

## + MODIFICATION OF CONCEPT PLAN APPROVAL NO. 06\_0316 (MOD 3)

### COBAKI ESTATE CONCEPT PLAN – PROPOSED RESIDENTIAL SUBDIVISION

#### At Sandy Lane, Cobaki Lakes

• Prepared For: Leda Manorstead Pty Ltd | • Prepared by: DAC Planning Pty Ltd | • December 2015 |

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## MODIFICATION OF CONCEPT PLAN APPROVAL NO. 06\_0316 (MOD 3)

### PROPOSED COBAKI ESTATE RESIDENTIAL DEVELOPMENT AT SANDY LANE, COBAKI LAKES

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#### EXECUTIVE SUMMARY

On 8 May 2015, and as amended on 13 May 2015, Leda Manorstead (owner of the subject site) requested the Secretary's Environmental Assessment Requirements for Mod 3, which relates to the reclassification of a stand of 52 Swamp Mahogany trees which are located on residential zoned land which is identified as Precincts 5, 6 and 7 on the approved Concept Plan. The subject vegetation was originally identified as Swamp Sclerophyll Forest on Coastal Floodplains Endangered Ecological Community (EEC).

On 30 July 2015 the Department of Planning and Environment issued the Secretary's Environmental Assessment Requirements (SEAR's) for the modification.

In response to the SEAR's Leda Manorstead Pty Ltd has instructed DAC Planning Pty Ltd to prepare this Section 75W Application seeking modification of the Concept Plan.

The Cobaki Concept Plan is for a proposed residential development of approximately 5,500 dwellings including 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 network.

The subject land is described as the Cobaki Estate, which is located adjacent to the New South Wales/Queensland border and has a total area of 593.53 hectares. The legal description of the Cobaki Estate is Lot 1 in DP 570076; Lot 2 in DP 566529; Lot 1 in DP 562222; Lot 1 in DP 570077; Lot 1 in DP 823679; and Lots 46, 54, 55, 199, 200, 201, 202, 205, 206, 209, 228 and 305 in DP 755740.

Land surrounding the Cobaki Estate includes the State border reserve to the north and west, environmental land and the Cobaki Broadwater to the east and the Cobaki Creek and rural residential and grazing land to the south and south west.

The vegetation community the subject of Mod 3 is located on an elevated sand ridge, above the 1 in 100 year flood level and is disbursed across an area of 3.8 hectares. The vegetation community is highly disturbed by previous agricultural activities including cattle grazing and slashing.

Detailed assessments have been undertaken to assess the condition of the subject Swamp Mahogany (*E. robusta*) woodland against the criteria outlined in the NSW Scientific Committee determination for *Swamp Sclerophyll Forest on Coastal Floodplain* EEC. These include investigation of the soil characteristics, hydrological, flooding and compilation of a Plant Species List within the boundaries of the vegetation community. The assessments have been considered by JWA Ecological Consultants who contended that the stand of Swamp Mahogany vegetation on the site does not comply with a number of the significant criteria contained in the Scientific Community determination. Further, JWA Ecological Consultants contend that the vegetation should not properly be described as an EEC.

Consultations have been had with the NSW Office of Environment and Heritage (OEH) and Tweed Shire Council (TSC). Concerns were raised by these Agencies in relation to offsetting. To address this issue an assessment based upon the Bio-Banking Assessment Methodology (BBAM) was undertaken.

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That assessment of 9 threatened species provided by the BBAM, including expert reports, indicates that there is a very low likelihood of occurrence of 8 of those species, and only a possible occurrence for the Wallum Froglet.

The above analysis of the vegetation community demonstrates that the vegetation is not an EEC or threatened species habitat and therefore the Concept Plan Approval does not require offsetting under Clause 9.4.1.1(b) of the Framework for Biodiversity Assessment - NSW Biodiversity Offset Policy for Major Projects prepared by OEH.

However, since approval of the Concept Plan in December 2010, Tweed Shire Council, on 19 February 2015, adopted (as a strategy) the Tweed Coast Comprehensive Koala Plan of Management (KPoM).

Under the terms of that Plan, the site is located in the Tweed Heads Management Area. Although the Cobaki Estate is not located within a Koala Activity Precinct (KAP) or a Koala Linkage Precinct (KLP), the KPoM requires the offsetting of Swamp Mahogany trees removed from the site to be planted within the Southern KMA and within a KAP or KLP. On this basis a total of 824 trees are required to be provided as offsets.

The proposed modification of the Concept Plan, relating to Condition C19, Statement of Commitment 4.8 and the insertion of a new Condition A3A giving effect to the removal of erroneous references to the *Swamp Sclerophyll Forest on Coastal Floodplain* EEC and giving effect to the revised offsetting arrangements, is considered to be justified.

## 1.0 INTRODUCTION

Leda Manorstead Pty Ltd has commissioned DAC Planning Pty Ltd to prepare an application for modification of Concept Plan Approval No. 06\_0316 (MOD 3) which relates to a residential subdivision at Cobaki Estate.

This Modification Application seeks to make amendments to the Approval to reclassify the Swamp Sclerophyll Forest on Coastal Floodplains Endangered Ecological Community (EEC).

## 2.0 SECRETARY'S ENVIRONMENTAL ASSESSMENT REQUIREMENTS

The Secretary's Environmental Assessment Requirements (SEARS) are reproduced in **Table 1**. The table indicates where each of the relevant matters is addressed in this Environmental Assessment. A copy of the SEARS is attached as **Annexure A**.

