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+ MODIFICATION REPORT - PROJECT APPROVAL NO. 08_0200

PRECINCT 9 AND PRECINCT 11 BORROW AREAS - PROJECT APPROVAL FOR CENTRAL OPEN SPACE

Sandy Lane, Cobaki Lakes

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**MODIFICATION REPORT - PROJECT APPROVAL NO. 08_0200 CENTRAL OPEN SPACE
PRECINCT 9 AND PRECINCT 11 BORROW AREAS
COBAKI ESTATE SANDY LANE, COBAKI LAKES**

1.0 INTRODUCTION

Leda Manorstead Pty Ltd (the owner of the land) has commissioned Darryl Anderson Consulting Pty Ltd to prepare an application for modification of Project Approval No. 08_0200, which relates to the Central Open Space area of the residential development located in the Tweed Shire Local Government Area, known as the Cobaki Estate.

The proposed modification relates to the inclusion of Borrow Areas located within part of Precinct 9 and Precinct 11 of the Cobaki Estate. The Borrow Areas contain the material required to complete the approved filling of the Central Open Space area in accordance with Project Approval No. 08_0200.

2.0 PROJECT APPROVAL

On 28 February 2011 the then Minister for Planning granted Project Approval No. 08_0200 for the carrying out of:

- Subdivision of the entire Cobaki Estate site into seven (7) lots (including one residue lot for future urban development – Lot 807);
- Staged bulk earthworks to create the central open space, riparian corridor, structured open space and future stormwater drainage area;
- Road forming works and culverts crossing the central open space (including Lot 802);
- Road forming works across saltmarsh area, including culverts and trunk sewer and water services (Lot 804);
- Revegetation and rehabilitation of environmental protection areas for coastal saltmarsh (Lots 805 and 806); and
- Establishment of freshwater wetland and fauna corridors (Lots 801 and 803).

A copy of the Project Approval is contained at **Annexure A**.

The subject Project Approval was granted pursuant to the Cobaki Concept Approval No. 06_0316. The subject site to which the Approval relates is the Cobaki Estate described as Lot 1 DP 570076, Lot 2 DP 566529, Lot 1 DP 562222, Lot 1 DP 570077, Lot 1 DP 823679 and Lots 46, 54, 55, 199, 200, 201, 202, 205, 206, 209, 228 and 305 DP 755740.

Details of the modifications proposed as part of this application including a background to the proposed modifications are contained in **Section 4.0** of this Report.

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3.0 ENVIRONMENTAL PLANNING AND ASSESSMENT ACT AND REGULATIONS

Schedule 6A, Clause 3 of the Act relates to Continuation of Part 3A—transitional Part 3A provisions and states that Part 3A of this Act (as in force immediately before the repeal of that Part and as modified under this Schedule after that repeal) continues to apply to and in respect of a transitional Part 3A project.

Section 75W (as in force immediately before the repeal of that Part) facilitates the lodgement and determination of an application to modify a Part 3A approval. Section 75W is in the following terms:

"Modification of Minister's approval

75W

(1) *In this section:*

Minister's approval means an approval to carry out a project under this Part, and includes an approval of a concept plan.

Modification of approval means changing the terms of a Minister's approval, including:

- (a) *revoking or varying a condition of the approval or imposing an additional condition of the approval, and*
 - (b) *changing the terms of any determination made by the Minister under Division 3 in connection with the approval.*
- (2) *The proponent may request the Minister to modify the Minister's approval for a project. The Minister's approval for a modification is not required if the project as modified will be consistent with the existing approval under this Part.*
- (3) *The request for the Minister's approval is to be lodged with the Director-General. The Director-General may notify the proponent of environmental assessment requirements with respect to the proposed modification that the proponent must comply with before the matter will be considered by the Minister.*
- (4) *The Minister may modify the approval (with or without conditions) or disapprove of the modification.*
- (5) *The proponent of a project to which Section 75K applies who is dissatisfied with the determination of a request under this section with respect to the project (or with the failure of the Minister to determine the request with 40 days after it is made) may, within the time prescribed by the regulations, appeal to the Court. The Court may determine any such appeal.*
- (6) *Subsection (5) does not apply to a request to modify:*
 - (a) *an approval granted by or as directed by the Court on appeal, or*
 - (b) *a determination made by the Minister under Division 3 in connection with the approval of a concept plan.*
- (7) *This section does not limit the circumstances in which the Minister may modify a determination made by the Minister under Division 3 in connection with the approval of a concept plan."*

There are no regulations of relevance to a Modification Application.

