

## + MODIFICATION OF PROJECT APPROVAL NO. 08\_0200

### PROJECT APPROVAL (CENTRAL OPEN SPACE)

Sandy Lane, Cobaki Lakes

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## MODIFICATION OF PROJECT APPROVAL NO. 08\_0200 CENTRAL OPEN SPACE

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#### 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.

#### 2.0 PROJECT APPROVAL

On 28 February 2011 the 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 B**.

The subject Project Approval was granted under the Cobaki Concept Approval MP 06\_0316.

To date two other Development Consents (DA10/0800 and DA 10/0801) have been granted by Tweed Shire Council under the Concept Plan, which together provide approval for the creation of 916 residential lots in Precincts 1, 2 and 6.

As a result of the assessment and conditions imposed on DA10/0800 and DA10/0801, it is apparent that modifications are required to the Central Open Space Project Approval.

Details of 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 the assessment and approval of DA10/0800 and DA10/0801, Tweed Shire Council insisted that the drainage path within the central open space area (refer to Condition 12 of DA10/0801) is to be maintained by Council for drainage purposes only and is not to be utilised for any environmental offsets.

This has altered the original plans to rehabilitate the Freshwater Wetland onsite within the Central Open Space area and accordingly affects the ability of Leda to comply with Commitments and Management Plans that accompanied the Concept Plan.

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

For comparison against the modifications proposed in this application, the original Concept Approval and Statement of Commitments are provided at **Annexure B**.

In this Report, the proposed modifications to conditions of the Approval and the Statement of Commitments are shown with text to be deleted as '~~struck through~~' and text to be added as 'underlined'.

### 4.2 Schedule 1 - Part A - Table

Modification of Table A is required to delete the reference to "establishment of freshwater wetlands and fauna corridors on Lots 801 and 803" which is located adjacent to the heading "for the carrying out of". The required changes are to that row of the table as follows:

for the carrying out of:	<ul style="list-style-type: none"><li>• Subdivision of the entire Cobaki Estate site into seven (7) lots (including one residue lot for future urban development – Lot 807);</li><li>• Staged bulk earthworks to create the central open space, riparian corridor, structured open space, and future stormwater drainage area;</li><li>• Road forming works and culverts crossing the central open space (including Lot 802);</li><li>• Road forming works across saltmarsh area, including culverts and trunk sewer and water services (Lot 804);</li><li>• Revegetation and rehabilitation of environmental protection areas for coastal saltmarsh (Lots 805 and 806); and</li><li>• Establishment of freshwater wetland and fauna corridors <del>(Lots 801 and 803).</del></li></ul>
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### 4.3 Condition 1 – Project Description

Modification of the Project Description is required to delete reference to the location of the establishment of freshwater wetlands and fauna corridors as they can no longer be provided on proposed Lots 801 and 803.

The required change to Condition 1 is as follows:

**Delete Condition 1**

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## Insert Modified Condition 1A

" **1A. Project Description**

Project approval is granted only to:

PART ONE - SUBDIVISION

- Subdivision of the entire Cobaki Estate site into seven (7) lots (including one residue lot for future urban development – Lot 807);

PART TWO – BULK EARTHWORKS AND CIVIL WORKS

- 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 areas, including culverts and temporary trunk sewer and water services (Lot 804);

PART THREE – ENVIRONMENTAL ENHANCEMENT WORKS

- 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).~~"

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

Modification to Condition 2 is required to correctly reference the amended Ecological Management Plans. The required changes to the part of the table relating to Management Plans are as follows:

Management Plans		
Author	Title	Date
Yeats Consulting Engineers	<i>Stormwater Quality Concept Plan</i>	September 2010 Revision 02
James Warren and Associates	<i>Revised Saltmarsh Rehabilitation Plan – Cobaki Lakes</i>	<del>October 2010</del> <u>November 2012</u>
<del>James Warren and Associates</del>	<del><i>Revised Freshwater Wetland Rehabilitation Plan – Cobaki</i></del>	<del>October 2010</del>
James Warren and Associates	<i>Revised Site Regeneration and Revegetation Plan – Cobaki Lakes</i>	<del>October 2010</del> <u>November 2012</u>
Mosquito Consulting Services	<i>Biting Midge and Mosquito Control Plan – Cobaki Lakes</i>	May 2008
Everick Consultants P/L	<i>Final Cobaki Lakes Cultural Heritage Management Plan</i> approved as part of the Cobaki Estate Concept Plan (06_0316).	April 2010
James Warren and Associates	<i>Fauna Management Plan</i>	October 2009

An explanation of the proposed modifications to the documents affected by proposed modification of this condition is provided as follows.

