



**MODIFICATION REQUEST:**  
***Cobaki Estate Residential Community  
Development  
Sandy Lane, Cobaki Lakes, Tweed Heads  
(06\_0316 Mod 1 & 08\_0200 Mod 1)***

***Description of Proposed Modifications***

- *Amendment to biodiversity offsetting arrangements*
- *Minor amendments to the Cobaki Estate Development Code*
- *Amendments to Concept Plan terms of approval regarding bushfire management and environmental management plans*
- *Approval of bulk earthworks in Precincts 1 and 2 for the winning of fill for construction of the central open space area*

Director-General's  
Environmental Assessment Report  
Section 75W of the  
*Environmental Planning and Assessment Act 1979*

May 2013

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# 1. BACKGROUND

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## Minister's Approvals

On 6 December 2010 the then Minister for Planning approved a concept plan for the Cobaki Lakes Residential Community Development (MP06\_0316). Approval was granted for the following:

- 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
- protection and rehabilitation of environmentally sensitive land
- road corridors and utility services infrastructure
- water management areas, and
- roads and pedestrian and bicycle networks.

On 15 November 2010 the Director-General approved the Cobaki Estate Development Code, a site specific exempt and complying development code that contains the exempt and complying development controls for the Cobaki residential community development. The Code's exempt and complying development provisions were given effect through a Ministerial Order pursuant to s75P(2)(d) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) which was declared at the same time as the Minister approved the concept plan on 6 December 2010.

On 28 February 2011 the Deputy Director-General, as delegate for the Minister for Planning, gave project approval (MP08\_0200) for the carrying out of:

- subdivision of the entire Cobaki estate into 7 lots (including residue lot for future urban development – Lot 807);
- staged bulk earthworks to create the central open space, riparian corridor, structured open space, and future stormwater drainage area;
- road forming works and culverts crossing the central open space (including Lot 802);
- road forming works across saltmarsh areas, including culverts and trunk sewer and water services (Lot 804);
- revegetation and rehabilitation of environmental protection areas for coastal saltmarsh (Lots 805 and 806); and
- establishment of freshwater wetland and fauna corridors (Lots 801 and 803).

The project location is shown in Figure 1. The approved concept plan layout and project approval are shown in Figure 2, Figure 3 and Figure 4 below.



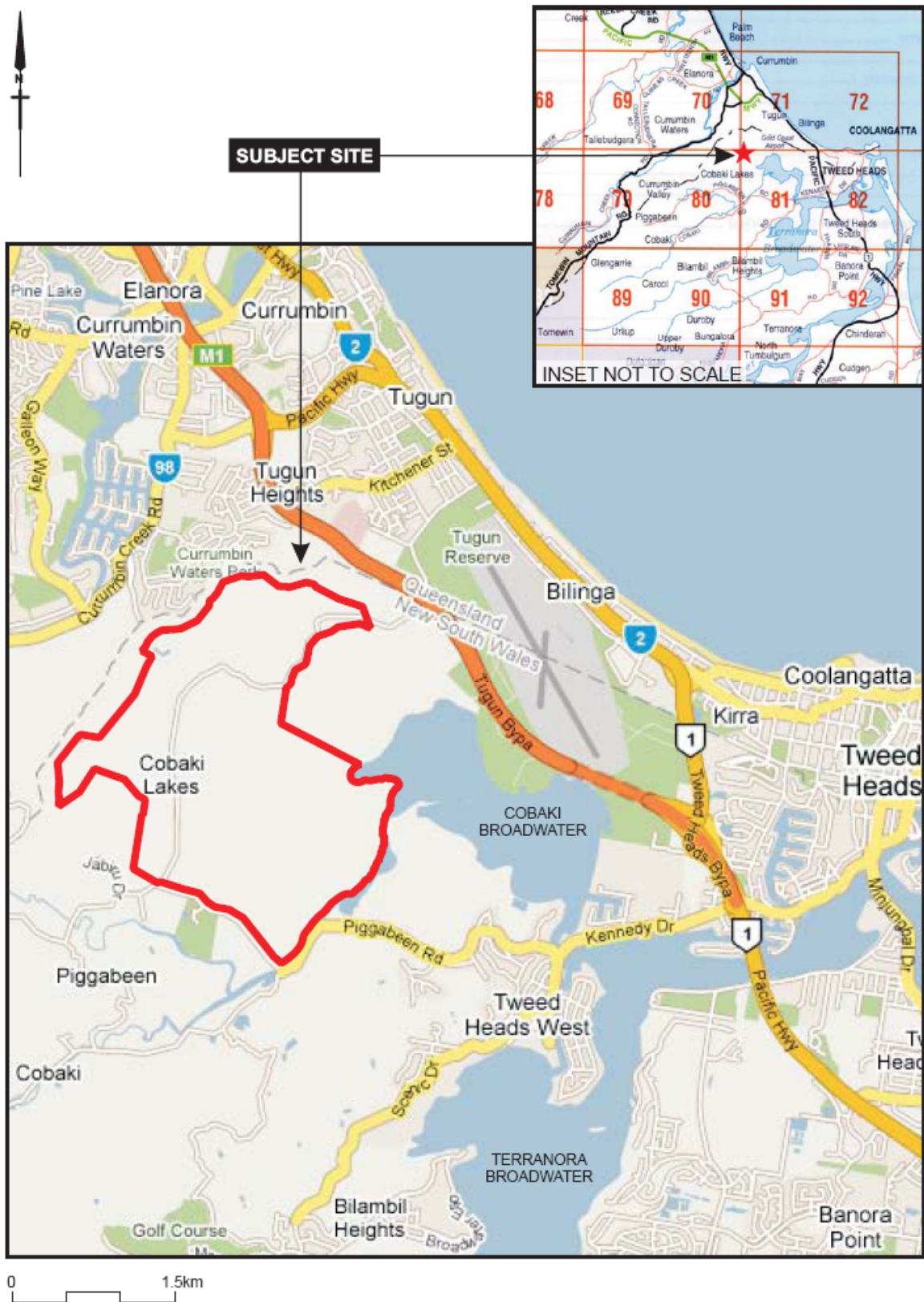


Figure 1: Project Location

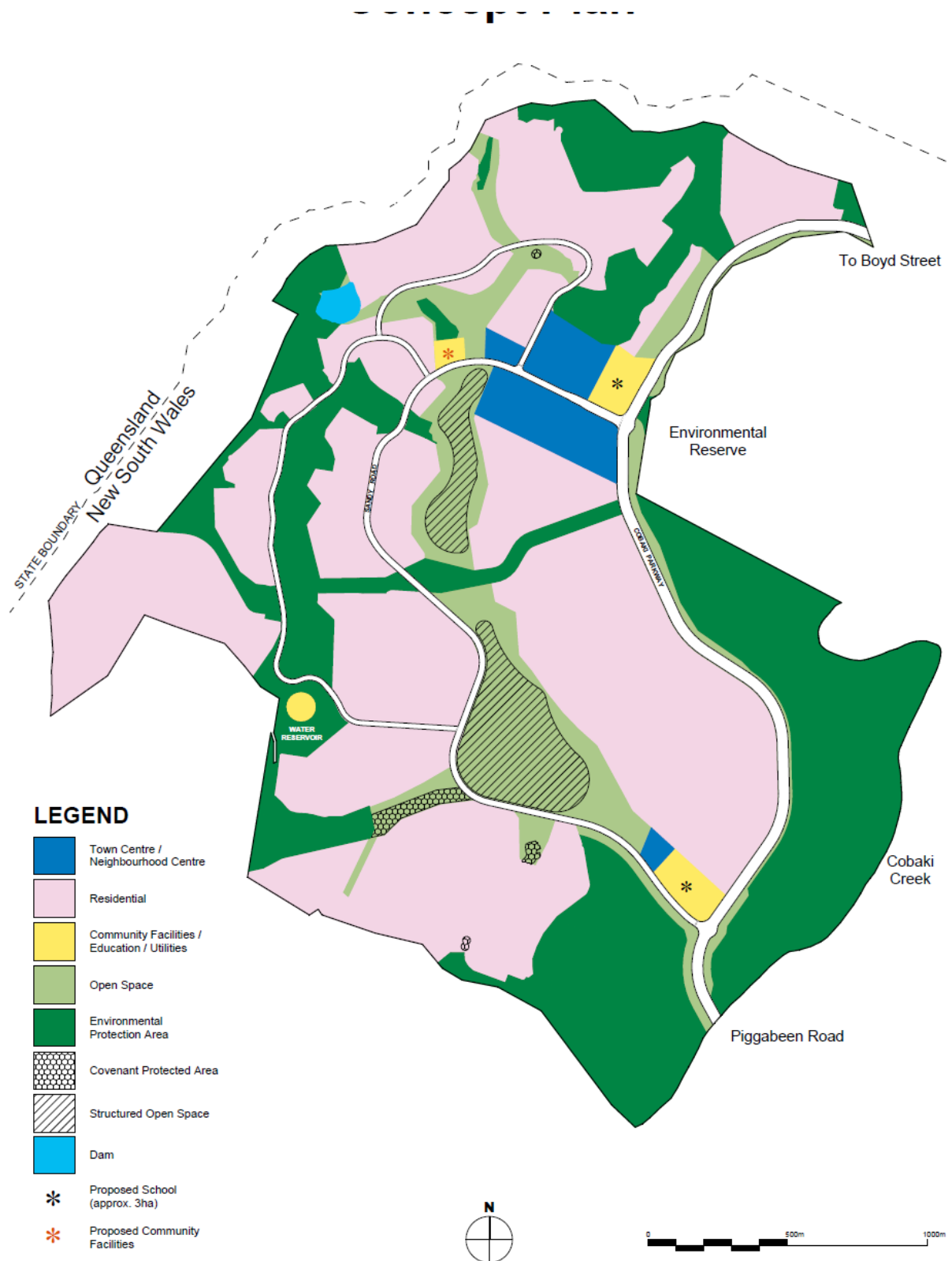


Figure 2: Approved Concept Plan (06\_0316)

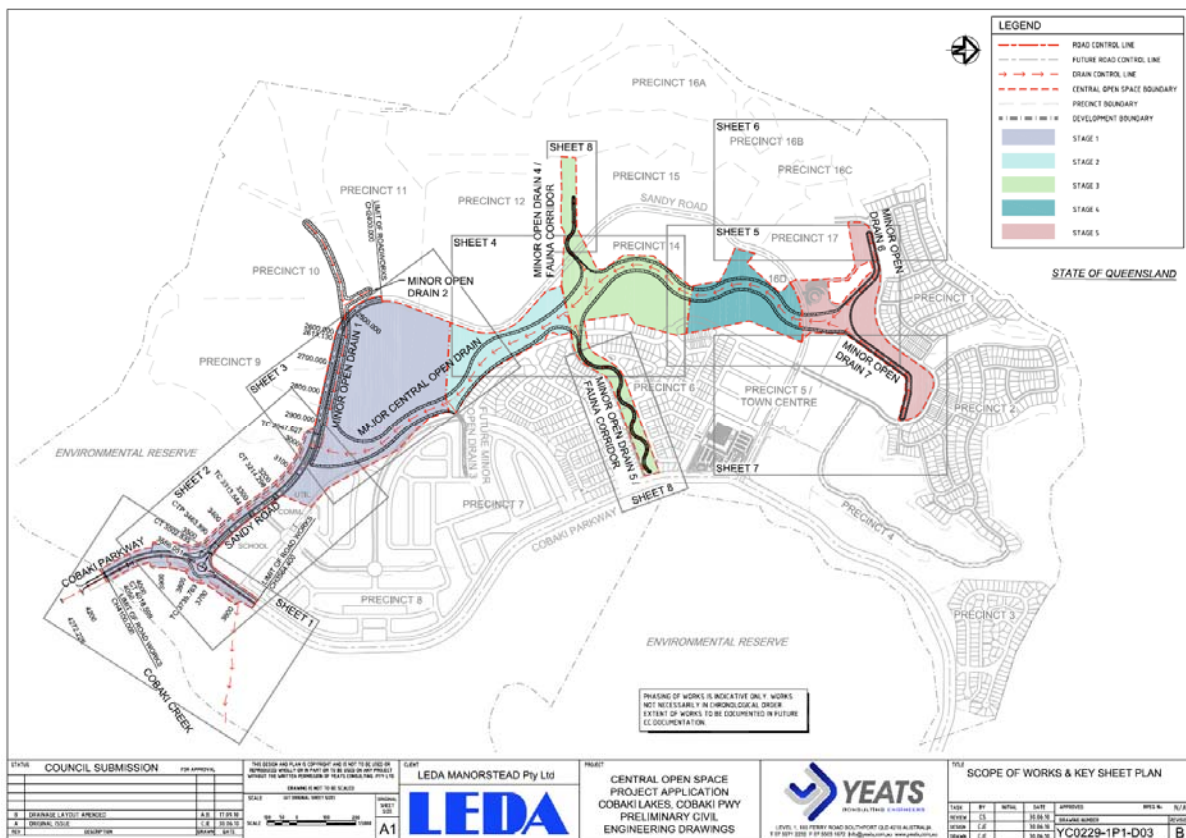


Figure 3: Approved Earthworks and Civil Works (08\_0200)



Figure 4: Approved Landscaping in Central Open Space (08\_0200)

### Northern Joint Regional Planning Panel Approvals

On 26 May 2011 the Northern Joint Regional Planning Panel approved subdivision of Precinct 1 and Precinct 2 in the north of the site into 475 residential lots (including 1 residual lot) and lots for drainage, open space and urban infrastructure (DA10/0800) and subdivision of Precinct 6 in the east of the site into 442 residential lots (including 1 residual lot) and lots for drainage, open space and urban infrastructure (DA10/0801).