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4.0 PROPOSED MODIFICATIONS

4.1 Background to the Proposed Modifications

During attempts to obtain a Construction Certificate for Bulk Earthworks from the Precinct 1 and Precinct 2 Borrow Areas under Project Approval No. 08_0200, although there were references to the use of onsite borrow areas, there was conflicting legal advice as to whether Project Approval No. 08-0200 extended to the winning of the required material from the Borrow Areas.

To remove any doubt, on 29 May 2013 the then Director of Metropolitan and Regional Projects North granted Project Approval No. 08_0200 Mod 1. That Approval provided various modifications to the Conditions, Plans and Management Plans and included the Borrow Areas in Precincts 1 and 2 to obtain fill material to be placed in the central open space area. The Mod 1 Approval and Modified Statement of Commitments are attached as **Annexure B**.

Since the approval of Project Approval No. 08_0200 Mod 1 and the relevant Construction Certificate, work on the construction of the Central Open Space Area has commenced.

The fill material which has been obtained from the Precincts 1 and 2 Borrow Area (as provided by Mod 1) is almost depleted.

The additional fill material required to complete the Central Open Space Bulk Earthworks is located in Precinct 9 and Precinct 11. The general location of the proposed Precinct 9 and Precinct 11 Borrow Areas is shown on **Figure 1**.

