

## ASSESSMENT REPORT

### Cobaki Estate

#### Concept Approval MP06\_0316 (MOD 5) & Project Approval MP08\_0200 (MOD 4)

### 1. BACKGROUND

This report is an assessment of a request to modify the Concept Approval MP 06\_0316 (MOD 5) and Project Approval MP 08\_0200 (MOD 4) for a residential community development, referred to as 'the Cobaki Estate' at Cobaki Lakes in the Tweed local government area.

The request has been lodged by Planit Consulting on behalf of Northern Water Solutions Pty Ltd (NWS) (the Proponent), pursuant to Section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act). It seeks to allow private water and sewerage schemes to service the development.

### 2. SUBJECT SITE

Cobaki Estate is located on the New South Wales and Queensland Border approximately 1.5 kilometres west of the Gold Coast Airport and approximately six kilometres inland of Tweed Heads. Adjoining the site to the east is a wetland protected by *State Environmental Planning Policy No. 14 – Coastal Wetlands*, and the waterway of Cobaki Creek and Cobaki Broadwater. Remnant bushland areas lie to the west and north of the site and are zoned for environmental protection. Agricultural land primarily used for cattle grazing adjoins the site to the south and to the north-west. The site location is shown in **Figure 1**.



**Figure 1: Site location**

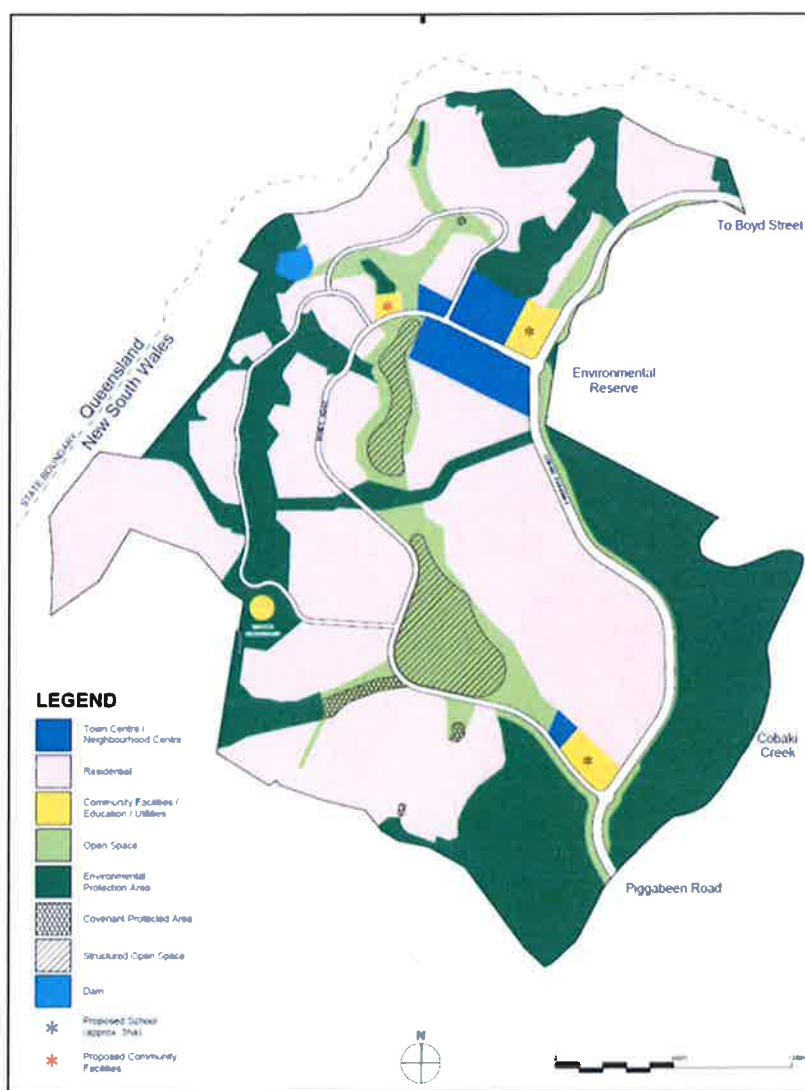
### 3. APPROVAL HISTORY

#### Concept Plan

On 6 December 2010, the then Minister for Planning approved the Concept Plan for Cobaki Estate including a residential development for approximately 5,500 dwellings and a town centre and neighbourhood centre, utility infrastructure, road corridors, open space and environmental protection areas (refer to **Figure 2**).

