



15 November 2016

Mr Anthony Witherdin
Director, Modifications Assessments
NSW Department of Planning & Environment
GPO Box 39
SYDNEY, NSW 2000

Dear Mr Witherdin,

Re: Cobaki Estate Concept Plan MP06_0316 Mod 4 – Response to Submissions

Leda Manorstead has been provided with copies of the following submissions in respect of this Modification Application.

Submissions from State Agencies

- NSW Office of Environment & Heritage – Letter 1 July 2016
- NSW Transport – Roads & Maritime Services – Letter 30 June 2016
- Transport for NSW – Letter 9 September 2016
- Tweed Shire Council – Letter 8 July 2016

Submissions from Members of the Public

- 7 Submissions from Tweed Shire residents
- 9 Submissions from Queensland residents

We respond to these submissions as follows.

Submissions from State Agencies

NSW Office of Environment & Heritage	
Issue	<i>The OEH recommends that the condition of approval requiring a restriction on the keeping of cats is retained unless other conservation measures are put in place to address biodiversity impacts.</i>
Response	See further submission on this issue.
Issue	<i>The OEH recommends that the management protocols for the proposed Cultural Heritage Park areas are amended to require the agreement of the OEH as well as the Registered Aboriginal Parties for any further harm within those areas.</i>
Response	Under the agreed landscaping plans, no harm to Aboriginal heritage within the Cultural Heritage Parks is being proposed. The only ground disturbance works that will occur within the CHP's will be revegetation works. Sufficient



archaeological information has been provided to demonstrate that these works can be undertaken without any harm occurring to Aboriginal objects, noting that the significant heritage is approximately 1.5m below ground surface.

NSW Transport – Roads & Maritime Services

Issue RMS to be kept informed of the larger scale modifications to the Cobaki proposal.

Response RMS will be kept informed.

Transport for NSW

Issue Outlined in Tab A of letter to Department of Planning & Environment 9 September 2016.

Response See Mod 4 Traffic Impact Assessment (Bitzios Consulting October 2016)

Tweed Shire Council

Issue The area of the school site requires clarification.

Response The area is 3.22ha

Issue In relation to the Registered Club and associated Child Care Centre, Council supports the registered club to continue to work with the proponent for the best outcome which address amenity concerns for adjoining residential area.

Response The registered club and Leda will ensure that detailed proposals address these concerns.

Issue The proposed neighbourhood centre shop site is quite large (5792m²), particularly given the proximity to the town centre.

Response It is anticipated that required parking, setbacks and service areas will limit the gross floor area of the development to approximately 1,200m².

Issue ...further amendments to the Cultural Heritage Management Plan (CHMP) are recommended in terms of clarifying the responsibilities for all parties with regard to the dedication and long-term maintenance of these culturally significant areas.

Response Everick Heritage Consultants consulted with Council on this issue, and report that Council will take ownership of the parks by dedication once the parks are established and a maintenance management plan prepared by Leda, covering maintenance requirements and their duration, has been accepted by Council. See Section 14 of the Aboriginal Cultural Heritage Management Plan (Everick August 2016).

Issue It is also noted that the landscaping concepts within Attachment A of the Revised Cultural Heritage Parks Report prepared by Everick Heritage Consultants (March 2016) are draft and have not yet been approved by the Registered Aboriginal Stakeholders, as required by the CHMP.

Response Consultation with Aboriginal stakeholders were had prior to March 2016, when Everick Heritage Consultants wrote to them confirming the results of the landscaping design workshops. No formal response was received from any of the stakeholders. However, during meetings with the Tweed Shire Council's Aboriginal Advisory Committee, Everick received in principle support from

