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Modification Assessments – Planning Services
Department of Planning & Environment
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Attention: Jane Flanagan

Dear Sir / Madam

**Proposed modification of the Cobaki Concept Approval
(MP06_0316 Mod 9) with regard to proposed amendments to the
biodiversity offsets for Swamp Sclerophyll Forest on Coastal
Floodplain**

I refer to your email dated 25 July 2017 inviting Council to provide comment on the proposal. Upon review of the documentation associated with Mod 9, please find below Council's comments:

Summary

Leda has lodged a modification (Mod 9) to a concept plan condition that will result in a reduction in offset obligations. This application has been made at the same time that Leda is negotiating the approval of a site-wide offset strategy with Council in order to satisfy a consent condition of DA15/1026. This strategy is inclusive of the offsets the subject of the modification application.

Review of the materials provided in support of Mod 9 has been undertaken with regard to the specific issue of Swamp Sclerophyll Forest (SSF) offsets and the broader implications of the application in relation to the site-wide offset strategy.

The proposed reduction in offset obligation is not supported due to the following reasons:

- Further reduction of offset obligations will result in a poorer ecological outcome for the site;
- Based on site analysis undertaken for the purposes of the site-wide offset strategy development, it is considered that there is adequate land available on site to achieve all offset obligations as per the Concept Plan;
- Administrative and site planning issues have not been satisfactorily addressed. These issues are critical to the assessment of the quantum of offsets able to be achieved on the site and include additional areas that appear likely to be cleared resulting in further reductions in offset areas and inconsistency with relevant management plans; and
- Absence of an agreed strategy to address the ongoing loss or reduction of viability of offset areas due to conflict with detailed design of civil infrastructure.

It is also noted that whilst the requirement to address the Tweed Coast Comprehensive Koala Plan of Management (KPOM) was identified in the Secretary's Environmental Assessment Requirements (SEARs) by the Department of Planning and Environment for a related modification application (Mod 3), this issue is not addressed in Mod 9.

Detailed consideration of each of these issues and relevant recommendations are provided below.

Swamp Sclerophyll Forest offset

Leda seeks to amend Concept Plan (Mod 1) Condition C19 (2) which currently reads:

- (2) Total offsets for Swamp Sclerophyll on Coastal Floodplain must be as follows:
- a. 6.77ha on-site in accordance with the approved Revised Ecological Assessment, April 2013; plus
 - b. additional lands¹ either on-site and/or off-site to compensate for the loss of the offset (as a result of 06_0316 MOD 1), of an area as agreed with OEH.
- ¹ Note: The department has noted that using the biobanking calculator, this offset could be in the order of 16 hectares.

The proposed amendment is as follows:

- (2) *Total offsets for Swamp Sclerophyll on Coastal Floodplain must be either*
- a. *an area on site estimated at 5.31ha in accordance with the approved Revised Site Regeneration and Revegetation Plan (JWA June 2017); plus*
 - b. *an area off site such that the total area provided on site and off site is no less than 14ha,*
- or*
- such other offsets as the Minister may approve.*

An amendment is also sought for Statement of Commitments 4.8.2 which currently reads:

- 4.8.2 Offsets for Swamp Sclerophyll on Coastal Floodplain will be as follows:
- 6.77ha on-site in accordance with the approved Revised Ecological Assessment. April 2013; and
 - such additional off-site offset, if any, as may be required by OEH.

The proposed amendment is as follows:

- 4.8.2 *Offsets for Swamp Sclerophyll on Coastal Floodplain must be either*
- *an area on site estimated at 5.31ha in accordance with the approved Revised Site Regeneration and Revegetation Plan (JWA June 2017); plus*
 - *an area off site such that the total area provided on site and off site is no less than 14ha,*
- or*
- such other offsets as the Minister may approve.*

Leda submits that due to detailed design work and conflicting approvals, 6.77ha of Swamp Sclerophyll Forest (SSF) offset can no longer be provided on site; a total of 5.31 can be. This is a loss to previously approved on site rehabilitation areas of approximately 1.47ha across four separate locations. A Biodiversity Assessment Report (JWA May 2017) has been submitted with the application to demonstrate that 14ha (onsite and offsite) is the appropriate quantum of offset for SSF. This is an overall reduction in SSF offset requirement of approximately 8.77ha. No attempt has been made to address this shortfall through new proposed offset areas on site.