The Concept approval also included a site specific Development Code (the Development Code) to guide future development and built form across the Cobaki Estate.

The Concept Plan has been the subject of a number of modification requests (refer to **Appendix D**).



**Figure 2:** Cobaki Lakes Residential Community Development – approved Concept Plan layout

#### Project Application

On 28 February 2011, the then Deputy Director-General, as delegate of the Minister for Planning, granted a Project Approval for the Central Open Space (COS) Area (MP 08\_0200). The approval included the subdivision of the entire Cobaki estate into seven lots, staged bulk earthworks and re-vegetation and rehabilitation works.

The Project Approval has been modified on three occasions (refer to **Appendix C**).

#### 4. PROPOSED MODIFICATIONS

The Proponent seeks approval to allow private water and sewerage schemes to service the needs of the development. The proposal seeks to modify existing conditions and terms of approval which have the effect of prohibiting connection to private water services, where such services would otherwise be permitted under the *State Environmental Planning Policy (Infrastructure) 2007* (the Infrastructure SEPP).

The existing approvals for the Cobaki Estate envisage connection to Tweed Shire Council's reticulated water and sewerage system. Therefore any water and sewerage works must currently be assessed by Council under Section 68 of the *Local Government Act 1993* (LG Act) as it would become a Council asset and therefore must be designed and constructed in accordance with Council's requirements.

However, privately owned and operated water and sewerage systems can be provided in NSW, subject to a separate license issued by the Independent Pricing and Regulatory Tribunal (IPART) in accordance with the *Water Industry Competition Act 2006* (WIC Act 2006). The Infrastructure SEPP allows sewerage treatment plants, water recycling facilities and sewage reticulation systems to be carried out without consent by any person licensed under the WIC Act 2006 (subject to appropriate zoning) across the State.

The proposed modifications would provide flexibility for the Proponent to either connect into Council's reticulated water and sewerage system or provide a standalone Waste Water Treatment Plant (WWTP) to service the development. The modifications would therefore bring the site into line with development provisions applying to the rest of the State under *State Environmental Planning Policy (Infrastructure) 2007*.

The proposed modifications include:

- amendments to the wording of the water and sewerage conditions in the existing approvals to allow for a private water and sewerage scheme under a separate approval pathway;
- additional conditions relating to the provision of private services infrastructure, noting such infrastructure, including the piping works would be exempt from a licence under the WIC Act;
- amendments to the Cobaki Development Code (the Code), as it relates to water servicing, including:
  - changes to the exempt and complying development provisions to:
    - change provisions which currently refer to approval of 'Council' as the relevant water authority to a general reference to 'the water supply authority';
    - remove a requirement for rainwater harvesting as part of complying development if the site is connected to a reticulated recycled water supply;
    - make other minor amendments to wording to enable connection to private water services; and
  - incorporation of a new section (Section 5.10) which provides controls for water and sewer systems.

The proposed modifications do not:

- result in any physical changes to the approved development;
- propose a specific type of water or sewage system; and
- include the provision of any water servicing infrastructure as part of this request.

Any future development of a sewage treatment plant, water recycling facility, or associated infrastructure would be the subject of a separate assessment and determination.

## 5. STATUTORY CONSIDERATION

### 5.1 Section 75W

The applications were originally approved under Part 3A of the EP&A Act. Although Part 3A was repealed on 1 October 2011, the projects remain 'transitional Part 3A projects' under Schedule 6A of the EP&A Act, and hence any modification to the approvals must be made under the former Section 75W of the Act. The Department is satisfied the proposed changes are within the scope of Section 75W of the EP&A Act, and do not constitute new applications.

