

Reg Van Rij

From: Rebecca Sommer <rebecca.sommer@planning.nsw.gov.au>
Sent: Thursday, 30 July 2015 9:33 AM
To: Reg Van Rij
Cc: Kate MacDonald; Christopher Ritchie
Subject: Cobaki - SEARS - Concept Plan MOD 3 (MP 06_0316 MOD 3)
Attachments: Cobaki - Concept Plan MOD 3 - SEARs - SIGNED#2.pdf

Hi Reg,

Please find attached a copy of the Secretary's Environmental Assessment Requirements (SEARs) for the request to modify Concept Approval MP06_0316 at Cobaki Estate.

If you would like to discuss, please feel free to give me a call.

Regards,
Rebecca

Rebecca Sommer
Senior Planner
Industry Assessments
Department of Planning & Environment
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**Planning &
Environment**

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Contact: Rebecca Sommer
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Mr Reg van Rij
Regional Manager – Residential
Leda Manorstead Pty Ltd
PO Box 1914
Surfers Paradise QLD 4217

Dear Mr van Rij

**Major Project Modification – Secretary's Environmental Assessment Requirements
Cobaki Estate Concept Plan Modification Request (MP06_0316 MOD 3)**

I have attached the Secretary's Environmental Assessment Requirements (SEARs) for the proposed modification to the Cobaki Concept Plan to reclassify the Swamp Sclerophyll Forest on Coastal Floodplains Endangered Ecological Community at the Cobaki Estate.

The SEARs have been prepared in consultation with the Office of Environment and Heritage (OEH) and Tweed Shire Council (see **Attachment 2**), and are based on the information you have provided to date. Please note that the Department may alter the SEARs at any time. You must consult further with the Department if you do not lodge a modification request and environmental assessment for the development within two years of the date of issue of these SEARs. The Department will review the environmental assessment for the modification before publicly exhibiting it and will require you to submit an amended environmental assessment if it does not adequately address the SEARs.

I wish to emphasise the importance of effective and genuine community consultation and the need for proposals to proactively respond to the community's concerns. Accordingly, you must undertake a comprehensive, detailed and genuine community consultation and engagement process during the preparation of the environmental assessment. This process must ensure that the community is informed of the development and engaged with issues of concern to them. Sufficient information must be provided to the community to enable a good understanding of the development and any potential impacts.

Your modification may require a separate approval under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). If an EPBC Act approval is required, please advise the Department accordingly, as the Commonwealth approval process may be integrated into the NSW assessment process, and supplementary SEAR's may need to be issued.

Please contact the Department at least two weeks before you intend lodging the environmental assessment and any associated documentation for the modified development. This will enable the Department to determine the:

- applicable fee (under Division 1A, Part 15 of the *Environmental Planning and Assessment Regulation 2000*); and
- consultation and public exhibition arrangements, including copies and format requirements of the EIS.

If you have any enquiries about these SEARs, please contact Rebecca Sommer on the above details.

Yours sincerely

Chris Ritchie
Director
Industry Assessments
As the delegate of the Secretary

30/7/15

Secretary's Environmental Assessment Requirements

Section 75F of the *Environmental Planning and Assessment Act 1979*

Application Number	MP 06_0316 MOD 3
Development Description	Concept Plan modification to the Cobaki Residential Development to reclassify the Swamp Sclerophyll Forest on Coastal Floodplains Endangered Ecological Community at the Cobaki site.
Location	Cobaki Residential Development, Piggabeen Road, Cobaki Lakes
Proponent	Leda Manorstead Pty Ltd
Date of Issue	July 2015
General Requirements	<p>The modification request must include:</p> <ul style="list-style-type: none"> • an executive summary; • a description of the existing and surrounding environment; • a detailed description of the modification including the need and justification; • interactions between the modification and existing, approved and proposed operations of the site; • details of any inconsistencies with the existing Concept Plan Approval and Project Application (as modified); • consideration of all relevant statutory provisions; • an environmental risk assessment to identify potential environmental impacts; • a detailed assessment of the key issues specified, including: <ul style="list-style-type: none"> – a description of the existing environment, using sufficient baseline data; – an assessment of the potential impacts of all stages of the modification, including any cumulative impacts, taking into consideration existing approvals, relevant guidelines, policies, plans and statutes; – a description of the measures that would be implemented to avoid, minimise, mitigate and if necessary, offset the potential impacts of the development, including proposals for adaptive management and/or contingency plans to manage significant risks to the environment; and – impacts of the modification, including cumulative impacts; • a description of any amendment/s required to the approved documentation (where necessary); and • a conclusion justifying the proposal, taking into consideration the environmental impacts of the proposal and the suitability of the site.
Key issues	<p>The modification request must address the following specific matters:</p> <ol style="list-style-type: none"> 1. Statutory and Strategic Context – including: Address the statutory provisions applying to the proposed development contained in all relevant environmental planning instruments, including: <ul style="list-style-type: none"> • <i>State Environmental Planning Policy No 44 (Koala Habitat Protection)</i>; • <i>Tweed Local Environmental Plan 2014</i>; • <i>Tweed Development Control Plan 2008</i>; and • <i>Tweed Coast Comprehensive Koala Plan of Management</i>. 2. Biodiversity <ul style="list-style-type: none"> • A detailed description of all flora and fauna within the community currently identified as Swamp Sclerophyll Forest on Coastal Floodplains Endangered Ecological Community. • A detailed justification of any reclassification of the vegetation community currently identified as Swamp Sclerophyll Forest on Coastal Floodplains Endangered Ecological Community. • Biodiversity impacts associated with the removal of the community currently identified as Swamp Sclerophyll Forest on Coastal Floodplains Endangered Ecological Community are to be assessed and documented in