The proponent (Project 28 Pty Ltd) has applied to a certifier for the issue of Construction Certificates (CCs) relating to the development consents for Precincts 1, 2 and 6, as well as the approval for the Central Open Space Corridor (08\_0200). The issue of the CC for the central open space is contingent on approval of this modification. Concurrently, Leda has also submitted Section 96 Modification Applications in respect of DA10/0800 and DA10/0801 which are currently under assessment. It is understood these modifications primarily relate to terms of bonds, length of "maintenance" periods, terms of the modification of old consents, deletion of the 5ha limit for maximum exposed areas during bulk earthworks, details of fire trails in Precincts 1 and 2, replacement of the required bridge structure (over the flora and fauna corridor) in Precinct 6 with culverts, but no actual change to the originally approved lot configurations.

### History of Council Approved Development Consents and Construction Certificates

Prior to the concept plan approval in 2010, several development consents were granted by Tweed Shire Council (council) over the subject site between 1993 and 2002 for bulk earthworks and residential subdivision. A summary of existing consents is outlined in the table below. The majority of the bulk earthwork consents have commenced and works have been undertaken.

**Table 1: Summary of Existing Development Consents**

Consent Number	Description	Date of Consent
D92/315	Boyd Street Extensions	5 January 1993
D94/438	Bulk Earthworks	27 January 1995
S94/194	730 Lot Urban Subdivision Parcels 1 to 5 and 13 Englobo Parcels (The Entrance, The Sand Ridge)	19 September 1995
D96/271	Bridge over Cobaki Creek	8 April 1997
S97/54	430 lot residential subdivision – parcel 7 to 10 (The Knoll, Piggabeen)	21 October 1997
K99/1124	560 Lot Urban Subdivision (The Foothills, The Plateau, Valley East, Valley West, East Ridge)	21 July 2000
1162/2001DA	8 Management Lots and Bulk Earthworks (town centre)	8 October 2002

A number of CCs have also been issued for bulk earthworks and other civil engineering works including construction of Cobaki Parkway. Figure 5 and Figure 6 illustrate the extent of the existing subdivision and earthworks approved by council across the site. The approved concept plan layout that reflects approved DAs and the project application is shown in Figure 7.

### Unauthorised Works

On 8 February 2013 the department issued an Order under section 121B of the *Environmental Planning and Assessment Act 1979* for breaches of the Cobaki Central Open Space project approval (08\_0200). Two fines were issued as a result of observations made during an inspection conducted by the department on 4 October 2012. The fines were issued for earthworks which had been conducted on the proposed Cobaki Parkway, south of Dunn's Drain (referred to as 'the missing link') prior to a number of conditions of the project approval (08\_0200) having been met, namely, failure to obtain a Construction Certificate and failing to appoint a Principal Certifying Authority.

The terms of the Order require the proponent to engage a technical specialist to report on the impacts of the earthworks on saltmarsh ecology and to make recommendations on remediation works required to rectify those impacts. This report was submitted on 18 March 2013 and the department



has engaged the services of an external saltmarsh expert to review the report and the proposed remediation works.

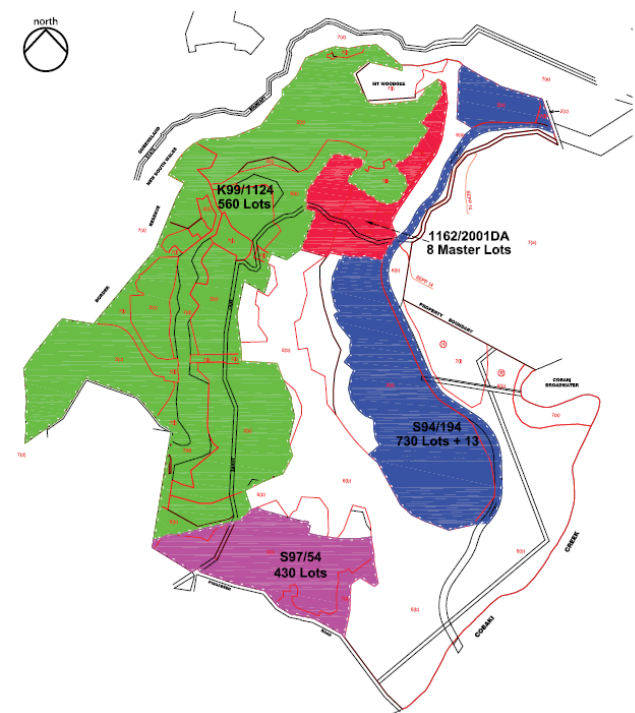


Figure 5: Council Approved Development Consents

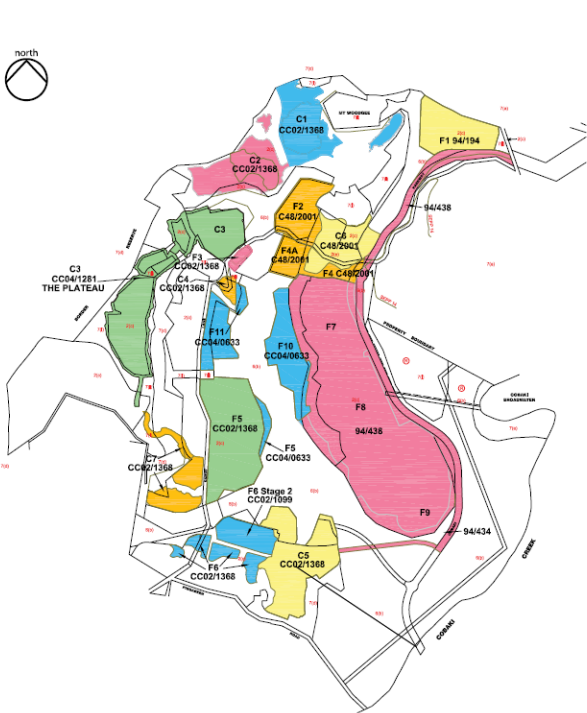


Figure 6: Council Approved Construction Certificates

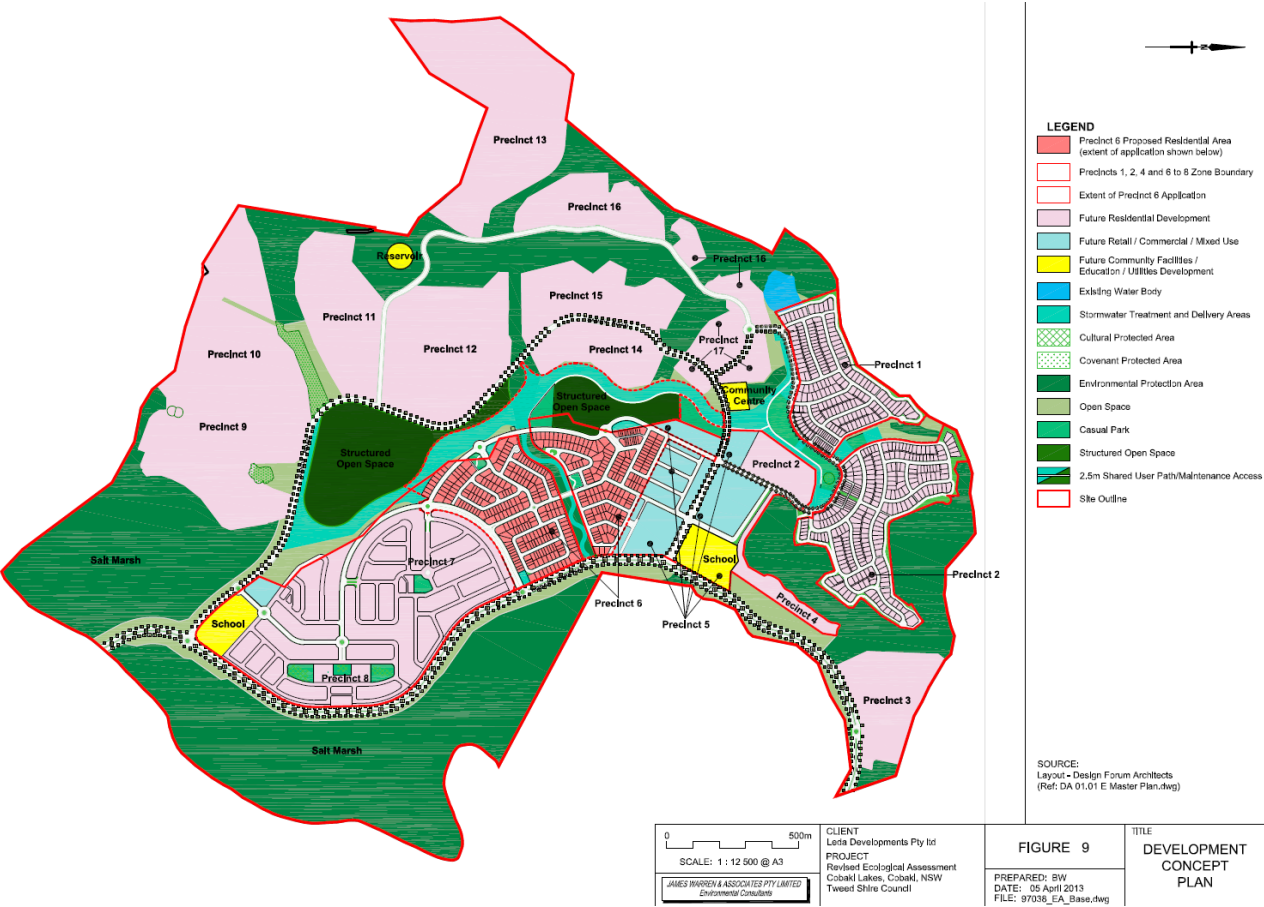


Figure 7: Approved concept plan layout showing detail of approved DAs and project application (Source: Revised Ecological Assessment, April 2013)

## 2. PROPOSED MODIFICATION

### 2.1 Modification Justification

As a result of the assessment and conditions imposed by the JRPP on DA10/0800 and DA10/0801, it is apparent that modifications are required to the concept plan approval, the project approval and the Cobaki Estate Development Code. In particular, Condition 12 of DA10/0801 states that the central drainage reserve is not to be utilised for any environmental offsets and is to be maintained by council for drainage purposes only. This has the effect of limiting the extent of freshwater wetland rehabilitation and Wallum Froglet compensation on the project site, and affects the ability of the proponent to comply with commitments and environmental management plans that accompanied the concept plan and project approval. There are other minor adjustments to the EEC offset areas and types of communities to be revegetated as a result of the proposed modification.

Furthermore, the proponent seeks also approval for the winning of fill from Precincts 1 and 2 for the construction of the central open space area as part of this modification request. The proponent indicated that the work was already approved in the original project application (MP08\_0200). However, based on legal advice, the department is of the view that no explicit approval was given for the earthworks in Precincts 1 and 2 to obtain fill for use in the central open space area, hence the need for the modification.

Due to the bushfire hazard planning, it is also proposed to amend the type of vegetation to be regenerated to the east of Precinct 4 from wet sclerophyll forest to Low land Rainforest on Floodplain.

The previously approved rehabilitation and management precincts on site and the proposed modified management precincts are shown in Figure 8 and Figure 9 respectively. It is clear that the extent of offset areas available through the central open space area is proposed to be significantly reduced as part of the modification request.

A number of minor “housekeeping” amendments to the Cobaki Estate Development Code are also proposed to clarify a few minor complying development controls and to facilitate development of bushfire affected lots.

### 2.1 Modification Description

The key aspects of the proposed modification to the concept plan are listed in **Table 2**.

**Table 2: Concept Plan Modification Summary**

<b>Aspect</b>	<b>Description</b>
<i>Project in accordance with documents (Term A3)</i>	Modification to correctly reference the amended Ecological Assessment and Management Plans (now updated to the current versions).
<i>Plan of Development (Term C1)</i>	Modification to remove requirement for noting level of construction on the Plan of Development, and instead noting that development is subject to the requirements of <i>Planning for Bushfire Protection 2006</i> and AS3959 Construction of Buildings in Bushfire Prone Areas.
<i>Management and Restoration Plans (Term C4)</i>	Modification to require draft stage-specific management plans at DA stage rather than final plans submitted at the DA stage, and instead, final plans to be submitted prior to issue of the relevant construction certificate.
<i>Geotechnical Assessments (Term C7)</i>	Modification to require a Preliminary Geotechnical Assessment at the DA stage rather than the final report required at the DA stage, with a final report to be submitted prior to release of the relevant construction certificate.
<i>Biodiversity Offsets (new Term C19)</i>	Modification to require details of Swamp Sclerophyll EEC offsets (on-site and off-site) to be provided with any development application for Precinct 6 as all of this EEC will be removed as a result of development in this precinct and the required offsets can no longer all be provided on-site.
<i>Revised Environmental Management Plans</i>	Modification to correctly reference the latest Saltmarsh Rehabilitation Plan and Revised Site Regeneration and Revegetation Plan.