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## Revised Saltmarsh Rehabilitation Plan

The Revised Saltmarsh Rehabilitation Plan – Cobaki, November 2012 is attached as **Annexure C**. A summary of the amendments made to this document is provided as follows:

- **Section 1.3** Proposed Development areas have been amended to reflect the relevant layout changes to management precincts and EEC offset areas;
- **Section 1.4** Offset areas have been amended for consistency with other plans;
- References to the Revised Freshwater Wetland Rehabilitation Plan (2010) have been removed;
- It is now specified that offsets for the removal of highly degraded Freshwater Wetland vegetation from the subject site will largely be addressed off-site;
- **Section 5.3.3** Compensation and rehabilitation areas have been amended;
- **FIGURE 5** has been amended; and
- References have been updated to include the most recent reports.

## Revised Site Regeneration and Revegetation Plan

The Revised Site Regeneration and Revegetation Plan – Cobaki, November 2012 is attached as **Annexure D**. A summary of the amendments made to this document is provided as follows:

- **Section 1.3** Proposed Development areas have been amended to reflect the relevant layout changes to management precincts and EEC offset areas;
- **Section 1.4.1** Specifies that references to the Revised Freshwater Wetland Rehabilitation Plan (2010) have been removed, as Condition 12 of DA10/0801 specifies that the low flow component of the central drainage reserve is to be maintained by Council for drainage purposes only and not utilised for any environmental offsets;
- **Section 4.4** Revegetation/Regeneration areas have been amended;
- **Section 4.4.1** refers to 2ha of Freshwater Wetland that will be regenerated/revegetated on the site in accordance with a Freshwater Wetland Compensatory Habitat Management Plan (SMEC 2012);
- References to the Revised Freshwater Wetland Rehabilitation Plan (2010) have been removed;
- It is now specified that offsets for the removal of highly degraded Freshwater Wetland vegetation from the subject site will largely be addressed off-site;
- **FIGURES 3, 4, 5, 8, 8A, 8B, 7, 8C & 9** have been amended; and
- References have been updated to include the most recent reports.

## 4.5 Condition 4 – Project in Accordance with Documents

A modification to Condition 4 of the Approval is required to reference revisions to the Assessment of Significance report that formed part of the original application. A reference in condition 4 is also proposed to reference this Modification Report is also provided. The required changes to Condition 4 are as follows:

### Delete Condition 4

### Insert Modified Condition 4A

#### ***"4A. Project in Accordance with Documents***

The project will be undertaken generally in accordance with the following documentation (including any Appendices contained therein):

- a. *Environmental Assessment Report: Cobaki Lakes Estate – Project Application No. 08\_0200 for Central Open Space, Lake and Riparian Corridor, Volumes 1*

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- and 2 (and all associated Appendices) prepared by JBA Urban Planning Consultants Pty Ltd on behalf of LEDA Manorstead Pty Ltd, dated December 2009; and
- b. *Preferred Project Report: Cobaki Lakes Estate – Project Application No. 08\_0200 for Central Open Space and Riparian Corridor*, Volumes 1 and 2 (and all associated Appendices) prepared by JBA Urban Planning Consultants Pty Ltd on behalf of LEDA Manorstead Pty Ltd, dated July 2010.
  - c. *Addendum to the Preferred Project Report: Cobaki Estate Part 3A Project Application (MP08\_0200) for Central Open Space and Riparian Corridor*, Volumes 1 and 2 (and all associated Appendices) prepared by JBA Urban Planning Consultants Pty Ltd on behalf of LEDA Manorstead Pty Ltd, dated October 2010
  - d. *Revised Assessment of Significance - Cobaki Parkway 'Missing Link' & Re-alignment of Sandy Lane (southern portion) - prepared by James Warren & Associates Pty Ltd dated November 2012*
  - e. *Modification Report prepared by Darryl Anderson Consulting Pty Ltd, dated November 2012."*

An explanation of the proposed modifications to the documents affected by proposed modification of this condition is provided as follows.

#### **Revised Assessment of Significance (Cobaki Parkway 'Missing Link' & Re-alignment of Sandy Lane (southern portion))**

The Revised Assessment of Significance - Cobaki Parkway 'Missing Link' & Re-alignment of Sandy Lane (southern portion) - prepared by James Warren & Associates Pty Ltd dated November 2012 is attached as **Annexure E**. A summary of the amendments made to this document is provided as follows.

- Some species names have been updated;
- **Section 3.2** Proposed habitat offset areas have been amended;
- Remove references to Revised Freshwater Wetland Rehabilitation Plan;
- Specify that offsets for the removal of highly degraded Freshwater Wetland vegetation from the subject site will now be largely be addressed off-site and that the nature of this off-site offset is still being negotiated and will therefore be detailed in subsequent reports;
- **Section 3.4.2** Proposed EEC offset areas have been amended;
- **FIGURES 6, 11, 12, 15, 16 & 17** have been amended; and
- References have been updated to include the most recent reports.