The total quantum of offset required to satisfy this condition is a matter for determination by the Office of Environment and Heritage. Through the process of development of the site-wide Offset Strategy, Council has consistently expressed a strong preference for offsets to be provided on site rather than off site, and that the shortfall in on site SSF offset should be addressed, not by reducing the on site offset obligation, but by determining an appropriate and strategic addition to rehabilitation area(s) on site. It is considered that such an addition should contribute to the total of at least the currently approved 6.77 hectares, then any remainder of the SSF offset obligation should be addressed off site.

Recommendation:

The proposed reduction in on site offset for SSF is not supported. The proposal should be amended to address the shortfall through strategic additions to rehabilitation areas, in line with the offset and environmental protection area principles as detailed below.

Additional SSF offset reduction

Of further concern to the provision of SSF offsets is Bio-retention No. 11 (see drawing YCO229-SW01, *Stormwater Quality Concept Plan (Yeats Consulting Engineers, Revision 02, and September 2010)*) which is located within a SSF offset area in Rehabilitation Area 7. No comment has been made in the application on whether this basin will be required. If it is, a further reduction in proposed SSF offsets will result, the corridor will be completely severed and its function will be severely compromised.

Recommendation:

It is submitted that resolution of this matter is required prior to the making of a decision in relation to this modification application.

Lowland Rainforest offsets

The inclusion of the *Revised Site Regeneration and Revegetation Plan 2017* expands the scope of the application to modification of offsets for rainforest EECs and the layout of rehabilitation areas in general.

Further conflicts exist between approved *Revised Ecological Assessment 2013* and approved *Stormwater Quality Concept Plan (Yeats Consulting Engineers, Revision 02, and September 2010)*. Leda seeks to resolve these conflicts through submission of the revised SRRP 2017, which deletes approximately 1.3 ha of proposed rainforest offset in favour of Bio-retentions No. 9 and No. 10 (see drawing YCO229-SW01).

No justification, other than conflict with the abovementioned stormwater plan, has been provided for removal of these areas, the implications of which are as follows:

- a) Rehabilitation Area 8, adjacent to Precinct 9 and Sandy Lane, contains a covenant protected area and threatened flora species. The approved Rehabilitation Area is small, approximately 1.5 ha in size, and isolated from other vegetation. As a result of conflict with Bio-retention No. 9 and the current proposal, the area is now less than 1 ha in size (approximately 60% of its original size), reducing its long term viability due to ongoing edge-related disturbance.
- b) Approved Rehabilitation Area 7 forms a substantial corridor, part existing vegetation and part proposed to be rehabilitated, approximately 100m in width, between Precincts 10 and 11. As a result of conflict with Bio-retention No. 10

and the current proposal, approximately 0.7ha of rehabilitation area has been removed, reducing the corridor to approximately 50% of its width along a distance of approximately 140m at its centre. This will result in a substantial reduction in the function of what was previously approved as a well-designed corridor.

Some attempt has been made to compensate for these shortfalls onsite, with the addition of approximately 0.85ha of proposed Lowland Rainforest offset in two locations, although no discussion has been provided to justify their inclusion to the proposal:

- c) Approximately 0.51ha has been added to Rehabilitation Area 3, in the north of the site. This has the effect of linking Rehabilitation Area 3 with existing vegetation to the north, additional buffering of threatened flora and is a meaningful addition to environmental protection areas. It should be noted that this addition is potentially at the expense of other public open space.
- d) Approximately 0.34ha has been added to the western extent of the east-west corridor, between Precincts 12 and 15. This area is already proposed Environmental Protection Area under the Concept Plan (see Figure 3 Development Concept Plan, *Revised Site Revegetation and Regeneration Plan April 2013*) and part of the east-west corridor, and as such, revegetation is expected. This area is therefore not a meaningful addition to the offset proposal.

Given the above, a shortfall of 0.79 ha remains as a result of priority being given to engineering requirements over offset requirements.

In the absence of any justification, the minor additions to EEC offset areas do not appear to have been based on consideration of good ecological design (edges, small patches etc).

