development. Condition C8 also requires all affected lots to be encumbered with an 88B instrument to this effect.

The applicant is requesting to remove to APZ restriction from each affected lot, stating that it is unnecessary...*'since Certification that the dwelling is not located within the flame zone in accordance with AS3959-2009 is required in association with any Complying Development Certificate.'*

Identification of APZ's should be clearly identified on the Plan of Development and eventually linked to a maintenance regime. Failure to indicate this land usage is a misrepresentation of the situation that exists adjoining Lots that are for sale. For the same reason, failure to encumber Lots as required with a S88B Instrument misleads prospective purchasers regarding building constraints that will be enforced at the DA stage. It is also noted that the decision to encumber Lots with a S88B restrictions / constraints is Council's to make.

The proposed modified Condition C8A is **not supported**.

### Schedule 3 - Statement of Commitments

- Statement of Commitment 4.1 – Saltmarsh Rehabilitation Plan

No objection to the proposed reference to the revised Saltmarsh Rehabilitation Plan November 2012, with the exception of the offsetting of Coastal Saltmarsh and Swamp Oak Floodplain Forest EECs over the same area, as noted above.

- Statement of Commitment 4.3 – Revised Site Regeneration and Revegetation

No objection to the proposed reference to the amended Revised Site Regeneration and Revegetation Plan November 2012.

- Statement of Commitment 4.7 – Freshwater Wetlands

The proposed modification to Statement of Commitment 4.7 refers to the preparation of a Freshwater Wetland Compensatory Habitat Management Plan (FWCHMP) and for this plan to be approved by Council. This is considered appropriate and this process is currently nearing finalisation.

This commitment now refers only to a 2.25ha area of land east of the Cobaki Parkway for the purpose of providing the on-site portion of the required Freshwater Wetland and Wallum Froglet Habitat offsets.

Section 4.3 of the Revised Freshwater Wetland Rehabilitation Plan (JWA October 2010) requires the preparation of a detailed Wallum Froglet Compensatory Habitat Management Plan (WFCHMP). The proponent has prepared a WFCHMP in conjunction with the FWCHMP (both of which are currently being assessed by Council). The proposed Statement of Commitment would no longer make reference to the JWA management plan, which raises the concern that the WFCHMP would no longer be triggered as a requirement.

In order to ensure that the WFCHMP continues to be a requirement, Council considers that it would also be appropriate to **either** include the WFCHMP in the proposed modification of Statement of Commitment 4.7, **or** to insert an additional commitment to the preparation of a WFCHMP. Both of these plans pertain to the management of the 2.25ha area.

The modifications have resulted in a minor inconsistency between the Concept Plan modification and the abovementioned management plans in that the modification application refers to this area being 2ha however management plans refer to this area being 2.25ha.

It is also noted that the existing wording under the heading 'Timing for Completion' for Commitment 4.7 still makes reference to the Revised Freshwater Wetland Rehabilitation Plan (JWA October 2010), which is being proposed to be replaced with the FWCHMP.

- Statement of Commitment 4.8 – Offsets for Freshwater Wetlands and associated Wallum Froglet Habitat

No objection to the proposed reference to OEH and the inclusion of offsets that are "either on-site or offsite".

- Statement of Commitment 8.1.1 – Management of Soils and Geotechnical Conditions

Reference is made to Council's comments for Condition C7, whereby Council proposes an alternative solution. That is, a Preliminary Geotechnical Assessment be provided at the Development Application stage for each future application and a Detailed Geotechnical Assessment be provided at the CC stage.

It is recommended that Statement of Commitment 8.1.1 reflect such an alternative solution.

## **Amended Cobaki Estate Development Code**

- Section 1.0 - Introduction

No objection is raised to the proposed correction of the typographical error.

- Part A, Section 2.2 – Complying Development

No objection is raised to the requirement to provide a rainwater tank in Control 5.

- Table 5.4.1

The applicant has attempted to define the term 'frontage' with the term 'effective lot width'. No objection is raised to the applicant's proposal.

- Section 5.4, Control 8

No objection to the proposed amendment to Control 8 regarding the term 'frontage'.

- Section 5.4, Control 10

No objection to the proposed amendment to Control 10 regarding the addition of the words 'or public footway'.