TABLE 1 – SECRETARY'S ENVIRONMENTAL ASSESSMENT REQUIREMENTS	
REQUIREMENT	SECTION
<b>Application Number MP06_0316 MOD 3</b>	
Concept Plan modification to the Cobaki Residential Development to reclassify the Swamp Sclerophyll Forest on Coastal Floodplains Endangered Ecological Community at the Cobaki site.	-
<b>Location</b>	
Cobaki Residential Development, Piggabeen Road, Cobaki Lakes	-
<b>Proponent</b>	
Leda Manorstead Pty Ltd	-
<b>Date of Issue</b>	
July 2015	-
<b>General Requirements</b>	
The modification request must include:	-
an executive summary;	Page 5
a description of the existing and surrounding environment;	Section 3.0
a detailed description of the modification including the need and justification;	Section 4.0
interactions between the modification and existing, approved and proposed operations of the site;	Section 5.0
details of any inconsistencies with the existing Concept Plan Approval and Project Application (as modified);	Section 6.0
consideration of all relevant statutory provisions;	Section 7.0
an environmental risk assessment to identify potential environmental impacts;	Section 8.0
a detailed assessment of the key issues specified, including:	Section 9.0
- a description of the existing environment, using sufficient baseline data;	Section 11.0
- 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;	Section 12.0

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TABLE 1 – SECRETARY'S ENVIRONMENTAL ASSESSMENT REQUIREMENTS	
REQUIREMENT	SECTION
- 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	Section 13.0
- impacts of the modification, including cumulative impacts;	Section 14.0
a description of any amendments required to the approved documentation (where necessary); and	Section 15.0
a conclusion justifying the proposal, taking into consideration the environmental impacts of the proposal and the suitability of the site.	Section 16.0
<b>Key Issues</b>	
The modification request must address the following specific matters:	-
<b>1. Statutory and Strategic Context - including:</b>	Section 9.1
Address the statutory provisions applying to the proposed development contained in all relevant environmental planning instruments, including:	
• State Environmental Planning Policy No 44 (Koala Habitat Protection);	Section 9.1.1
• Tweed Local Environmental Plan 2014;	Section 9.1.2
• Tweed Development Control Plan 2008; and	Section 9.1.3
• Tweed Coast Comprehensive Koala Plan of Management.	Section 9.1.4
<b>2. Biodiversity</b>	Section 9.2
A detailed description of all flora and fauna within the community currently identified as Swamp Sclerophyll Forest on Coastal Floodplains Endangered Ecological Community.	Section 9.2.1
A detailed justification of any reclassification of the vegetation community currently identified as Swamp Sclerophyll Forest on Coastal Floodplains Endangered Ecological Community.	Section 9.2.2
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 accordance with the Office of Environment and Heritage's Framework for Biodiversity Assessment, unless otherwise agreed by OEH, by a person accredited in accordance with s142B(1)(c) of the Threatened Species Conservation Act 1995.	Section 9.2.3
<b>Consultation</b>	Section 10.0
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:	
• Tweed Shire Council; and	Section 10.1
• NSW Office of Environment and Heritage;	Section 10.2
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.	

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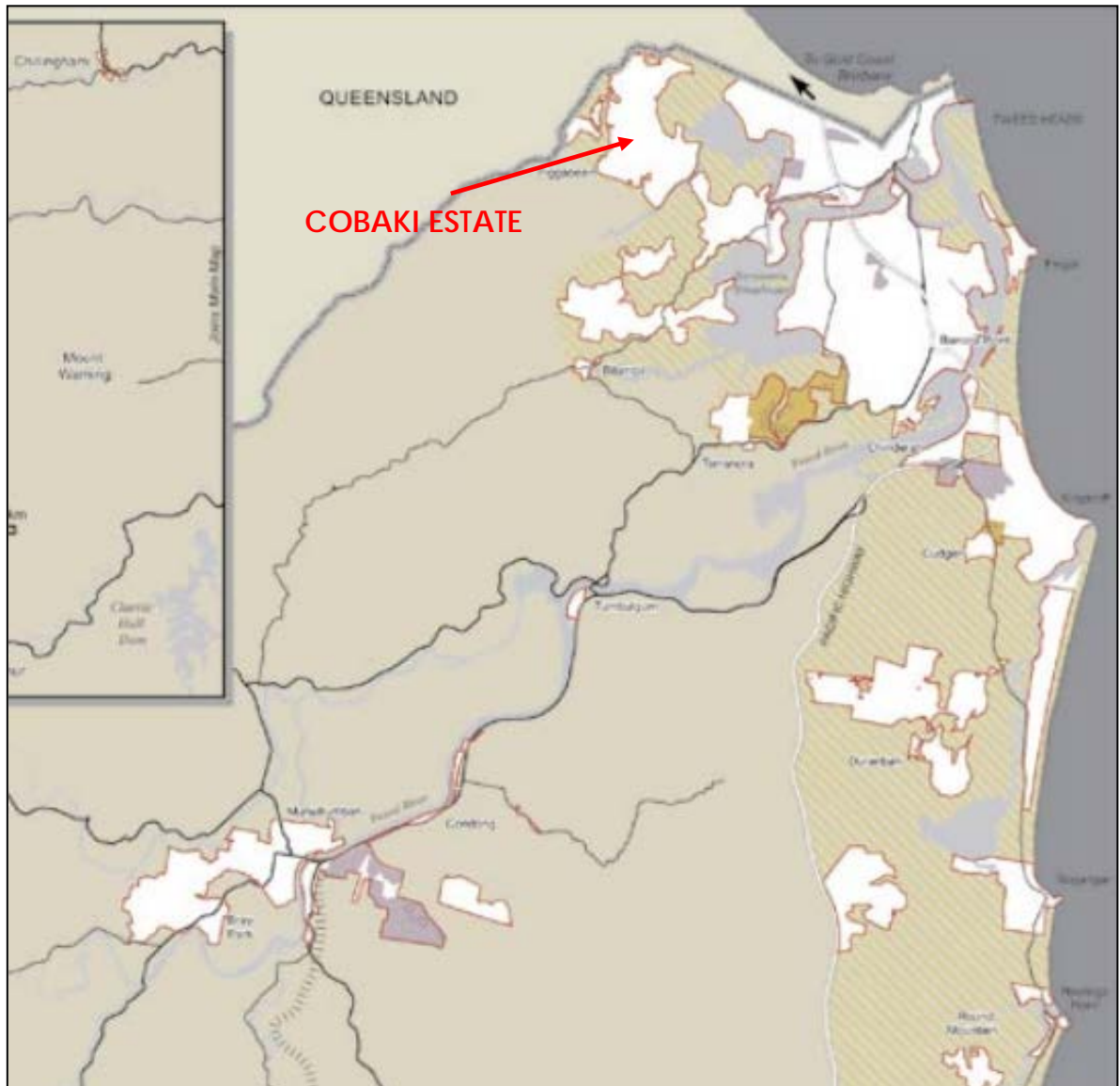
### 3.0 DESCRIPTION OF THE EXISTING AND SURROUNDING ENVIRONMENT