<b>Aspect</b>	<b>Description</b>
<i>(SoC 4.1 &amp; 4.3)</i>	
<i>Freshwater Wetlands and Wallum Froglet offsets (SoC 4.7 &amp; 4.8)</i>	Modification to reflect the altered offsetting arrangements for Freshwater Wetland EEC whereby 2ha are provided on site and the remaining offsets are to be provided off-site, with details provided in a Planning Agreement with OEH. This is a result of the inability for offsets to be provided within the central stormwater drainage channel, as originally envisaged in the approved Site Regeneration and Revegetation Plan (October 2010).
<i>Cobaki Estate Development Code</i>	Modification to reflect minor amendments to the complying development controls for general subdivision and plan of development requirements.

The key aspects of the proposed modification to the project approval are listed in **Table 3**.

**Table 3: Project Approval Modification Summary**

<b>Aspect</b>	<b>Description</b>
<i>Project description (Condition 1)</i>	Delete reference to the location of establishment of freshwater wetlands and fauna corridors in Lots 801 and 803 as these offsets can no longer be provided on site.  Modification to include bulk earthworks for the purposes of winning fill from Precincts 1 and 2.
<i>Project in accordance with plans (Condition 3)</i>	Modification to correctly reference the amended ecological management plans and Precincts 1 and 2 bulk earthworks drawings.
<i>Project in accordance with documents (Condition 4)</i>	Modification to include a Revised Assessment of Significance for the Missing Link and realignment of Sandy Lane, the Modification of Project Approval report, Development Precincts 1 & 2 Bulk Earthworks Environmental Assessment and the Response to Submissions report.
<i>Certification (Condition 8)</i>	Modification to clarify that a Subdivision Certificate may be obtained from an Accredited Certifier, not just council.
<i>Environmental Offset Areas (New Conditions 11A &amp; 11B)</i>	Modification to require the offset area for biodiversity offset areas to be surveyed, subdivided as a separate lot and protected in perpetuity; and, to require the proponent to be responsible for the management of all offset areas for conservation purposes and the implementation of ongoing management and maintenance activities in all environmental management plans, including a requirement for environmental auditing.
<i>Bulk earthworks (new Condition 21A)</i>	Modification to specify the details required to be submitted with the construction certificate for the earthworks for the purposes of winning of fill from Precincts 1 and 2
<i>Biodiversity Offsets (Condition 38)</i>	Modification to reflect revised arrangements for the provision of Freshwater Wetland EEC and Wallum Froglet environmental offsets.
<i>Earthworks – Limits of Approval (Condition 41)</i>	Modification to clarify that no bulk earthworks are to be undertaken outside of the central open space area, other than in Precincts 1 and 2, approved under the modified project approval (08_0200 MOD 1).
<i>Saltmarsh rehabilitation works (Condition 65)</i>	Modification to correctly reference the latest Revised Saltmarsh Rehabilitation Plan, dated November 2012.
<i>Site Regeneration and Revegetation (Condition 68)</i>	Modification to correctly reference the latest Revised Site Regeneration and Revegetation Plan, November 2012.
<i>Freshwater Wetlands (Statement of Commitment No.4)</i>	Modification to refer to the planning agreement between the proponent and OEH instead of the former management plan. The planning agreement will set out the terms for an off-site offset as required by Statement of Commitment No.4.7 of the Cobaki concept plan approval.



Aspect	Description
Revised Environmental Management Plans (Statement of Commitment No.3, No.5 and No.7)	Modification to correctly reference the latest Revised Site Regeneration and Revegetation Plan, Saltmarsh Rehabilitation Plan and Revised Assessment of Significance – Cobaki Parkway ‘Missing Link’ & Realignment of Sandy Lane (southern portion).

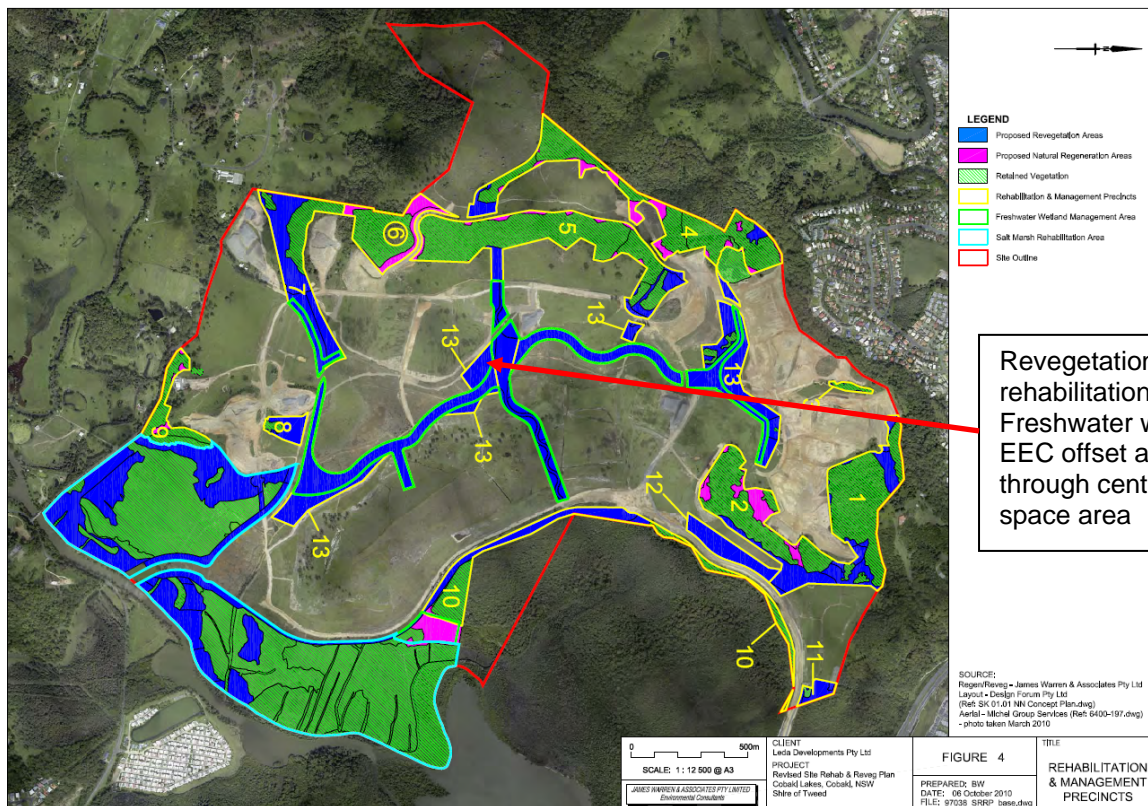


Figure 8: Approved Rehabilitation and Management Precincts

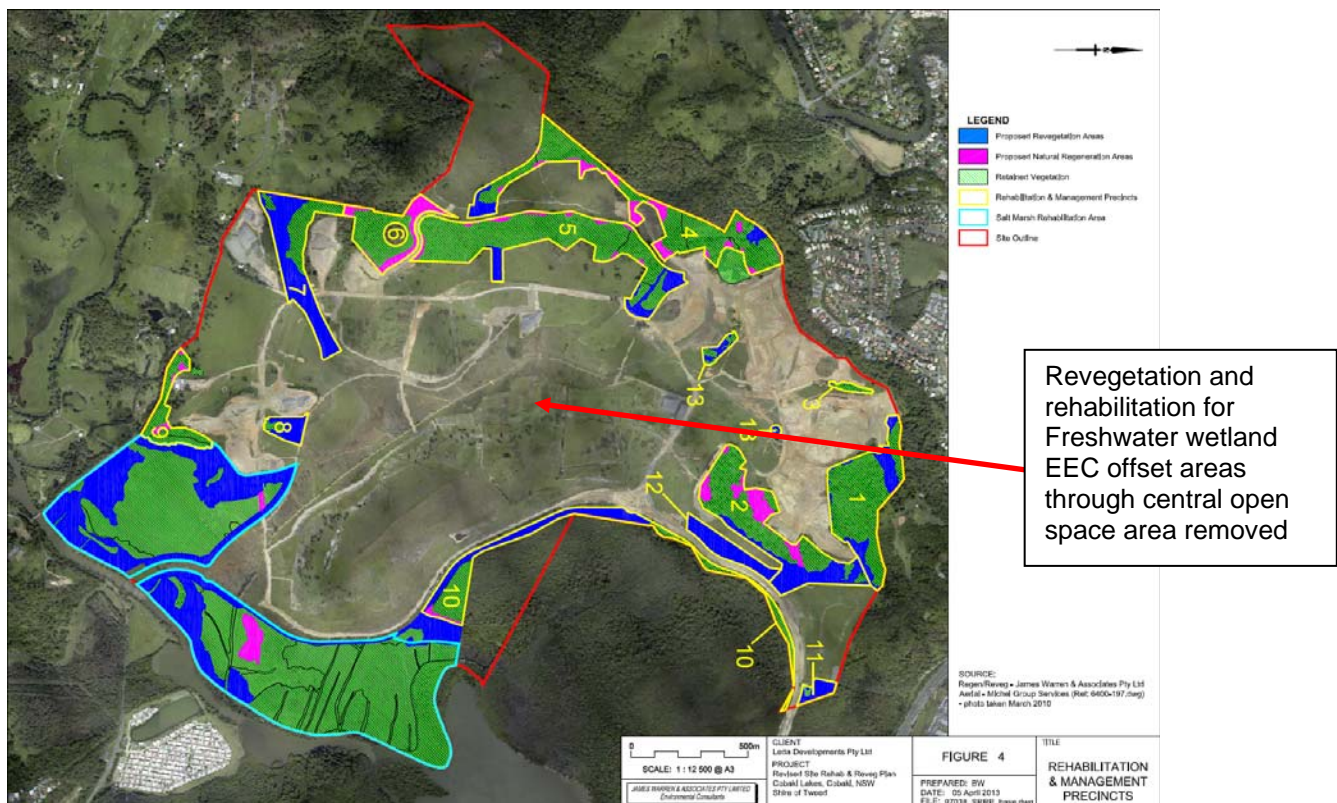


Figure 9: Modified Rehabilitation and Management Precincts



The proposed Precinct 1 and 2 borrow areas are identified in Figure 10 below.

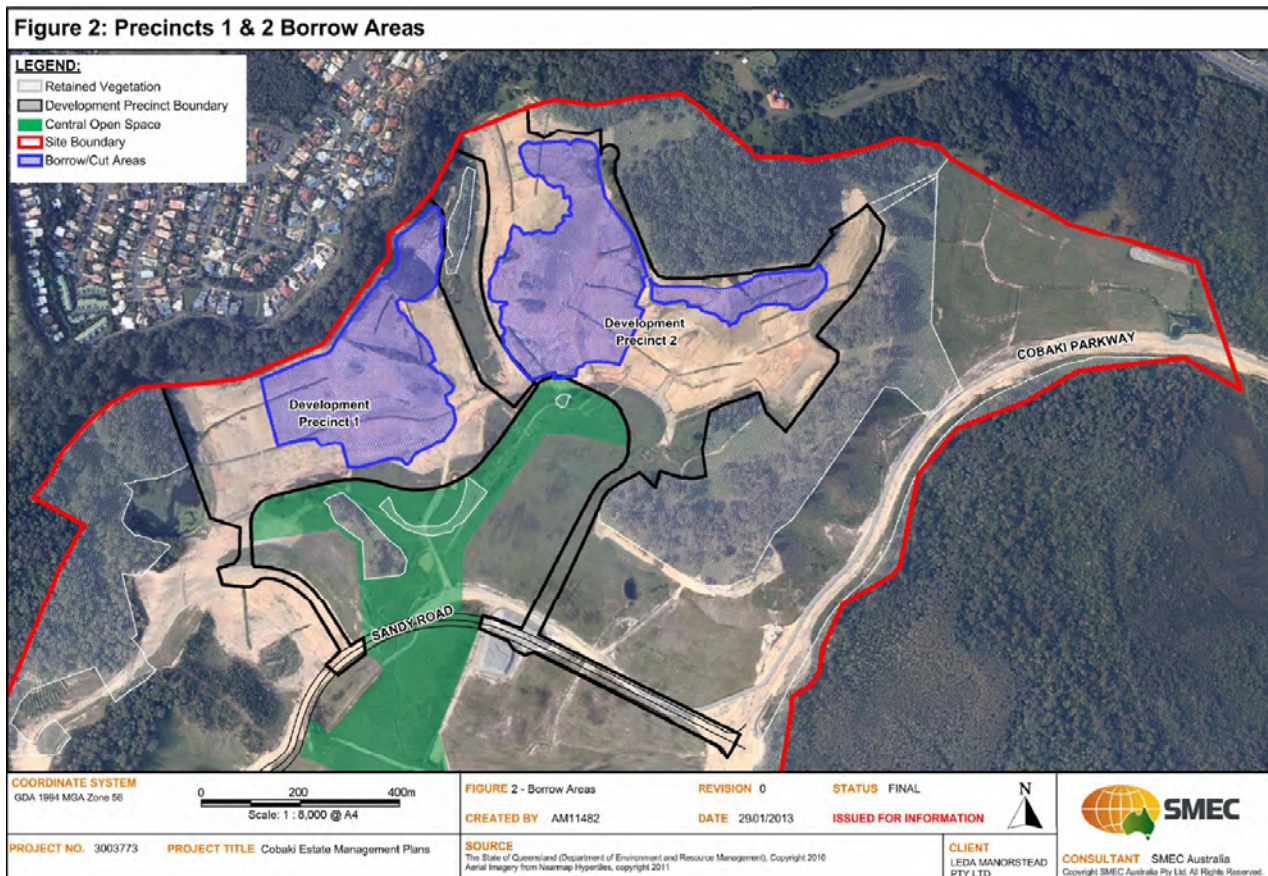


Figure 10: Precincts 1 and 2 Borrow Areas

### 3. STATUTORY CONTEXT

#### 3.1 Modification of the Minister's Approval

Approvals of 06\_0316 and 08\_0200 were granted in accordance with Part 3A under sections 75O and 75J, respectively, of the EP&A Act. Section 75W of the EP&A Act provides for the modification of the Minister's approval.

