

Modification of Minister's Approval

Section 75W of the *Environmental Planning & Assessment Act 1979*

As delegate of the Minister for Planning and Infrastructure under delegation, I approve the modification of the project approval referred to in schedule 1, subject to the conditions in schedule 2.



Heather Warton
Director
Metropolitan and Regional Projects North

Sydney

29 May

2013

SCHEDULE 1

Project Approval:

08_0200 granted by the then Minister for Planning on 28 February 2011

For the following:

Subdivision; bulk earthworks to create the central open space, riparian corridor, structured open space and future stormwater drainage area; road forming works and culverts; revegetation and rehabilitation works; and, establishment of freshwater wetland and fauna corridors, Cobaki Estate, Tweed LGA

Modification:

08_0200 Mod 1: The modification includes the following:

- amendments to Condition 1 to delete the reference to the location of the freshwater wetlands and fauna corridors;
- amendments to Condition 3 to reflect amendments to the approved project plans and inclusion of borrow area bulk earthworks plans;
- amendments to Condition 4 to reflect amendments to the approved project documents;
- amendments to Condition 8 to confirm a subdivision certificate may be obtained from council or a PCA;
- new Conditions 11A and 11B to make the proponent the responsible for offset lands until dedication to council
- amendments to Conditions 38 and 39 to reflect amendments to the biodiversity offset arrangements;
- amendment to Condition 65 to reflect the updated Revised Saltmarsh Rehabilitation Plan;
- amendment to Condition 68 to reflect the updated Revised Site Regeneration and Revegetation Plan; and,
- a revised Statement of Commitments to reflect amendments to the biodiversity offset arrangements.

SCHEDULE 2

The project approval is modified as follows:

SCHEDULE 1

PART A - TABLE

1) Amend the table as follows:

- a) Delete the words "(Lots 801 and 803)" from row 6 of the table, immediately following the words "Establishment of freshwater wetland and fauna corridors"

PART C – DEFINITIONS

2) Immediately after the definition for "Environmental Assessment" insert a new definition as follows:

Environmental Management Plan means the management plans listed in Condition 3 of this approval, the Wallum Froglet Compensatory Habitat Management Plan and the Freshwater Wetland Compensatory Habitat Management Plan (as required by Condition 38 of this approval)

3) Immediately after the definition for "Minister" insert a new definition as follows:

Offset Area means the 'proposed revegetation areas', 'proposed natural regeneration areas', 'retained vegetation', 'rehabilitation and management precincts' and the 'saltmarsh rehabilitation area' as shown on Figure 4 of the Revised Regeneration and Revegetation Plan prepared by James Warren and Associates Pty Limited dated April 2013, entitled 'Rehabilitation and Management Precincts' dated 5 April 2013

SCHEDULE 2

PART A

4) Amend Condition 1 as follows:

1. Project Description

- a) Delete the words "(Lots 801 and 803)" from the last point of the row titled "For the carrying out of."

5) Amend Condition 3 as follows:

3. Project in Accordance with Plans

- a) Delete row 2 underneath the section of the table entitled "Earthworks Drawings prepared by Yeats Consulting Engineers" and replace with the following:

Drawing No	Revision	Name of Plan	Date
YCO229-1P1-EC02	D	Bulk Earthworks Cut & Fill Plan Sheet 2 of 2	18 October 2012

- b) 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 of Plan	Date
YCO229-1E1-E01	C	Erosion and Sediment Control Plan Sheet 1 of 2	18 October 2012
YCO229-1E1-E02	C	Erosion and Sediment Control Plan Sheet 2 of 2	18 January 2013

YCO229-1E1-EW09	B	Precinct 1 & 2 Borrow Area Earthworks Plan Sheet 1 of 4	18 October 2012
YCO229-1E1-EW10	B	Precinct 1 & 2 Borrow Area Earthworks Plan Sheet 2 of 4	18 October 2012
YCO229-1E1-EW11	B	Precinct 1 & 2 Borrow Area Earthworks Plan Sheet 3 of 4	18 October 2012
YCO229-1E1-EW12	B	Precinct 1 & 2 Borrow Area Earthworks Plan Sheet 4 of 4	18 October 2012
YCO229-1E1-ES04	D	Precinct 1 & 2 Borrow Area Earthworks Sections Sheet 1 of 4	18 January 2013
YCO229-1E1-ES05	A	Precinct 1 & 2 Borrow Area Earthworks Sections Sheet 2 of 4	18 January 2013
YCO229-1E1-ES06	A	Precinct 1 & 2 Borrow Area Earthworks Sections Sheet 3 of 4	18 January 2013
YCO229-1E1-ES07	A	Precinct 1 & 2 Borrow Area Earthworks Sections Sheet 4 of 4	18 January 2013

c) Delete the list of Management Plans in the table and replace with the following:

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>	April 2013
James Warren and Associates	<i>Revised Site Regeneration and Revegetation Plan – Cobaki Lakes</i>	April 2013
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 approved as part of the Cobaki Estate Concept Plan (06_0316)</i>	April 2010
James Warren and Associates	<i>Revised Fauna Management Plan</i>	April 2013

6) Amend Condition 4 as follows:

4. Project in Accordance with Documents

- a) Immediately after Condition 4c. insert new clauses d., e., f. and g. as follows:
- d. Modification Report prepared by Darryl Anderson Consulting Pty Ltd dated November 2012
 - e. Revised Assessment of Significance – Cobaki Parkway 'Missing Link' & Realignment of Sandy Lane (southern portion) prepared by James Warren and Associates Pty Ltd dated April 2013
 - f. Cobaki Estate Development Precincts 1 and 2 Bulk Earthworks Environmental Assessment Report prepared by SMEC Urban, Revision 2, dated April 2013
 - g. Response to Submissions Report prepared by Darryl Anderson Consulting dated 18 April 2013

7) Amend Condition 8 as follows:

8. Certification

- a) Delete the words "from the Council" in Condition 8b. and replace with the words "in accordance with Section 109D(1)(d) of the Act"

8) Immediately after Condition 11 insert new Conditions 11A and 11B as follows:

11A. On-site Environmental Offset Areas

Within 3 months of the date of the modified approval (08_0200 Mod 1), or as otherwise agreed with the Director-General, the Proponent shall:

- a. engage a registered surveyor to prepare a survey plan(s) and permanently mark the boundaries of the Offset Areas;
- b. where relevant, submit amended plans of proposed subdivision to the Director-General for approval that show the Offset Areas as separate lot(s);
- c. ensure that the boundaries marked by the surveyor remain marked at all times in a permanent manner that allows operating staff, the landowner and inspecting officers to clearly identify those boundaries; and
- d. submit for the Director-General's approval, a form of dealing(s) to be registered on the title to the Council Dedicated Land and the Offset Areas that must:
 - I. bind all future landowners;
 - II. provide for the management of the Offset Areas for conservation purposes including the implementation of relevant Environmental Management Plans, in perpetuity;
 - III. permit access to the Offset Areas by the Department, the OEH and Council at all times for the purpose of monitoring compliance with relevant covenants and the Environmental Management Plans; and
 - IV. provide for a release of any registered dealings in circumstances where all or part of the Offset Areas are transferred to a public authority.
- e. Where the Offset Areas are subject to any amended plans of subdivision, the Proponent must within 3 months of the date of the Director-General's approval of the amended plans of subdivision under condition 11A(b) or the Director-General's approval of dealing(s) referred to in condition 11A(d), lodge for registration the dealing(s) on the relevant titles to Offset Areas to the Director-General evidence of such registration within 10 days of the dealing(s) being registered.

11B. Management and Maintenance of Environmental Lands

- a. The Proponent is responsible for the management of all Offset Areas for conservation purposes and the implementation of ongoing management and maintenance activities specified in all Environmental Management Plans from the date of the project approval modification (08_0194 Mod 1), until such time that an agreement is reached with Council regarding the dedication of that land.
- b. Within 3 months of the completion criteria specified in each Environmental Management Plan being met, the Proponent must submit to the Director-General for approval, an environmental audit ("Initial Audit") to confirm that the completion criteria have been met. The Initial Audits(s) must be prepared by a suitably qualified independent environmental consultant and approved by the Director-General.
- c. Within 3 months after each of the first and third anniversaries of the Director-General's approval of the Initial Audit(s), the Proponent shall submit to the Director-General for approval, environmental audits prepared by a suitably qualified independent environmental consultant. Those environmental audits must review the condition of the Offset Areas against the completion criteria specified in each Environmental Management Plan.

9) Immediately after Condition 21 insert new Condition 21A as follows:

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 and 2:
 - 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.
- 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.