#### 3.1 Property Description

The subject land is described as the Cobaki Estate and is located adjacent to the New South Wales/Queensland border and has a total area of 593.53 hectares.

The legal description of the Cobaki Estate is Lot 1 in DP 570076; Lot 2 in DP 566529; Lot 1 in DP 562222; Lot 1 in DP 570077; Lot 1 in DP 823679; and Lots 46, 54, 55, 199, 200, 201, 202, 205, 206, 209, 228 and 305 in DP 755740.

The regional context of the site in relation to the NSW coast, the towns of Tweed Heads, Murwillumbah and Kingscliff is indicated in **Figure 1**.



**Figure 1 – Regional Context**  
Source: Far North Coast Regional Strategy 2006 – 2031, Department of Planning 2006

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In summary, the Tweed Heads town centre is located approximately 5.5 kilometres to the east of the site and Gold Coast Airport is located approximately 1.2 kilometres to the east of the site.

In the local context, **Figure 2** shows the spatial relationship between the site and surrounding development. The Cobaki Estate is located on the western edge of the Tweed Heads urban area with access to Boyd Street to the east, and Piggabeen Road to the south. Piggabeen Road connects to the Pacific Highway via Kennedy Drive.



Figure 2 – Local Context  
Source: SIX Maps

To the north and west of the Cobaki Estate is the State Border Reserve which is forested and located on elevated land such that the residential uses further to the north in Queensland are not visible from the site. To the east of the site is vegetated public land adjoining the Cobaki Broadwater, and Cobaki Creek. To the south of the site on the opposite side of Piggabeen Road are Rural and Rural Residential land uses.

The site comprises a large portion of cleared land which has historically been used for agricultural purposes including grazing and slashing.

Various development consents for the purpose of residential subdivision have been commenced within the site, with bulk earthworks continuing.

Extensive clearing and subsequent slashing over the drainage basin and sand ridge area has resulted in the recruitment of a combination of native and introduced grass species.

The vegetation community the subject of this Modification is located in Precincts 5, 6 and 7 on the approved Concept Plan and is identified on the Aerial Photograph attached as **Figure 3**. That part of the site to the east of the Central Open Space and Drainage Corridor is known as the Sand Ridge due to its elevated nature and sandy soil.

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Figure 3 – Location of the Subject Eucalyptus Robusta Vegetation Community  
Source: JWA Ecological Consultants, November 2015

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#### 4.0 A DETAILED DESCRIPTION OF THE MODIFICATION INCLUDING THE NEED AND JUSTIFICATION

The proposed modification seeks to reclassify the vegetation community within Precincts 5, 6 and 7 currently classified as Swamp Sclerophyll Forest on Coastal Floodplains EEC and modification to Clause C19 of Concept Plan Approval 06\_0316 MOD 1 determined on 29 May 2013.

JWA Ecological Consultants have completed a detailed assessment of the designation of the Swamp Mahogany trees as an Endangered Ecological Community (EEC)(refer to **Annexure B**).

This assessment reviewed the Scientific Determination and its implications for this designation. The following issues were critically analysed:

- the soil type on which the trees occurred; and
- the location of the trees in relation to the 1 in 100 year flood recurrence line.

Based on the review of the Specialist Reports relating to soil characteristics and Hydrological Assessment prepared by Gilbert + Sutherland (included as appendices to **Annexure B**), it is apparent that the soil type on which the trees occurred **was not consistent with flood plain soils** as required by the Scientific Determination, and the Swamp Mahogany trees **did not occur at or below the 1 in 100 year recurrence line** as is required by the Scientific Determination.

The existing surface levels over the area in which the trees are located, which is at or above, the 1 in 100 year flood level, are very flat, with little or no fall to the major drainage corridors of the central open space and Cobaki Parkway. Landforming work is required to provide adequate drainage and reticulation of services to the residential land on which the trees are located. It was previously acknowledged that the above considerations do not merit preservation of this vegetation. Accordingly, its removal was foreshadowed in the approved Concept Plan and offsetting therefore specifically dealt with by Condition C19, which was also the subject of MOD 1.