Pursuant to Section 75W(2) of the EP&A Act, the proponent may request the Minister to modify approval of a project. Any request is to be lodged with the Director-General. A copy of the proponent's modification request is included at **Appendix A**.

Section 75W(3) of the EP&A Act provides that the Director-General may notify the proponent of environmental assessment requirements (DGRs) with respect to the proposed modification. Following an assessment of the modification request, it was considered that DGRs are not required.

Under Section 75W(4) of the EP&A Act, the Minister may modify the approval (with or without conditions) or disapprove the modification.

The following report describes the department's assessment of the requested modification and supporting documentation as provided by the proponent. It is recommended the proposed modification request be **approved** subject to conditions.

#### 3.2 Delegated Authority

Under the Instrument of Delegation dated 14 September 2011, the Minister for Planning and Infrastructure has delegated his functions to determine section 75W modification requests to the Director, Metropolitan and Regional Projects North, whereby:

- the relevant local council has not made an objection to the proposal;
- a political disclosure statement has not been made; and

- there are less than 10 public submissions in the nature of objections.

Council has not objected to the proposal, a political disclosure statement has not been made and as the modification request was not required to be publicly exhibited, no submissions in the nature of objections were received. The Director – Metropolitan and Regional Projects North may therefore determine the modification request under delegation.

## 4. CONSULTATION AND SUBMISSIONS

### 4.1 Exhibition

Under section 75W of the EP&A Act, it is at the department's discretion as to whether a modification request is publicly exhibited. Given the nature of the modification, public exhibition was not undertaken. Notwithstanding, under section 75X(2)(f) of the EP&A Act, the Director-General is to make publicly available requests for modifications of approvals given by the Minister. In accordance with clause 8G of the Environmental Planning and Assessment Regulation 2000, the request for modification was made publicly available on the department's website.

The request was referred to council, Office of Environment and Heritage (OEH), Rural Fire Service (RFS), Department of Primary Industries (DPI) and the Environment Protection Authority (EPA) inviting any issues or requirements to be provided. A summary of the issues raised in submissions is provided overleaf.

### 4.2 Public Authority Submissions

Five (5) submissions were received from public authorities. These are summarised in **Table 4** below.

**Table 4: Public Authority Submissions Summary**

<b>Tweed Shire Council</b>	<p><u>Concept Plan Approval</u></p> <ul style="list-style-type: none"> <li>• does not support overlapping of offsets for Coastal Saltmarsh and Swamp Oak Floodplain Forest EECs over the same area, offsets should be treated separately and suitable offset locations identified and managed accordingly for each EEC;</li> <li>• does not support removal of APZ setbacks and BAL ratings from the Plan of Development;</li> <li>• does not support deferral of management plans until approval is secured, draft management plans to be submitted at DA stage, with final plans submitted prior to issue of construction certificate (CC);</li> <li>• does not support deferral of geotechnical assessment to CC stage, a preliminary geotechnical assessment to be submitted at DA stage with detailed assessments submitted at CC stage;</li> <li>• requirement for the Wallum Froglet Compensatory Habitat Management Plan (WFCHMP) to be included in Statement of Commitments;</li> <li>• minor inconsistency with regard to area of the on-site Freshwater Wetland offset – 2.25ha in management plans, but modification request refers to only 2ha; and,</li> <li>• does not support change of wording from “dwellings per lot” to “bedrooms per dwelling” in Cobaki Estate Development Code regarding the Plan of Development.</li> </ul> <p><u>Project Approval</u></p> <ul style="list-style-type: none"> <li>• the removal of any trigger for the WFCHMP is not supported, this should be included in Condition 38;</li> <li>• does not support removal of the requirement for the proponent to specify a mechanism for ongoing funding of the 2ha onsite Wallum Froglet habitat offset area to ensure the long term viability of the population, the use of council rates is not supported;</li> <li>• does not support the fire trail profiles as represented on the Yeats’ contour plans and associated cross-sections;</li> <li>• fill spreading and compaction must be the subject of Level 1 supervision and certification by a registered Geotechnical Engineer;</li> <li>• council staff are of the opinion that the department have an opportunity to address the alleged unlawful works on the Northern Hillside (under development consent K99/1124) as part of the modification and it is considered good planning practice to use the planning process to rectify compliance issues, including the reconciliation of</li> </ul>
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	<p>old consents such as K99/1124; and,</p> <ul style="list-style-type: none"> <li>council confirms that the area where alleged unlawful earthworks have occurred overlaps with the area proposed for obtaining source material within Precincts 1 and 2.</li> </ul>
<b>Office of Environment &amp; Heritage</b>	<p><u>Concept Plan Approval</u></p> <ul style="list-style-type: none"> <li>15.73ha of proposed regenerated Swamp Sclerophyll Forest appears to have been reduced to 7.3ha, OEH requests that the proponent be requested to clarify this and justify the amendment;</li> <li>the Revised Assessment of Significance and other documents do not adequately address the impacts on connectivity as a result of the proposed modified offsetting arrangements;</li> <li>two areas of Swamp Sclerophyll EEC offsets would be subject to edge effects, what additional measures might be required to ensure such areas will be able to be regenerated and maintained in perpetuity; and,</li> <li>inconsistencies in mapping between the various management plans and reports.</li> </ul> <p><u>Project Approval</u></p> <ul style="list-style-type: none"> <li>OEH has no objection to the revised offsetting approach for Freshwater Wetlands although agreement will need to be reached on the additional compensation required</li> </ul>
<b>Rural Fire Service</b>	No issues raised with respect to the proposed modifications
<b>Department of Primary Industries</b>	<p><u>Concept Plan Approval</u></p> <ul style="list-style-type: none"> <li>the Revised Saltmarsh Rehabilitation Plan should include an additional transect for monitoring the saltmarsh to inform adaptive management strategies;</li> <li>to include an additional adaptive management strategy to lower the dredged bud levee adjacent to Cobaki Creek below 0.3m AHD; and,</li> <li>realignment of the fence line along the eastern boundary would provide for improved protection of the saltmarsh revegetation area, while reducing impacts on aquatic habitats.</li> </ul>
<b>Environment Protection Authority</b>	<p><u>Project Approval</u></p> <ul style="list-style-type: none"> <li>no objection to proposed modifications and defers to council for pollution control matters</li> </ul>

### 4.3 Proponent's Response to Submissions

The proponent provided a response to the issues raised in submissions. Although the Response to Submissions (RtS) was not publicly exhibited, it was made available on the department's website and referred to relevant government agencies and council for comment.

The key issues raised in agency submissions are discussed in Section 4 of this report.

The department has considered the issues raised in submissions in its assessment of the proposed modification.

## 5. ASSESSMENT

The department considers the key issues for the proposed modification to the concept plan to be:

- EEC offsetting arrangements;
- impacts on connectivity for biodiversity;
- amendments to the Cobaki Estate Development Code; and,
- requirements for future applications

The department considers the key issues for the proposed modification to the project approval to be:

- biodiversity offsets (condition 38); and,
- bulk earthworks

### 5.1 Assessment of Concept Plan Key Issues

#### 5.1.1 Endangered Ecological Community (EEC) Offsets

Vegetation mapping indicates that there are approximately 109 hectares of endangered ecological communities (EECs) across the subject site. The concept plan approved the removal of 40.82ha of these EECs, subject to appropriate offsetting arrangements being provided.

The major amelioration strategy for EECs on the subject site is the retention and long term protection of these vegetation communities where possible within Environmental Protection Areas. The approved Site Regeneration and Revegetation Plan (JWA, October 2010) outlines the various measures to ensure that the retained EECs are adequately managed. Revegetation and regeneration will be completed in accordance with this plan to offset any loss of EECs (refer **Figure 8** above). Under the approved concept plan, sufficient offset areas were not available on the subject site for Freshwater Wetlands EECs and associated Wallum Froglet habitat, and as such the proponent's Statement of Commitments included a commitment to enter into separate Planning Agreements with OEH for additional offsite offsets. It is understood that negotiations for such an agreement are ongoing.

The modified proposal actually reduces the impact on EECs across the site to a loss of 38.45ha, but this is primarily due to more accurate / current mapping. However, the latest Revised Ecological Assessment dated April 2013 indicates that the current offsetting arrangements for EECs will be altered due to the inability to provide offsets within the central drainage reserve, as a consequence of Condition 12 of DA10/0801, which states that the central drainage reserve is not to be utilised for any environmental offsets and is to be maintained by council for drainage purposes only. **Table 5** below summarises the approved and proposed EEC offsets on the subject site. **Figure 12** illustrates the approved and proposed onsite offsetting arrangements.

**Table 5: Summary of Approved and Proposed EEC Offsets**

EEC Offset Area	Existing EEC (ha)	Approved EEC to be removed (ha)	Proposed EEC to be removed (ha)	Approved Onsite Offset (ha)	Proposed Onsite Offset (ha)
Swamp sclerophyll forest on coastal floodplain	3.80	3.80	3.80	15.73	<b>6.77</b>
Lowland rainforest on floodplain	1.75	0.04	0.01	5.06	9.59
Lowland rainforest	9.24	0.10	0.10	7.06	<b>3.71</b>
Freshwater wetlands	35.39	25.68	24.12	24.27	<b>2.00</b>
Coastal saltmarsh	54.63	10.25	9.69	14.3	20.00
Swamp oak floodplain forest	4.52	0.95	0.73	9.74	<b>5.88</b>



