

# Modification of Project Approval

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

As delegate of the Minister for Planning under delegation, I approve the Project Approval referred to in Schedule 1, subject to the conditions in Schedule 2.



Marcus Ray  
Deputy Secretary  
Planning Services

Sydney *29 August* 2017

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### SCHEDULE 1

<b>Project Approval:</b>	MP 08_0200 granted by the Deputy Director-General, Development Assessment & Systems Performance on 28 February 2011.
<b>Land:</b>	Cobaki Estate
<b>Development:</b>	<p>Approval for:</p> <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 areas, 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</li></ul>
<b>Modification No:</b>	MP 08_0200 MOD 4
<b>Modification:</b>	Modifications to enable provision of a private water and sewerage scheme on the site.

## SCHEDULE 2

The project approval as described in Schedule 2 is modified as follows:

- a) Condition 4 is amended by the inclusion of **bold and underlined** words and numbers and the deletion of the ~~struck-out~~ words and numbers as follows:

### ***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 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. *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
- h. *Modification Report – Precinct 9 and Precinct 11 Borrow Areas – Project Approval for Central Open Space* prepared by Darryl Anderson Consulting Pty Ltd dated December 2013
- i. *Cobaki Estate Environmental Assessment Report – Precincts 9 & 11 Borrow Areas – Bulk Earthworks* prepared by SMEC dated December 2013
- j. *Cobaki Estate Construction Environmental Management Plan (CEMP) – Precincts 9 & 11 Borrow Areas – Bulk Earthworks* prepared by SMEC dated December 2013
- k. *Environmental Noise Impact Report – Proposed Earthworks for Central Open Spaces Stages 9 and 11, Cobaki Development, Cobaki NSW* prepared by CRG Acoustical Consultants dated 17 December 2013
- l. *Report on Geotechnical Investigation – Proposed Borrow Source Precincts 9 and 11 Cobaki Lakes, Cobaki* prepared by Douglas Partners dated December 2013
- m. *Modification Application MP08\_0200 MOD 3 - Modification Report – Project Approval No. 08\_0200* prepared by Darryl Anderson Consulting Pty Ltd, July 2014
- n. *Cobaki Estate Development Construction Environmental Management Plan (CEMP) Cobaki Estate – Southern Special Purpose Precinct (SSPP) Bulk Earthworks* prepared by SMEC Urban, July 2014

- o. *Cobaki Estate Development Environmental Assessment Report, Southern Special Purpose Precinct (SSPP) Bulk Earthworks – Bulk Earthworks Revision 1* prepared by SMEC Urban, July 2014
  - p. *Report on Geotechnical Investigation – Proposed Southern Special Purpose Precinct Cobaki*, prepared by Douglas Partners dated May 2014.
  - q. **Modification Report prepared by Planit Consulting dated 28 July 2016, as amended by subsequent responses and additional information dated 7 November 2016, 10 January 2017, 31 January 2017, 10 March 2017, 21 April 2017, 28 July 2017 and 9 August 2017.**
- b) Condition 5 is amended by the inclusion of **bold and underlined** words and numbers and the deletion of the ~~struck-out~~ words and numbers as follows:

## **5. Inconsistency between documents**

In the event of any inconsistency between:

- a. The conditions of this approval and the drawings/documents referred to in Conditions 3 and 4 above, the conditions of this approval prevail to the extent of the inconsistency;
  - b. Any document listed in Conditions 3 and 4 above ~~and any other document listed in Conditions 3 and 4 above~~, the most recent document shall prevail to the extent of the inconsistency; and
  - c. The conditions of this approval and the proponent's Statement of Commitments, the conditions of this approval prevail to the extent of the inconsistency.
- c) Condition 7 is amended by the inclusion of **bold and underlined** words and numbers and the deletion of the ~~struck-out~~ words and numbers as follows:

## **7. Subdivision Manual**

- a. All works approved as part of this project are to be carried out generally in accordance with Council's *Development Control Plan Part A5 - Subdivision Manual* and Council's relevant Development Design and Construction Specifications unless otherwise altered by the provisions of **the Concept Approval or the Cobaki Estate Development Code Revision 2 dated June 2017.**

Note: minor variations to the drawings approved in this approval may be required and approved in applications for construction certificate at the discretion of Council.