10) Immediately after Condition 36 insert new Condition 36A as follows:

36A. Groundwater

All surface and groundwater take must be authorised under and in adherence to relevant New South Wales water legislation and regulations, as follows:

- a. for areas on site that require dewatering, a water licence must be obtained prior to commencement of work with sufficient entitlement to account for the predicted maximum water take. The water licence application must be accompanied by a groundwater management plan developed to the satisfaction of the NSW Office of Water.
- b. for all works that intersect the aquifer, a licence issued by the NSW Office of Water must be obtained prior to any work being carried out.

11) Delete Condition 38 and replace with new Condition 38 as follows:

38. Biodiversity Offsets

- a. 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 a planning agreement is entered into between the Proponent and 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 a healthy wetland environment is not achieved after an agreed time. Evidence of such an agreement shall be forwarded to the Director-General no later than 5 working days prior to such works commencing.
- b. 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 as shown on Figure 28 of the Revised Ecological Assessment dated April 2013 entitled 'Endangered Ecological Communities Offset Areas' dated 5 April 2013. The Compensatory Habitat Management Plan shall be submitted for approval of Council prior to any works being commenced that may cause or contribute to the relevant impact.
- c. The proponent shall prepare a detailed Wallum Froglet Compensatory Habitat Plan for the 2 hectares of core breeding habitat on the eastern side of Cobaki Parkway, that includes 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. detail of 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); and,
 - VIII.a contingency planning option in the case of system failure.
- d. The Wallum Froglet Compensatory Habitat Management Plan shall be submitted for approval by Council prior to any works being commenced that may cause or contribute to the relevant impact.

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.

12) Delete Condition 39 and replace with new Condition 39 as follows:

39. Wallum Froglet Populations

The proponent must design, construct, operate and maintain the project to ensure that it does not adversely affect any remaining Wallum Froglet Populations on, or adjacent to the site.

13) Delete Condition 41 and replace with new Condition 41 as follows:

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 and 2 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 YCO229-1E1-ES04 (Rev D), YCO229-1E1-ES05 (Rev A), YCO229-1E1-ES06 (Rev A), YCO229-1E1-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.

14) Amend Condition 65 as follows:

65. *Saltmarsh Rehabilitation Works*

- a) Delete the words "Revised Saltmarsh Rehabilitation Plan – Cobaki Estate October 2010" in Condition 65a. and replace them with the words "Revised Saltmarsh Rehabilitation Plan – Cobaki Estate April 2013"
- b) Delete the word "DECCW" in Condition 65b. and replace with "OEH"
- c) Delete the words "Pursuant to Terms of Approval of the Cobaki Estate concept plan, and" in Condition 65b.
- d) Immediately after Condition 65b.(VI) insert an additional point (VII) as follows:
"VII. An adaptive management approach that includes the option to lower the dredged bund levee adjacent to Cobaki Creek below 0.3m"
- e) Delete the words "Revised Saltmarsh Rehabilitation Plan – Cobaki Estate October 2010" in Condition 65d. and replace them with the words "Revised Saltmarsh Rehabilitation Plan – Cobaki Estate April 2013"

15) Amend Condition 68 as follows:

68. *Site Regeneration and Revegetation*

- a) Delete the words "October 2010" and replace with "April 2013"

16) Delete Condition 71

SCHEDULE 3

STATEMENT OF COMMITMENTS

- 7) Delete the Statement of Commitments dated October 2010 and replace with the Revised Statement of Commitments dated 8 May 2013, attached.



Revised Statement of Commitments (8 May 2013) – Cobaki Central Open Space

Project Component	Environmental Outcome (Commitment)	Measure (Commitment)	Timing for Completion
1. Stormwater and flood management	Stormwater management structures are maintained. Flood protection is provided in the design of the development.	Stormwater management structures are to be maintained in accordance with the Stormwater Quality Concept Plan (Yeats September 2010) Development will be carried out in accordance with the Revised Local Flooding and Flood Impact Assessment (Gilbert & Sutherland July 2010) and measures required by Tweed Shire Council.	As part of infrastructure works for each stage of development in central open space and riparian corridor. As part of infrastructure works for each stage of development in central open space and riparian corridor.
2. Groundwater	Groundwater levels and quality are maintained.	The measures for monitoring and managing groundwater in the Groundwater Management Plan (Gilbert & Sutherland April 2008) are to be implemented.	As part of infrastructure works for each stage of development in central open space and riparian corridor.
3. Native vegetation	Native vegetation is rehabilitated and maintained.	Native vegetation is to be rehabilitated and maintained in accordance with the Revised Site Revegetation and Regeneration Plan (James Warren & Associates April 2013) and Vegetation Management Plan (James Warren & Associates 2009d).	Rehabilitation works will commence prior to registration of a plan of subdivision for residential development adjacent land, and be completed in accordance with the Revised Site Regeneration and Revegetation Plan until the land is dedicated to Tweed Shire Council.