Having established that the subject vegetation is not properly classified as an EEC, it is necessary to make relevant adjustments to the offsetting requirements. It is acknowledged that the current offsetting requirements mentioned in Condition C19 were partly based on a desktop Bio-Banking Assessment prepared by Ecological Consultants engaged by the Department (Umwelt). The *"NSW Biodiversity Offsets Policy for Major Projects: Practice Note – Offset Threshold for vegetation below a certain condition level"* was published by OEH in July 2015 to correct the Framework for Biodiversity Assessment to confirm circumstances where an offset is not required, including where the vegetation is not an endangered or critically endangered ecological community, or threatened species habitat.

JWA Ecological Consultants have completed a Condition Assessment of the Swamp Mahogany trees and their immediate environment. This Condition Assessment was completed in compliance with the Bio-banking Assessment Methodology. The assessment of threatened species is documented in **Annexure C**. Data collected during the BBAM Assessment, and the subsequent BBAM calculation, undertaken by JWA Ecological Consultants is attached as **Annexure D**.

The reclassification of the vegetation and the Bio-Banking Assessment which has been undertaken of threatened species, indicates that there is no requirement to offset the proposed removal of the vegetation under the Concept Plan Approval.

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However, the Tweed Coast Comprehensive KPoM requires an off-site offset in the form of 824 Swamp Mahogany trees.

Discussions have been held with National Parks and Wildlife Service, in relation to suitable offset planting sites on a National Parks estate.

## **5.0 INTERACTIONS BETWEEN THE MODIFICATION AND EXISTING, APPROVED AND PROPOSED OPERATIONS OF THE SITE;**

On 6 December 2010 the Minister for Planning granted Concept Approval No. 06\_0316 for the carrying out of:

- Residential development 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 network.

A Development Code was also approved under the Concept Plan which contains Exempt and Complying Provisions (Part A) and Development Controls (Part B).

A copy of the Concept Approval and Plan is contained at **Annexure E**.

On 29 May 2013 Concept Approval No. 06\_0316 MOD 1 was approved by the Minister's delegate. The MOD 1 Approval included amendments concerning the timing of submission of various Management Plans for future Development Applications and an amendment to Condition C19 requiring details of Swamp Sclerophyll EEC offsets to be provided with the Development Application for works in Precinct 6. MOD 1 also revised the Statement of Commitments to reflect amendments to the biodiversity offset arrangements. A copy of the MOD 1 Instrument of Approval is attached as **Annexure F**.

On 20 April 2015 SEARS were issued for MOD 2 of Concept Approval No. 06\_0316. MOD 2 relates to a proposal to incorporate a university campus within the Cobaki Estate.

To date two Development Consents (DA10/0800 and DA10/0801) have been granted by Tweed Shire Council under the Concept Plan, which together provide approval for the creation of 916 residential lots in Precincts 1, 2 and 6.

The existing Concept Plan Approval anticipates the removal of the vegetation community within Precincts 5, 6 and 7 classified as Swamp Sclerophyll Forest on Coastal Floodplains EEC addressing the issue via an off-site biodiversity offset.

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Accordingly the reclassification of the vegetation community will not affect the implementation of the existing development consents within the Estate. The modification will in effect adjust the off-site biodiversity offsets required by C19 and Statement of Commitments of the Concept Plan, to reflect the correct biodiversity value of the vegetation, which is not an EEC.

## **6.0 DETAILS OF ANY INCONSISTENCIES WITH THE EXISTING CONCEPT PLAN APPROVAL AND PROJECT APPLICATION (AS MODIFIED)**

The reclassification of the vegetation requires modification of C19 and Statement of Commitments of the Concept Plan, to reflect the correct biodiversity value of the vegetation, which is not an EEC.

Various Reports and Management Plans prepared under the Concept Plan make reference to the subject trees as an EEC and offsetting arrangements. The most effective method of dealing with this minor inconsistency is to include a new condition which overrides and corrects any inconsistency of that sort. A suggested condition has been drafted and is discussed in Section 15 of this Report.

As the subject trees are located within a residential precinct and were always intended to be removed under the Cobaki Concept Plan Approval, the proposed modification will not have any material impact upon the Concept Plan Approval.

## **7.0 CONSIDERATION OF ALL RELEVANT STATUTORY PROVISIONS**

### **7.1 Environmental Planning and Assessment Act and Regulations**

Section 75W of the Act facilitates the lodgement and determination of an application to modify a Part 3A Approval. Section 75W is in the following terms:

***"Modification of Minister's approval***

**75W**

(1) *In this section:*

***Minister's approval*** means an approval to carry out a project under this Part, and includes an approval of a concept plan.

***Modification of approval*** means changing the terms of a Minister's approval, including:

- (a) *revoking or varying a condition of the approval or imposing an additional condition of the approval, and*
  - (b) *changing the terms of any determination made by the Minister under Division 3 in connection with the approval.*
- (2) *The proponent may request the Minister to modify the Minister's approval for a project. The Minister's approval for a modification is not required if the project as modified will be consistent with the existing approval under this Part.*
- (3) *The request for the Minister's approval is to be lodged with the Director-General. The Director-General may notify the proponent of environmental assessment requirements with respect to the proposed modification that the proponent must comply with before the matter will be considered by the Minister.*
- (4) *The Minister may modify the approval (with or without conditions) or disapprove of the modification.*

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- (5) *The proponent of a project to which Section 75K applies who is dissatisfied with the determination of a request under this section with respect to the project (or with the failure of the Minister to determine the request with 40 days after it is made) may, within the time prescribed by the regulations, appeal to the Court. The Court may determine any such appeal.*
- (6) *Subsection (5) does not apply to a request to modify:*  
*(a) an approval granted by or as directed by the Court on appeal, or*  
*(b) a determination made by the Minister under Division 3 in connection with the approval of a concept plan.*
- (7) *This section does not limit the circumstances in which the Minister may modify a determination made by the Minister under Division 3 in connection with the approval of a concept plan."*

Currently there are no regulations of relevance to a Modification Application.