- b. Notwithstanding condition 7a above, where there is any inconsistency, the conditions of this approval, the Cobaki Estate Concept Plan (06\_0316) and Cobaki Estate Development Code **Revision 2 dated June 2017** prevail to the extent of the inconsistency.
- c. **Notwithstanding condition 7a above, where there is an inconsistency between this consent and any water and sewer infrastructure sought under the Water Industry Competition Act 2006, then the provision of the Water Industry Competition Act 2006 and any approval granted under this legislation, will prevail, to the extent of the inconsistency.**

- d) Condition 8 is amended by the inclusion of **bold and underlined** words and numbers and the deletion of the ~~struck-out~~ words and numbers as follows:

## **8. 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, **plus Section 68 approval under the Local Government Act 1993 for any water and sewer not constructed under a WIC Act Licence.**
  - 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 **in accordance with Section 109D(1)(d) of the Act, plus a Certificate of Compliance under Section 307 of the Water Management Act 2000 for any water and sewer not constructed under a WIC Act licence that services the subdivision. Works carried out under a WIC Act Licence must be appropriately certified by the licenced network operator.**
  - 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.
- e) Condition 11 is amended by the inclusion of **bold and underlined** words and numbers and the deletion of the ~~struck-out~~ words and numbers as follows:

## **11. Registration of Easements / Restrictions to use / Right of carriageway**

- a. The creation of easements for services, rights of carriageway and restrictions as to user are applicable under Section 88B of the *Conveyancing Act 1919*, including (but not limited to) the following:
  - I. Easements for sewer, water supply and stormwater/drainage over all public services/infrastructure on private property.
  - II. Stormwater/drainage easements are to be placed over all relevant surface drains, all subsurface drains and inter-allotment drainage, benefiting and burdening the property owners. Maintenance of the subsurface drains is to be included in the 88B instrument.
- b. Any Section 88B Instrument creating restrictions as to user, rights of carriageway or easements which benefit Council shall contain a provision enabling such restrictions, easements or rights of way to be revoked, varied or modified only with the consent of Council.

*Note:* Privately owned infrastructure on community land may be subject to the creation of statutory restrictions, easements etc in accordance with the *Community Land Development Act 1989*, *Strata Schemes Management Act 1996*, *Conveyancing Act 1919*, or other applicable legislation.

- c. A Section 88B Instrument shall be submitted with the Subdivision Certificate application, for Council's endorsement, creating all necessary easements for services, access, stormwater/drainage, rights of carriageway and restrictions as to user as may be applicable under Section 88B of the *Conveyancing Act 1919* (including any necessary temporary arrangements).
- d. Pursuant to Section 88BA of the *Conveyancing Act 1919* (as amended) the Instrument creating the right of carriageway/easement to drain water shall make

provision for maintenance of the right of carriageway/easement by the owners from time to time of the land benefited and burdened, and for costs to be shared equally or proportionally on an equitable basis

- e. The restriction is to be clearly marked on the plan of subdivision and Council **relevant authority** is to be nominated as the sole party to vary, modify and/or extinguish the restriction.
- f) Condition 13 is amended by the inclusion of **bold and underlined** words and numbers and the deletion of the ~~struck-out~~ words and numbers as follows:

### **13 Bond for Works**

Prior to the issue of a Construction Certificate for Civil Works **or issue of a Section 68 for water and sewer under the Local Government Act (as applicable)**, a cash bond or bank guarantee (unlimited in time) shall be lodged with Council for an amount based on 1% of the value of the Civil works as set out in Council's fees and charges at the time of payment. The bond may be called up at any time and the funds used to rectify any non-compliance with the conditions of this approval, which are not being addressed to the satisfaction of Council.