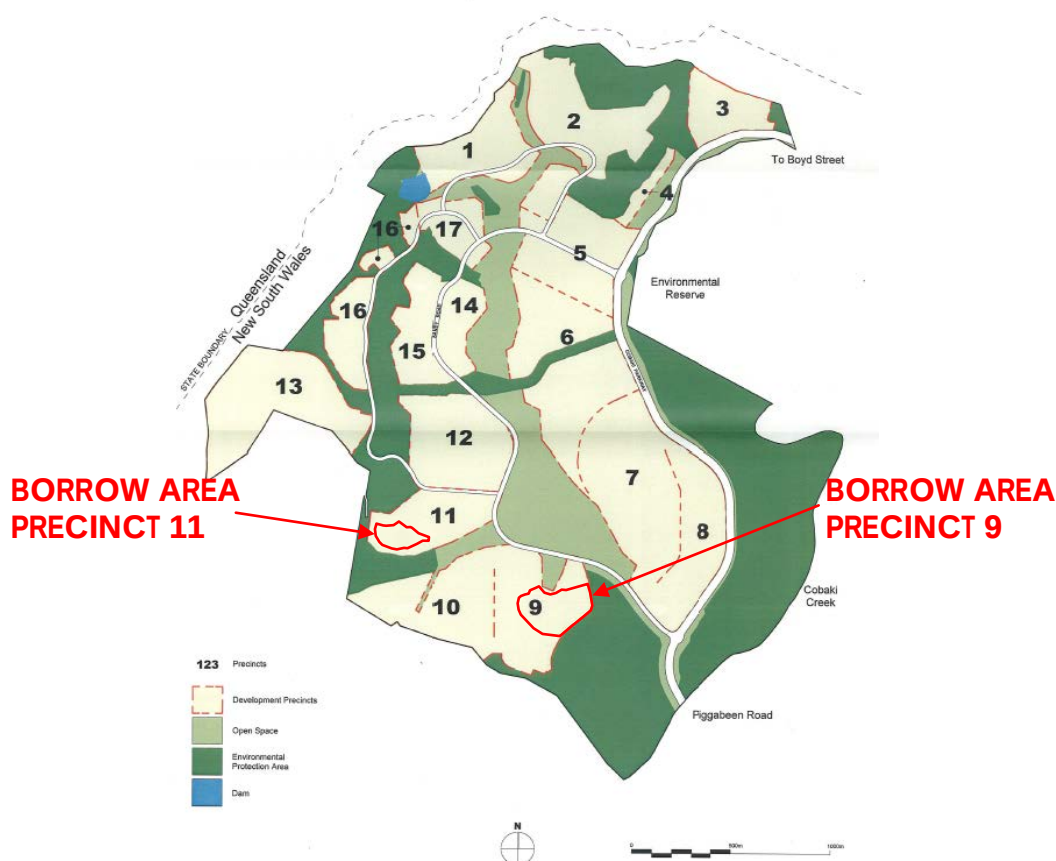


Figure 1 – Location of Precinct 9 and Precinct 11 Borrow Areas

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The Precinct 9 and Precinct 11 Borrow Areas are within areas which are to be developed for the purpose of residential subdivision, as identified under the approved Cobaki Estate Concept Plan Approval No. 06_316. Both Borrow Areas have previously been disturbed by bulk earthworks commenced under previous Development Consents (K99/1124 and S97/54) and therefore do not comprise any significant environmental features.

The site of both the proposed Precinct 9 and Precinct 11 Borrow Areas require bulk earthworks to achieve a landform suitable for the intended future residential use of those areas. The proposed modification will involve a total of 600,000m³ of cut material and has been designed so that it will work towards and is not inconsistent with, the profile of the required future bulk earthworks in Precinct 9 and Precinct 11 to create residential lots.

Plans, sections and erosion and sedimentation control details of the proposed Precinct 9 and Precinct 11 Borrow Areas are attached as **Annexure C**.

The alternative of importing the same quantity of fill material is not a feasible consideration both on economic and environmental grounds. There are also clear benefits with the use of the available on-site material, being that the works are consistent with achieving an on-site cut to fill balance further minimising external impacts to the site that would otherwise be associated with future earthworks.

It is apparent that modifications are required to the Central Open Space Project Approval in order to formally include the Borrow Areas located in Precinct 9 and Precinct 11.

The proposed modifications relate to Conditions of the Project Approval as further described in the following subsections of this Report.

4.2 Modification of Condition 3 – Project in Accordance with Plans

Modification to Condition 3 is required to correctly reference and include the Precinct 9 and Precinct 11 Borrow Area Plans. The required changes to the part of the table are as follows:

Insert the following additional earthworks drawings into the table underneath the section of the table entitled "Earthworks Drawings prepared by Yeats Consulting Engineers".

Drawing No	Revision	Name on Plan	Date
YC0229-1E1-D03	F	Scope of Works and Key Sheet Plan	10.12.13
YC0229-1E1-E01	F	Erosion & Sedimentation Control Plan Sheet 1 of 2	11.12.13
YC0229-1E1-E03	D	Sedimentation Basin Setout Details Sheet 1 of 3	16.12.13
YC0229-1E1-E04	D	Sedimentation Basin Setout Details Sheet 1 of 3	16.12.13
YC0229-1E1-E05	A	Sedimentation Basin Setout Details Sheet 3 of 3	11.12.13
YC0229-1E1-EC01	F	Bulk Earthworks Cut & Fill Plan Sheet 1 of 2	11.12.13

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Drawing No	Revision	Name on Plan	Date
YC0229-1E1-EW13	A	Precinct 9 Borrow Area Earthworks Plan	11.12.13
YC0229-1E1-EW14	A	Precinct 11 Borrow Area Earthworks Plan	11.12.13
YC0229-1E1-ES08	A	Precinct 9 Borrow Area Earthworks Sections	11.12.13
YC0229-1E1-ES09	A	Precinct 11 Borrow Area Earthworks Sections	11.12.13

4.3 Modification of Condition 4 – Project in Accordance with Documents

A modification to Condition 4 of the Approval is required to reference information relating to the Precinct 9 and Precinct 11 Borrow Areas. The required changes to Condition 4 are as follows:

Below Condition 4(e) insert:

- f. Modification Report – Project Approval No. 08_0200 prepared by Darryl Anderson Consulting Pty Ltd, December 2013.
- g. Cobaki Estate Development Construction Environmental Management Plan (CEMP) Precincts 9 & 11 Borrow Areas Bulk Earthworks prepared by SMEC Urban, Revision 1, December 2013
- h. Cobaki Estate Development Environmental Assessment Report Precincts 9 & 11 Borrow Areas Bulk Earthworks prepared by SMEC Urban, Revision 1, December 2013
- i. Summary Report on Preliminary Geotechnical Investigation Precincts 9 and 11 Cobaki Lakes, Cobaki, prepared by Douglas Partners, dated December 2013
- j. Environmental Noise Impact Report – CRG Acoustics, 17 December 2013

4.4 Modification of Condition 21A – Bulk Earthworks

Modification is proposed to Condition 21A as follows. Amendments are shown with new text underlined.