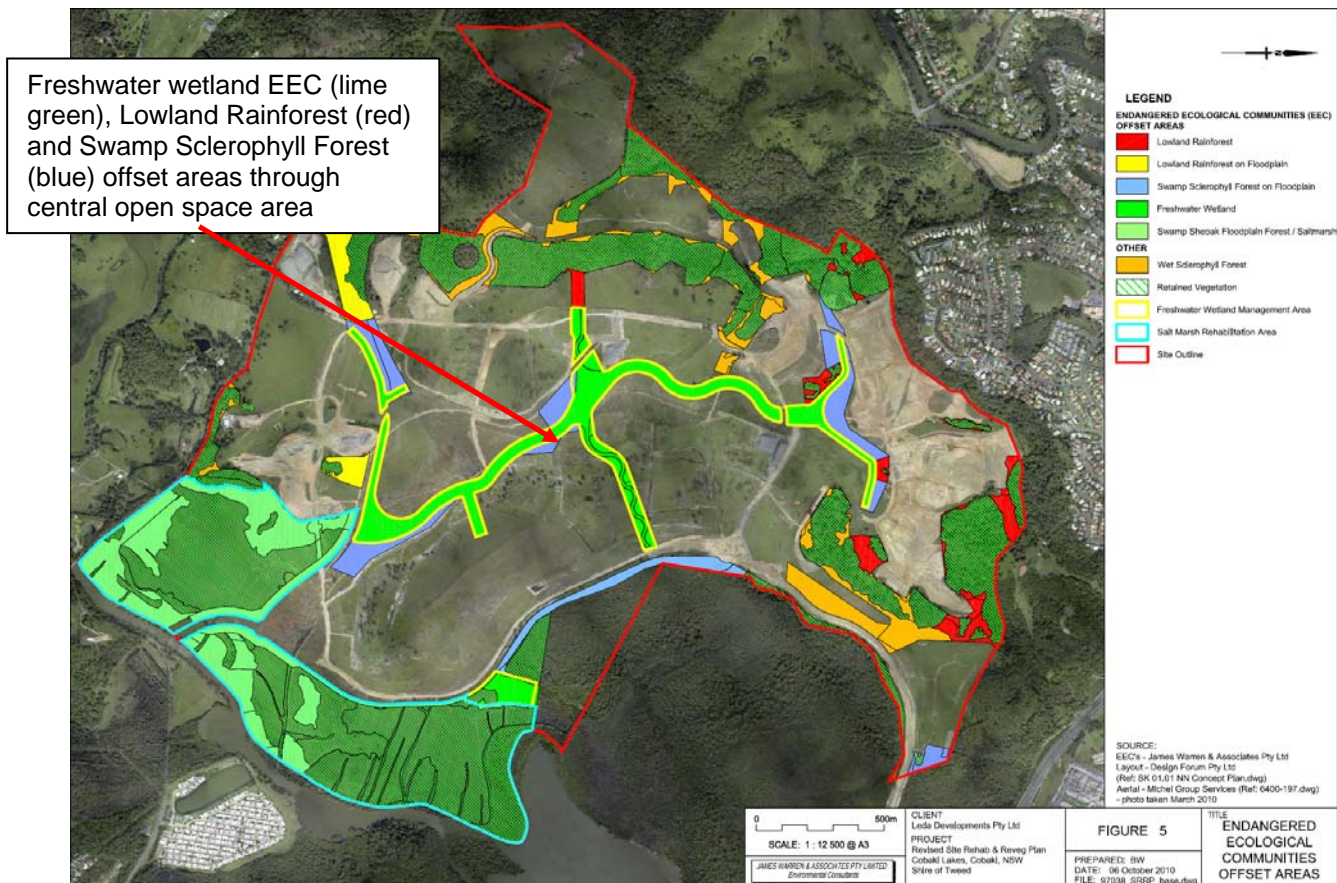


Figure 11: Approved EEC Onsite Offset Areas (Source: Revised Site Regeneration and Revegetation Plan, October 2010)

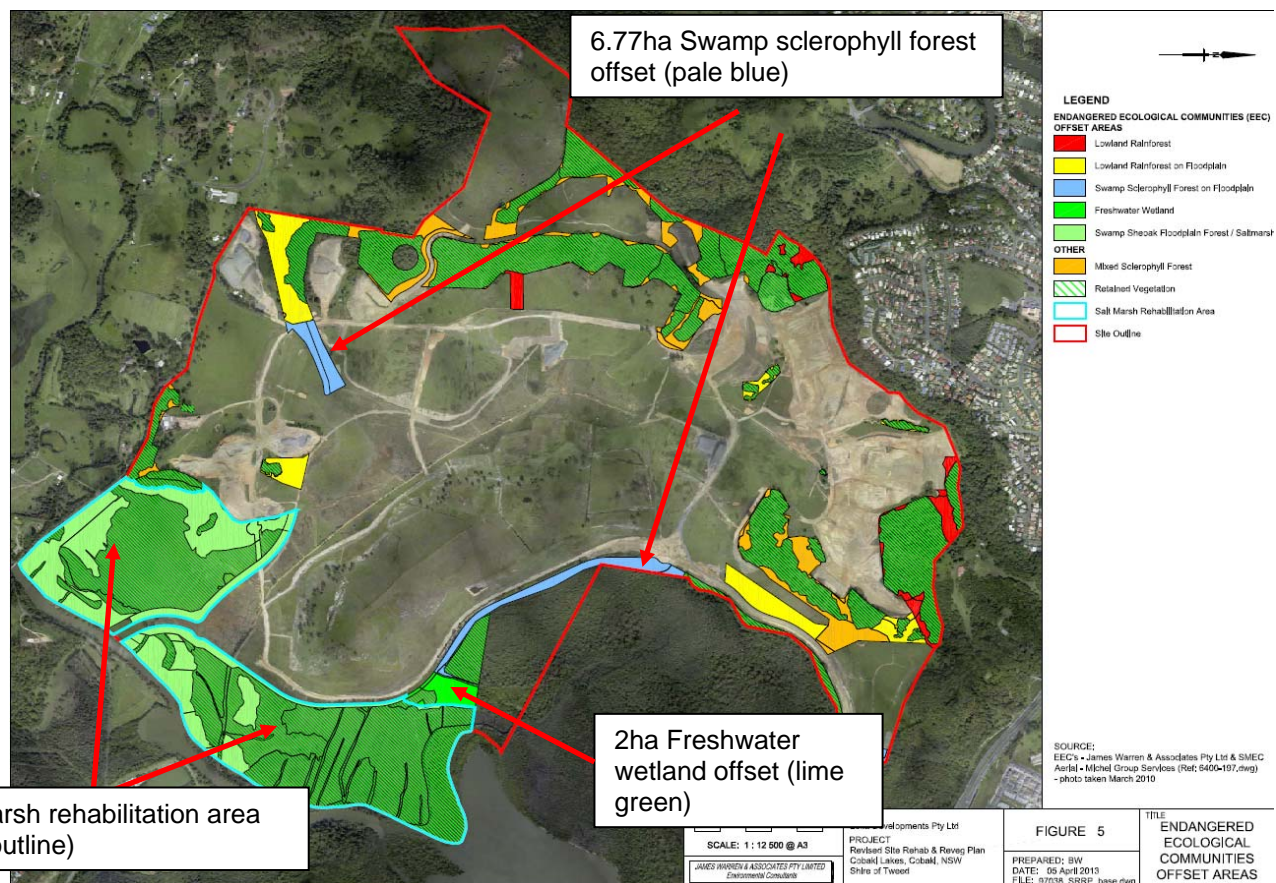


Figure 12: Modified EEC Onsite Offset Areas (Source: Revised Ecological Assessment, April 2013)

### Swamp Sclerophyll EEC

The Revised Ecological Assessment (June 2010) submitted with the Preferred Project Report for the concept plan assessment stated that a total of 23.74ha of Swamp Sclerophyll EEC would be revegetated/regenerated on site to offset the loss of 3.80ha of this community, which lies wholly within the boundaries of Precinct 6. However, as the project application for the central open space area (MP08\_0200) was being assessed at the same time the concept plan assessment was being finalised, further analysis of the offsetting arrangements across the entire site indicated that only 15.73ha of Swamp Sclerophyll EEC offsets could be provided on site, most of which was to be provided within the central open space area. This resulted due to additional Saltmarsh & Swamp Oak EEC restoration proposed by the Revised Saltmarsh Rehabilitation Plan (October 2010). It was accepted at this time that an offset of 15.73ha for the loss of 3.8ha was appropriate. This was subsequently approved through the Revised Site Regeneration and Revegetation Plan (October 2010) as part of the concept plan approval and the project approval.

The current modification request seeks to reduce the on-site offset for Swamp Sclerophyll EEC from 15.73ha to 6.77ha as offsets can no longer be provided through the central drainage corridor. No additional off-site offsets are proposed. The department, council and OEH raised concern regarding the significant reduction in proposed onsite offsets for this community. The proponent argues that the proposed offset will result in a net gain of 2.97ha of this EEC on the subject site (3.8ha existing to be replaced by a 6.77ha offset) and provides for an offset ratio of 1.8:1, which they consider sufficient to offset the loss of this community.

To assist in its assessment of this issue, the department engaged the services of a specialist ecological consultant to undertake a biobanking assessment of the proposed on-site ecological offsets for Swamp Sclerophyll EEC. The biobanking assessment results indicate that a loss of 3.80ha of moderate/good condition Swamp Sclerophyll EEC creates the need for 192 ecosystem credits. The proposed offset of 6.77ha provides only 42 ecosystem credits, resulting in a net shortfall of 150 ecosystem credits. This translates to a total outstanding offset requirement of 16.1ha.

Under the concept plan approval, the department was satisfied that the appropriate offset for the Swamp Sclerophyll EEC was 15.73ha and this was subsequently approved (through the approval of the Revised Site Regeneration and Revegetation Plan dated October 2010). The department therefore considers that it is appropriate to require the proponent to provide additional offsets for the Swamp Sclerophyll EEC either onsite as part of the Revised Revegetation and Rehabilitation Plan, or off-site, as part of the separate Planning Agreement to be entered into with OEH. The proponent has modified its Statement of Commitments to reflect the need to provide additional offsets for Swamp Sclerophyll, but does not commit to providing a specific quantum of offset, and instead requests that such additional off-site offset, if any, are provided, as may be required by OEH.

The department considers that it is important that the quantum of additional Swamp Sclerophyll offsets that may be required, as calculated by the biobanking assessment, be noted in the approval, for information. As the Swamp Sclerophyll EEC lies wholly within the boundary of the development consent for Precinct 6 subdivision (DA10/0801), the department has recommended an additional requirement for future applications on the concept plan approval that requires the proponent to submit details of Swamp Sclerophyll EEC offsets with the any development application for Precinct 6. The offsets must include 6.77ha on site and additional off-site offsets, as may be required by OEH, noting that using the biobanking calculator, this offset (likely to be off-site, but it could be on-site) could be in the order of 16 hectares.

Despite the fact that the concept plan prevails over any inconsistencies within subsequent development/project applications, it would be good planning practice for the development consent for Precinct 6 (DA10/0801) to be modified to reflect the need to provide sufficient offsets, either onsite or offsite, for this EEC. Council is currently assessing a modification to this DA, therefore it is recommended that the proponent seek to further modify the development consent accordingly.

### Freshwater Wetland EEC and Associated Wallum Froglet Habitat

The concept plan approved the removal of 25.68ha of Freshwater Wetland EEC from the site. A total of 24.12ha of Freshwater wetland (68.15%) is now proposed to be removed from the site as a result of the development. This is 1.56ha less than approved under the concept plan. This minor reduction is primarily due to more accurate and current mapping, and not due to any changes in the actual development footprint. Due to the inability to no longer provide the majority of offsets for Freshwater wetland EEC and associated Wallum Froglet habitat onsite, the proponent proposes to provide the required offsets offsite, with the exception of the re-creation of approximately 2ha of compensatory Freshwater wetlands. This is to be provided on the eastern side of Cobaki Parkway, immediately adjacent to the saltmarsh rehabilitation area (refer **Figure 12**) in an area that is a known breeding habitat for this species.

The department, council and agencies agree to this modified arrangement in principle, however, the proponent's changes to its Statement of Commitments in relation to the new arrangement did not include a commitment to manage the area in accordance with the Wallum Froglet Compensatory Habitat Management Plan currently being prepared by the proponent, it only committed to manage the area in accordance with the Freshwater Wetland Compensatory Habitat Management Plan (FWCHMP). This raised concern that the WFCHMP would no longer be triggered as a requirement.

The proponent has agreed that this should be included in its Statement of Commitment 4.7 and has modified this commitment accordingly. This issue is further discussed in Section 5.5 of this report.

### Coastal Saltmarsh and Swamp Oak Floodplain Forest

Under the approved concept plan, the removal of approximately 0.95 hectares of the Swamp oak floodplain forest community from the site was to be ameliorated by regenerating and revegetating 9.74 hectares of compensatory Swamp oak communities within the Saltmarsh Rehabilitation Area (SRA). The Swamp Oak Floodplain Forest community exists along the edges of the constructed drainage lines within the SRA and covers an area of approximately 4.52 hectares.