### 5.2 Approval Authority

The Minister for Planning is the approval authority for the modification requests. However, the Deputy Secretary, Planning Services may determine the requests under delegation as:

- Council has not made an objection to the proposals
- a reportable political donation has not been made
- there were no public submissions in the nature of objections.

The proposals also include changes to the Cobaki Estate Development Code's exempt and complying development provisions which were given effect through a Ministerial Order pursuant to s75P(2)(d) of the EP&A Act which was declared at the same time as the Minister approved the Concept Plan on 6 December 2010.

The approved Code can be amended by approving the revised Code and making an order to amend the existing section 75P(2)(d) order.

The Minister for Planning is the approval authority for the proposed changes to the Development Code. However, the Deputy Secretary, Planning Services, may approve an amendment to the Code under delegation.

## 6. CONSULTATION

The Department made the modification requests publically available on its website and also consulted with Tweed Shire Council (Council) about the proposed modifications.

**Council** does not object to the provision of a private water and sewerage system for the Cobaki Estate. However, Council raises concern with the proposed pressure sewer system currently being pursued by the Proponent in its separate application to IPART for a network operator's licence. Council is of the opinion a conventional gravity system is the most appropriate system to use for the Cobaki Estate.

Council also provided comments in relation to:

- compliance with Council's standards and design specifications;
- accommodating additional infrastructure within the road reserves;
- the location of any future WWTP and public notification of surrounding residents; and
- permissibility of WWTP under the Code

These issues are addressed in **Section 7** below.

Council also recommended minor changes to the wording of relevant conditions and provisions of the Code, most of which have been agreed to by the Proponent and the wording of the proposed conditions and the Code have been amended accordingly.

## 7. ASSESSMENT

Throughout the assessment process, Council raised concerns and suggested changes to conditions and the Code to facilitate the provision of a private water and sewerage system for the Cobaki Estate. In response, the Proponent has accepted most of the Council's recommended changes and has included further changes to the Code to address Council's issues. Following multiple changes to the Code, key issues that remain for Council relate to:

- the type of sewer system likely to be provided by the private supplier;
- the potential wastewater treatment plant that may be provided in the future; and
- the accommodation of additional services within the road verges.

These issues are discussed in **Table 1**.

**Table 1:** *Consideration of outstanding Council issues*

Issue	Consideration	Recommendation
Type of Sewer System	<ul style="list-style-type: none"><li>• The proposed modifications would allow the Proponent to pursue private water servicing arrangements on the site, and subject to approval of a network operator's licence, this may allow the Proponent to provide a pressure sewer system instead of a conventional gravity system, without Council approval.</li><li>• Council acknowledges the type of sewer system is not subject of these modification requests, but would be subject of future applications and licencing arrangements. However, Council wants to flag its concerns with the pressure sewer system being pursued by the Proponent (in its separate application to IPART).</li><li>• Council do not support pressure systems due to potential maintenance, noise and odour issues. Council advises that should the Proponent require Council approval under Section 68 of the LG Act (in the event a licence is not issued, or where works are being carried out under a licence exemption), Council would not support a pressure system.</li><li>• Further, Council is concerned that should a pressure system be constructed, Council could be nominated as 'Last Resort Provider' and if the operator fails, it would be required to operate and maintain a system it considers to be substandard.</li><li>• The Proponent takes a different view and considers gravity sewer is not suited to the low areas of the site. It also notes that alternative systems, including pressure sewer systems, are provided for under the Council's DCP requirements.</li><li>• The Department notes both parties views on the merits of each sewer system. However, the Department considers the merits or otherwise of a particular type of system is outside of the scope of the current modification requests. Rather, the merits and requirements for future system/s on the site would be subject to separate assessment and determination processes and licencing arrangements.</li><li>• The Department considers the proposed modification is acceptable as it would merely enable private water servicing arrangements to be pursued on the site consistent with the State-wide provisions for water recycling and sewerage infrastructure under the Infrastructure SEPP. However, approval of these modifications in no way indicates or provides support for one type of system over another.</li></ul>	No additional future assessment requirements or amendment necessary.

