



Issued: 25 July 2019 11:46 AM

JUDGMENT/ORDER

COURT DETAILS

Court	Land and Environment Court of NSW
Division	Class 1
Registry	Land and Environment Court Sydney
Case number	2018/00206081

TITLE OF PROCEEDINGS

Applicant(s)	Leda Manorstead Pty Ltd
Respondent(s)	Minister for Planning

DATE OF JUDGMENT/ORDER

Date made or given	24 July 2019
Date entered	24 July 2019

TERMS OF JUDGMENT/ORDER

(1) The Court is satisfied that the requested modification falls within the scope of former section 75W of the Environmental Planning and Assessment Act 1979, as continued in force by clause 3C of Schedule 2 of the Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017.

(2) The appeal is upheld.

(3) The requested modification ('MOD 9') lodged by the Applicant on 3 July 2017 to modify concept plan approval MP06_0316 is determined by approving the modification set out in the Annexure.

SEAL AND SIGNATURE



Signature	Sarah Froh
Capacity	Registrar
Date	25 July 2019

If this document was issued by means of the Electronic Case Management System (ECM), pursuant to Part 3 of the Uniform Civil Procedure Rules (UCPR), this document is taken to have been signed if the persons name is printed where his or her signature would otherwise appear.

PARTY DETAILS

First Civil Proceeding

Applicant(s)

First Applicant

Leda Manorstead Pty Ltd

Respondent(s)

First Respondent

Minister for Planning



Annexure

Leda Manorstead Pty Ltd v Minister for Planning

Approved Modifications

- (a) Schedule 2 Part A – Administrative Conditions, Condition A2 is amended by the insertion of the **bold and underlined** words and deletion of the ~~struckout~~ words/numbers as follows:

A2 Project in Accordance with Plans

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<u>Endangered Ecological Communities Offset Areas</u>	<u>JWA Pty Ltd</u>	<u>97038 EA Base.dwg</u>	<u>10 July 2019</u>
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- (b) Schedule 2 Part C – Requirements for Future Applications, Condition C19 is amended by the insertion of the **bold and underlined** words and deletion of the ~~struckout~~ words/numbers as follows:

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.

- (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

¹Note: The department has noted that using the biobanking calculator, this offset could be in the order of 16 hectares.

- (1) To offset the loss of 3.8 ha of Swamp Sclerophyll forest Endangered Ecological Community (EEC) the Proponent shall:**

- a. **provide a 6.77 ha on-site offset in the locations identified in Amended Site Revegetation and Regeneration Plan approved by the Secretary under Condition C19A;**
- b. **revegetate 6.77 ha of Swamp Sclerophyll Forest EEC in accordance with the Amended Site Revegetation and Regeneration Plan approved by the Secretary under Condition C19A; and**
- c. **Prior to the commencement of site preparation works, including but not limited to clearing, earth moving, excavation and construction, the Applicant must retire 150 Swamp Sclerophyll Forest EEC biodiversity credits to the satisfaction of the OEH. The retirement of the credits must be carried out in accordance with the NSW Biodiversity Offsets Policy for Major Projects and can be achieved by:**

- (i) **acquiring and retiring "biodiversity credits" within the meaning of the Biodiversity Conservation Act 2016; or**
- (ii) **making payments into an offset fund that has been developed by the NSW Government; or**



(iii) providing supplementary measures, as agreed with OEH.

Note: Following repeal of the Threatened Species Conservation Act 1995 on 25 August 2017, "biodiversity credits" created under that Act are taken to be "biodiversity credits" under the Biodiversity Conservation Act 2016. The above credits are expressed as credits under the former Threatened Species Conservation Act 1995. Accordingly, the Environment Agency Head may determine the biodiversity credits under the Biodiversity Conservation Act 2016 that are reasonably equivalent to those credits (as per clause 22(3) of the Biodiversity Conservation (Savings and Transitional) Regulation 2017).

- (2) **To offset the loss of 0.11 ha of Lowland Rainforest vegetation, the Proponent shall:**
- a. **provide a 13.3 ha on-site offset in accordance with the Amended Site Revegetation and Regeneration Plan approved by the Secretary under Condition C19A ; and**
 - b. **revegetate 13.3 ha of Lowland Rainforest vegetation on-site in accordance with the Amended Site Revegetation and Regeneration Plan approved by the Secretary under Condition C19A.**
- (c) Schedule 2 Part C – Requirements for Future Applications, after Condition c19 add new Condition C19A as follows:

C19A Site Revegetation and Regeneration Plan

Within three months of the date of determination of MP 06 0316 MOD 9, the Proponent shall prepare and submit an Amended Site Revegetation and Regeneration Plan to the Secretary for approval. The amended plan must:

- a. **reflect the offset requirements identified in Term C19 of the Concept Approval;**
- b. **update Section 3.3 to identify the Swamp Sclerophyll Forest EEC located on-site;**
- c. **ensure no areas of Lowland Rainforest on Floodplain EEC within the on-site offset areas are reclassified; and**
- d. **be generally consistent with Plan No: 97038 EA Base.dwg dated 10 July 2019 to the extent that Plan No: 97038 EA Base.dwg dated 10 July 2019 reflects only the offset areas the subject of MP06 0316 MOD 9.**

The Amended Site Revegetation and Regeneration Plan must be approved by the Secretary prior to the commencement of site preparation works, including but not limited to clearing, earth moving excavation and construction. The approved amended plan must reflect all changes effected by MP06 0316 MOD 9.

C19B Concept plan

Within three months of the date of determination of MP 06 0316 MOD 9, the Proponent shall prepare and submit an Amended Concept Plan to the Secretary for approval. The only changes to the Concept Plan permitted under this Condition are those changes that are necessary to ensure that the Concept Plan is generally consistent with the Plan No: 97038 EA Base.dwg dated 10 July 2019 to the extent that Plan No: 97038 EA Base.dwg dated 10 July 2019 reflects only the offset areas the subject of MP06 0316 MOD 9. The approved amended plan must identify the offset areas in the Amended Site Revegetation and Regeneration Plan approved by the Secretary under Condition C19A as 'Environmental Protection Area'. The Concept Plan approved under this Condition is taken to be the approved Concept Plan, subject to any further modification of this Approval. The Amended Plan must be approved by the Secretary prior to the commencement of site preparation works, including but not limited to clearing, earth moving excavation and construction.



C19C Survey of EEC Offsets

Suitable evidence must be provided to Tweed Shire Council with any development application for works in each Precinct confirming the boundaries and quantum of any relevant EEC Offsets are consistent with the approved MP06 0316 MOD 9.

- (d) Schedule 3 commitment 4.8.2 — omit all of the text in commitment 4.8.2.

End of Modification