	stakeholders Desrae Rotumah, Jackie McDonald and the Tweed Byron LALC. Final agreement of the stakeholders will be obtained prior to any ground-disturbing works commencing.
Issue	<i>It is considered appropriate to revise the Plan such that the Community Facilities site is nominated as a yellow "Community Facilities / Education / Utilities" land use, as originally approved. The legend of the Concept Plan would also require amending, to incorporate Community Facilities with School / Utilities, as originally approved.</i>
Response	The Plan has been revised.
Issue	<i>The Development Matrix and Table 1 of the Mod Report (page 17) is considered to require amendment/updating to accurately reflect the correct land areas associated with each of the land use domains. For example, the Community Facilities / Education / Utilities use is noted as only being 3.22ha of land owned by LEDA. This figure does not appear to take into consideration the land area required for the Community Facilities (minimum of 1.5ha) and requirements for Utilities.</i>
Response	The Plan has been amended.
Issue	<i>The Precinct Plan is considered to require amendment in order to clarify which precinct the residential areas immediately adjoining the Town Centre are located in (i.e. the area to the north of the Town Centre is currently unnumbered and the area to the south of the Town Centre is not clear – is this still nominated as part of Precinct 6?).</i>
Response	The Plan has been amended.
Issue	<i>Table 1 (on pages 10 – 14 of the Mod Report) appears to incorrectly reference the sections within the report that address the specific items of the Secretary's Environmental Assessment Requirements.</i>
Response	The Table has been corrected.
Issue	<i>Traffic</i>
Response	See Mod 4 Traffic Impact Assessment (Bitzios Consulting October 2016)
Issue	<i>The Access Network Plan and Potential Bus Route plan is considered to require amendment. The proposed plan references 19.0m wide road reserves for Low Volume Neighbourhood Connector Roads (purple in colour on the Plan). It is considered appropriate to amend the plan reflect Council's standard for this road type, which is an 18.5m road width.</i>
Response	The Plans have been amended.
Issue	<i>...the proposed 'reduction' of land for housing by 3.61ha is of concern. The new Town Centre plan includes a University with an anticipated population of 10,500 staff and students (Traffic Report associated with Mod 4). There is concern this may increase demand on local housing stock, in particular for affordable rental and purchase properties which are in short supply in the Tweed.</i>
Response	The new Town Centre incorporating a proposed University campus is not a part of this application.

Issue	<i>...there is concern that housing suited to the estimated student population is not provided for.</i>
Response	The University campus and associated student housing needs are not a part of this application.
Issue	<i>The need for affordable housing in Tweed Shire (and the State) is recognised in Councils Homelessness Policy (2015) and the Draft North Coast Regional Plan (2016) State trends and Tweed Shire research suggests the need for affordable housing has increased significantly and the Cobaki Affordable Housing Strategy could be revised to review the estimate for affordable housing and to reflect the student demographic changes in the development.</i>
Response	Affordable housing issues are not raised by this application.
Issue	<i>Council is aware that the Tweed Byron Local Aboriginal Land Council (TBLALC) has concerns for the management of their adjoining property, as they have a significant ongoing Potoroo Study within their boundaries. TBLALC are concerned that cats will become a threat to the Potoroo and other wildlife.</i>
Response	See further submission on this issue.
Issue	<i>...the proposed modification to Condition C14 is not supported. It is recommended that the wording of Condition C14 remain in its current form (i.e. the keeping of cats is totally prohibited and each residential lot be encumbered to this effect by way of an 88B instrument). If the Department supports the proposed modification of Condition C14, it is recommended that all management measures noted in the JWA report for the keeping of cats (November 2014) be applied to future residential properties.</i>
Response	See further submission on this issue.
Issue	<i>It is noted that the Height Control plan is highlighted in the Table associated with Condition A2, yet no changes have been made to the plan.</i>
Response	The highlighting referred to has been removed.

Submissions from Members of the Public

Issue	No	Response
Opposed to allowing cats		
QLD Residents	8	Objections are based on the impact cats have on wildlife. See further submission on this issue.
Tweed Shire Residents	6	
Opposed to only one school site		
QLD Residents	3	The school will serve NSW residents. A single school is the requirement of the NSW Department of Education.
Tweed Shire Residents	-	

Opposed to enlarged town centre		
QLD Residents	3	The increase in area is to accommodate the University campus and not a part of this application. The town centre will essentially serve the needs of the Cobaki Estate community.
Tweed Shire Residents	-	
Opposed to reduction of Cultural Heritage Parks		
QLD Residents	2	The two parks, which cover a larger area than the originally proposed three, have been agreed in consultation with the Aboriginal Community representatives.
Tweed Shire Residents	-	
Opposed to Registered Club		
QLD Residents	3	A registered club is a normal part of a community of the size to which Cobaki Estate will grow.
Tweed Shire Residents	-	
Opposed to any attempt to connect to Warringa Drive		
QLD Residents	-	No such attempt has ever been made. The extension of Cobaki Parkway through to Scenic Drive is part of Council's roadworks plan.
Tweed Shire Residents	1	
Advocates allowing dogs		
QLD Residents	-	The keeping of dogs is not prohibited by existing conditions.
Tweed Shire Residents	1	
Advocates connection to Pacific Highway		
QLD Residents	-	Connection to Pacific Highway is included in Council's roadworks plan.
Tweed Shire Residents	1	

