

## ASSESSMENT REPORT

### Cobaki Estate Residential Community Development Concept Approval MP 06\_0316 (MOD 11)

#### 1. INTRODUCTION

This report is an assessment of a request to modify the Concept Plan Approval MP 06\_0316 for a residential community development, referred to as 'the Cobaki Estate' at Cobaki Lakes in the Tweed local government area (LGA).

The request has been lodged by Leda Manorstead Pty Ltd (the Proponent), pursuant to Section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act). It seeks to modify the level of detail and timing of information to be provided as part of the 'Plan of Development' required under the Concept Plan approval. The proposal also seeks to amend the Cobaki Estate Development Code in relation to the requirements for the Plan of Development.

#### 2. SUBJECT SITE

Cobaki Estate is located on the New South Wales and Queensland border approximately 1.5 kilometres west of the Gold Coast Airport and approximately six kilometres inland of Tweed Heads. The site location is shown in **Figure 1**.



Figure 1: Site location

Adjoining the site to the east is a wetland protected by *State Environmental Planning Policy No.14 – Coastal Wetlands*, as well as the waterway of Cobaki Creek and the Cobaki Broadwater. Remnant bushland forest areas lie to the west and north of the site and are zoned for environmental protection. Agricultural land primarily used for cattle grazing adjoins the site to the south and to the north-west. To the south-west is a golf course, which is zoned for rural purposes.

### 3. APPROVAL HISTORY

#### 3.1 Concept Plan

On 6 December 2010, the then Minister for Planning approved the Concept Plan for Cobaki Estate including a residential development for approximately 5,500 dwellings, a town centre and neighbourhood centre, utility infrastructure, road corridors, open space and environmental protection areas.

The Concept Plan has been the subject of a number of modification requests as set out in **Table 1**.

**Table 1:** *Summary of modification requests*

MOD	Modification	Date Approved / Current Status
1	Include new biodiversity offset arrangements and various administrative changes to conditions	29 May 2013
2	Accommodate a university campus on the site	Withdrawn
3	Reclassification of the vegetation community	SEARs issued
	Changes to school location, neighbourhood centre and registered club, community facilities	31 August 2017
5	Changes to allow private water and wastewater services	29 August 2017
6	Increase the building heights	Withdrawn
7	Changes to the Cobaki Development Code	26 October 2017
8	Increase building heights	SEARs issued
9	Modify biodiversity offsets	Refused 5 April 2018
10	Modify condition 14 in relation to cat ownership	Deemed refusal appeal commenced in Land and Environment Court

The Concept Plan approval includes future environmental assessment requirement (FEAR) C1 which requires a 'Plan of Development' to be submitted with future applications for subdivision including the following information:

#### **C1 Plan of Subdivision**

*A Plan of Development must be submitted with each future application for subdivision on the Cobaki Estate site. The Plan of development must, at a minimum, include the following information:*

- 1) Location and width of Asset Protection Zones.*
- 2) A notation on the fire affected lots that development is subject to the requirements of 'Planning for Bushfire Protection 2006' and AS 3959-2009 – Construction of Building in Bushfire Prone Areas.*
- 3) Type of development permissible on each lot. eg: zero lot housing, plex housing, etc.*
- 4) Finished floor levels requirements on flood prone lots in accordance with the requirements of Tweed Shire Council's Development Control Plan – Section A3 – Flood Liable Land (or any replacement document).*
- 5) All other matters specified for Subdivision in the Cobaki Development Code.*

### 3.2 Cobaki Estate Development Code

The Cobaki Estate Development Code, was approved under the Concept Plan and sets out planning controls for future development on the site. It has been revised on a number of occasions. Section 5.6 of the Code sets out the following requirements for the Plan of Development:

#### 5.6 Plan of Development Requirements

##### Objectives

- (1) *To identify the position of Nominated Lots within a subdivision.*
- (2) *To provide the key controls which are necessary to achieve the effective master planning of the nominated lots.*
- (3) *To identify vehicular access location for each lot.* (4) *To provide the landscape and fencing intent for key locations of the subdivision.*

