



**Office of
Environment
& Heritage**

Your reference: 08_0200 (MOD 3)
Our reference: DOC14/171279
Contact: Kelly Roche (02) 6659 8288

Mr Chris Ritchie
Manager, Industry, Key Sites and Social Projects
Department of Planning and Environment
GPO Box 39
Sydney NSW 2001

Att: Ms Rebecca Sommer

Dear Chris Ritchie

Re: Cobaki Residential Subdivision – Open Space – Modification 3

Thank you for your letter dated 30 July 2014 to the Office of Environment and Heritage (OEH) seeking comments on the proposed Cobaki Residential Subdivision Modification 3. I appreciate the opportunity to provide input.

In preparing this response, OEH has reviewed the following documentation:

- *Cobaki Lakes Environmental Assessment Report – Southern Special Purpose Precinct (SSPP)* July 2014
- *Construction Environmental Management Plan – Cobaki Estate – Southern Special Purpose Precinct (SSPP), Bulk Earthworks* July 2014
- *Revised Site Revegetation and Regeneration Plan* (James Warren Associates) November 2012
- *Revised Saltmarsh Rehabilitation Plan* (James Warren Associates) November 2012
- *Cultural Heritage Management Plan, Cobaki Lakes Residential Development* (Everick) April 2010
- *Cultural Heritage Letter of Advice, Proposed Modification Application – Central Open space Project Approval, Cobaki Lakes Residential Development* (Everick) July 2014

From a review of the above-mentioned documentation, OEH understands that the modification proposal specifically relates to:

- The extraction of over 180,000m³ of fill from the Precinct 9 'extension area'; and
- Placement of the fill into the Southern Special Purpose Precinct (SSPP) 'extension area', which is necessary due to identified geotechnical issues associated with the Cobaki Parkway Missing Link area.

Detailed OEH comments in relation to biodiversity, Aboriginal cultural heritage and flooding aspects are provided in Attachment 1.

In relation to biodiversity, OEH recommends that prior to determining the proposed modification:

1. The location, extent, biodiversity features and environmental safeguards associated with both the proposed borrow area and the SSPP extension fill site should be clarified in the context of the extent to which the clearing involved with the proposed modification is consistent with clearing assessed under prior approvals. This is required to facilitate the assessment of biodiversity impacts and the formulation of appropriate and/or additional environmental safeguards, mitigation and offset strategies for the proposed modification.

2. The areas of Endangered Ecological Communities to be cleared within the borrow area and the SPSS extension fill site should be provided.
3. The CEMP for the borrow area and the SSPP extension fill site should be refined to only include management actions and controls that are relevant to this area and the currently proposed modification to improve the capacity for execution and verification of those actions and controls.
4. Consideration should be given to requiring assisted restoration within the Environmental Reserve, utilising topsoil, seed bank and living plants from the coastal saltmarsh endangered ecological community that will be removed from the SSPP area.

In relation to Aboriginal cultural heritage, OEH acknowledges the Cultural Heritage Management Plan details appropriate procedures to manage the Aboriginal cultural heritage values associated with the project area. OEH has no additional concerns with the Aboriginal cultural heritage assessment for the proposed modification and considers Conditions 32 and 37 of the existing approval provide for the management of Aboriginal cultural heritage.

In relation to flooding, OEH advises that the documentation submitted in support of the proposed modification makes no mention of its impact on flooding. OEH recommends that:

1. Further consideration of flooding in the context of the overall proposal may be required.
2. If not already undertaken, flood impacts should be reviewed and reconsidered in light of the findings of the Tweed Valley Floodplain Risk Management Study and Plan which is now finalised.

If you require further information or clarification, or should the Department be in possession of information that suggests OEH's statutory interests may be affected, please contact Ms Kelly Roche, Regional Biodiversity Conservation Officer, on (02) 6659 8288. Please note that Kelly works part-time and is only available on Mondays, Tuesdays and Wednesdays.

Yours sincerely

 29 August 2014

DIMITRI YOUNG
Senior Team Leader Planning, North East Region
Regional Operations

Biodiversity assessment

The modification documentation lacks clarity on the location and extent of the proposed borrow area in Precinct 9, from which over 180,000m³ of material is to be extracted. The potential direct and indirect impacts of the proposed modification works to the environment that could result do not appear to have been adequately considered.

Specifically, the Environmental Assessment Report (EAR) (Revision 1, dated July 2014) does not define the boundary of the extraction area and is silent on the potential biodiversity impacts associated with this component of the proposed works. Similarly, the Construction Environmental Management Plan (CEMP) makes no specific mention of the borrow area and how it is proposed to be managed.