Issue	Consideration	Recommendation
<i>Waste Water Treatment Plant (WWTP)</i>	<ul style="list-style-type: none"> <li>• The proposed modification would provide flexibility for the Proponent to either connect into Council's reticulated systems or provide a standalone WWTP to service the development.</li> <li>• Council is concerned that if a network operator's licence is obtained, then the WWTP may not be the subject of any development application process and any future approval pathway may not provide adequate opportunity for public consultation.</li> <li>• Council also note that in the event the facility is located within the site, the Code would need to be amended to include a WWTP as a permissible use.</li> <li>• The Department notes the WWTP does not form part of this proposal and is therefore outside the scope of the requests.</li> <li>• However, should the Proponent seek to implement a WWTP on the site in the future, a further modification to the Concept Approval would be required, as the existing approval currently does not provide for WWTPs as a permissible land use. The Department would ensure any future modification for an on-site WWTP would be notified to adjoining landowners.</li> <li>• The ability to provide a WWTP off-site (and the notification requirements of any associated assessment process) is not altered by this modification.</li> </ul>	No additional future assessment requirements or amendment necessary.
<i>Provision of Services in the Road Reserve</i>	<ul style="list-style-type: none"> <li>• To facilitate the provision of private sewer and water services on the site, the Proponent sought to amend Section 5.9 of the Code, which sets out how services are to be provided below the footpath / verge. The Proponent sought to include updated road sections which illustrate the location of the additional water servicing infrastructure within the road reserve.</li> <li>• Council noted the Proponent seeks to reduce the width of the road to accommodate the additional services within a larger verge. Council noted that if a wider verge is required to accommodate the services, then the total road reserve needs to be widened, without changing the width of the road. This may impact on lot layouts for existing and future subdivision configurations. Council also raised a number of other concerns with the proposed roadway sections and noted existing subdivision approvals issued by Council may need to be modified to accommodate additional infrastructure within the verges.</li> <li>• In response, the Proponent deleted the proposed revisions to Section 5.9. However, Council advised deleting the revisions does not resolve its concerns regarding the width of the road and verge to accommodate the proposed services, as additional width would potentially be required to accommodate the recycled water pipes.</li> <li>• The Department considers the provision of additional services within the road reserve is likely to require additional verge widths, and this should be provided without compromising the width of the road. However, until the water servicing arrangements are known, it is not possible to determine exactly how much additional width is required.</li> <li>• The Department therefore considers it is appropriate to impose a new future assessment requirement for future subdivision applications to demonstrate all necessary services can be provided within the road reserve without reducing the widths of the road. On this basis, the Department is satisfied the proposed modifications can allow flexibility in water servicing arrangements without compromising future road design.</li> </ul>	A future application requirement is recommended requiring future applications for subdivision and new roads to demonstrate adequate space within the verge and road reserve for provision of all services.



Issue	Consideration	Recommendation
Code Changes	<ul style="list-style-type: none"> <li>The Department notes existing approvals issued by Council were based on connection to Council's infrastructure. Should the Proponent seek to modify these to incorporate connection to private water systems, it would be open to Council to consider any necessary changes to verge widths to accommodate the infrastructure.</li> </ul>	
	<ul style="list-style-type: none"> <li>The proposal incorporates a number of changes to the Cobaki Development Code as it relates to water servicing.</li> <li>Changes include amendments to the exempt and complying development provisions to: <ul style="list-style-type: none"> <li>change some provisions which currently require the approval of 'Council' as the relevant water authority to a general reference to 'the water supply authority';</li> <li>remove a requirement for rainwater harvesting as part of complying development if the site is connected to a reticulated recycled water supply; and</li> <li>make other minor amendments to wording to enable connection to private water services.</li> </ul> </li> <li>Changes also include a new section of the Code (Section 5.10) which provides controls for water and sewer systems whether connected to Council's system, or operated privately.</li> <li>Council and the Department made a number of suggestion changes to the wording of the proposed controls, the majority of which have been adopted by the Proponent.</li> <li>The Department considers the amended Code incorporates appropriate controls to enable future provision of private water servicing arrangements on the site, as well as flexibility to connect to Council services if private services are not provided.</li> </ul>	<p>Existing future assessment requirements requiring applications to comply with the Code have been updated to reference the new Code.</p> <p>A Order to amend the Code has been prepared for approval at <b>Appendix B.</b></p>