	<p>accordance with the Office of Environment and Heritage's <i>Framework for Biodiversity Assessment</i>, unless otherwise agreed by OEH, by a person accredited in accordance with s142B(1)(c) of the <i>Threatened Species Conservation Act 1995</i>.</p>
Consultation	<p>During the preparation of the modification request you must consult with the relevant local, State or Commonwealth Government authorities, service providers, community groups and affected landowners. In particular you must consult with:</p> <ul style="list-style-type: none"> • Tweed Shire Council; and • NSW Office of Environment and Heritage; <p>The modification request must describe the consultation process and the issues raised, and identify where the design of the development has been amended in response to these issues. Where amendments have not been made to address an issue, a short explanation should be provided.</p>
Further consultation after 2 years	<p>If you do not lodge a modification request within 2 years of the issue date of these SEARs, you must consult with the Secretary in relation to the requirements for lodgement.</p>

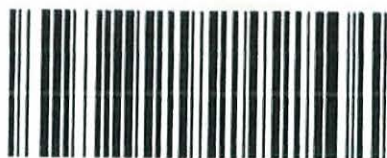
ATTACHMENT 1
Guidance Material

Title	Web Address
NSW Biodiversity Offsets Policy for Major Projects (OEH, 2013)	http://www.environment.nsw.gov.au/resources/biodiversity/140672biopolicy.pdf
Framework for Biodiversity Assessment (OEH, 2013)	http://www.environment.nsw.gov.au/resources/biodiversity/140675fba.pdf

ATTACHMENT 2
Government Authority and Council Responses to Request for Key Issues



Office of
Environment
& Heritage



PCU060304

Your reference MP 06_0316 MOD 3
Our reference: DOC15/186672
Contact Krister Waern 6640 2503

Ms Kate MacDonald
Department of Planning & Environment
GPO Box 39
Sydney NSW 2001



Attention: Ms Evelyn Craigie

Dear Ms MacDonald

Re: Request for input to SEARs for a modification to the Cobaki Estate Concept Plan

Thank you for your email dated 25 May 2015 requesting comment from the Office of Environment and Heritage (OEH) in relation to the above proposed modification. I appreciate the opportunity to provide input.

OEH has reviewed the modification which appears to propose deletion of the words 'Endangered Ecological Community' (EEC) from the current conditions of approval. However, it is unclear what, if any, implications arise from this deletion.

We have previously written to the applicant advising our position regarding the subject vegetation community. The OEH correspondence dated 18 December 2014 forms part of the submitted information from the applicant. In that letter we stated:

Despite interpretations of the conservation status of this vegetation and the alignment to an EEC or not, there clearly remains a biodiversity loss associated with its removal which still requires an appropriate offset. OEH notes that the Department of Planning and Environment (DP&E) has previously engaged Umwelt consultants to quantify the biodiversity loss by using the BioBanking Assessment Methodology.

Umwelt provided a detailed BioBanking analysis for the biodiversity loss in a letter to DP&E dated 6 May 2013. The determination of the vegetation as either EEC or not does not change these BioBanking calculations.

The offset requirement for this area is specified in clause 4.8 of the Statement of Commitments from the Concept Approval 06_0316 (Amended 29 May 2013). Based on the abovementioned BioBanking calculations, OEH considers the presence or otherwise of the EEC to be irrelevant to the intent of the condition to offset a biodiversity impact.