## **8.0 ENVIRONMENTAL RISK ASSESSMENT TO IDENTIFY POTENTIAL ENVIRONMENTAL IMPACTS**

All of the Swamp Mahogany trees will be removed as a result of the proposed development. As the vegetation is not an EEC and is not threatened species habitat, there is no requirement from Commonwealth or State Agencies to offset the loss of these trees.

## **9.0 ASSESSMENT OF THE KEY ISSUES SPECIFIED**

### **9.1 Statutory and Strategic Context**

#### **9.1.1 Environmental Protection and Biodiversity Conservation Act 1999**

On 13 October 2011 EPBC Approval No. 10/5296 was granted in relation to the proposed action to construct a residential and ancillary commercial, retail, recreational and educational facilities within the Cobaki Estate (see **Annexure G**). The conditions of the Approval include the removal of the subject 3.8ha of Swamp Sclerophyll Forest (providing potential habitat for the Swamp Orchid (*Pahius australis*).

On 11 September 2015 the EPBC Approval was modified to delete Condition 3, which related to altered offsetting arrangements of the foraging habitat for the Grey-headed Flying Fox. That modification does not relate to the subject Swamp Mahogany vegetation (see **Annexure H**).

No further Commonwealth approvals are required to allow the removal of the subject Swamp Mahogany trees occurring on the Cobaki Estate site.

#### **9.1.2 State Environmental Planning Policy No. 44 (Koala Habitat Protection)**

A detailed Koala Survey and Assessment was completed on the site in 2012 for the completion of a SEPP 44 – Koala Habitat Protection Assessment. A copy of the Assessment is annexed to the Ecological Assessment - Bio-Banking Assessment Methodology attached as **Annexure C**.

That report includes the following comment in its conclusion:

*"Surveys of the Cobaki Estate site over the past thirty (30) years have not recorded a significant population of Koalas on the site. Sporadic records of a small number of Koala scats exist for the site and similar results were again recorded during this assessment.*

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*Whilst several small and isolated patches of primary (SEPP 44 - Schedule 2) Koala food trees occur it is considered that the subject site generally represents secondary habitat for the Koala. Historical evidence of low level activity suggests that a low density Koala population may be present within the vicinity of the site, likely within the vegetated lands to the west. It would appear that the site has over time provided, and continues to provide, forage resources for one (1) or possibly two (2) Koalas as they move through the locality.*

*The results of the SEPP 44 assessment indicates that the site does not support core Koala habitat."*

The Cobaki Estate does not provide core Koala habitat. Accordingly there is no further consideration required under the provisions of SEPP 44 in relation to the preparation of a KPOM.

However, Tweed Shire Council has adopted (as a strategy), Tweed Coast Comprehensive KPOM. The requirements of that document are discussed in Section 9.1.5 of this Report.

### **9.1.3 Tweed Local Environmental Plan 2014**

Clause 5.9 of Tweed LEP 2014 relates to the preservation of trees or vegetation and requires development consent for the removal of trees specified by Tweed DCP 2008, Section A16.

The Cobaki Estate is subject to a Part 3A Concept Plan Approval and Development Code. MOD 3 is not affected by the application of controls contained in Tweed LEP 2014 or Tweed DCP 2008, where they are inconsistent with the Concept Plan Approval.

The proposed MOD 3 relates to the Concept Plan Conditions which will alter the existing offsetting arrangements for the removal of the subject vegetation.

### **9.1.4 Tweed Development Control Plan 2008**

Tweed DCP 2008, Section A16 relates to the preservation of trees or vegetation and via Clause 5.9 of Tweed LEP 2014 requires development consent for the removal of certain vegetation.

The Cobaki Estate is subject to a Part 3A Concept Plan Approval and Development Code. The proposed MOD 3 relates to the Concept Plan Conditions which will alter the existing offsetting arrangements for the removal of the subject vegetation.

The removal of the vegetation is approved by the Concept Plan and is not affected by the application of policy controls contained in Tweed DCP 2008, where they are inconsistent with the Concept Plan Approval.

### **9.1.5 Tweed Coast Comprehensive Koala Plan of Management**

The Tweed Coast Comprehensive KPOM was adopted by Tweed Shire Council on 19 February 2015 as a strategy.

Cobaki Estate is located within the boundaries of the KPOM study area, identified as the Tweed Coast Koala Study Area and is identified within the Tweed Heads Management Area, which is located north of the Tweed River. The KPOM does not list the Cobaki Estate site as a Koala Activity Precinct (KAP) or a Koala Linkage Precinct (KLP).

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Appendix C of the KPoM contains the provisions for offsetting impacts on Koala habitat resulting from development activities within the Tweed Coast Koala Study Area. Table 2 in Appendix C contains the offsetting provisions for developments which occur within the Koala Study Area but are not KAP's or KLP's and is therefore relevant to Cobaki Estate.

There are fifty two (52) Swamp Mahoganies occurring in the area the subject of MOD 3. The calculated offset for two (2) trees of 100 – 250 mm DBH is 1:12 providing an offset of twenty four (24) trees. The calculated offset for fifty (50) trees of > 250 mm is 1:16 providing an offset of eight hundred (800) trees.

Accordingly a total of 824 trees is required for offsetting purposes. The trees will need to be planted in a Southern KMA and within a KAP or KLP.