##### Controls

- (1) *A Plan of Development must be submitted with all future development applications for subdivision on the site and include the following information where applicable.*
  - (a) *location and width of Asset Protection Zones; and*
  - (b) *Level of construction required for dwellings/buildings adjacent to Asset Protection Zones in accordance with Planning for Bushfire Protection 2006 and Australian Standard 3959 – 1999 – Construction of Building in Bushfire Prone Areas; and*
  - (c) *type of development permissible or intended for each lot, for example, dwelling house, seniors housing, attached dwelling; and*
  - (d) *finished floor levels requirements on flood prone lots in accordance with the requirements of Tweed Shire Council's Development Control Plan – Section A3 – Flood Liable Land (or any replacement document); and*
  - (e) *the type of development nominated on each lot which may be undertaken as Complying development; and*
  - (f) *the location of development lots and the maximum number of dwellings and bedrooms intended in the future development of the development lot; and*
  - (g) *setbacks for all buildings and structures, including garages; and*
  - (h) *zero lot line locations if relevant; and*
  - (i) *the location of preferred vehicular street access and driveway locations for all dwellings; and*
  - (j) *the location of private open space for each lot; and*
  - (k) *the type of fencing to be provided to roads and other public land frontages; and*
  - (l) *the lots on which 3 or >3 storey building height is permissible other than those which may be determined on merit by DRP; and*
  - (m) *The location of public open space; and*
  - (n) *The location of specific landscaping to meet the design guidelines for each precinct; and*
  - (o) *Gateways or entry statements; and*
  - (p) *A reference to the Design Guidelines which apply to the precinct.*

*Note: Any lot except for a development lot, or lot within the town centre, may be development for a dwelling house, despite being nominated on the POD for another residential type."*

### 4. PROPOSED MODIFICATION

The Proponent lodged a modification request seeking approval to Modify FEAR C1 and the Cobaki Estate Development Code to require less detailed information in the Plan of Development at the development application (DA) stage and instead provide a higher level of detail at the subdivision certificate stage.

The modification is sought to minimise ongoing changes to the Plan of Development (and therefore associated DA modification requests), and to ensure an appropriate level of detail is

provided at the DA stage, which can then be expanded upon at the subdivision certificate stage. The Proponent notes that minor changes to the subdivision layout (including minor changes to layout, levels, road design, servicing, and housing types) may occur between the DA stage and the subdivision certificate stage as the detailed design is being undertaken and the proposed modification would reduce the need to modify the Plan of Development as a result of minor design changes.

The proposed requirements under FEAR C1 are set out below. It is proposed to amend Section 5.6 of the Cobaki Estate Development Code to reflect the same requirements.

## **C1 Plan of Development**

*A Plan of Development must be submitted with each future application for subdivision on the Cobaki Estate site. The level of detailed information illustrated in the Plan of Development is expanded upon through the development process from Development Application to the Subdivision Certificate such that, all controls provisions of the Cobaki Development Code Section 5.6 are addressed / notated by the Subdivision Certificate stage.*