- Section 5.6, Control 1(a)

The applicant is requesting deletion of the requirement to include the location and width of Asset Protection Zones. As noted under Condition C1(1) and (2), the proposed deletion is **not supported**.

- Section 5.6, Control 1(d)

As noted under Condition C1(4), the proposed deletion of the word 'fill' is **not supported**.

- Section 5.6, Control 1(e)

The identification of easements and the submission of Section 88B Instruments typically occurs at the Subdivision Certificate stage. The preparation of these documents prior to the lodgement of the Subdivision Certificate would be advantageous however it is not necessary for it to be included in the Plan of Development. Council raises no objection to the proposed amendment.

- Section 5.6, Control 1(j)

The applicant proposes to change the wording from '*dwelling*s per lot' to '*bedrooms* per dwelling'. Without further explanation / justification from the proponent, the proposed modification is **not supported**.

Alternatively, the Plans of Development could provide both the maximum number of dwellings **and** the maximum number of bedrooms per dwelling.

## 2. Project Approval 08\_0200MOD1 (Central Open Space)

### Schedule 1 – Part A – Table

No objection to the proposed amendment to Table A to delete reference to Lots 801 and 803.

#### Condition 1 – Project Description

No objection to the proposed amendment to Table A to delete reference to Lots 801 and 803.

#### Condition 2 – Project in Accordance with Plans

This revision proposes removal of the Revised Freshwater Wetland Rehabilitation Plan (JWA October 2010). This is considered appropriate given that it referred to the provision of Freshwater Wetland within the Central Open Space area, which is no longer achievable.

It should be noted that the revised condition lists the Fauna Management Plan (JWA October 2009) as one of these plans, however this plan has not been updated to be consistent with the other revised plans submitted with the modification application.

#### Condition 4 – Project in Accordance with Documents

No objection to the proposed reference to the Revised Assessment of Significance November 2012 or the reference to the Modification Report November 2012.

#### Condition 8 (b) - Certification

The applicant is requesting an amendment to Condition 8(b) to allow for an Accredited Certifier to issue a Subdivision Certificate for the proposed subdivision. This request is **not supported**.

When the Department of Planning amended the EP&A Act in 1998 it gave general powers to accredited certifiers to issue certificates under Part 4A of the EP&A Act. These certificates included;

- Construction Certificates
- Occupation Certificates
- Complying Development Certificates
- Compliance Certificates

The only exception to these general powers related to the issue of Subdivision Certificates where it was acknowledged that the responsibility of accepting new public infrastructure

**should only rest** with the local authority unless the Council's LEP specifically granted accredited certifiers the power to issue Subdivision Certificates.

This exception which only allowed for the local authority to issue Subdivision Certificates was sensible and reasonable particularly given the significant financial implications associated with the acceptance of new public infrastructure to rate payers. To quantify the financial implications, it is estimated that in 2012/13 Tweed Shire will accept approximately \$60 million worth of new public infrastructure.

This exception was subsequently changed by legislation such as *Clause 11 of the State Environmental Planning Policy (Major Development) 2005* which confers general powers to private certifiers for the issuing of Subdivision Certificates.

Local Authorities use the determination of a Subdivision Certificate as a mechanism for auditing and assessing the quality of the public infrastructure proposed for dedication and also ensuring compliance with all conditions of consent before the Developer transfers the responsibility for maintenance of the infrastructure to the Council. It is the last opportunity that Council has to ensure that the infrastructure meets minimum standards thus preventing the infrastructure from becoming a long term maintenance and financial liability.

Tweed Shire Council maintains a Third Party Certification quality control system which runs in conjunction with a mandatory inspection regime between Council officers and private consulting engineers. Despite this rigorous quality control system, it has been Council's experience over 20 years that Council Officers are regularly forced to reject the newly constructed infrastructure because it does not meet minimum standards. Council officers are then required to issue notices to rectify the infrastructure, reinspect and finally accept the works. A similar problem exists with ensuring compliance with other non engineering conditions of consent.

Council as the recipient of this infrastructure should have a role in the final acceptance of this expensive public infrastructure. If an Accredited Certifier has the power to accept this public infrastructure without any input from Council then it is highly likely that Council will be exposed to an unacceptable financial risk due to the acceptance by the Certifier of poorly constructed infrastructure, incorrect payment of S94 and S64, incorrect payment of fees and charges and non compliance with conditions of consent.

