

16 December 2016

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Attn: Natasha Harras
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Modification Assessments
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Dear Natasha

**Tweed Shire Council submission on the proposed Modification of
the Cobaki Concept Plan (MP06_0316 Mod 4)**

I refer to your email dated 21 November 2016 inviting Council to provide any further comments on the proponent's Response to Submissions on Cobaki Mod 4.

The proponent has addressed some of the issues raised in Council's previous comments; however there are several matters that Council wish to raise in response to the Leda submission, as follows:

1. Planning/Urban Design

- a. With regard to the Club and Child Care Centre sites within Precinct 8, it is acknowledged that the registered club and Leda have noted that detailed proposals will address amenity issues previously raised by Council. Pre-lodgement discussions with Council officers are recommended in this regard.
- b. It is noted that the proposed development on the Neighbourhood Shop site within the Southern Special Purpose Precinct is expected to have a gross floor area of 1200m².
- c. The proponent's response states that "*...Council will take ownership of the parks by dedication once the parks are established and a maintenance management plan prepared by Leda*". The Maintenance Management Plan will need to be approved by Council prior to the issue of a subdivision certificate for Precinct 8. The response also makes reference to Section 14 of the Cultural Heritage Management Plan (CHMP). The reference should be amended to reflect Section 13 of the CHMP.
- d. Whilst it is acknowledged that a revised CHMP has been prepared, there are several aspects of the CHMP that require further consideration:
 - i. Section 13.3 makes several references to Appendix A. This should be amended to reference Appendix 1.
 - ii. The following amendments (shown in bold or struck through) are recommended for Section 13.3(d):

- (d) *Prior to the Tweed Shire Council issuing any subdivision certificates for Precinct 8 of the approved Precinct Masterplan:*
- a. *the Developer shall be responsible for establishing CHP 8 and CHP 10 ~~consistent~~ **in accordance** with the agreed landscaping requirements developed through implementation of Clause 14 of this CHMP **and in accordance with relevant conditions of consent**; and*
 - b. *the Developer shall prepare a Maintenance Management Plan, which shall include but may not be limited to:*
 - i. *details on how CHPs **and the surrounding open space areas** are to be maintained;*
 - ii. *a schedule of estimated costs associated with the establishment and maintenance of the CHPs;*
 - iii. *procedures for monitoring the ongoing public use of the CHPs and the condition of any plants and built infrastructure within them; and*
 - iv. *specifying ~~when the ownership of CHPs shall be handed over to Council, being at time where the plants within the CHPs have reached a self-sustaining condition.~~ **that the ownership of CHP's will be dedicated to Council in accordance with relevant conditions of consent.***
 - iii. Note - the required maintenance periods etc for the Cultural Heritage Parks (CHP's) and open space areas will be conditioned accordingly in the relevant future consent for the subdivision of Precinct 8.
 - iv. Section 13.2 (d) should be amended to reflect the same amendments noted above for Section 13.3 (d).
 - v. It is also noted that Section 13.2(d) makes reference to "...the approved Precinct Masterplan" for Precincts 13 and 16. There have been no approvals for these Precincts. As such, Section 13.2(d) should be amended to reference any future approved Precinct Masterplan.
 - e. In response to Council's initial comments that the landscaping concepts are draft and have to be approved by the Registered Aboriginal Stakeholders, the proponent has noted that Council's Aboriginal Advisory Committee (AAC) provided in principle support from stakeholders.

In this regard, please note that the AAC minutes from 5 February 2016 note the following:

"The members of the AAC provided in principle support to the landscaping concept plans associated with the Cobaki Cultural Heritage Parks within Precinct 8, subject to further detail and consultation with the registered Aboriginal stakeholders".

Further consultation should be with the wider list of stakeholders (ensuring that the list within the CHMP is accurate and up to date), as opposed to just the standing members of the AAC. The proponent has committed to future consultation with stakeholders in terms of final landscaping design

for the two CHP's within Precinct 8. A similar consultation process will need to be undertaken for other CHP's (CHP 1 to 7) as required by the CHMP.

- f. Whilst the Development Matrix has been amended to reflect the additional area of the Community Facilities within Precinct 17, it does not appear to reflect the Utilities (Water Reservoir) requirements adjacent to Precinct 11. It is also noted that Table 1 (page 17) of the Modification Report has not been updated to reflect the above.

2. Traffic

Council's initial comments raised concerns relating to the proponent's *Transport and Accessibility Report* (TAR), prepared by Bitzios. Concerns were in relation to the difficulty is assessing MOD4 in isolation, given that the TAR dealt with broader changes to the Concept Plan centering around a university and mixed used town centre, with traffic impacts felt on Local and State road infrastructure on both sides of the State Border.