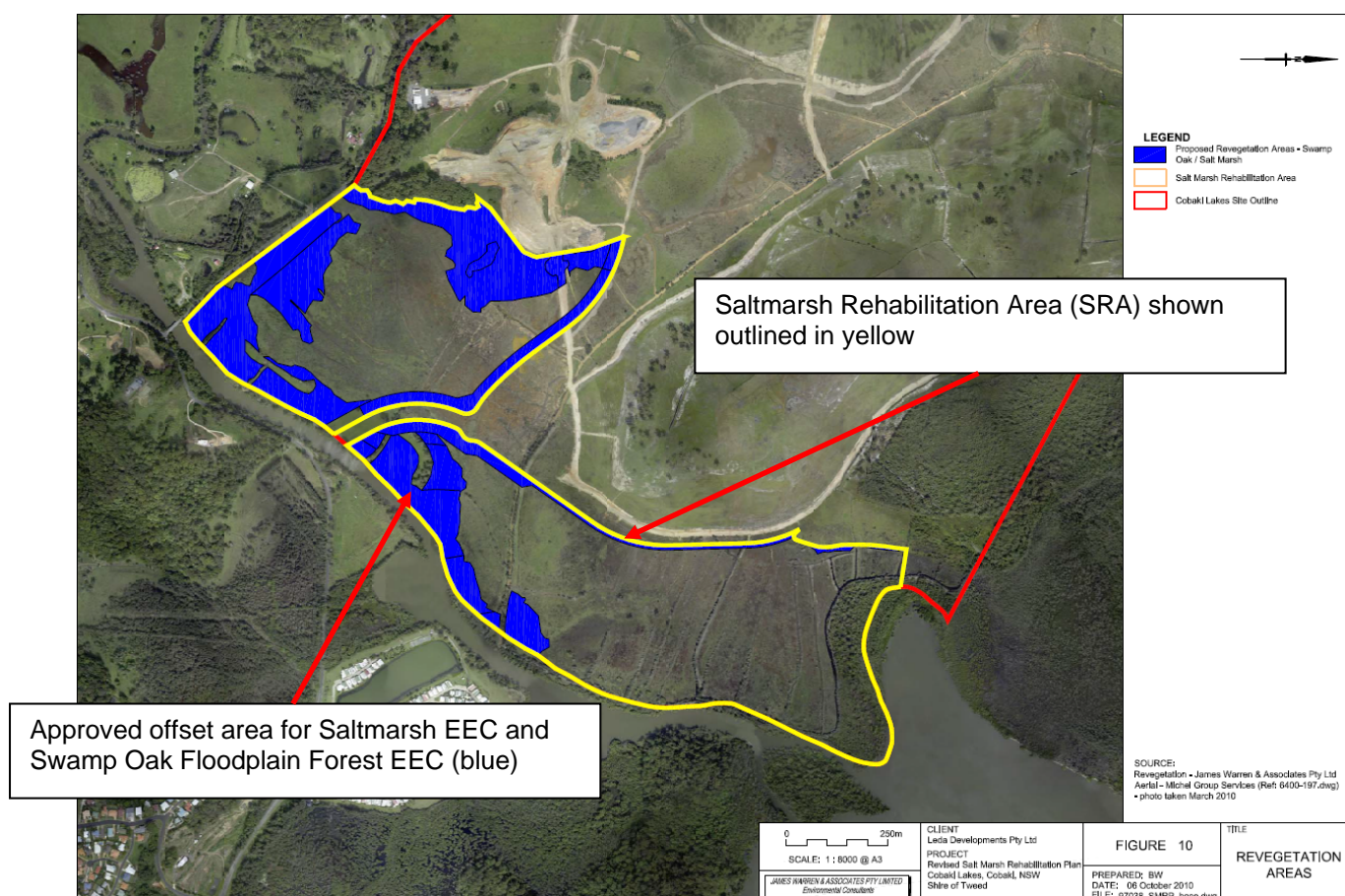
The revised concept plan proposes the clearing of a reduced area of 0.73 hectares of this community with an offset of 5.88 hectares to be revegetated in the SRA. The minor reduction in area is a result of more accurate / current mapping as a result of further detailed analyses done for the development consents submitted for the site.

The Revised Ecological Assessment dated April 2013 proposes the offsetting of Coastal Saltmarsh and Swamp Oak Floodplain Forest EECs over the same area, in the southern portion of the subject site (Saltmarsh Rehabilitation area). Council does not consider that this overlap of offsets is appropriate.

Council's ecologists advise that Coastal Saltmarsh is a treeless community consisting of reed and grass species, whereas the Scientific Community Determination of Swamp Oak Floodplain Forest states that the community "...has a dense to sparse tree layer in which *Casuarina glauca* is the dominant species..." Whilst these two EECs typically occur adjacent to one another in the landscape and form small-scale mosaics within the intertidal zone, they are distinguished by their floristic composition and structure, fauna, hydrology, soil, position in the landscape and a range of other abiotic factors, the location of each being restricted by topography and incidence of inundation. Council considers that the offsetting requirements for these two EECs should be treated separately and suitable offset locations identified and managed accordingly for each.

The approved Revised Saltmarsh Rehabilitation Plan (October 2010) already shows that the offsets for Saltmarsh and Swamp Oak Forest would be provided over the same area, being within the SRA (refer Figure 13). It was specifically noted in the approved Plan that some of the revegetation of Saltmarsh and Swamp Oak Floodplain Forest EEC would occur over the same area, with the Swamp Oak making up the canopy and the Saltmarsh the groundcover.





**Figure 13: Approved Offset Area for Saltmarsh and Swamp Oak Floodplain Forest EEC (Revised Saltmarsh Rehabilitation Plan, October 2010)**

The department therefore considers the proposed offsetting arrangements for these communities is appropriate as it reflects the original offsetting arrangements within the approved concept plan management plans and is representative of the existing mosaic of communities on the site within the SRA.

The department also engaged the services of a specialist ecological consultant to undertake a biobanking assessment of the proposed on-site ecological offsets for Swamp Oak Floodplain Forest EEC. Of the existing 4.52ha of Swamp Oak EEC on the site, the proponent proposes to remove 0.73ha, therefore, retaining a total of 3.79ha on the site. The biobanking assessment results indicate that a loss of 0.73ha of moderate/good condition Swamp Oak EEC creates the need for 50 ecosystem credits. The proposed offset of 5.88ha provides 45 ecosystem credits, and the retained vegetation provides 29 credits, resulting in a total of 74 ecosystem credits. This exceeds the requirement of 50 credits. The department is therefore satisfied that the proposed modified offsets for Swamp Oak EEC on the site are adequate.

### 5.1.2 Connectivity

#### Wallum Froglets

OEH raised concern that the proposal to now reduce the previously proposed offset habitat areas (Swamp Sclerophyll Forest and Freshwater Wetland) for Wallum Froglets from within the central open space area and to replace these with offset areas elsewhere impacts on connectivity for this species across the site as a whole.

The proponent's response indicates that the 'proposed fauna corridor' (see Figure 14) will link retained vegetation in the west of the site with Cobaki Broadwater vegetation and identified Wallum Froglet habitat in the east of the site. The proponent considers that this is appropriate to maintain adequate connectivity across the Cobaki site for this species. This corridor along with existing Wallum



Froglet core breeding and forage habitat will also provide connectivity to the proposed 2ha Freshwater wetland offset in the east of the site.

Wallum Froglets have been recorded within the central drainage channel and adjacent sedgeland in the east of the site. Records do not show this species in the west of the site. Connectivity for this species across the site, from east to west, is therefore not considered to be reduced or impacted by the proposed development. The proposed off-site offsets for the loss of Wallum Froglet habitat is being satisfactorily addressed by the proposed on-site and off-site offsets for this species. The retention of the 2 hectares of core breeding habitat on the site will provide the opportunity for natural recolonisation of Wallum Froglets in suitable areas within and adjacent to the site following completion of all construction works.

#### Functionality of Fauna Corridor

OEH raised concern that the connection at the eastern end of the fauna corridor that runs east-west through Precinct 6 appears to be directly onto a landscaped road which in turn adjoins 'open space' proposed to be revegetated. OEH therefore requested that the stated intention to design and construct fauna crossing structures (underpasses/culverts) to allow movement through retained and rehabilitated corridors should be adequately defined prior to approval. OEH considers that the revised assessment of significance and other documents provided do not adequately address these issues.

The fauna corridor referred to is the narrow band of mixed 'stormwater treatment and delivery areas' and 'environmental protection areas' in the centre of urban precinct 6 continuing through the central open space and in between Precincts 12 and 14 and 15 (refer Figure 14).

The department has reviewed the Draft Site Regeneration and Revegetation Plan for the Central Open Space and Precincts 1, 2 and 6 prepared by SMEC, dated March 2013. Section 9 and Appendix 3 of this report specifically addresses the design and management of the east-west fauna corridor. This report clarifies that the fauna corridor is an area assigned for the purpose of stormwater management as well as providing foraging habitat and connectivity between the retained vegetation on the western side of the site and the Cobaki Broadwater vegetation east of the Cobaki estate. The corridor has been designed to support a range of reptiles, amphibians, birds and ground dwelling and arboreal mammals, including threatened species such as Koala, Powerful Owl, Masked Owl, threatened Microbats, Glossy-black Cockatoo, Squirrel Glider and Common Planigale. With the exception of Wallum Froglet, the species listed above are highly mobile and have extensive home ranges. It is not expected that rehabilitation works will disturb the normal activities of these highly mobile species and it is expected that they will utilize the fauna corridor. Figure 15 and Figure 16 show the proposed design of the fauna corridor.

The department and council's ecologists are satisfied that this multipurpose corridor achieves effective functionality for a diversity of species.

With regards to OEH's concern regarding the provision of details for fauna crossing structures, the department has reviewed the conditions of development consent for Precinct 6 and discussed the issue with council. Condition 63 of DA10/0801 for the subdivision of Precinct 6 requires design drawings for all road crossings over the nominated fauna corridor to be provided illustrating replacement of culverts with bridges to enable a range of fauna to facilitate east-west connectivity for fauna across the site. It is understood that council and the proponent are in negotiations over the final designs for these road crossings and that it is likely that culverts will be accepted by council, provided they are consistent with council's design requirements. Furthermore, the fauna crossing under Cobaki Parkway was assessed and approved under the previous development consent (S94/194) for construction of the Parkway. The department is therefore satisfied that appropriate fauna crossings will be provided along the fauna corridor, as required by the relevant conditions of consent.

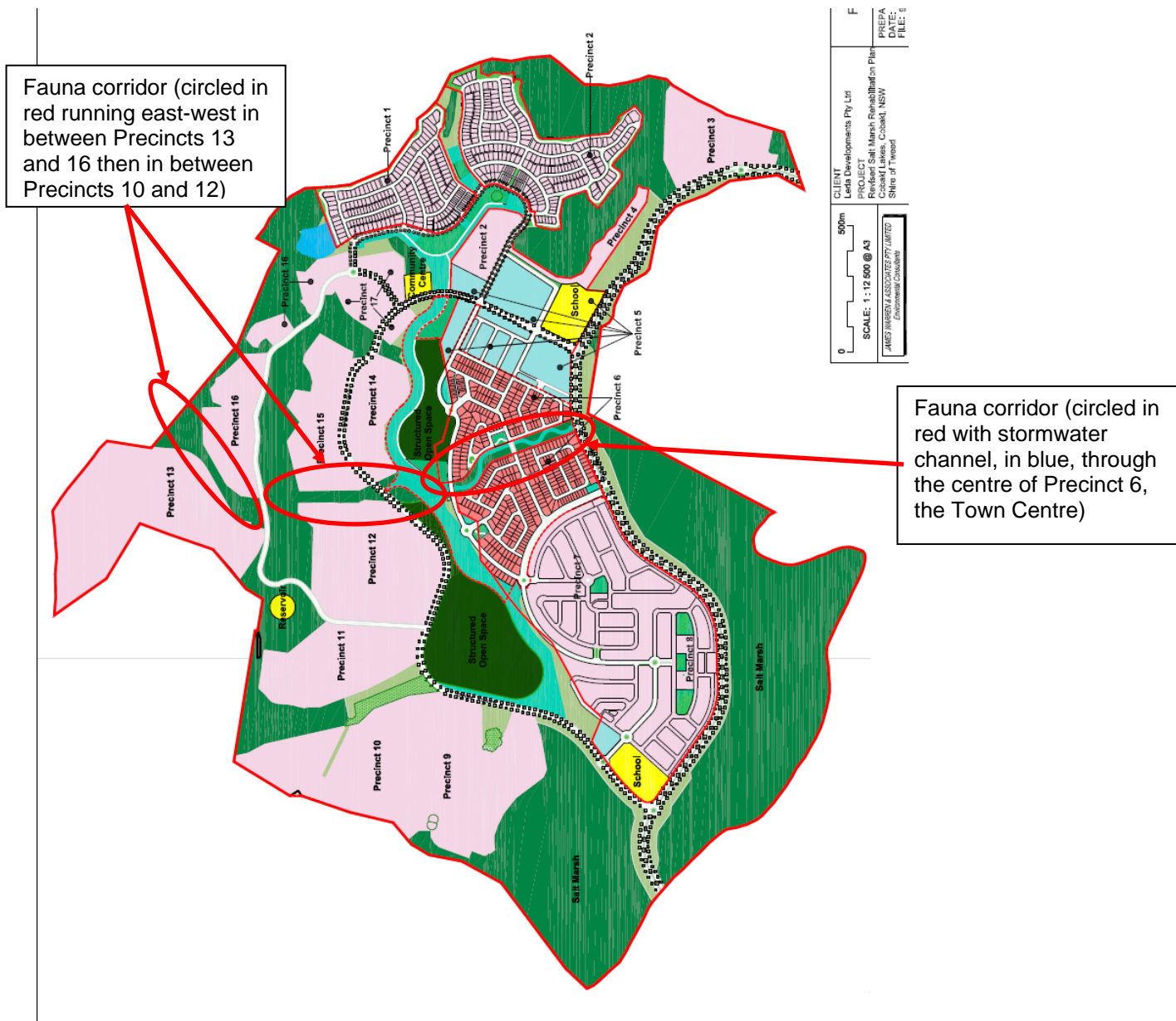


Figure 14: Location of proposed east-west fauna corridor

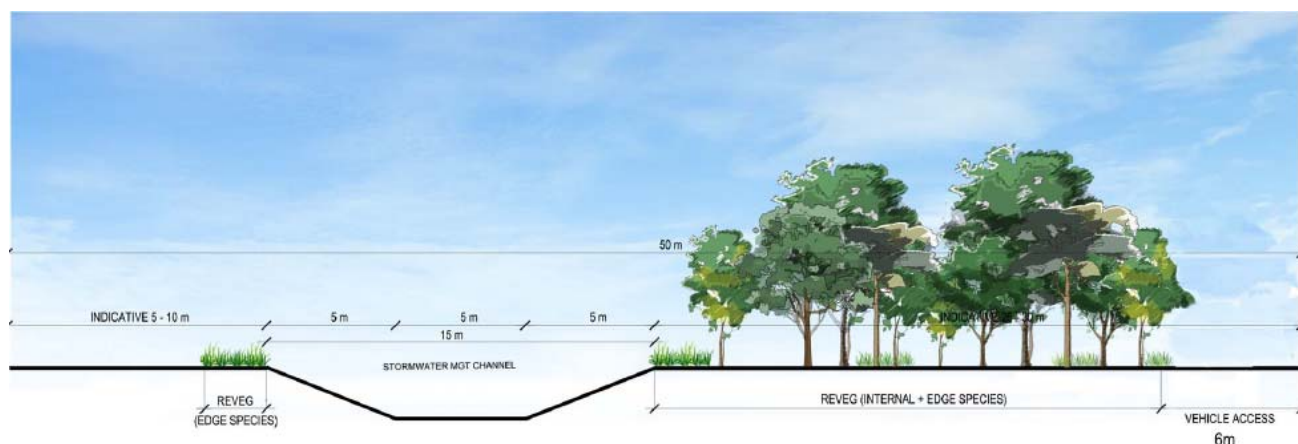


Figure 15: Typical cross-section of the east-west fauna corridor through Precinct 6