- 1. The Plan of Development associated with a Development Application must, at a minimum, include the following information:*
  - a. A notation on fire affected lots that development is subject to the requirements of 'Planning for Bushfire Protection 2006' and AS3959-2009 Construction of Buildings in Bushfire Prone Areas, including the location and width of Asset Protection Zones.*
  - b. Proposed development on each lot, specifically;*
    - i. For areas nominated residential on the approved Concept Plan, the type of residential accommodation and the number of dwellings and bedrooms associated with each; or*
    - ii. Other permissible use; and*
    - iii. For areas nominated Town Centre/ Neighbourhood Centre on the approved Concept Plan the;*
      - 1) type of residential accommodation and the number of dwellings and bedrooms associated with each; and/or*
      - 2) type of tourist and visitor accommodation and the number of dwellings and bedrooms associated with each; and /or*
      - 3) business premises; and/or*
      - 4) commercial premises; and/or*
      - 5) health services facility; and/or*
      - 6) community facility; and/or*
      - 7) a mixed use building.*
  - c. Finished Floor Level requirements on flood prone lots in accordance with the requirements of Tweed Shire Council's Development Control Plan – Section A3 – Flood Liable Land (or any replacement document).*
  - d. Acoustic fencing location and specification (if applicable)*
  - e. Setback controls (tabular format)*
  - f. Driveway location*
  - g. Private Open Space location; and*
  - h. Maximum building height.*
- 2. The Plan of Development to be submitted with each Subdivision Certificate application must, at a minimum, include the following information:*
  - a. Location and width of Asset Protection Zones; and*
  - b. Level of construction required for dwellings/buildings adjacent to Asset Protection Zones in accordance with Planning for Bushfire Protection 2006 and Australian Standard 3959 – 1999 – Construction of Building in Bushfire Prone Areas; and*
  - c. Type of development permissible or intended for each lot, for example, dwelling house seniors housing attached dwelling; and*
  - d. Finished Floor Levels requirements on flood prone lots in accordance with the requirements of Tweed Shire Council's Development Control Plan – Section A3 – Flood Liable Land (or any replacement document); and*

- e. *The type of development nominated on each lot which may be undertaken as Complying development; and*
- f. *The location of development lots and the maximum number of dwellings and bedrooms intended in the future development of the development lot; and*
- g. *Setbacks for all buildings and structures, including garages; and*
- h. *Zero lot line locations if relevant; and*
- i. *The location of nominated vehicular street access and driveway locations for all dwellings; and*
- j. *The location of private open space for each lot; and*
- k. *The type of fencing to be provided to roads and other public land frontages; and*
- l. *The lots on which 3 or >3 storey building height is permissible and*
- m. *The location of public open space; and*
- n. *The location of specific landscaping to meet the design guidelines for each precinct; and*
- o. *Gateways or entry statements; and*
- p. *A reference to the Design Guidelines which apply to the precinct; and*
- q. *All necessary easements.*

## **5. STATUTORY CONSIDERATION**

### **5.1 Section 75W**

The Concept Approval was originally approved under Part 3A of the EP&A Act. The power to modify concept plans approved under Part 3A of the EP&A Act under former section 75W of the EP&A Act is being wound up. Clauses 3BA(2) and (3) of Schedule 2 to the Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017 (EP&A (ST&OP) Regulations) provide that an approved concept plan cannot be modified under section 75W on or after the cut-off date of 1 March 2018, unless the request to modify was lodged before 1 March 2018.

However, Clause 3BA(5) of Schedule 2 to the EP&A (ST&OP) Regulations provides that a Concept Plan may continue to be modified under section 75W in response to a request lodged before or after 1 March 2018 if the Minister is satisfied that:

- a. *the proposed modification is to correct a minor error, misdescription or miscalculation, or*
- b. *the proposed modification is of minimal environmental impact, or*
- c. *the project to which the concept plan as modified relates is substantially the same as the project to which the concept plan currently relates (including any modifications previously made under section 75W).*

This proposal seeks to amend an existing FEAR. The Department is satisfied that the proposal is within the scope of clauses 3BA(5)(b) and (c) as it is of minimal environmental impact and the project as modified would be substantially the same as the project to which the Concept Plan currently relates.

### **5.2 Approval Authority**

The Minister for Planning is the approval authority. However, the Director, Regional Assessments, may determine the modification request under delegation as:

- the relevant local council has not made an objection
- a reportable political donation has not been made
- no public submissions were made.

## 6. CONSULTATION

The Department made the modification request publicly available on its website and consulted with Tweed Shire Council (Council), the Office of Environment and Heritage (OEH) and the Rural Fire Service (RFS) about the proposed modification.

**Council** does not object and advises the proposed amendments are consistent with discussions between the Council and the Proponent. Council considers the proposed level of detail for the Plan of Development is appropriate for each stage of the development process.