Response to Submissions in Relation to the Application to Remove the Condition Restricting the Keeping of Cats

Introduction

From 1995 through to 2003 a number of Development Approvals were given by Tweed Shire Council covering approximately 80% of the developable area of Cobaki Estate. None of these consents included any conditions in connection with the keeping of domestic pets.

In 2006 Leda prepared an application for the approval by the NSW Department of Planning of a Concept Plan under the then applicable Part 3A of the EP&A Act. The following responses to the public exhibition of the application were received:

- A substantial submission by Tweed Shire Council. It did not raise any concern in relation to the keeping of cats.
- A submission by the then Department of Environment & Climate Change. It did not raise any concern in relation to the keeping of cats.
- Many submissions from interest groups and the public. Of these:
 - only one member of the public expressed concern about cats
 - one member of the public and two environmental groups advocated the exclusion of both cats *and* dogs.

Clearly, it was not then an issue of significance to these agencies and the wider public. In the 2010 Concept Plan approval the condition that was included prohibiting the keeping of cats had no precedence.

The recent public exhibition of the Mod 4 application, which included the proposal to remove this restriction, resulted in the following submissions on the cats issue:

- a submission by Tweed Shire Council to the effect that the prohibition should be maintained but, were the Department to agree to removing the restriction, that the protocols proposed in the JWA Ecological Consultants report should be applied.
- a submission by the NSW Office of Environment and Heritage to the effect that the prohibition should be maintained *“unless other conservation measures are put in place to address biodiversity impacts”*.
- 15 submissions from members of the public, one proposing that both cats and dogs be allowed, and 14 supporting the prohibition on the keeping of cats.

Again, it is evidently not today an issue of significance to the broad Tweed Shire Community.

The Situation in Councils Adjacent to Tweed Shire

Kyogle and Lismore Councils

Neither of these Councils have imposed a prohibition on the keeping of cats in development consent conditions, nor are they currently considering doing so.

Byron Shire Council

Byron has a Policy 5.3 – Local Orders for the Keeping of Animals – which prohibits dogs and cats in two estates. One, Tread Lightly Estate, has less than 20 lots, and the other, Lilli Pilli, comprises approximately 90 lots.

Gold Coast City Council

GCCC allows the keeping of up to two cats without registration. The cats must be contained within a property. Queensland State Legislation requires that cats be microchipped.

The Cobaki boundary is separated from the Gold Coast suburb of Currumbin Waters by a strip of vegetated Crown Land. Currumbin Waters is partly developed, but includes a site of some 150ha approved for residential development.

The GCCC has not imposed a ban on the keeping of cats in any development consent conditions, nor is it presently considering doing so.

Conditions Concerning Cats in Relation to Other Tweed Shire Developments

Conditions Imposed by Tweed Shire Council

Restrictive covenants in relation to pets within six developments in Tweed Shire have been considered. Only two restrict the keeping of pets.

- One prohibits cats, but allows dogs. The covenant is in favour of the other lots in the development – not the Council.
- One prohibits both cats and dogs. The covenant is in favour of the Council. This is the Koala Beach Estate, the very poor sales history of which has been shown in earlier research commissioned by Leda to have been substantially caused by this restriction.

The other four developments considered permit cats and dogs, subject to conditions.

- Three deal with the keeping of cats, the covenant in each case in favour of the other lots
- One deals with the keeping of both cats and dogs, the covenant in favour of the Council

Significant enforcement issues are raised in these different approaches.

Whereas Condition C14 of the Concept Plan provides that *“all future development applications must demonstrate that the keeping of cats within the Cobaki Lakes site shall be totally*

prohibited ...”, the two development approvals that have been given with respect to the Cobaki site since the Concept Plan approval include the following condition:

In order to preserve the natural habitat of the site and surrounding areas, no occupant, tenant, lessee or registered proprietor of the site or part thereof may own or allow to remain on the site or any part thereof any cat.