Figure 16: Plan view of east-west fauna corridor through Precinct 6

### 5.1.3 Cobaki Estate Development Code

The Cobaki Estate Development Code was endorsed by the then Minister for Planning on 6 December 2010 as a component of the Concept Plan. The Code prevails to the extent of any inconsistencies with council's planning controls and the NSW Housing Code and provides for a range of housing choice to be assessed as exempt and complying development. It allows for lot sizes ranging from 150m<sup>2</sup> for a terrace dwelling, 400m<sup>2</sup> for a traditional detached dwelling and up to 500m<sup>2</sup> for mews dwellings. The Code was developed in consultation and agreement with council.

A number of minor amendments to the Code are proposed as a few issues have been identified in the assessment and approval of the first two development applications that were submitted to Tweed Shire Council (DA10/0800 and DA10/0801). These primarily relate to the development controls in Part B of the Code, not the exempt and complying provisions. The amendments include the following:

- Part A – Exempt & Complying Development
  - Amendment to Section 2.2 of the Code, which sets out the controls for complying development, as this does not include any reference to the requirement to provide rainwater tanks. A new control 5) in Section 2.2 requires rainwater harvesting to be provided.
- Part B – Development Controls
  - The term “frontage” is not defined, therefore relevant sections require amendment to refer to “effective lot width” instead, which is defined in Appendix A of the Code;
  - Amendment of the controls for terrace dwellings to allow lots nominated for terrace dwellings to have a secondary road frontage to a lane or public footway, not just a lane;
  - Amendments to the Plan of Development requirements to remove the notations regarding location and width of APZs, fill levels on flood prone lots and easements as the proponent considers these to be onerous and unnecessary requirements; and,
  - An amendment to change the requirement for the Plan of Development to specify “bedrooms per dwelling” rather than “dwellings per lot” for plex, mews and development lots as the proponent considers this is a more relevant consideration for the purposes of determining developer contributions.

The department, council and RFS are generally supportive of the amendments proposed, however, the following amendments to the subdivision controls (Part B, Section 5 of the Code) are not supported:

- Section 5.6, Control 1(a) – the proponent requests deletion of the requirement to show the location and width of Asset Protection Zones (APZs) on the Plan of Development for future subdivision applications as this is an onerous and unnecessary requirement. This amendment is not supported as the location of APZs are essential information to prospective purchasers and building designers in relation to future maintenance burdens, building design and location of building envelopes and should be shown on the Plan of Development.

- Section 5.6, Control 1(j) – the proponent requests that the requirement to note the “dwellings per lot” be changed to require the number of “bedrooms per dwelling” on the Plan of Development as this is a more relevant consideration for the purposes of determining contributions at the subdivision stage. This amendment is not supported as the number of dwellings and the number of bedrooms are both relevant for the purpose of calculating developer contributions. Council has requested that the requirement should be for both the number of dwellings and bedrooms per dwelling to be noted on the Plan of Development. The department supports council’s request.

The department requested that the proponent modify the Development Code to reflect the above amendments to the development controls. The proponent has accepted all of these changes, and has submitted the revised final Code for approval. The existing approved Code can be amended by:

- approving the revised Code to replace the existing Code, dated 15 November 2010; and
- making an order to amend the section 75P(2)(d) order, dated 6 December 2010.

The amending order would simply replace 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, May 2013*', being the revised Code.

On 27 February 2013, the Minister for Planning and Infrastructure delegated his functions under section 75P to the Executive Director, Development Assessment Systems and Approvals. This delegation is sufficiently broad to approved the revised Code and make an order to amend the existing order under section 75P(2)(d). Relevant documentation will be prepared and submitted to the Executive Director following approval of this modification.

#### 5.1.4 Requirements for Future Applications

The proponent requests a number of modifications to Part C of the concept plan approval, being the ‘Requirements for Future Applications’. The following amendments to the requirements are not supported:

- Condition C1(1) – Plan of Development – the proponent requests deletion of the requirement for the APZs to be shown on the Plan of Development. The department does not agree to remove this requirement as it is important that the developer and prospective purchasers understand where these areas are for maintenance purposes.
- Condition C1(2) – Plan of Development – the proponent requests deletion of the requirement for noting the level of construction on bushfire affected lots. The department agrees with this, however, considers this should be replaced with a notation on affected lots that development is subject to the requirements of *Planning for Bushfire Protection 2006* and AS3959 Construction of Buildings in Bushfire Prone Areas.
- Condition C4 – Management and Restoration Plans – the proponent requests to modify the condition to defer the finalisation of stage-specific management plans to the subdivision construction certificate stage. The department agrees to this request in principle, however, the department and council recommend the condition be modified to require the submission of draft stage-specific management plans at the DA stage and final plans to be submitted prior to the issue of the relevant subdivision works construction certificate/s.
- Condition C7 – Geotechnical Assessments – the proponent requests to modify the condition to defer the Geotechnical Assessments from the DA stage to the subdivision works construction certificate. The department does not agree to modify the condition in this manner as it is critical to understand the geotechnical condition of the site at the DA stage to ensure subdivision (lot sizes, orientation and shape) and road design reflect the geotechnical constraints. The department and council therefore recommend the condition be modified to require submission of a Preliminary Geotechnical Assessment at the DA stage with a final report submitted prior to the issue of the relevant construction certificate.
- Condition C8 – Bushfire Assessment – the proponent requests to modify the condition to remove the requirement for APZs to be shown on the Plan of Development and affected lots encumbered with a Section 88B instrument. The department does not agree to remove the requirement for APZs and restrictions on title. The location of APZs is essential information to prospective purchasers and building designers in relation to future maintenance burdens,

building design and location of building envelopes and should be shown on the Plan of Development. The requirement for a restriction on title is consistent with *Planning for Bushfire Protection 2006* and advice from the RFS.

The proponent has accepted the department's position on the above matters. The terms of approval of the modified concept plan have been amended accordingly.

## **5.2 Assessment of Project Approval Key Issues**

### **5.2.1 Biodiversity Offsets**

#### Wallum Froglets

Approximately 79ha of suitable Wallum Froglet habitat exists on the undeveloped site. The concept plan approved the removal of a total of 69.29ha (88%) of this habitat. To ameliorate for this loss, a number of areas on the subject site were to be rehabilitated in accordance with a *Revised Freshwater Wetland Rehabilitation Plan* (JWA 2010) as follows:

- 4.75 hectares of core habitat, and
- 19.52 hectares of potential forage habitat.

Furthermore, 15.73 hectares of Swamp Sclerophyll Forest would be regenerated/revegetated on the subject site in accordance with the *Revised Site Regeneration and Revegetation Plan* (JWA, October 2010) to provide additional suitable forage habitat for this species. This would result in a total on-site offset of 40ha. Remaining offsets were to be provided off-site to be subject to an agreement between OEH and the proponent.

The Revised Freshwater Wetland Rehabilitation Plan (October 2010) was approved as part of the central open space project approval (MP08\_0200). The biodiversity offset requirements were subsequently included as Condition 38 of the project approval. Condition 38(1) requires evidence of the agreement with OEH prior to works commencing in the freshwater wetland and Wallum Froglet habitat areas. Condition 38(2) requires the preparation of the WFCHP and sets out the information to be included in the plan, including a mechanism for ongoing funding of the Wallum Froglet habitat offset areas.

The proponent now proposes to modify condition 38 of the project approval to reflect the proposed revised offsetting arrangements for Freshwater Wetlands EEC and Wallum Froglet habitat. The proposed changes result in only 2.25ha of core breeding habitat being provided on site. The proponent has committed to entering into separate Planning Agreements with OEH for the balance of the offsets, either on-site or off-site. The proponent requested to delete the reference to the requirement for the WFCHP, and instead only require the preparation of a Freshwater Wetland Compensatory Habitat Management Plan (FWCHMP) to address the rehabilitation of 2.25ha of freshwater wetland offset on the site. This essentially meant the requirement for a Wallum Froglet management plan would not be stated in the condition.

The department, council and OEH support the proposed amendment to require a FWCHMP, but do not support the deletion of condition 38(2) requiring a detailed WFCP as there is still a requirement for 2.25ha of core breeding habitat for the Wallum Froglet to be provided on site.

The proponent accepts the inclusion of a requirement in condition 38 to provide a WFCHMP, including the relevant details specifically listed under the original condition 38 pertaining to details of the core breeding habitat areas. This is with the exception of condition 38(2)(v) which requires the management plan to include a mechanism for ongoing funding of the Wallum Froglet habitat area to ensure the long-term viability of the population. Both the FWCHMP and the WFCHMP have already been submitted to council for approval. Council has advised that these plans are generally satisfactory, however, agreement has not yet been reached on the means for ongoing funding for these onsite offset areas. The proponent is of the view that the funding source for the long-term maintenance of the proposed offset areas should be council rates, while council is of the view that funding should be provided by the proponent.



The department is of the view that the requirement to specify a mechanism for ongoing funding may be deleted from within the condition, as requested. However, as an environmental offset area, it is the responsibility of the proponent to ensure that this area is managed appropriately in perpetuity and to ensure ongoing management activities are appropriately funded. This is supported by condition 71(c) – Environmental Management Plans - of the project approval that states that the proponent is responsible for implementation of the various environmental management plans, and once the environmental rehabilitation/offset lands have met the completion criteria specified in the plans, the proponent shall either:

- conclude an agreement with council for the dedication of that parcel of land to council; or
- if a part of the land is to remain in private ownership, make suitable arrangements to ensure such land is set aside and appropriately managed in perpetuity by its owner.

The department has therefore recommended a revised condition 38 which includes the following:

- evidence of an agreement between OEH and the proponent to ameliorate the project's impacts on biodiversity (either on-site or off-site);
- a requirement for a FWCHMP; and,
- a requirement for a WFCHMP, including specific details on core breeding habitat areas.

#### On-site Environmental Offset Areas

To ensure it is abundantly clear that ongoing management and funding for all offset areas across the site (including the Wallum Froglet offset areas) is the responsibility of the proponent, the department recommends deleting condition 71 – Environmental Management Plans, and replacing it with new conditions 11A and 11B within Part One – Subdivision, of the project approval (which applies to the subdivision of the entire Cobaki Estate). New condition 11A clarifies the requirements stated under existing condition 71c. with regards to the arrangements to be made if environmental offset areas are to remain in private ownership to ensure the lands are managed appropriately in the long term. The new condition requires that the proponent engage an independent registered surveyor to survey and permanently mark the boundaries of the offset areas across the entire site such that they can be clearly identified by operating staff, the landowner and inspecting officers at all times. Restrictive and positive covenants under the *Conveyancing Act 1919* are to be placed on the titles of the land referring to the surveyed environmental offset areas, to ensure that the proponent and subsequently the landowner:

- manage the offset areas for conservation in perpetuity; and,
- permit access to the offset areas by the department and relevant public authorities at all times for the purposes of monitoring compliance with the covenants and the environmental management plans to the satisfaction of the Director-General.

New condition 11B replaces existing condition 71a. and 71b. of the project approval to be more specific about the proponent's responsibility for ongoing implementation of the environmental management plans and requirements for environmental auditing of all offset areas across the entire Cobaki Estate to ensure the lands are being maintained to an appropriate standard, in accordance with the various environmental management plans, once the agreed completion criteria have been met. This means the issue of funding is resolved as it makes the landowner (in this case, the proponent) responsible for the offset areas until such time an agreement is made with council (possibly through a VPA) for the dedication of that land, and therefore management costs are borne by the landowner until this time.