Council staff has since discussed these traffic concerns with representatives of Leda and Bitzios. It was recommended that a revised TAR be prepared that dealt specifically with the impacts of MOD4 so that this application could be dealt with separately to the more significant town centre / university modifications. Since then, it is understood that the university precinct is no longer planned for Cobaki, and the pending MOD2 is unlikely to go ahead.

Leda and Bitzios have submitted a revised Traffic Impact Assessment (TIA, dated 11/10/16) to deal with MOD4. However the TIA remains difficult to assess due to the following limitations:

- The TIA remains based on the paramics microsimulation modelling that includes the university precinct and expanded town centre;
- The results of the paramics modelling are unclear (Figures 7 and 8);
- There is no discussion as to the incremental impacts of the changes from MOD4 against the traffic generation from the approved Concept Plan;
- The traffic assessment around the school site and the tavern/child care centre is based on an unapproved road network with controls such as left in – left out intersections which may not be suitable for the wider traffic network for the estate, and have not been reviewed by Council; and
- No detail of the likely operation of the school site, such as car and bus set-down and pick-up areas has been provided;

It is acknowledged that the subject MOD4 only provides for changes in the Concept Plan, and that separate Development Applications for the precinct subdivisions (including road and lot layouts) and the school and tavern/child care sites will be forthcoming. It is also acknowledged that the Concept Plan as approved will have significant impacts on the external road network in Tweed and Gold Coast Council areas, including potentially the Pacific Motorway, and that there is limited nexus for the MOD4 application to address these wider impacts.

It is recommended that two options be considered to address the above traffic concerns for MOD4:

- 1) That a revised TIA be prepared by the proponent, to provide an evaluation of Concept Plan traffic generation and distribution on the internal and external road networks with and without the MOD4 land use amendments. The intent of this modelling is to determine whether the amendments have positive, negative or neutral impacts on the internal and external road networks, and to identify any corrective actions needed by the developer; or
- 2) That the MOD4 amendments be accepted on traffic grounds, subject to detailed traffic assessment of subsequent development applications for the subdivision of Precincts 5 to 8, and development of the future school and tavern/child care centre sites, but that the Bitzios Traffic Impact Assessment (11/10/2016) not be specifically referenced in this approval due to the limitations of this report, and to avoid assumptions that the road and active transport networks shown within that report are endorsed by Council or the Department.

In terms of the information provided addressing Pedestrian and Bicycle Connectivity (Section 4.2), an amendment to Figure 11 within the TAR is requested, to provide 2.5m wide off road shared user path on all frontages to the school site.

3. Community Services / Social Planning

- a. Council's initial comments raised concerns with regard to the loss of residential land as a result of the proposed school and also highlighted potential impact upon affordable rental housing stock as a result of the proposed Town Centre / University proposal.

The proponent has not addressed the loss of residential land, only stating that the University Campus is not part of this application.

It is considered reasonable that until such time that Mod 2 (Town Centre / University) is formally withdrawn, the impact on residential land and potential affordable housing impacts should be a consideration of the Department, despite the University being part of a different application (i.e. the demographics of the area will change if the University is proposed). If Mod 2 is withdrawn, no affordable housing issues are raised as part of Mod 4.

- b. The previous comments of the Tweed Byron Local Aboriginal Land Council (TBLALC) remain in place. That is, there is concern for the management of their adjoining property, as the TBLALC has a significant ongoing Potoroo Study within their boundaries. TBLALC are concerned that cats will become a threat to the Potoroo and other wildlife and as such do not support the proposed modification to Condition C14.

4. Ecology / Natural Resource Management

Council's initial comments did not support the removal of the cat restriction from the Concept Plan Approval.

An assessment of the proponent's response to Council's and OEH's comments has been undertaken as follows:

- a. The proponent has stated that the lack of submissions during development of the Concept Plan on the keeping of cats indicates that it is not an issue of significance to the Tweed community.

The restriction on the keeping of cats was volunteered by the proponent at the Concept Plan stage. Accordingly, the absence of cats has been considered by assessors as a mitigating factor in considering the overall environmental impact of the development during the Concept Plan and subsequent stages. The Office of Environment and Heritage (OEH) has similarly stated that *"...This restriction would have been considered as a component of a package of biodiversity conservation measures as part of the Concept Plan approval to assist in the protection of biodiversity values on the site"*.

The lack of correspondence on the issue is not considered to reflect its level of significance, rather that assessors from relevant agencies have previously considered that the proposed restriction and the resulting condition were an appropriate response to the issue. As such, no concerns were raised prior to the current modification request. It is noted that the proponent's response states that the current modification request resulted in 14 submissions from the public supporting the restriction to remain in place.

- b. The proponent has provided a number of links to websites and web article (not peer-reviewed) with regard to the social and health benefits of owning a cat.