The Department sought further advice from Council, who subsequently confirmed it was only necessary to include the first part of the proposed condition (relating to development application requirements) on the Concept Plan and the remaining part of the proposed condition (relating to subdivision certificate requirements) need not be included, as they could be included in any future DA approval for subdivision by Council. However, Council requested that all proposed amendments to Section 5.6 of the Cobaki Estate Development Code (relating to requirements at both the DA and subdivision certificate stages) be adopted.

**OEH** does not object but recommends the Department consider the implications of the proposed modification on required management plans and timing of other conditions of the approval.

**RFS** does not object but notes that the level of detail provided at future DA stages must be sufficient to enable assessment of the proposal against 'Planning for Bushfire Protection 2006'.

No **public submissions** were received.

## 7. ASSESSMENT

In assessing the merits of the proposal, the Department has considered:

- the modification application and associated documents
- the Environmental Assessment and conditions of approval for the original project
- all submission received on the proposal and the Applicant's response to the submissions
- relevant environmental planning instruments, policies and guidelines
- the requirements of the EP&A Act.

The Department considers the key issues for consideration are:

- the extent of the matters than can be included in a FEAR
- whether the proposed FEAR would ensure a sufficient level of detail is provided to assess the future DAs for subdivision
- whether the proposed FEAR would ensure a sufficient level of detail is provided to guide future urban development on the site.

### 7.1 Matters to be included in FEAR C1

Proposed FEAR C1 includes details to be provided on the Plan of Development in two stages. Part one of the FEAR sets out details to be provided at DA stage and part two sets out details to be provided at the subdivision certificate stage.

Former section 75P of the EP&A Act allows Concept Approvals to set out environmental assessment requirements for future DAs. However, it does not make provision for Concept Approvals to include detailed requirements for future subdivision certificates.

The Department therefore recommends that only Part 1 of the proposed FEAR, which outlines the requirements for the Plan of Development at the DA stage, be incorporated in the modified instrument. Any subsequent requirements for an amended or more detailed Plan of

Development, could then be required as a condition of any DA approval issued by Council, where considered appropriate.

While FEAR C1 would only include requirements for the Plan of Development at the DA stage, the Department notes the proposed amended Section 5.6 of the Cobaki Estate Development Plan would include requirements for the Plan of Development for both the DA stage and the subdivision certificate stage. On this basis, the Department is satisfied that Council could impose a condition requiring approval of additional information in the Plan of Development at the subdivision certificate stage, consistent with the requirements of the Code.

## **7.2 Assessment of future subdivision DAs**

A key issue for consideration is whether the proposed level of detail to be provided at the DA stage would be sufficient for the assessment of future subdivision DAs.

Some details which would have been required in the Plan of Development at the DA stage under the existing approval, but would no longer be required include:

- location and width of asset protection zones and the level of construction required for buildings adjacent to asset protection zones (although a notation on fire affected lots that the development is subject to *Planning for Bushfire Protection 2006* and the Australian Standard for Construction of Buildings in Bushfire Prone Areas would be provided)
- the type of development permissible on each lot (although the proposed development on each lot would be provided)
- the type of development nominated on each lot which may be undertaken as complying development
- the type of fencing to be provided to roads and public land frontages (although details of any acoustic fencing would be provided where applicable)
- lots on which 3 or more than 3 storeys are permitted (although building height controls would be provided)
- the location of public open space
- location of specific landscaping to meet the design guidelines
- gateway or entry statements
- a reference to the Design Guidelines which apply to the precinct.

The Department notes that Council, who will be responsible for the assessment of subdivision DAs, is satisfied the proposed level of detail is appropriate.

OEH recommended consideration be given to the potential impacts on the required management plans and RFS noted the detail provided needs to be sufficient to enable an assessment against bushfire planning controls.

The Department notes Council's advice and considers proposed FEAR C1 and other FEARs in the Concept Plan approval include sufficient detail to enable a proper assessment of future DAs for subdivision.