Darryl Anderson Consulting Pty Ltd

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Town Planning & Development Consultants



Project Component	Environmental Outcome (Commitment)	Measure (Commitment)	Timing for Completion
4. Freshwater wetlands	Freshwater wetlands are maintained.	<p>Freshwater Wetlands (on site) are to be maintained in accordance with the Freshwater Wetland Compensatory Habitat Management Plan.</p> <p>Wetlands to be maintained off site 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.</p>	<p>Rehabilitation works for on-site offsets will commence prior to registration of a plan of subdivision for residential development of adjacent land, and be completed in accordance with the Freshwater Wetland Compensatory Habitat Management Plan and maintained until the land is dedicated to Tweed Shire Council.</p> <p>Rehabilitation works off-site offsets will be 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.</p>
5. Saltmarsh	Saltmarsh is rehabilitated and maintained.	Saltmarsh is to be rehabilitated and maintained in accordance with the Revised Saltmarsh Rehabilitation Plan (James Warren & Associates April 2013).	Rehabilitation works will commence prior to registration of any plan of subdivision for residential development at Cobaki Estate, and be completed in accordance with the Revised Saltmarsh Rehabilitation Plan until the land is dedicated to Tweed Shire Council.



Project Component	Environmental Outcome (Commitment)	Measure (Commitment)	Timing for Completion
		A drainage easement on title shall be provided through the saltmarsh area in accordance with the Revised Saltmarsh Rehabilitation Plan dated April 2013).	Registration of plan of subdivision for central open space and riparian corridor.
6. Biting Midge and Mosquitos	Biting midge and mosquito habitat is managed to reduce populations.	Biting midge and mosquito habitat is to be managed in accordance with the Biting Midge and Mosquito Control Plan (Mosquito Consulting Services May 2008).	The implementation of the Biting Midge and Mosquito Control Plan will commence and be completed in conjunction with the rehabilitation works in Revised Saltmarsh Rehabilitation Plan above.
7. Fauna management	Potential impacts on threatened fauna are managed and mitigated.	The provisions of the Revised Fauna Management Plan, Cobaki Lakes (James Warren & Associates April 2013) and the SEPP 44 Assessment, Cobaki Lakes - Preferred Project Report (James Warren & Associates, 2009h) and the Revised Assessment of Significance - Cobaki Parkway 'Missing Link' & Re-alignment of Sandy Lane (southern portion) (James Warren & Associates April 2013) will be implemented.	As part of relevant stages of work.
8. Site Remediation	The abandoned cattle dip site is remediated.	The abandoned cattle dip is to be remediated in accordance with the approved Remediation Action Plan, and issued with a Site Audit Statement from an accredited auditor.	Prior to registration of any plan of subdivision at Cobaki Estate.
9. Acid Sulfate Soils Management	Acid sulphate soils are managed without harmful effects on the environment.	The ASS Management Plan at Appendix H of the Environmental Assessment Report for this Project Application will be implemented	As part of earthworks.
10. Geotechnical Stability	Geotechnical conditions are stable.	10.1 The Broadscale Geotechnical Investigation - Cobaki Lakes (Cardno Bowler, February 2010) will be implemented to support earthworks, civil construction and building work.	As part of earthworks.
11. Heritage conservation	Aboriginal cultural heritage on the site is appropriately conserved.	The requirements of the Cultural Heritage Management Plan (CHMP) (Everick, April 2010) will be implemented in relevant areas.	As part of all works.

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Project Component		Environmental Outcome (Commitment)	Measure (Commitment)	Timing for Completion
12.	Construction Management	Construction impacts are managed and mitigated.	A Construction Management Plan (CMP) will be prepared and implemented to manage the proposed methods and impacts of construction described in the EAR.	CMP will be prepared prior to commencement of works the subject of this application, and implemented throughout the construction works.