#### **4.6 Condition 8 – Certification**

A modification to Condition 8 is required to rectify the reference to the entity that a Subdivision Certificate may be obtained from.

Clause 11 of the State Environmental Planning Policy (Major Development) 2005 allows a Subdivision Certificate to be issued by an Accredited Certifier for a subdivision that is a Transitional Part 3A Project. The Central Open Space Project Approval is such a Project and therefore a Subdivision Certificate may be issued by an Accredited Certifier.

The required changes to Condition 8 are as follows:

#### **Delete Condition 8**

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## Insert Modified Condition 8A

### **"8A. Certification**

- a. Construction Certificate: Prior to the commencement of works, the proponent must obtain the appropriate Construction Certificate(s) for the proposed works from either the Council or an Accredited Certifier.
- b. Subdivision Certificate: Prior to registration of the plan of subdivision of the project, under Division 3 of Part 23 of the *Conveyancing Act 1919*, a Subdivision Certificate pursuant to Section 109C(1)(d) of the Act must be obtained from the Council or an Accredited Certifier.
- c. Notwithstanding any other condition of this approval, separate Construction Certificates for bulk earthworks and civil works (including any approved staging) may be issued.
- d. Submission of relevant certificates may occur in a staged manner consistent with the indicative construction timing approved as part of the CEMP, or as otherwise agreed to by the PCA."

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

Modification to Condition 38 is required to reflect the revised arrangements for the provision of Freshwater Wetland biodiversity offsets.

The required changes to Condition 38 are as follows:

### **Delete Condition 38**

### **Insert Modified Condition 38A**

#### **"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.
- ~~(2) Notwithstanding the above, the proponent shall 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:~~

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- ~~(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) How threats to the survival of Wallum Froglet will be managed;~~
  - ~~(iv) 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);~~
  - ~~(v) A mechanism for on going funding of this Wallum Froglet Habitat areas to ensure the long term viability of the population; and~~
  - ~~(vi) A contingency planning option in the case of system failure.~~

Note: Statement of Commitments 4.8 of the Cobaki Estate Concept Plan (06\_0316) commits the proponent to ensuring environmental offsets are provided for impacts on freshwater wetlands and associated Wallum Froglet habitat, from approved bushfire hazard reduction works in native vegetation areas, and on existing trees within the Scribbly Gum Reserve (should any impacts occur). The bushfire hazard reduction works and scribbly gum community are outside the central open space area the subject of this application.

Note 2: This condition is only intended to restrict works in those environmentally sensitive areas already defined in the Cobaki Estate Concept Plan (06\_0316).

Note 3: Condition B1 of the concept plan approval requires the preparation of a detailed Fauna Monitoring Report by 10 December 2011, or as otherwise agreed by the Department. This includes monitoring of the Wallum Frog species. This plan must bring together all monitoring and reporting requirements on-site relating to flora and fauna."

#### 4.8 Condition 65- Saltmarsh Rehabilitation Works

Modification to Condition 65 is required to reflect the necessary amendments to the Saltmarsh Rehabilitation Plan.

The required changes to Condition 65 are as follows:

##### Delete Condition 65

##### Insert Modified Condition 65A

###### **"65A. Saltmarsh Rehabilitation Works**

- a. The saltmarsh area shall be appropriately rehabilitated generally in accordance with the provisions of the *Revised Saltmarsh Rehabilitation Plan – Cobaki Estate* ~~October 2010~~ November 2012, prepared by James Warren and Associates) and other relevant plans and documents listed in conditions 3 and 4 of this approval.
- b. Pursuant to the Terms of Approval of the Cobaki Estate concept plan (06\_0316), and prior to works commencing in the affected areas, the proponent shall submit to the Director-General for approval a final saltmarsh rehabilitation plan that is to include, but not be limited to:

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- i. Detailed aims and objectives, and measurable performance and completion criteria tracking success against those aims and objectives (for each stage and overall);
  - ii. Detailed planting species list, composition and density for each ecological community and, for endangered ecological communities (EECs), this is to include species composition that is benchmarked against a reference EEC community;
  - iii. Details on creek bank erosion management;
  - iv. management of tidal flux and hydrological management
  - v. timing and responsibilities; and
  - vi. developer maintenance period reflecting completion criteria.

This plan shall be prepared in partnership with the scientist required in condition 65e below. A copy of this plan shall also be forwarded to the ~~DECCW-OEH~~, NSW Industry & Investment – Fisheries and Council for their information.

