

18 November 2016

Fiona Gibson  
Planner – Modification Assessments  
NSW Planning & Environment  
GPO Box 39  
**SYDNEY, NSW 2001**

By email: [fiona.gibson@planning.nsw.gov.au](mailto:fiona.gibson@planning.nsw.gov.au)

Dear Fiona,

**Cobaki Project Approval 08\_0200 – Mod 5 – Condition 39A & 39B**

We respond to submissions received by the Department as follows:

Tweed Shire Council

- In relation to the proposed amendment to condition 39A, Council's submission itself shows that Council recognizes that the areas intended to be protected by fencing are *those adjacent to Precinct 9 and 11 earthworks*:

*"...ensure that earthworks do not extend into rehabilitation areas ..."*  
*"...the boundary between works areas and rehabilitation areas..."*

Council's submission is therefore inconsistent with such recognition, because the proposed modification is to remove the requirement for fencing only to areas that are *not* adjacent to Precinct 9 and 11 earthworks.

- Condition 39A requires "*either high visibility netting barrier/fencing or permanent fencing during Precinct 9 and 11 earthworks activities*" (emphasis added).

Whilst the term "permanent fencing" is inconsistent with the requirement for fencing only for the duration of these earthworks, it is clear that the "high visibility netting barrier/fencing is only required for that period. It is therefore only for that period that Council's assertion that fencing "is the only available mechanism for protection of these areas..." has relevance.

The current fencing plan requires only a temporary fence to Rehabilitation Area 7. Council's submission, however, implies that such fencing is to be maintained after the earthworks in Precincts 9 and 11 (related to Mod 2) are

complete, such as it would be in existence when rehabilitation works in Area 7 commenced.

That is not the case. The earthworks in Precincts 9 and 11 (related to Mod 2) will be complete long before works commence in Area 7, for which development approval has yet to be applied for.

In any event, whereas Council concedes the removal of Area 7's fencing "only to the extent that it allows access for works related to the construction of the ... drains...", it would be impractical to keep the fences on (at least) the southern and eastern sides during the excavation of these 25m wide drains.

In the report *Revised Site Revegetation and Regeneration Plan (JWA Ecological Consultants, April 2013)* the condition of Rehabilitation Area 7 was recorded as "very poor". Its vegetation was mapped as "low closed grassland with scattered trees (Pastoral grasses +/- mixed species".

Most of the Area is proposed for revegetation as Swamp Sclerophyll Forest on Floodplain, whilst minor drains 1 and 2 are to be constructed along two edges.

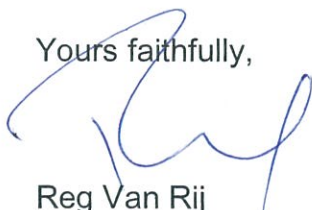
- The fencing plan that was proposed (under this Mod application) does not depict this as an "Environmental Protection Area (no-go zone)", but as "Open Space" consistent with its zoning as "RE Private Recreation".
- Since the Modification Application was made it has been identified that a pair of Ospreys have established a nest adjacent to the location of the previously-existing nest in Precinct 11. We therefore provide a further revised fencing plan (No. 3310071E-044 (2) Rev B) showing a temporary fencing requirement to contain a buffer around this nest.
- With respect to Council's submission concerning any raptors nest in Precinct 9, we provide herewith
  - Letter from SMEC, 8 November 2016
  - Letter from MK Environmental & Heritage Consulting, 11 November 2016

#### Office of Environment & Heritage

The import of the OEH submission is that all areas of the site proposed for protection and/or rehabilitation should be fenced. This is not relevant to Conditions 39A and 39B and the Modifications proposed thereto, nor was it contemplated in the Concept Plan Approval and Project Approval.

OEH's submission with respect to slashing is also not relevant to this Mod Application. We will respond to such enquiry as the Department may make about this.

Yours faithfully,



Reg Van Rij  
Regional Manager – Residential



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8/11/16

Leda Manorstead Pty Ltd  
46 Cavill Avenue  
Surfers Paradise  
QLD 4217

**Attn: Reg Van Rij**

Dear Reg,

**RE: Former Wedge Tailed Eagle Nest – Precinct 9**

We refer to the Raptor's nest identified in Sedgman Yeats plan YCO229-1E1-EC01 dated March 2014 and, as requested by you, comment as follows:

- A SMEC ecologist was the site Environmental Officer from August 2012 to June 2014. No raptors were observed using this site during this period.
- The fencing plan relating to Precinct 9,11 and the SSPP (Drawing 3310071E - 044) was issued in October 2013. It was not considered necessary to provide for a fenced buffer area to this disused site.

Yours sincerely,



**Jon Alexander**  
Principal Ecologist

Dale Scotcher  
LEDA Holdings  
Po Box 1914  
Surfers Paradise  
QLD 4217

11<sup>th</sup> November 2016

**RE: Cobaki Estate Environmental Monitoring - Wedge Tailed Eagle Precinct 9.**

This is to confirm that since the commencement of undertaking the environmental officer role at Cobaki Estate in June 2015, I have never witnessed the presence of a Wedge Tailed Eagle nest in Precinct 9, nor have I witnessed the presence of a Wedge Tailed Eagle flying near or within Precinct 9.

As provided in previous memos I am aware of a nest in Management Area 6 and regularly observe up to four Wedge Tailed Eagles flying over Precinct 11 and 1 however, I have never observed one near Precinct 9 or any nest within or near Precinct 9.

Furthermore, on the 9<sup>th</sup> November 2016 I undertook an observation based assessment of the vegetation buffering Precinct 9 specifically to determine the presence of such a nest and no nest was observed.

I have also discussed the lack of the historically recorded nest with previous environmental officers on site and the current fauna and flora team undertaking summer monitoring, and they also confirm that the nest has not been there since they began monitoring on site in November 2013 (*pers comms* J. Alexander 10/11/2016).

Kindest regards,



Dr Michelle Mills

Technical Director

MK Environmental and Heritage Consulting





#### LEGEND

- ENVIRONMENTAL PROTECTION AREA
- PERMANENT FENCE
- TEMPORARY FENCE
- PROPERTY BOUNDARY
- COVENANT AREA
- BORROW AREA
- OPEN SPACE
- VEHICLE GATE
- PRECAUTIONARY WEDGE-TAILED EAGLE NEST 100M RADIUS NO-GO AREA (SUBJECT TO CONFIRMATION OF USAGE BY AN ECOLOGIST)
- WEDGE-TAILED EAGLE NEST

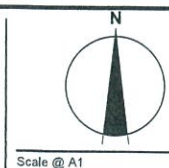
B	Addition of Raptor Nest	16/11/16	AM/CH	
A	Issued for Approval	08/06/16	AM/CH	
REVISION		DATE	DES/DT	APPD

**LEDA**

Principal  
Leda Developments  
Suite 14, Level 1, 46 Cavill Avenue  
Surfers Paradise

Project Leader  
S.Sandford  
Designed  
A. Marsden  
Drawn  
C. Haywood  
Checked

Authorised  
  
Date  
June 2016



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**COBAKI ESTATE**  
Precinct 9 & 11  
Tweed Shire Council  
Borrow Areas  
Fencing Plan Precinct 9,11 Borrow Areas  
Drawing No. 3310071E-044 (2) Rev B  
Sheet No. 1 of 1  
Subject to Approval  
Not to be used for construction