## **9.2 Biodiversity**

### **9.2.1 A detailed description of all flora and fauna within the community currently identified as Swamp Sclerophyll Forest on Coastal Floodplains Endangered Ecological Community**

An assessment of the biodiversity impacts associated with the removal of the subject Swamp Mahogany vegetation community has been undertaken including the collection of site attributes via field collection and the obtaining of expert reports. This process was undertaken in accordance with the Office of Environment and Heritage's *Framework for Biodiversity Assessment*.

Complete details of the assessment are provided in the reports prepared by JWA Ecological Consultants which are attached as **Annexure C** and **Annexure D**.

### **9.2.2 A detailed justification of any reclassification of the vegetation community currently identified as Swamp Sclerophyll Forest on Coastal Floodplains Endangered Ecological Community**

The detailed justification for the reclassification of the subject vegetation community is provided in the report prepared by JWA Ecological Consultants which is attached as **Annexure B**.

In summary, the subject vegetation does not satisfy a number of fundamental requirements of the NSW Scientific Committees Final Determination relating to Swamp Sclerophyll Forest on Coastal Floodplains of the NSW North Coast, Sydney Basin and South East Corner Bioregions - Endangered Ecological Listing.

Specifically, the soil type on which the trees occurred was not consistent with flood plain soils as required by the Scientific Determination, and the Swamp Mahogany do not occur at or below the 1 in 100 year flood recurrence line.

### **9.2.3 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 accordance with the Office of Environment and Heritage's *Framework for Biodiversity Assessment*, unless otherwise agreed by OEH, by a person accredited in accordance with s142B(1)(c) of the *Threatened Species Conservation Act 1995*.**

Complete details of the all flora and fauna within the community currently identified as Swamp Sclerophyll Forest on Coastal Floodplains Endangered Ecological Community are provided in the reports prepared by JWA Ecological Consultants which are attached as **Annexure C** and **Annexure D**.

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An assessment of the flora within the Swamp Mahogany (*Eucalyptus robusta*) Open Woodland Community covering an area of approximately 3.8ha was based upon a Detailed Vegetation Assessment undertaken on 22 September 2015. This Detailed Assessment included a Tree Survey and utilised the Bio-Banking Assessment Methodology, to determine the site value (vegetation condition) of the vegetation. The Assessment indicated that the condition of this vegetation community is highly degraded, when compared to benchmark condition, achieving an average site value score of **51.33/100**. The Tree Survey revealed that twenty-nine (29) of the surveyed trees (>55%) are exhibiting some level of crown dieback. The cause of the dieback is unknown but may be attributable to altered hydrology/groundwater conditions as a result of site regrading and drainage works. Some individual trees, however, such as those observed with significant habitat features, are considered to have elevated conservation significance.

An assessment of the relevant threatened species under Section 6.5.1.3(a) of the Bio-Banking Assessment Methodology was undertaken for nine (9) threatened species to determine whether the habitat is substantially degraded such that the particular species is unlikely to utilise the development site.

The assessment concluded that due to factors including long term clearing; Agricultural landuse; Drainage works; Bund construction works; Slashing; and Cattle grazing as well as the long term isolation of the Swamp Mahogany trees, that there is a very low likelihood of occurrence of eight (8) of the species and a possible occurrence for the Wallum Froglet.

Under the *NSW Biodiversity Offset Policy for Major Projects Practice Note - Offsets Threshold for Vegetation Below a Certain Condition Level*, since the vegetation is not an EEC and since it does not provide threatened species habitat, a biodiversity offset is not required.

## **10.0 CONSULTATION**

Consultations have been undertaken with the Office of Environment and Heritage (OEH) and Tweed Shire Council.

### **10.1 Office of Environment and Heritage**

The Proponent consulted with the Office of Environment and Heritage (OEH) through the Proponent's Ecological Consultant, James Warren of JWA Ecological Consultants.

We are advised that the OEH required that the biodiversity impacts associated with the removal of the community currently identified as Swamp Sclerophyll Forest on Coastal Floodplains Endangered Ecological Community be assessed and documented in accordance with the OEH's Framework for Biodiversity Assessment.

That additional assessment has been completed and is contained in the information attached as **Annexure C** and **Annexure D**.

### **10.2 Tweed Shire Council**

On 13 October 2015 a representative of the proponent and the proponent's Ecological Consultant met with Tweed Shire Council Officers in relation to proposed MOD 3. The consultant's notes of the consultation are reproduced as follows:

*"Discussed recent assessments in relation to the 3.8 ha patch of Swamp mahogany trees occurring on the Cobaki site including:*

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*Umwelt Biobanking assessment – advised Council that this was a desktop assessment only (i.e. a site inspection was not completed to obtain attribute data) and therefore did not accurately determine the value of the vegetation zone or the number of credits/size of offset required;*

*JWA site assessment utilising the appropriate Biobanking methodology to determine a site value score against relevant benchmark data. At Council's request, explained the definition of "within benchmark" for specific plant community types. Provided that site value score and biobanking credits required was lower than that determined in the Umwelt desktop assessment; and*

*Expert report completed by Dr Steve Debus in relation to the Powerful owl – Discussed the results of this assessment being that vegetation in question does not represent suitable habitat for this species due to the isolated nature of its occurrence, lack of suitable large hollows and lack of meaningful prey source.*

*Discussed the fact that while the Swamp mahogany patch does comprise species characteristic of Swamp sclerophyll forest on coastal floodplain EEC, it is not considered a representative of this EEC. This is due to its occurrence outside the floodplain (i.e. 1 in 100yr ARI) and the fact that it does not contain the correct soil type (i.e. humic clay or sandy loams) as provided by the NSW Scientific Committee.*

*Council iterated that they and OEH were of the opinion that the loss of biodiversity should be offset regardless of the vegetation's classification as an EEC or not. I offered that under the Framework for Biodiversity Assessment (FBA) impacts resulting from a Major Project were not required to be offset, unless the impact was to an EEC or threatened species habitat. This view was not supported by Council.*

*Council also raised the issue that any proposed offsets would also need to satisfy the relevant provisions of the Tweed Coast KPoM."*

Matters raised in the consultation with TSC are addressed in this Modification Report and particularly the Annexures.