Recommendation:

The *Amended Site Revegetation and Regeneration Plan*, *Revised Ecological Assessment*, and draft *Offset Strategy* should be amended to demonstrate that shortfalls resulting from a) and b) above are adequately compensated for on site, in line with the offset and environmental protection area principles below.

Administration

The *Revised Ecological Assessment April 2013* referred to in Condition C19 is not the same as the *Revised Site Revegetation and Regeneration Plan April 2013*, as stated in the letter of 6 April 2017. These are separate Plans, both prepared during the Mod 1 application. Both documents contain maps and hectare calculations relating to offset requirements under that approval. Should the modification request be approved in its current form, the approval will be inconsistent with the *Revised Ecological Assessment April 2013* to which the Condition currently refers.

Recommendation:

It is submitted that resolution of this matter is required prior to the making of a decision in relation to this modification application.

Tweed Coast Comprehensive Koala Plan of Management

It is also noted that the requirement to address the Tweed Coast Comprehensive Koala Plan of Management was identified in the Secretary's Environmental

Assessment Requirements (SEARs) by the Department of Planning and Environment for an earlier modification application (Mod 3). These modification applications both relate to the same area of vegetation, and this issue is not addressed in Mod 9.

Recommendation:

That the Tweed Coast Comprehensive Koala Plan of Management (KPOM) be considered in relation to assessment of the values, significance and offset requirements for Mod 9.

Site-wide Offset Strategy

It is considered that this modification application process is an opportunity to rationalise the design of environmental protection areas across the site, in order to improve ecological outcomes and to reduce the establishment and ongoing management burden for these areas. Additionally, and to the same end, Council has been working with LEDA for several months on the preparation of a site-wide offset strategy to satisfy consent Condition 31 of DA15/1026. The intent of the strategy is to detail and provide a revised offsets package to address changes to approved offset requirements that have occurred over time, as detailed design and works on the site have progressed. It was anticipated that a single, site-wide strategy would provide the opportunity to examine the multiple offset requirements on a strategic, whole-of-site basis and potentially improve the design and ecological integrity of the resulting environmental protection areas.

A draft Offset Strategy has been prepared by LEDA, and is referred to in the information accompanying the current Modification. Neither the modification application nor the draft Offset Strategy appear to achieve a better strategic outcome that addresses the ramifications of priority being given to engineering requirements over offset requirements.

While not explicitly identified in the current modification application, the draft Offset Strategy itemises 26 separate changes to the layout of offset areas since the approval of the *Revised Site Revegetation and Regeneration Plan* in 2013. The cumulative impact arising from changes to the configuration of offset areas thus requires consideration and resolution. The modifications to environmental protection areas have resulted in reduced patch size and increased edge length in multiple locations across the site. The implications of this are reduced long term viability of the environmental protection areas, increased initial establishment costs (for Leda) and increased ongoing management costs (to be borne by the community). It is considered that the net result of this modification request is a poorer ecological outcome on site.

During the Offset Strategy preparation process, Council prepared indicative mapping (attached) indicating a number of locations where a better ecological outcome could be achieved through either:

- retention of existing vegetation currently proposed for removal under the development footprint, or
- minor additions or subtractions to environmental protection areas.

The combined area identified by this mapping as potentially suitable for provision of additional on site offsets totals approximately 15ha.

In order to address the impacts of ongoing, incremental change such as described above, the following recommendation is offered.

Recommendation:

It is recommended that decisions regarding changes to the quantity or design of offset and environmental protection areas on the site, including the current and any future modification application, be guided by the following offset and environmental protection area principles:

- Offsets preferentially achieved on site;
- Additional to all existing obligations including approved rehabilitation areas;
- Improved ecological outcome for the site;
- Minimise linear patches with large edge/area ratio;
- 'Smoothing' edges to existing rehabilitation areas; and
- Avoidance of future conflict with other land uses.

For further information regarding this matter please contact Colleen Forbes on (02) 6670 2596. Please note that Council officers are happy to discuss any of the matters raised above.

Yours faithfully

Lindsay McGavin
MANAGER DEVELOPMENT ASSESSMENT AND COMPLIANCE