## 8. CONCLUSION

The Department has assessed the modification requests and supporting information in accordance with the relevant requirements in the EP&A Act. The Department's assessment concludes the proposed modifications are appropriate on the basis that they would:

- allow the State-wide provisions for water recycling and sewerage infrastructure under the Infrastructure SEPP to be applied to the site
- provide flexibility for the Proponent to either connect to Council's water and sewer systems, or to implement a private standalone water and sewerage system to service the development
- facilitate competitive water and sewer services consistent with the objectives of the WIC Act 2006.

Consequently, the proposals are in the public interest and it is recommended that the modifications be approved subject to the recommended conditions.

## 9. RECOMMENDATION

It is recommended that the Deputy Secretary, Planning Services, as delegate of the Minister for Planning:

- **considers** the findings and recommendations of this report
- **determines** that the requests fall within the scope of section 75W of the EP&A Act;
- **approves** Concept Approval MP06\_0316 (MOD 5) and Project Approval MP08\_0200 (MOD 4), subject to conditions;
- **signs** the notices of modification (**Appendix A**); and
- **signs** the Order to amend the Cobaki Estate Development Code (**Appendix B**).

Recommended by:



Anthony Witherdin  
Director  
Modification Assessments

Recommended by:



Chris Ritchie  
Acting Executive Director  
Key Sites and Industry Assessments

25/8/17

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## DECISION

Approved by:



Marcus Ray  
Deputy Secretary  
Planning Services

29/08/2017



## **APPENDIX A: NOTICE OF MODIFICATION**

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The Notices of Modification can be found on the Department's website at the following addresses:

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=7866](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7866)

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=7867](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7867)

**APPENDIX B: ORDER TO AMEND THE COBAKI ESATE DEVELOPMENT CODE**

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**ORDER TO AMEND PART A - EXEMPT AND COMPLYING DEVELOPMENT – COBAKI  
ESTATE DEVELOPMENT CODE**

I, Marcus Ray, Deputy Secretary, Planning Services, as delegate of the Minister for Planning, amend the Order made under section 75P(2)(d) of the *Environmental Planning and Assessment Act 1979*, dated 6 December 2010, by replacing the reference to '*Part A - Exempt and Complying Development in Cobaki Estate Development Code, 15 November 2010*' with '*Part A - Exempt and Complying Development in Cobaki Estate Development Code, June 2017 (Revision 2)*'.



Marcus Ray  
**Deputy Secretary**  
**Planning Services**

Dated this 29<sup>th</sup> day of August 2017

## APPENDIX C: SUPPORTING INFORMATION

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The following supporting documents and supporting information to this assessment report can be found on the Department of Planning and Environment's website as follows:

1. Modification request

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=7866](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7866)

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=7867](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7867)

2. Submissions

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=7866](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7866)

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=7867](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7867)

3. Response to Submissions

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=7866](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7866)

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=7867](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7867)

4. Updated Cobaki Estate Development Code

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=7866](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7866)

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=7867](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7867)

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## APPENDIX D: APPLICATION HISTORY

### Concept Plan

On 6 December 2010, the then Minister for Planning approved the Concept Plan for Cobaki Estate and included zoning amendments to the Tweed Local Environment Plan (LEP) 2000 and the adoption of the site specific Code to guide future development and built form across the Cobaki Estate (refer to **Figure 2**).