In addition, the proposed FEAR would not preclude Council from requesting additional information it considers necessary to assess the subdivision DA in accordance with the Concept Plan approval, the Cobaki Estate Development Code, or its Development Control Plan requirements for subdivision, which have been incorporated into the Code.

For example, although 'the location of public open space' has been excluded from the requirements of the Plan of Development at the DA stage, FEAR C13 – *Open Space* and Council's subdivision controls would still require the location of open space to be provided with future subdivision DAs submitted to Council. Similarly, FEAR C8 – *Bushfire Assessment* would still ensure sufficient information would be provided with future subdivision DAs to ensure a proper assessment against *Planning for Bushfire Protection 2006*.



The Department also considers the level of information provided on the Plan of Development at the DA stage would not compromise the ability to develop, assess, or approve the management plans required under the Concept Approval. Rather, less detail in the Plan of Development will mean less likelihood of conflicts with the management plans, which will incorporate greater levels of detail than the Plan of Development.

Overall, the Department is satisfied proposed FEAR C1, in conjunction with existing Concept Approval, the Cobaki Estate Development Code and Council's subdivision controls, will ensure an appropriate level of detail would still be provided at the DA stage to enable a proper assessment of future subdivision development applications.

### **7.3 Assessment of future built form**

The other purpose of the Plan of Development is to ensure the future built form will meet the objectives of the Concept Approval and the Cobaki Estate Development Code. The future built form, including the specific type of development, the number of storeys and location of zero lot lines will be determined by the Plan of Development, in conjunction with the Development Code and the 'Design Guidelines'. The Design Guidelines, once approved, will form part of the Plan of Development and will include detailed criteria for future built forms. Separate requirements for establishing the Design Guidelines are set out in Section 5.7 of the Development Code.

The Department considers that the Plan of Development as modified, in conjunction with the required Design Guidelines and the existing controls in Development Code, would continue to provide appropriate guidance for future urban development on the site. The Department therefore considers the proposed modification is acceptable.

## **8. CONCLUSION**

The Department has assessed the modification request and supporting information in accordance with the relevant requirements in the EP&A Act.

The Department supports the first part of the proposed FEAR, as the level of detail proposed to be provided on the Plan of Development at the DA stage (in conjunction with other required information) is considered to be sufficient to enable assessment of subdivision DAs and provide appropriate guidance for future development of the land. However, the Department does not support incorporating the second part of the proposed FEAR as this level of detail is more appropriately dealt with at the DA stage.

The proposed modification to the Cobaki Estate Development Code is also supported as it will continue to provide appropriate guidance for future urban development on the site.

Consequently, the proposal is in the public interest and it is recommended that the modification be approved subject to the recommended conditions.



## 9. RECOMMENDATION

It is recommended that the Director, Regional Assessments, as delegate of the Minister for Planning:

- **considers** the findings and recommendations of this report,
- **determines** the request falls within the scope of Section 75W of the EP&A Act and Clause 3BA(5) of Schedule 2 to the EP&A (ST&OP) Regulations
- **approves** the modification request MP 06\_0316 MOD 11, subject to conditions; and
- **signs** the attached notice of modification (**Appendix A**).

Recommended by:

 27/9/18

Joel Herbert  
**Planner**  
**Regional Assessments**

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## DECISION

The recommendation is approved by:

 27/9/18

Anthony Witherdin  
**Director**  
**Regional Assessments**  
as delegate of the Minister for Planning

## **APPENDIX A: NOTICE OF MODIFICATION**

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The Notice of Modification can be found on the Department's website at the following address:

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=9399](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9399)

## APPENDIX B: SUPPORTING INFORMATION

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The following supporting documents and supporting information to this assessment report can be found on the Department of Planning and Environment's website as follows:

1. Modification request

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=9399](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9399)

2. Submissions

[http://majorprojects.planning.nsw.gov.au/index.pl?action=view\\_job&job\\_id=9399](http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=9399)