## **11.0 DESCRIPTION OF THE EXISTING ENVIRONMENT**

The area immediately surrounding the Swamp Mahogany trees has been subject to over one hundred (100) years of anthropogenic disturbance.

Clearance of the original vegetation allowed cattle grazing to occur. The current stand of Swamp Mahogany trees constitutes regrowth.

There is no mid-storey vegetation (small trees or shrubs) occurring with the Swamp Mahogany trees. Groundcovers include sedges, rushes and grasses (both native and introduced).

Complete details of the ecological significance of the subject vegetation are provided in the Ecological Reports attached as Annexures to this report.

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**12.0 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**

The removal of the 52 Swamp Mahogany trees was always intended by the approved Concept Plan.

Despite the reclassification of the vegetation and the revised Bio-Banking Assessment which indicates that there is no requirement to offset the proposed removal of the vegetation, the SEARS require that MOD 3 address the Tweed Coast Comprehensive KPoM.

The KPoM requires an off-site offset in the form of 824 Swamp Mahogany trees.

Consultation with the National Parks and Wildlife Service has commenced in relation to suitable offset planting sites on National Parks estate. The offset vegetation would be established at the proponent's cost.

Accordingly, it is submitted that the cumulative impact of the proposed modification, which does not require offsetting under the BAM criteria, but would nevertheless be offset under the contemporary KPoM, will be negligible.

**13.0 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**

As discussed in Section 12.0 above, it is proposed to offset the vegetation to be removed under the Tweed Coast Comprehensive KPoM. Refer to the proposed modification to Condition C19 and Statement of Commitment 4.8.

**14.0 IMPACTS OF THE MODIFICATION, INCLUDING CUMULATIVE IMPACTS**

The Ecological Assessments accompanying this application state that the vegetation does not meet the required criteria to be considered an EEC. The vegetation has also been found not to provide threatened species habitat. Accordingly the previously approved offsetting arrangements require modification.

Having regard to the biodiversity assessment of the reclassified vegetation and the proposed off-site offset arrangement, it is submitted that the impacts of the MOD 3 proposal are minimal and will not lead to unreasonable cumulative impact.

**15.0 DESCRIPTION AMENDMENTS REQUIRED TO THE APPROVED DOCUMENTATION**

**15.1 Condition C19**

Existing Condition C19:

***"C19 Biodiversity Offsets***

*(1) Details of biodiversity offsets for the loss of Swamp Sclerophyll Endangered Ecological Community on the site must be submitted with any development application for works in Precinct 6.*

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- (2) Total offsets for Swamp Sclerophyll on Coastal floodplain must be as follows:
- 6.77ha on-site in accordance with the approved Revised Ecological Assessment, April 2013; plus
  - Additional lands<sup>1</sup> either on-site and/or off-site to compensate for the loss of the off-set (as a result of 06\_0316 MOD 1), of an area as agreed with OEH.

<sup>1</sup>**Note:** The Department has noted that using the biobanking calculator, this offset could be in the order of 16 hectares"

For the reasons identified within this Modification Request Report, the Department is requested to modify Condition C19 as follows:

Amended Condition C19:

**C19 Biodiversity Offsets**

- Total offsets for loss of 52 Swamp Mahogany Trees within Precincts 5, 6 and 7 must be in the form of 824 swamp mahogany trees to be planted in a Southern KMA and within a KAP or KLP under the Tweed Coast Comprehensive KPoM (adopted by TSC on 19 February 2015).
- Details of offsets for the loss of 52 Swamp Mahogany Trees within Precincts 5, 6 and 7 must be submitted with any development application for works in Precincts 5, 6 or 7.

## 15.2 Statement of Commitment 4.8

Existing Statement of Commitment 4.8:

Project Component	Environmental Outcome	Commitment	Timing for Completion
4. Flora and Fauna Management	4.8 Offsets will be provided for impacts on Freshwater Wetlands and associated Wallum froglet habitat and on Swamp Sclerophyll on Coastal Floodplain EEC, for impacts resulting from approved bushfire hazard reduction works within native vegetation areas, and for any impacts on existing trees in the Scribbly Gum Reserve.	<p>4.8.1 The proponent will enter into separate Planning Agreements with OEH for the offset onsite and/or offsite of the following impacts:</p> <ul style="list-style-type: none"> <li>- on Freshwater Wetland and associated Wallum froglet habitat and on Swamp Sclerophyll on Coastal Floodplain EEC;</li> <li>- from approved bushfire hazard reduction works within native vegetation areas; and</li> <li>- On existing trees within the Scribbly Gum Reserve should this occur.</li> </ul> <p>4.8.2 Offsets for Swamp Sclerophyll on Coastal Floodplain will be as follows:</p> <ul style="list-style-type: none"> <li>- 6.77ha on-site in accordance with the approved Revised Ecological Assessment, in April 2013; and</li> <li>- such additional off-site offset, if any, as may be required by OEH.</li> </ul> <p>The proponent will fulfil its obligations in accordance with these Planning Agreements.</p>	Before any works are commenced that may cause or contribute to the relevant impact.