Although this condition stems from the Concept Plan approval, the objective it contains (*to preserve the natural habitat of the site and surrounding areas*) constitutes a precedent for a similar prohibition in the conditions of approval of future greenfield subdivisions within the Shire where similar, adjacent or nearby biodiversity values exist. This raises significant social issues.

Conditions Imposed by the Minister for Planning

Approvals which contain no conditions restricting the keeping of cats include “Rise” at Bilambil Heights, a large development of some 2,000 lots within a sensitive environment and which may in due course become a competitor of Cobaki Estate. Others are “Seaside City” near Kingscliff and the Casuarina mixed use subdivision, projects separated from Cudgen Nature Reserve only by Tweed Coast Road.

Part 3A conditions of approval for “Altitude Aspire” at Terranora include a prohibition on the keeping of cats.

The Social and Health Benefits of Owning a Cat

Studies have shown that health benefits accrue from owning a cat. For example, one of these is reported at www.mritechnicianschools.net/2010/17-health-benefits-of-owning-a-cat/, which lists and explains the following benefits:

1. Lower risk of cardiovascular disease
2. Reduce risk of heart attack
3. Improve immunity function
4. Decrease chance of developing allergies
5. Help prevent asthma in children
6. Reduce blood pressure
7. Lower triglycerides
8. Lower cholesterol
9. Reduce risk of stroke
10. Reduce stress
11. Reduce anxiety
12. Improve your mood
13. Help with depression
14. Help with autism
15. Reduce loneliness
16. Fewer health care visits
17. Longer life

Similar reports can be found at www.academia.edu/1449356/Studies_Confirm_Health_Benefits_of_Having_a_cat, and www.healthfitnessrevolution.com/top-10-health-benefits-owning-cat/

The American Psychological Association reports that “Pets are good for mental health of everyday people” at www.apa.org/news/press/releases/2011/07/cats-dogs.aspx.

Proposals in Respect of Cobaki Estate

Cobaki Estate is approved for 5,500 residences and an ultimate population of about 12,000. It will in effect become a new town. A prohibition on the keeping of cats throughout such a

development is an entirely different matter compared to such a prohibition on a niched development of 100 or even 500 allotments.

Reportedly, 28% of Australian households have a cat. Prohibiting the ownership of cats at Cobaki will effectively exclude that proportion of its market, whilst many potential buyers who do not intend themselves to have a cat will be concerned about the resale prospects of their property burdened by such a restriction.

Nevertheless, the impact which cats, and in particular feral cats, have on the environment is well documented.

The proponent therefore proposes the following:

1. All future residential lots to be created under the Concept Plan are to be encumbered with a Section 88B Instrument under the NSW Conveyancing Act 1919 to the effect that:
 - the keeping of cats on any residential premises shall be restricted to a maximum of two cats, and
 - between the hours of 5.00pm of a day and 6.00am of the day following, any cat shall be kept within the premises or an enclosure within the lot, such that the cat is prevented from leaving the premises or lot.
2. The developer will at its expense:
 - Provide an education/information package to all residents
 - Drawing attention to the land titles restriction on the keeping of cats and the requirements of the *Companion Animals Act 1998*,
 - Explaining the risks cats pose to wildlife and outlining the need for and the requirements of responsible cat ownership, and
 - Encouraging all residents to actively participate in the promotion of responsible cat ownership by reporting any contrary observations.
 - For five years after the first residence within the estate is occupied the developer will:
 - Carry out quarterly surveys of all residences to record the keeping of cats within the estate, and
 - Conduct an annual monitoring program within the estate and the lands adjacent targeted to the control of cats. The components of this program and required cat control actions will be developed in consultation with Tweed Shire Council, to which an annual report will be provided.

Attached Documents

We attach copies of the following:

- Mod 4 Traffic Impact Assessment (Bitzios Consulting 2016)
- Aboriginal Cultural Heritage Management Plan (Everick Heritage Consultants August 2016)
- Amended Plans
 - Concept Plan
 - Development Matrix
 - Precinct Location Plan
 - Access Plan & Potential Bus Route
- Amended Environmental Assessment Report (DAC Planning, October 2016) – Table 1, pages 10-14 amended.

Yours sincerely,



Reg Van Rij
Regional Manager – Residential