With the recommended modifications to the conditions of approval as discussed above, the department is satisfied that the biodiversity offsets for the Freshwater Wetlands and associated Wallum Froglet habitat are appropriate, that all offset lands on the project site will be managed appropriately in accordance with the relevant management plans, and funding for offset areas is the responsibility of the landowner, which is secured through covenants over the land.

### 5.2.2 Bulk Earthworks

Under the project approval, bulk earthworks have been approved across the central open space area to shape the landform upon which the roads, structured and casual open space sites, and environmental enhancement works will be carried out – these earthworks largely consist of filling operations. Bulk earthworks are proposed to be carried out across the site generally in accordance with the plan provided in Figure 17. Although notations on this plan identified that suitable material from Precincts 1 and 2 was to be used as fill material in the central open space area, details of such works were not submitted as part of the project application and the proponent did not seek approval for such works in the Environmental Assessment. As such the department did not assess the environmental impacts of any excavation works outside the central open space area.

To specify the limits of the approval in relation to bulk earthworks, the department included the following condition on the project approval (Condition 41):

#### Earthworks – Limits of Approval

*Unless approved sources of fill material are identified in the approved CEMP or approved bulk earthworks construction certificates(s), no bulk earthworks are to be undertaken outside of the central open space area identified in the approved plans.*

*Note: Fill material required for the Central Open Space area sourced from elsewhere on the site shall be identified in the CEMP and may be subject to separate earthworks approvals over those areas.*

The proponent argued that the project approval authorises the excavation of land comprising Precincts 1 and 2 for the purpose of winning fill for use in the central open space area, relying solely on the approved plan - YC0229-1P1-SK02 – Phase 1 – Landforming/Earthworks Layout Plan (Figure 17) and their interpretation of Condition 41, being that Condition 41 enables a construction certificate to be issued in relation to the excavation in Precincts 1 and 2, to the extent excavation is necessary to win fill for use in the central open space area, and that Condition 41 of the project approval foreshadows this possibility.

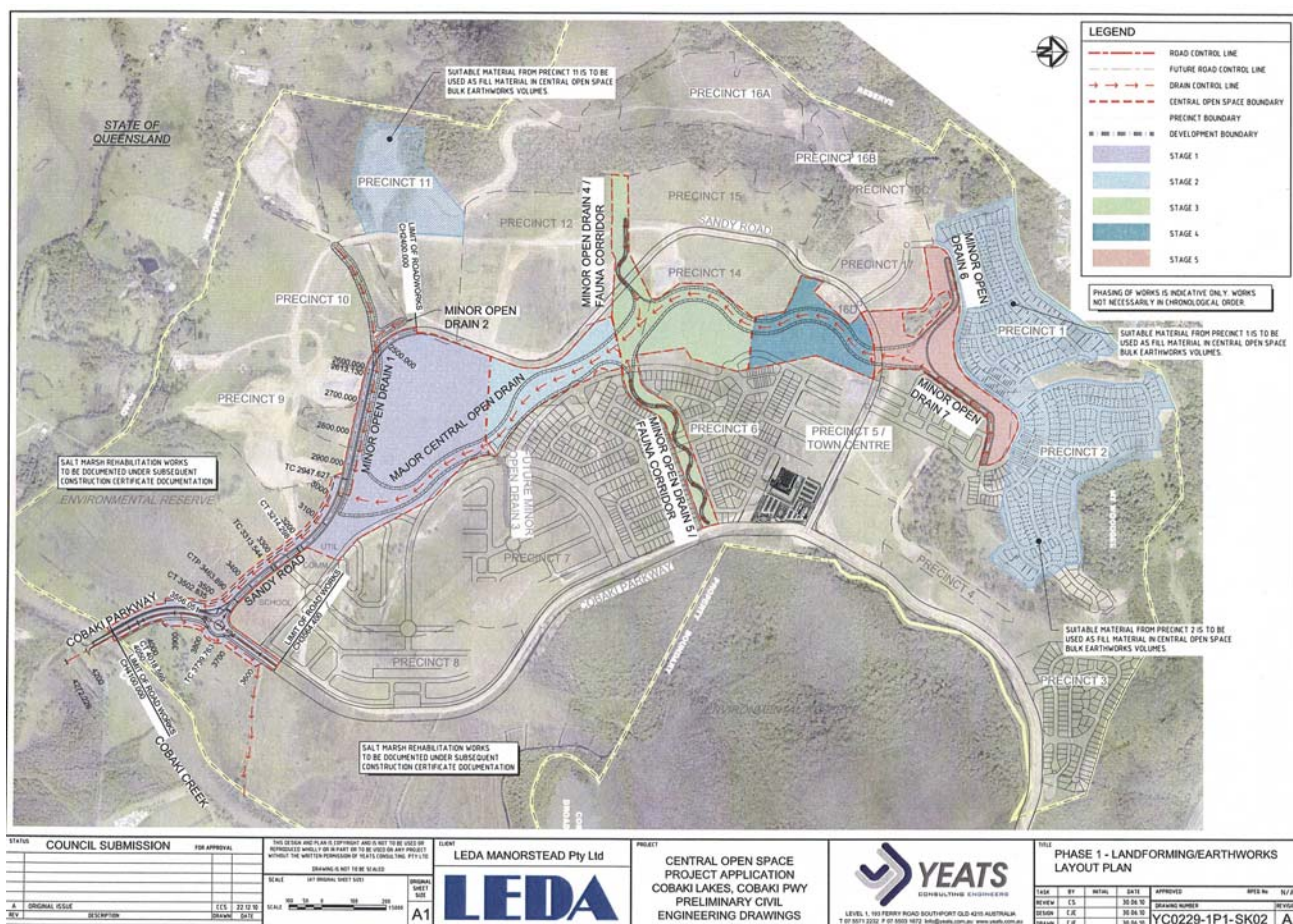
While there has been some debate about the interpretation of Condition 41, the department is of the opinion that the winning of fill from Precincts 1 and 2 requires further development approval. External legal advice has confirmed this position.

The proponent has agreed to seek approval for the winning of fill from Precincts 1 and 2 for the construction of the central open space area as part of this modification request. The proponent has submitted, as part of this modification request, relevant detailed bulk earthworks drawings (survey drawings, cut and fill plans, erosion and sediment control plan) and a supporting environmental impact assessment report for the winning of fill from Precincts 1 and 2 for the department's consideration.

The department, council and agencies are satisfied that the proposed environmental mitigation measures for the protection and management of flora and fauna are appropriate and will minimise impacts on the ecological assets on site and adjacent to the site. Furthermore, council has advised that in general the proposed mitigation measures are consistent with the relevant measures outlined in the approved environmental management plans for Precincts 1 and 2 and are considered sufficient.

However, council does not support the proposed retaining walls and fire trail profiles submitted on the bulk earthworks drawings, as these are inconsistent with plans submitted to satisfy conditions under DA10/0800.

The proponent has clarified that the retaining wall profiles and future fire trail landforms presented on the bulk earthworks drawings are not submitted for approval as part of this modification request. The final retaining wall and fire trail profiles are subject to approval by council in accordance with Condition 54 of the development consent for the subdivision of Precincts 1 and 2 (DA10/0800).



**Figure 17: Approved Landforming and Earthworks Layout Plan**

In light of the above, the department recommends that the wording of Condition 41 be amended such that the limits of the approval in relation to bulk earthworks are clear and unambiguous. The revised wording is:

- No bulk earthworks are to be undertaken outside of the central open space area (as defined in Schedule 1 Part C of this approval)*
- Notwithstanding a.) above, bulk earthworks may also be carried out in Precincts 1 and 2 for the sole purpose of the winning of fill to be placed in the central open space area.*
- Fill material required for the central open space area sourced from elsewhere on/or the site requires separate development approval.*
- Retaining walls and fire trail profiles identified on bulk earthworks drawings YCO229-1E1-ES04 (Rev D), YCO229-1E1-ES05 (Rev A), YCO229-1E1-ES06 (Rev A), YCO229-1E1-ES07 (Rev A) are not approved.*

*Note: Retaining wall heights and fire trail profiles within Precincts 1 and 2 shall be submitted to council for approval in accordance with the conditions of development approval DA10/0800.*

The department has also recommended a new condition of approval that sets out the details required to be submitted with the construction certificate application for the bulk earthworks activities in Precincts 1 and 2. This includes a requirement for maximum exposed areas to be no greater than 5ha, unless otherwise approved by the Director-General. The department, council and OEH are satisfied with the proponent's proposed environmental mitigation measures for the bulk earthworks activities.

The department is therefore satisfied that the bulk earthworks activities for the winning of fill in Precincts 1 and 2 will be managed appropriately.



## 6. CONCLUSION AND RECOMMENDATIONS

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The department has assessed the merits of the project, including the proponent's Modification Report, Environmental Assessment and the Response to Submissions and has considered all issues raised by State agencies and council. The key issues raised and discussed in relation to the concept plan modification include offsetting arrangements for biodiversity, impacts on connectivity for biodiversity, changes to the Cobaki Estate Development Code and modifications to the Requirements for Future Applications.

The department has considered these key issues raised and has recommended modifications to requirements for future applications to ensure the satisfactory addressing of these issues and minimal impacts as a result of the proposal. Key modifications include:

- **C4 – Management and Restoration Plans** - a modified future assessment requirement that requires the proponent to submit draft stage-specific management and restoration plans as part of future development/project applications (rather than final plans), with final plans approved prior to the issue of a construction certificate;
- **C7 – Geotechnical Assessments** - a modified future assessment requirement that requires a preliminary geotechnical assessment, rather than a detailed assessment, to be submitted with future development/project applications; and,
- **C19 – Biodiversity Offsets** - a new future assessment requirement that requires details of Swamp Sclerophyll EEC offsets to be provided with the application for any works in Precinct 6 and specifically requiring 6.77ha on site and additional offsets off-site, as agreed to by OEH, noting that the biobanking calculator indicates this may be in the order of 16 additional hectares.

The key issues raised in relation to the project application include the provision and management of biodiversity offsets and the approval for bulk earthworks in Precincts 1 and 2.

The department has considered the key issues raised in relation to the proponent's request to modify the project approval and has agreed to recommended modifications to a number of the project approval conditions to ensure the satisfactory addressing of these issues and minimal impacts as a result of the proposal. Key modifications include:

- **Condition 8 – Certification** - a modified condition to clarify that a subdivision certificate may be obtained from either council or an Accredited Certifier;
- **Condition 11A – On-site Environmental Offset Areas** - a new condition of approval to require environmental offset lands to be surveyed and subdivided out, and a form of dealings to be registered on title to require implementation of the environmental management plans and ensure protection of the land in perpetuity;
- **Condition 11B – Management and Maintenance of Environmental Lands** – a new condition of approval to clarify that the proponent is responsible for the management of open space and environmental protection land and the implementation of environmental management plans until such time that an agreement is reached with council regarding the dedication of these lands, and to require environmental auditing of these lands.
- **Condition 21A – Bulk Earthworks** – a new condition of approval to outline the required information to be submitted with an application for a construction certificate for the winning of fill from Precincts 1 and 2, and limiting maximum exposed areas to 5ha, unless otherwise approved by the Director-General;
- **Condition 36A – Groundwater** – a new condition of approval requiring adherence to legislative requirements for interactions with groundwater;
- **Condition 38 – Biodiversity Offsets** – a modified condition of approval to reflect the amended offsetting arrangements for Freshwater wetland EECs and Wallum Froglet habitat, including a requirement for a FWCHMP and a WFCHMP;
- **Condition 39 – Wallum Froglet Populations** – a modified condition of approval to clarify that the project does not adversely affect remaining Wallum Froglet populations on, or adjacent to the site

- **Condition 41 – Limits of Approval** – a modified condition of approval to clarify that the approval is limited to bulk earthworks in the central open space and the winning of fill in Precincts 1 and 2 only; and,
- **Condition 65 – Saltmarsh Rehabilitation Works** – a modified condition of approval to reflect the latest Saltmarsh Rehabilitation Plan and a requirement to include additional information in the final rehabilitation plan.

The proponent has reviewed the proposed conditions and is satisfied with the department's recommendations.

The modified project application is generally consistent with the modified concept plan and existing environmental planning instruments.

On these grounds the department recommends that the concept plan be modified in accordance with the proposed modifying instrument and the proponent's statement of commitments and the modified project application be approved subject to the recommended modified conditions of approval.

## 5.2 Recommendation

It is recommended that the Director, Metropolitan and Regional Projects North:

- **consider** the findings and recommendations of this report;
- **approve** the request to modify the concept plan subject to the modified terms of approval and future environmental assessment requirements under section 75W of the EP&A Act;
- **approve** the request to modify the project application, subject to conditions, under section 75W of the EP&A Act; and
- **sign** the attached Instruments of Approval (**Tag C**).