21A. Bulk Earthworks

- a. The Proponent shall submit the following plans and specifications with an application for construction certificate for the bulk earthworks in the Borrow Areas within Precincts 1, 2, 9 and 11:
 - I. Natural and finished development levels (spot levels and contours) clearly detailed with a legible scale;
 - II. Sediment and erosion control plans;
 - III. Evidence that the works will be undertaken under geotechnical supervision by a registered Geotechnical Engineer;
 - IV. All temporary and permanent batter slopes will be appropriately stabilised by way of grass seeding or hydromulch immediately after completion; and,
 - V. An earthworks phasing diagram that defines maximum exposed areas.

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- b. Bulk earthworks for the site are to be limited to a maximum exposed disturbed area (that has not been permanently vegetated) not exceeding a maximum of 5ha at any time to reduce exposed areas, unless otherwise approved by the Director-General.
 - c. Works are to be topsoiled, mulched and seeded immediately after completion to protect the exposed areas from water and wind erosion.

4.5 Modification of Condition 41 - Earthworks - Limits of Approval

The following modification is proposed to Condition 41. Amendments are shown with new text underlined.

41. Earthworks- Limits of Approval

- a. No bulk earthworks are to be undertaken outside of the central open space area (as defined in Schedule 1 Part C of this approval)
- b. Notwithstanding a.) above, bulk earthworks may also be carried out in Precincts 1, 2, 9 and 11 for the sole purpose of the winning of fill to be placed in the central open space area.
- c. Fill material required for the central open space area sourced from elsewhere on/or the site requires separate development approval.
- d. Retaining walls and fire trail profiles identified on bulk earthworks drawings YC0229-1 E1- ES04 (Rev D), YC0229-1 E1-ES05 (Rev A), YC0229-1 E1-ES06 (Rev A), YC0229-1 E1-ES07 (Rev A) are not approved.

Note: Retaining wall heights and fire trail profiles within Precincts 1 and 2 shall be submitted to council for approval in accordance with the conditions of development approval DA10/0800.

5.0 ENVIRONMENTAL ASSESSMENT

The placing of the material is authorised by the existing Central Open Space Project Approval.

Modification of the Project Approval as proposed will include the winning of material from the Precinct 9 and Precinct 11 Borrow Areas. As previously mentioned both of these areas have previously been disturbed by earlier works.

The borrow areas are considered to provide suitable fill material for the earthworks in the Central Open Space Area. A Geotechnical Report of the proposed Precinct 9 and Precinct 11 Borrow Areas is attached as **Annexure D**. The recommendations of the Geotechnical Report in terms of batter slopes are incorporated in the design of the Precinct 9 and Precinct 11 Borrow Area works.

The environmental impacts and the ameliorative management measures for the proposed inclusion of the Precinct 9 and Precinct 11 Borrow Areas are addressed in the Environmental Assessment Report attached as **Annexure E**. That report confirms that the proposed development will not result in any significant impacts on threatened species of flora or fauna recorded on, or adjacent to, the Cobaki site. The report also addresses issues including groundwater, acid sulfate soil, contamination, air quality and cultural heritage.

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A letter from the Project Cultural Heritage Consultant in relation to cultural heritage matters relating to the Precinct 9 and Precinct 11 Borrow Areas is attached as **Annexure F**.

Appropriate detail of how the work will be effectively managed to mitigate potential operational impacts is addressed in the Construction Environmental Management Plan attached as **Annexure G**.

The acoustic impact of the work associated with the Precinct 9 and Precinct 11 Borrow Areas has been discussed in the Environmental Noise Impact Report attached as **Annexure H**. The report identifies a number of recommendations which will mitigate the noise impacts of the proposal which will be associated with the construction phase.