Further, we have also reviewed the updated BioBanking credit calculator which has an in-built EEC multiplier. On this occasion the EEC multiplier has no contribution to the final credit calculations and does not increase the offset required because other biodiversity factors are driving the offsetting ratios.

This means that the offsets required for impacts on this vegetation community would be unchanged by the proposed modification.

Considering the above information and specifically that it is unclear how the modification will make any difference to the current approval, we recommend that the Department of Planning and Environment reject the application for modification.

If you require further information or clarification, please contact Mr Krister Waern, Senior Operations Officer, on 6640 2503.

Yours sincerely

Dimitri Young 26 June 2015

DIMITRI YOUNG
Senior Team Leader Planning, North East Region
Regional Operations

Council Reference: GT1/52
Your Reference: MP06_0316 MOD 3



TWEED
SHIRE COUNCIL

Customer Service | 1300 292 872 | (02) 6670 2400

7 April 2015

Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2001

Attention: Kate McDonald

Dear Sir / Madam

tsc@tweed.nsw.gov.au
www.tweed.nsw.gov.au

Fax (02) 6670 2429
PO Box 816
Murwillumbah NSW 2484

Please address all communications
to the General Manager

ABN: 90 176 732 496

**Cobaki Residential Development - Concept Plan Modification
(MOD 3) - Request for Secretary's Environmental Assessment
Requirements (SEAR's)**

I refer to your letter of 25 May 2015 in relation to a request for SEAR's for a proposed modification to the Cobaki Residential Development (MOD 3) and provide the following comment:

The proponent is seeking support for their position that the area of vegetation in question does not meet the criteria for listing as *Swamp Sclerophyll Forest on Coastal Floodplain* EEC as described by the Scientific Committee's final determination. LEDA seeks to remove the offsetting requirements of Condition C19 as a result. Council has not been provided with the full scope of the proposed modification, thus its exact nature is unclear at this stage.

As noted in the assessment report for Concept Plan Mod 1 (May 2013), the reduction in planned offsets for the loss of the vegetation is an ongoing issue of concern shared by the Department, Council and OEH.

- 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 onsite to offset the loss of **3.80ha** of this community.
- The Concept Plan approval (October 2010) determined that an onsite offset of **15.73ha** was appropriate.
- Concept Plan Mod 1 requested a further reduction to **6.77ha** onsite.
- Concept Plan Mod 1 approval (May 2013) determined that **6.77ha** is to be provided as onsite offset along with an additional area of **~16ha** either onsite or offsite. The quantum of additional offsets is to be determined via the biobanking calculator and agreement with OEH (as per Condition C19)

The vegetation community in question is a Swamp Mahogany forest, with a ground layer comprising sedge, fern and heath species.

As identified in comments provided by OEH, the analysis of vegetation community characters against the Scientific Committee determination is equivocal. Resolution of this issue is not likely to be straightforward. OEH stated in its letter of 18 December 2014 that "*Despite interpretations of the conservation status of this vegetation and the*

alignment to an EEC or not, there clearly remains a biodiversity loss associated with its removal which still requires an appropriate offset."

Council similarly considers that regardless of its classification, the vegetation community has significant ecological value. Swamp Mahogany provides an important winter flowering resource for the Grey-headed Flying Fox (GHFF) and numerous other nectarivorous species. A Biodiversity Offset Strategy (as required by the Cobaki EPBC approval) is currently being prepared by the proponent for the loss of foraging habitat for the GHFF. This area forms part of the habitat for which these offsets are being negotiated.

Additionally, the vegetation community likely comprises Preferred Koala Habitat as defined by the Tweed Coast Comprehensive Koala Plan of Management 2015. Under this Plan, the removal of this habitat, if allowed, would require offsetting consistent with the provisions of the Plan.

Based on limited information provided to date, it would be difficult for Council to support any further reduction in offset for the removal of this community. However, should the Department consider modification of Condition C19, the following information should be required from the proponent to form part of their application:

- Details of any proposed offsets (if different from those currently conditioned);
- Justification for any reduction in proposed offset and how any proposed remaining offset will improve or maintain ecological values associated with the development;
- Details of how any proposed offset meets the offset requirements of the Tweed Coast Comprehensive Koala Plan of Management;
- Clarification as to the spatial relationship of this area with any areas involved in providing retained habitat or offset habitat for GHFF, ensuring consistency with and additionally to, areas retained, managed or protected for other purposes; and
- Details of timing of offset establishment and commitment to the commencement of restoration works within offset areas prior to removal of vegetation from Precincts 6 and 7.

For further information regarding this matter please contact Colleen Forbes on (02) 6670 2596.

Yours faithfully



Lindsay McGavin
Manager Development Assessment