- c. Notwithstanding anything else in this approval, the resulting ecological community must be consistent with the NSW Scientific Committee's classification of Coastal Saltmarsh, or Swamp Oak Floodplain Forest (as applicable), and its classification as an Endangered Ecological Community.
- d. The damaged floodgate at the entrance to Dunn's Drain must be replaced by a fish friendly floodgate allowing regulated tidal inundation into the Saltmarsh Rehabilitation Area. This must be undertaken in accordance with the approved Addendum to the *Revised Saltmarsh Rehabilitation Plan* (James Warren and Associates, ~~October 2010~~ November 2012) prior to issue of construction certificate for any saltmarsh works. Additional detail on the design and monitoring and maintenance of the flood gate shall be submitted for referral to and approval by NSW Industry & Investment – Fisheries and Council.
- e. The proponent shall engage (and fully fund) an appropriately qualified scientist (preferably with established expertise in coastal saltmarsh ecology and hydrology), to peer review the detailed plan and guide its development, and periodically monitor, provide advice and review progress with the saltmarsh rehabilitation throughout the duration of works. The nominated scientist must receive the approval of the Director- General prior to engagement by the proponent.
- f. Any adaptive management actions/corrective works required to ensure compliance with condition 65c must be pre-approved by the scientist referred to in condition 65e prior to such works commencing.
- g. The proponent must ensure that whilst undertaking saltmarsh rehabilitation works on-site and in the manner set out in the approved staging plan that no adverse impacts occur on other areas of saltmarsh."

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

Modification to Condition 68 is required to reflect the necessary amendments to the Site Regeneration and Revegetation Plans.

The required changes to Condition 68 are as follows:

##### Delete Condition 68

##### Insert Modified Condition 68A

###### ***“68A. Site Regeneration and Revegetation***

Detailed regeneration and revegetation plans shall be prepared for each of the Rehabilitation and Management Precincts impacted upon by works approved under this project as detailed in the *Revised Site Regeneration and Revegetation Plan* (SRRP), prepared by James Warren and Associates and dated ~~October 2010~~ November 2012. These plans shall be submitted to, and approved by, the Director-General prior to works commencing in those areas.

These detailed plans for each Rehabilitation and Management Precinct are to be consistent with the SRRP and must include as a minimum:

- a. performance objectives detailing measurable performance and completion criteria (for each stage and overall);
- b. Detailed planting species list, composition and density for each vegetation community and, for endangered ecological communities (EECs) to be rehabilitated, this is to include ground, mid and canopy species and species composition must be benchmarked against an appropriate reference EEC community;
- c. Details on creek bank erosion management;
- d. timing and responsibilities; and
- e. developer maintenance period reflecting completion criteria.

Note: this condition excludes those areas already covered by the Revised Freshwater Wetland Rehabilitation Plan and the Revised Saltmarsh Rehabilitation Plan.”

#### 4.10 Schedule 3 – Statement of Commitments

The amended Statement of Commitments is attached as **Annexure F** and described as follows:

##### **Statement of Commitment 3 – Native Vegetation**

A modification is required to update the reference to the latest Revised Site Regeneration and Revegetation Plan prepared by James Warren & Associates Pty Ltd, dated November 2012.

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#### **Statement of Commitment 4 – Freshwater Wetlands**

Since the majority of the freshwater wetland offset is no longer to be provided on the site, a modification is required to refer to the Planning Agreement between the Proponent and OEH instead of the former Management Plan. The Planning Agreement will control the provision of an off site offset as required by Statement of Commitment 4.7 of the Cobaki Concept Approval No. 06\_0316.

#### **Statement of Commitment 5 – Saltmarsh**

A modification is required to update the reference to the latest Saltmarsh Rehabilitation Plan prepared by James Warren & Associates Pty Ltd, dated November 2012.

#### **Statement of Commitment 7 – Fauna Management**

A modification is required to update the reference to the latest Revised Assessment of Significance - Cobaki Parkway 'Missing Link' & Re-alignment of Sandy Lane (southern portion) prepared by James Warren & Associates, November 2012.

### **5.0 ENVIRONMENTAL ASSESSMENT**

Modification of the consent as proposed is essentially administrative in nature and will address a number of conditions and current anomalies.

Therefore no other additional impacts are likely to arise and indeed the modified project will enable the development to proceed on a viable basis and satisfy Tweed Shire Council's requirements.

The environmental impacts of the proposed amendments to the Project Approval are addressed in the Revised Assessment of Significance report prepared by James Warren and Associates Pty Ltd November 2012 (see **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.

In the circumstances, it is therefore submitted that the Environmental Assessment accompanying the original Major Project Application, together with the Revised Assessment of Significance prepared by James Warren and Associates Pty Ltd provides an adequate Environmental Assessment of the modified project.

### **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 do 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 addressed in the original Environmental Assessment are likely to arise. Details of the proposed off site offsets are able to be adequately addressed by attaching this requirement to the Voluntary Planning Agreement that Leda Manorstead Pty Ltd is required to enter into with OEH.

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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