Environmental considerations have been adequately addressed by the requirements for offsetting, rehabilitation and revegetation under the Cobaki Estate Concept Plan Approval No. 06_0316. In this regard the proposed Borrow Area works will occur within parts of the subject Precincts and therefore will not be inconsistent with the precinct and buffer boundaries. Rehabilitation of the surrounding vegetation management areas will proceed in association with the future residential subdivision of Precinct 9 and Precinct 11 in accordance with the Statement of Commitments.

The modification to the project is required to enable the project to proceed on a viable basis, utilising the available on-site resource which will avoid the need to import fill from an external source.

The design and location of the Borrow Areas has been carefully considered by the Project Engineers so as to ensure that it works towards earthworks which are required to achieve a suitable landform for the future residential development of Precinct 9 and Precinct 11 as per the Cobaki Estate Concept Plan. The temporary batters to be created in the Borrow Areas will be stable and will minimise site disturbance.

In the circumstances of this case, it is submitted that the Revised Environmental Assessment Report provides an adequate Environmental Assessment of the modified project.

The proposed modification of the Project Approval is considered to be justified on the basis that the Precinct 9 and Precinct 11 Borrow Areas are required to complete the approved filling in accordance with the Central Open Space Project Approval. In addition, those parts of the site are already disturbed and therefore have very little environmental value. The areas subject to the proposed Borrow Areas will also be subject to future works as foreshadowed by the Cobaki Concept Plan Approval No. 06_0316.

6.0 CONCLUSION

Modification of the conditions and terms of the approval as proposed is authorised by Section 75W(1)(a) and (b) of the Environmental Planning and Assessment Act.

The proposed modifications are required to provide the source of fill material required to complete the construction of the design levels of the Central Open Space as approved by Project Approval No. 08_0200. It was always intended that the fill material was to be obtained from within the Cobaki site. The proposed Borrow Areas have been designed within the approved residential Precincts 9 and 11 under the Cobaki Concept Plan Approval No. 06_0316.

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The Precinct 9 and Precinct 11 Borrow Areas progress towards the land forming works that are required for the future residential subdivision of Precinct 9 and Precinct 11 and are accompanied by appropriate Specialist Reports and Management Plans to ensure that the works are appropriately managed. Accordingly the proposed modification to incorporate the Precinct 9 and Precinct 11 Borrow Areas does not give rise to any significant physical changes to the scale, nature or footprint of the approved project and therefore no impacts other than those previously anticipated and addressed in the comprehensive reports prepared are likely to arise.

The proposed modification of the approval is considered to be sustainable and in the public interest and therefore approval of the application is respectfully requested.

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**ANNEXURE A Project Approval No. 08_0200 Issued by the Minister for Planning on
28 February 2011**

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ANNEXURE B

**Project Approval No. 08_0200 Mod 1 Issued by the Minister for Planning on
29 May 2013**

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Modification of Major Project No. 08_0200
Project No: LED 13/148 – December 2013

Central Open Space Project Approval
Sandy Lane, Cobaki



**ANNEXURE C Precinct 9 and Precinct 11 Borrow Area Plans – Yeats Consulting Engineers,
December 2013**

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**ANNEXURE D Preliminary Geotechnical Investigation Precincts 9 and 11 Cobaki Lakes,
Cobaki – Douglas Partners, December 2013**

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**ANNEXURE E Environmental Assessment Report Precincts 9 and 11 Bulk Earthworks –
SMEC Australia Pty Ltd, December 2013**

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Modification of Major Project No. 08_0200
Project No: LED 13/148 – December 2013

Central Open Space Project Approval
Sandy Lane, Cobaki



ANNEXURE F

**Letter Regarding Cultural Heritage – Everick Heritage Consultants,
December 2013**

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**ANNEXURE G Construction Environmental Management Plan (CEMP) Precincts 9 & 11
Borrow Areas Bulk Earthworks – SMEC Australia Pty Ltd, December 2013**

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ANNEXURE H Environmental Noise Impact Report – CRG Acoustics, December 2013

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