

8 November 2016

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Attention: Natasha Harras

Dear Sir/Madam

**Proposed modification of the Cobaki Project Approval
(MP08_0200 Mod 5) with regard to fencing and raptor nest
requirements (Condition 39A and 39B).**

I refer to your letter dated 17 October 2016 inviting Council to make a submission on the proposed modifications to the Cobaki Project Approval (Mod 5) in relation to fencing and raptor nest requirements. Please find below comments on the proposed Mod.

1. Condition 39A – Fencing of Environmentally Sensitive Areas – Precinct 9 and 11 Earthworks

Condition 39A has two components, these being: (a) fencing requirements around rehabilitation / covenant areas; and (b) barriers / fencing around an existing Raptor nesting site.

It is proposed to replace the existing wording of Condition 39A with the following:

The boundaries of environmentally sensitive areas in accordance with "Fencing Plan Precinct 9, 11 Borrow Areas Drawing No. 3310071E-044(2), together with the 5m buffer to existing threatened flora species within Vegetation Management Areas 7 and 8, shall be surveyed and appropriately marked with either high visibility netting barriers / fencing or permanent fencing during Precinct 9 and 11 earthworks activities.

Comment:

The fundamental intent of the fencing in these areas is to ensure that earthworks activities do not extend into rehabilitation areas and assist in avoiding inadvertent disturbance to areas subject to future plans for restoration. Secondly, the presence of fencing assists any officers on site to clearly identify the boundary between works areas and rehabilitation areas, which is vitally important on a site of this size and complexity. Whilst some of these areas are currently in low condition, the presence of fencing should prevent further degradation of these areas, within which disturbance will hamper future restoration efforts.

It is considered that fencing is the only available and effective mechanism for protection of these areas and as such the removal of fencing requirements as currently proposed in relation to Condition 39A(a) is not supported.

Modification of fencing requirements in some areas may be appropriate, however these are limited to:

- a. Fenced buffer to the wedge-tailed eagle nest within Precinct 11 (adjacent to Rehabilitation Area 6). This nest site was removed in December 2015 and as such the requirement for a precautionary fenced buffer to this site is no longer required. It is noted however that the Department's Compliance Unit identified that during a site inspection on 19 September 2016, that *"...it appears Ospreys are nesting in the tree immediately adjacent to the previous Wedge Tail Eagle nest (north of P11). Further, in addition two Wedge tail Eagles were present flying overhead of this area."* It is considered that further assessment of this current raptor activity is required, however it would appear appropriate that a precautionary fenced buffer to the Osprey nest and any site being used by Wedge-tailed Eagles is now required; and
- b. Rehabilitation Area 7b (part of which contains Minor Drain 1 and Minor Drain 2) only to that extent that allows access for works relating to construction of the aforementioned drains. Note that in this area, the approved drains overlap with approved Rehabilitation Areas and a covenant protected area. The entire area is still depicted as "Environmental Protection Area (No-go zone) on the fencing plan submitted with this modification request. These conflicts are yet to be appropriately resolved, and it is recommended that further clarification be sought from the applicant in this regard.

Condition 39A(b) relates to the nesting site adjacent to Rehabilitation Area 8, and Precinct 9. The modification request relates to a different raptor nesting site: the nesting site that was removed from Rehabilitation Area 6, adjacent to Precinct 11. As far as Council is aware, the nesting site to which the condition applies still exists, and as such the removal of Condition 39A(b) is not supported.

2. Condition 39B – Buffer to Raptor Nesting Site

Condition 39B requires the proponent's Environmental Officer to determine whether the existing Raptor nest in Precinct 9 is in use prior to Precinct 9 earthworks being carried out. If the site is being utilised by any Raptor species, no works are permitted within 100m radius of the nesting site.

It is proposed to delete Condition 39B.

Comment:

The modification request relates to the nesting site that was removed from Rehabilitation Area 6, adjacent to Precinct 11. Condition 39B specifically relates to the raptor nesting site within Rehabilitation Area 8, adjacent to Precinct 9. This raptor nesting site is still present, and as such, the condition remains relevant. Accordingly, the proposed deletion of Condition 39B is not supported.

Please contact Council's Colleen Forbes on (02) 6670 2596 if you wish to discuss any of the matters raised above.

Yours faithfully

Lindsay McGavin

Manager Development Assessment and Compliance