The lack of reference to the location, extent, biodiversity features or environmental safeguards associated with the proposed borrow area makes it impossible to determine the relevance, effectiveness and adequacy of any management, mitigation and/or offset regime. OEH recommends that these matters be clarified to facilitate assessment of biodiversity impacts and formulation of appropriate environmental safeguards, mitigation and offset strategies prior to determining the proposed modification.

The EAR does not appear to clearly address the likely impact of the placement of fill into areas mapped as Endangered Ecological Communities (EECs). The EAR states (p16) that the areas of EECs to be cleared within the SSPP area are not currently known due to recent clearing works associated with earlier consents which may alter the figures contained within Table 4 of the EAR.

The EAR goes on to state that areas of EECs will be “clearly delineated once accurate on-ground survey is complete.” OEH makes the assumption that a maximum of 4.3ha area of vegetation to be cleared within the SSPP area may be identifiable as EECs, with saltmarsh being the main vegetation community impacted. Further, the table detailing “Monitoring relevant to the construction activities within the SSPP” (Table 17 page 37) does not provide for the delineation of EECs prior to construction. OEH recommends that this information be provided prior to determining the application to modify the approval, in order to clarify the extent to which the clearing proposed under the proposed modification is consistent with clearing assessed under prior approvals.

Environmental Management Activities and Controls outlined in the CEMP for fauna and flora are not specific to the SPSS site, so it is difficult to determine which measures will relate to the subject area. OEH recommends that the CEMP for the SSPP be refined to only include management actions and controls that are relevant to this area to improve the capacity for execution and verification of those actions and controls.

OEH understands that a substantial area of coastal saltmarsh EEC within the Environmental Reserve area immediately west of Sandy Road may have been impacted following works to construct a road embankment for Cobaki Parkway and that management of coastal saltmarsh communities in the project area is currently under review.

Given the likely need for substantial rehabilitation effort in the coastal saltmarsh EEC areas in the Environmental Reserve, OEH recommends that consideration be given to requiring assisted restoration utilising the saltmarsh community that will be removed from the SSPP area.

Careful, planned translocation of topsoil, seed bank and living plants from the SSPP saltmarsh area to the Environmental Reserve could significantly increase the regenerative capacity of the site in a timely and cost-effective manner. It would also ensure that appropriate genetic provenance is maintained.

Despite the potential benefits of translocation outlined above, translocation is not supported by OEH as an offset mechanism. Any areas of coastal saltmarsh EEC to be translocated should be counted as part of the impact for the proposal and appropriately offset.

A similar translocation program was undertaken as part of the Tugun Bypass Pacific Highway upgrade project adjacent to the project area. Adoption of this approach may have implications for the timing of any approval for the modification proposed, and may warrant the imposition of specific conditions to give effect to a coastal saltmarsh translocation program that requires access to biological resources within the SSPP area.

Aboriginal cultural heritage assessment

OEH acknowledges the significance of the area to the local Aboriginal community and notes that the *Cultural Heritage Management Plan, Cobaki Lakes Residential Development* (dated April 2010) (CHMP) prepared by Everick Heritage Consultants Pty Ltd (Everick) reflects this.

OEH also notes the correspondence (Cultural Heritage Letter of Advice, Proposed Modification Application – Central Open space Project Approval, Cobaki Lakes Residential Development. NSW 2486) dated 16 July 2014 to the Department of Planning and environment from Everick stating the proposed modification is unlikely to have any additional impact on Aboriginal cultural heritage and therefore can be adequately managed through continued adherence to the CHMP for the Development.

OEH acknowledges the CHMP details appropriate procedures to manage the Aboriginal cultural heritage values associated with the project area. OEH has no additional concerns with the Aboriginal cultural heritage assessment for the proposed modification and considers Conditions 32 and 37 of the existing approval provide for the management of Aboriginal cultural heritage.

Flooding assessment

OEH advises that if there is no change to the landform (cut and fill) or waterway openings at Sandy Lane and Cobaki Parkway, it is then likely that flood impacts would remain unchanged.

The Cobaki Lakes development had considered flood risk where a minimum floor level of 3.1m AHD had been adopted based on the BMT-WBM "Cobaki Lakes Estate Preliminary Flood Impact Assessment" report of 2008.

Previous OEH correspondence may have recommended that flood impacts be reviewed and reconsidered in light of the findings of the Tweed Valley Floodplain Risk Management Study and Plan. These are now completed. The management study and plan included modelling of the 2050 and 2100 climate change scenarios which may have implications on the planned floor levels and evacuation routes. OEH recommends that the consent authority establish whether this review has been undertaken.