The bond will be refunded, if not expended, when the associated Subdivision Certificate is issued.

- g) Condition 17 is amended by the inclusion of **bold and underlined** words and numbers and the deletion of the ~~struck-out~~ words and numbers as follows:

### **17 Water and Sewer Infrastructure**

- a. Design and construction of the water main and sewer rising mains proposed along Cobaki Parkway to Cobaki Creek Bridge **if not constructed under a WIC Act Licence**, must be subject to separate construction certificate approval **and/or Section 68 approval under the Local Government Act for water and sewer** by Council and shall be generally in accordance with the following plan prepared by Yeats Consulting Engineers:

YC0229-1P1-TP01	B	Temporary Water and Sewer Rising Main Plan	17 September 2010
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- b. The design of these services shall take into account soil settlement and geotechnical issues in those areas.

Note: The proponent shall ensure that the water main and sewer rising mains proposed along Cobaki Parkway to Cobaki Creek Bridge are in place prior to the release of the first residential lots (or other land uses that require their operation).

- c. The proponent shall demonstrate that timing of construction of the water main and sewer rising mains proposed along Cobaki Parkway to Cobaki Creek Bridge is coordinated with preload for all other roadways and structures in this corridor, to the satisfaction of Council.
- d. The water main and sewer rising mains proposed along Cobaki Parkway to Cobaki Creek Bridge must be designed to ensure their integrity is sustained during flood events, particularly through the floodway section, and in the embankment between the culverts and Cobaki Creek Bridge.
- e. **The above condition (a) is only applicable where particular mains are to become Council assets. If the pipelines are to be constructed and operated under the provisions of a WIC Act licence, they may be constructed and**

**operated under the provisions of the State Environmental Planning Policy (Infrastructure) 2007 and the licenced approved scheme.**

- h) Condition 58 is amended by the inclusion of **bold and underlined** words and numbers and the deletion of the ~~struck-out~~ words and numbers as follows:

**58 Works as Executed**

- a. A Certificate of Compliance shall be submitted to Council by the Proponent's Subdivision Works Accredited Certifier (SWAC) or equivalent, verifying that the placed fill has been compacted in accordance with the requirements of AS 3798, *Guidelines on Earthworks for Commercial and Residential Developments* and is suitable for the intended purposes. This submission shall include copies of all undertaken test results.
- b. All civil works approved with the Construction Certificate(s) are to be completed to the satisfaction of the PCA.
- c. Works as Executed Plans shall be submitted in accordance with the provisions of Council's *Development Control Plan A5 - Subdivisions Manual* and Council's *Development Design and Construction Specification, D13 - Engineering Plans*.
- d. The plans are to be endorsed by a Registered Surveyor or a Consulting Engineer Certifying that:
  - I. all relevant drainage systems, **water and** sewer lines, services and structures (as appropriate) are wholly contained within an appropriate easement created by the subdivision;
  - II. the plans accurately reflect the Works as Executed.

Note: Where works are carried out by Council on behalf of the proponent it is the responsibility of the proponent to prepare and submit works-as-executed plans.

- i) The Statement of Commitments are amended by the inclusion of new commitment No 13 as follows:

Project Component	Environmental Outcome (Commitment)	Measure (Commitment)	Timing for Completion
<b><u>13. Water and Sewer Infrastructure</u></b>	<b><u>13.1 All water and sewer infrastructure is to be constructed in accordance with relevant approvals and to the necessary standard.</u></b>	<b><u>13.1.1 That where the proponent does not seek to utilise Tweed Shire Council for the provision of water and Sewer Infrastructure, that such infrastructure will be provided in accord with the private approval requirements outlined under the Water industry Competition Act, 2006 and associated regulations</u></b>	<b><u>At each relevant stage of development.</u></b>

**END OF MP 08\_0200 MOD 4**