The social and health benefits of keeping animals are recognised. It is considered however that the risks to the environmental values of bushland surrounding the Cobaki Estate with the introduction of a minimum of more than 1,500 cats to the area (according to the Response to Submissions, 28% of Australian households have a cat, and Cobaki Estate will support 5,500 residences) are significant enough to warrant the maintenance of the restriction.

There is no restriction on the keeping of dogs or a number of other domestic animals at Cobaki Estate, and as such it is considered that the health and social benefits of animal keeping can be realised by future residents.

The threats posed to native fauna by roaming domestic cats are well recognised, and are particularly significant in isolated habitats, such as the remaining bushland surrounding Tweed's urban areas, where prey populations are already low and / or impacted by other stressors. As stated in the recent Draft Pest Animal Management Review (Natural Resources Commission, March 2016), feral cat populations are readily established from a few stray domestic founders, and are unequivocally recognised as having severe to catastrophic effects on native fauna. The inevitable loss of biodiversity and increased cost of management associated with the presence of cats must also be considered a significant social burden for existing and future residents to bear.

- c. The proponent proposes restrictions on the keeping of cats to two per property, and the containment of cats to a house or yard between 5:00pm and 6:00am. Education and monitoring is also proposed.

It is considered that the proposed measures will not effectively mitigate the impact of cats on the ecological value of the surrounding significant environmental areas. Contemporary monitoring data from Council-managed peri-urban bushland areas has recorded regular and repeated incursions of roaming domestic cats, despite existing partial restrictions on neighbouring residential properties. Only the complete restriction on the keeping of cats, such as is in place at Koala Beach Estate, appears to result in acceptable outcomes in this regard.

Further, despite recent and considerable investment by Council in encouraging responsible cat ownership in some areas with partial cat restrictions, no discernible improvement in voluntary compliance with such restrictions is evident.

While the proponent offers additional cat-related monitoring, no additional management actions or funds to undertake compliance or management are proposed. A significant education, compliance and management burden will fall to Council as a result of keeping of cats at Cobaki. These costs have not been considered in any cost estimates to date for management plan implementation, including the proposed special rate, for ongoing environmental management of Cobaki Estate's bushland areas.

Accordingly, Council reiterates its previous position, being that the keeping of cats at Cobaki Estate is not supported, and that Council recommends that the Department maintains the wording of Condition C14 in its current form.

5. Condition A2 – *Project in Accordance With Plans*

The proponent seeks to modify Concept Plan Condition A3 to reflect the amended documentation associated with this Mod.

No objection is raised to the proposed referencing of amended plans, subject to the Development Matrix being updated / amended as per comments in Item 1(f) above.

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.

It is also recommended that the traffic related matters raised within Item 2 above be adequately addressed prior to the approval of the amended Concept Plan.

6. Condition A3 – *Project in Accordance With Documents*

The proponent seeks to modify Concept Plan Condition A2 to reflect the amended/updated documentation associated with this Mod.

No objection is raised to the proposed referencing of the Modification Report (May 2016) and Aboriginal CHMP (March 2016) / Revised Cultural Heritage Parks Report (March 2016) in Condition A3(5), subject to consideration of the matters raised in Items 1(c), (d), (e) and (f) above.

No objection is raised to the proposed modification of the Cobaki Development Code to reference the amended / updated plans, subject to the Development Matrix being updated / amended as per comments in Item 1(f) above.

7. Condition C4 – *Management & Restoration Plans*

The proponent seeks to modify Concept Plan Condition C4(1) to reflect the amended Aboriginal CHMP (March 2016) / Revised Cultural Heritage Parks Report (March 2016).

No objection is raised to the proposed referencing of the amended Management Plan, subject to consideration of the matters raised in Items 1(c), (d), and (e) above.

8. Condition C14 – *Restriction on Cats*

The proponent seeks to modify Concept Plan Condition C14 such that residential properties within the development site will be encumbered with a restriction of a maximum of two cats, with the cats to be kept indoors or within an enclosure on the allotment between the hours of 5.00pm and 6.00am. The proponent also proposes education and monitoring measures.

Further to the comments provided above in Item 3(b) and Item 4, 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).

9. Condition C15 – *Cultural Heritage Management Plan*

The proponent seeks to modify Concept Plan Condition C15 to reference the amended Aboriginal CHMP (August 2016) / Revised Cultural Heritage Parks Report (March 2016).

No objection is raised to the proposed referencing of the amended Management Plan / Report, subject to consideration of the matters raised in Items 1(c), (d), and (e) above.

10. Schedule 3 - *Statement of Commitments*

The proponent seeks to amend Statement of Commitment 11 to reference the amended Aboriginal CHMP (August 2016) / Revised Cultural Heritage Parks Report (March 2016).

No objection is raised to the proposed referencing of the amended Management Plan / Report, subject to consideration of the matters raised in Items 1(c), (d), and (e) above.

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

Yours faithfully

Lindsay McGavin
Manager Development Assessment & Compliance