It is therefore strongly recommended that Condition 8(b) **not be amended** as requested by the applicant.

### **Condition 38 - Biodiversity Offsets**

The proposed amendment to Condition 38 seeks to remove the requirement to prepare a Wallum Froglet Compensatory Habitat Management Plan (WFCHMP). That is, the proponent proposes to replace the trigger for a WFCHMP with the requirement for a Freshwater Wetland Compensatory Habitat Management Plan (FWCHMP).

Council has been reviewing the FWCHMP and WFCHMP prepared by SMEC (2012) both of which pertain to management of the 2.25ha compensatory habitat area on the eastern side of Cobaki Parkway.

As noted above under the Concept Approval comments, Council is concerned that the deletion of existing Condition 38 (2), whilst specifically requiring preparation of the FWCHMP, will result in the lack of a trigger for the preparation or implementation of the WFCHMP for the 2.25ha onsite Compensatory Habitat Area.



It is considered appropriate that **either** the proponent be required to include the preparation of the WFCHMP in the new condition 38A (2) **or** to retain the current Condition 32A (2), with the removal of (ii) which is no longer relevant, in conjunction with the new proposed condition 38A (2). The removal of any trigger for the WFCHMP is **not supported**.

It is also noted that the proponent has not provided any explanation for the deletion of Condition 38(2). This component of the condition deals with the requirements for the WFCHMP, including the need for a... 'mechanism for ongoing funding of the Wallum Froglet Habitat area to ensure the long term viability of the population' (Condition 38 (2)(v)).

In order to facilitate the finalisation of the WFCHMP, the proponent was requested on 31 October 2012 to provide written confirmation that the condition of consent would be adequately addressed and complied with. In addition, the proponent was requested to provide details of the proposed mechanism for the on-going funding for Council's consideration.

The proponent provided the following response on 31 October:

*"The condition to which you refer is amongst the matters for which we will shortly be making a Modification Application to DoP. The condition was set in light of the then proposed substantial area of wetland/wallum froglet habitat to be provided on site. The bulk of this is now to be provided off site, such that only about 2ha remains on site – the area east of Cobaki Parkway.*

*The funding source for the long term maintenance of this small area will be Council rates."*

The approval of the Concept Plan and the Project Approval was granted subject to appropriate mechanisms being put in place by the proponent for the funding for the long term maintenance of the environmental areas. Although it is acknowledged that the on-site Freshwater Wetland and Wallum Froglet Compensatory Habitat area have been significantly reduced, it is **not considered acceptable** that the cost of maintenance of these areas should now be taken up by the rate payers of the Shire.

The removal of the requirement for a mechanism for funding of the Wallum Froglet Habitat area is **not supported**. The use of Council rates for the ongoing funding of the area is **not supported**.

### **Condition 65 – Saltmarsh Rehabilitation Works**

No objection is raised to the proposed references to the revised Saltmarsh Rehabilitation Plan November 2012.

### **Condition 68 – Site Regeneration and Revegetation**

No objection is raised to the proposed reference to the revised Site Regeneration and Revegetation Plan November 2012.

### **Schedule 3 – Statement of Commitments**

- Statement of Commitment 3 – Native Vegetation

No objection is raised to the proposed reference to the revised Site Regeneration and Revegetation Plan November 2012.

- Statement of Commitment 4 – Freshwater Wetlands

No objection is raised to the proposed wording of the commitment, referencing the terms of agreement between the proponent and OEH and the requirement of the Statement of Commitment 4.7 of the Concept Approval, subject to the comments provided under the Concept Approval's Statement of Commitments 4.7 Freshwater Wetlands heading being applied.

- Statement of Commitment 5 – Saltmarsh

No objection is raised to the proposed reference to the revised Saltmarsh Rehabilitation Plan November 2012, subject to the comments made under the Concept Approval comments in relation to the offsetting of Coastal Saltmarsh and Swamp Oak Floodplain Forest EECs over the same area.

- Statement of Commitment 7 – Fauna Management

No objection is raised to the proposed reference to the Revised Assessment of Significance November 2012.

For further information regarding this matter please contact Colleen Forbes on (02) 6670 2596.

Yours faithfully

**Lindsay McGavin**  
Manager Development Assessment