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For the reasons identified within this Modification Request Report, and to separate matters which are not required to be incorporated in a Voluntary Planning Agreement the Department is requested to modify the Statement of Commitments table by deleting the Statement of Commitment 4.8 and replacing it with the following:

Modified Statement of Commitments 4.8 – 4.10:

Project Component	Environmental Outcome	Commitment	Timing for Completion
4. Flora and Fauna Management	4.8 Offsets will be provided for impacts on Freshwater Wetlands and associated Wallum froglet habitat and for any impacts on existing trees in the Scribbly Gum Reserve.	4.8.1 The proponent will enter into separate Planning Agreements with OEH for the offset onsite and/or offsite of the following impacts: - On Freshwater Wetland and associated Wallum froglet habitat. - On existing trees within the Scribbly Gum Reserve should this occur. The proponent will fulfil its obligations in accordance with these Planning Agreements.	Before any works are commenced that may cause or contribute to the relevant impact.
	4.9 Offsets will be provided for impacts on Swamp Mahogany trees located in Precincts 5, 6 and 7.	4.9.1 The proponent will offset offsite the impact on the Swamp Mahogany vegetation within Precincts 5, 6 and 7 as follows: - replanting a total of 824 swamp mahogany trees in a Southern KMA and within a KAP or KLP under the Tweed Coast Comprehensive KPoM (as adopted by TSC on 19 February 2015).	Commencement of offset works prior to registration of any plan of residential subdivision on land within Precincts 5, 6 and 7.
	4.10 Offsets will be provided for impacts resulting from approved bushfire hazard reduction works within native vegetation areas.	4.10.1 The proponent will offset onsite and/or offsite the impact from approved bushfire hazard reduction works within native vegetation areas.	Commencement of offset works prior to registration of any plan of residential subdivision on land for which the bushfire hazard reduction works within native vegetation areas are required.

### 15.3 Proposed New Condition A3A

There are a number of existing Reports and Management Plans relating to the Cobaki Estate.

The reclassification of the Swamp Sclerophyll Forest on Coastal Floodplains Endangered Ecological Community will create inconsistency with various Reports and Management Plans including the Revised Ecological Assessment, JWA, Nov 2012; Revised Assessment of Significance, JWA, Nov 2012; Regeneration and Revegetation Plan, JWA, Nov 2012 and the Vegetation Management Plan, JWA, April 2013.

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Rather than undertaking housekeeping amendments to all of the affected Management Plans to address the reclassification of the vegetation and offsetting arrangements, it is proposed to address this issue by inserting a new condition to overcome the inconsistency.

The proposed new condition could be inserted as Condition A3A in the following terms:

**A3A Reclassification and Offsetting of Swamp Mahogany Trees in Precincts 5, 6 and 7**

Notwithstanding any other condition, any reference in an approved Report or Management Plan which refers to 3.8 hectares of Swamp Sclerophyll Forest on Coastal Floodplains Endangered Ecological Community in relation to the Concept Plan is instead to be read as 3.8 hectares containing 52 Swamp Mahogany trees.

Any requirement/s in an approved Report or Management Plan relating to the Concept Plan, Project Approval or Development Consent, which relates to that vegetation is satisfied by complying with the requirements of Condition C19 (as amended MOD 3) and Statement of Commitment 4.8 (as amended MOD 3) of the Concept Plan only.

**16.0 SUMMARY AND CONCLUSION**

The Cobaki Estate comprises is a major Urban Release Area which will ultimately deliver up to 5500 dwellings and a range of associated commercial services and facilities. The Cobaki Estate Concept Plan will facilitate the development of the site in an orderly, co-ordinated and economic manner.

The resolution of the MOD 3 Application is required in order to allow the development to proceed in an efficient and economic manner, whilst ensuring that environmental offsets are provided to properly reflect and replace the environmental features to be disturbed.

The proposed reclassification of the subject stand of 52 Swamp Mahogany trees located in Precincts 5, 6 and 7 has been underpinned by comprehensive ecological and environmental science and hydrological investigations and analysis.

From the additional investigations undertaken it is apparent that the subject vegetation was erroneously identified as Swamp Sclerophyll Forest on Coastal Floodplains Endangered Ecological Community (EEC). This conclusion is made based on the observations that a number of key criteria of the NSW Scientific Committees Final Determination relating to Swamp Sclerophyll Forest on Coastal Floodplains of the NSW North Coast, Sydney Basin and South East Corner Bioregions - Endangered Ecological Listing are not achieved.

Specifically, the soil type on which the trees occurred was not consistent with flood plain soils as required by the Scientific Determination, and the Swamp Mahogany do not occur at or below the 1 in 100 year recurrence line.

A detailed assessment of the biodiversity impacts of the proposed removal of the vegetation has also been undertaken including the collection of site data and consideration of impacts upon threatened species. These investigations of the reclassified vegetation and the condition of the vegetation under the Bio-Banking Assessment Methodology indicate that no offsetting of the vegetation is required.

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Despite the reclassification of the vegetation community, the assessment of the proposal against the contemporary Tweed Coast Comprehensive KPoM (adopted by TSC on 19 February 2015) and compliance with the SEAR's requires that the removal of the 52 Swamp Mahogany trees be offset by replanting a total of 824 Swamp Mahogany trees in a Southern KMA and within a KAP or KLP under that KPoM.

The proposed Modifications to the relevant Condition C19 and the Statement of Commitments together with a new condition to address the reclassification of the vegetation and offsetting arrangements under the various other Reports and Management Plans under the Concept Plan have been prepared to address this requirement.

It is therefore concluded, having regard to the foregoing Environmental Assessment, that the project is generally consistent with relevant statutory planning controls and compliant with contemporary urban design standards and ESD principles. Approval of MOD 3 would therefore be sustainable and in the public interest.

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