Concept approval was granted to develop 605.45 ha of land as a residential development comprising:

- residential development to cater for approximately 5,500 dwellings;
- town centre and neighbourhood centre for future retail and commercial uses;
- community facilities and school sites;
- open space;
- wildlife corridors and the protection and rehabilitation of environmentally sensitive land;
- road corridors and utility services infrastructure including water management areas; and
- roads and pedestrian and bicycle networks.

The Concept Plan is also subject of a number of modification applications as follows:

**Table 1:** *Summary of Modification Applications*

MOD	Modification	Date Approved/Current Status
1	<ul style="list-style-type: none"><li>• include new biodiversity offset arrangements and various administrative changes to conditions</li></ul>	29 May 2013
2	<ul style="list-style-type: none"><li>• accommodate a university campus on the site</li></ul>	Withdrawn
3	<ul style="list-style-type: none"><li>• reclassification of the vegetation community</li></ul>	SEARs issued 30/07/15
4	<ul style="list-style-type: none"><li>• various changes including new school site and extension to the Town Centre</li></ul>	Under Assessment
6	<ul style="list-style-type: none"><li>• increase the building heights</li></ul>	SEARs issued 10/11/16
7	<ul style="list-style-type: none"><li>• modify Cobaki Development Code</li></ul>	Under Assessment
8	<ul style="list-style-type: none"><li>• increase the building heights</li></ul>	Draft SEARs being prepared

### Project Application

On 28 February 2011, the then Deputy Director-General, as delegate of the Minister for Planning, granted a Project Approval for the Central Open Space Area (MP 08\_0200). The approval allowed for the carrying out of the following:

- subdivision of the entire Cobaki estate into 7 lots (including residue lot for future urban development);
- staged bulk earthworks to create the central open space (COS) area, riparian corridor, structured open space, and future stormwater drainage area;
- road forming works and culverts crossing the central open space;
- road forming works across saltmarsh areas, including culverts and trunk sewer and water services;
- revegetation and rehabilitation of environmental protection areas for coastal saltmarsh; and
- establishment of freshwater wetland and fauna corridors.

This Project Approval has been modified on three occasions. **Table 1** provides a summary of the modification requests.

**Table 1: Summary of Modifications**

<b>MOD</b>	<b>Modification</b>	<b>Date Approved</b>
1	<ul style="list-style-type: none"> <li>amendments to proposed offsetting arrangements for Freshwater Wetlands and Wallum Froglet, including subsequent changes to the relevant management plans; and</li> <li>approval for the use of fill from Precincts 1 &amp; 2 for the formation of the COS area.</li> </ul>	29 May 2013
2	<ul style="list-style-type: none"> <li>the winning of 600,000m<sup>3</sup> of fill from Precincts 9 &amp; 11 (500,000m<sup>3</sup> from Precinct 9 to complete Stage 1 earthworks within the COS area and 100,000m<sup>3</sup> from Precinct 11 to complete Stages 2 &amp; 3 earthworks within the COS area).</li> </ul>	3 April 2014
3	<ul style="list-style-type: none"> <li>bulk earthworks to fill a 4.3 hectare area located within the southern part of the Cobaki Estate, known as the Southern Special Purpose Precinct (SSPP)</li> </ul>	13 February 2015
5	<ul style="list-style-type: none"> <li>removal of the fencing requirements.</li> </ul>	Disapproved 12 April 2017

**Development Applications**

**Table 2** provides a summary of the development applications (DA) determined by the Northern Joint Regional Planning Panel approved by Council:

**Table 2: DA Approvals**

<b>DA Reference</b>	<b>Consent Authority</b>	<b>Description</b>	<b>Date Approved</b>
10/0800	Northern Joint Regional Planning Panel	Subdivision of precinct 1 and 2 comprising 475 residential lots (including one residual lot) and lots for drainage, open space and urban infrastructure	30 May 2011
10/0801	Northern Joint Regional Planning Panel	Subdivision of precinct 6 comprising 442 residential lots (including one residual lot) and lots for drainage, open space and urban infrastructure	30 May 2011