

JOINT REGIONAL PLANNING PANEL
(Northern Region)

JRPP No	2016NTH001
DA Number	DA15/1026
Local Government Area	Tweed Shire Council
Proposed Development	Staged development application under Section 83B of the EP&A Act 1979 development of Precincts 6, 7, 8, 9, 10, 11 & 12 – Cobaki Lakes (JRPP), Stage 1 – staged bulk earthworks
Street Address	Lots 46, 54, 55, 200, 201, 202, 205, 206, 209, 199, 228, 305 DP 755740; Lot 1 DP 823679; Lot 1 DP 570077; Lot 1 DP 562222; Lot 2 DP 566529; Lot 1 DP 570076; Sandy Lane and Piggabeen Road, Cobaki Lakes
Applicant	LEDA Manorstead Pty Ltd C/- Planit Consulting Pty Ltd
Owner	LEDA Manorstead Pty Ltd
Number of Submissions	Nil public submissions were received. A submission has also been received from/on behalf of Essential Energy.
Regional Development Criteria (Schedule 4A of the Act)	<i>Development with a capital investment value (CIV) over \$20 million.</i> The staged development application has CIV of \$105,395,000 over 8 stages.
List of All Relevant s79C(1)(a) Matters	<ul style="list-style-type: none"> <u>List all of the relevant environmental planning instruments: s79C(1)(a)(i)</u> State Environmental Planning Policy (SEPP) No. 14 – Coastal Wetlands State Environmental Planning Policy (SEPP) No. 55 - Remediation of Land State Environmental Planning Policy (SEPP) No 71 – Coastal Protection

	<p>State Environmental Planning Policy (SEPP) (Infrastructure) 2007 Tweed Local Environmental Plan 2014</p> <ul style="list-style-type: none"> • <u>List any relevant development control plan: s79C(1)(a)(iii)</u> Tweed Development Control Plan Section A3-Development of Flood Liable Land Tweed Development Control Plan Section A11-Public Notification of Development Proposals • <u>List any relevant planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F: s79C(1)(a)(iiia)</u> Draft VPA regarding Scribbly Gum Reserve • <u>List any coastal zone management plan: s79C(1)(a)(v)</u> Tweed Shire Coastline Management Plan 2005 Coastal zone Management Plan for Cobaki and Terranora Broadwater • <u>List any relevant regulations: s79C(1)(a)(iv) eg. Regs 92, 93, 94, 94A, 288</u> Clause 92(a) Government Coastal Policy
List all documents submitted with this report for the panel's consideration	Section 79C Assessment Report including proposed conditions of consent.
Recommendation	Approval with conditions
Report by	Colleen Forbes (Team Leader Development Assessment)
Report date	8 June 2016

Assessment Report and Recommendation

FILE NO: DA15/1026

REPORT TITLE:

Development Application DA15/1026 for a Staged Development Application under Section 83B of the EP&A Act 1979 development of Precincts 6, 7, 8, 9, 10, 11 & 12 – Cobaki Lakes (JRPP), Stage 1 – staged bulk earthworks at Lot's 46, 54, 55, 200, 201, 202, 205, 206, 209, 199, 228, 305 DP 755740; Lot 1 DP 823679; Lot 1 DP 570077; Lot 1 DP 562222; Lot 2 DP 566529; Lot 1 DP 570076; Sandy Lane and Piggabeen Road, Cobaki Lakes

SUMMARY OF REPORT:

The development application is required to be assessed under Part 4 of the NSW Environmental Planning and Assessment Act in accordance with the Minister's Concept Plan approval for the Cobaki site. As the proposed Staged Development Application has a CIV of over \$20 million, the Joint Regional Planning Panel is the determining authority in accordance with Schedule 4A of the Environmental Planning & Assessment Act 1979.

The proposal incorporates a conceptual Masterplan for the future subdivision of Precincts 6, 7, 8, 9, 10, 11 and 12 of the Cobaki Lakes development site. The application also incorporates Stage 1 Bulk Earthworks across Precincts 6 to 12. Future applications will be required for the staged subdivision of the development area, with a total of 8 stages proposed. Stages 2 & 3, being a 464 lot subdivision across part Precinct 6 and part Precinct 7 (DA16/0056) is currently being assessed by Council.

Access to the site will be via Boyd Street which leads in from Tugun in Queensland and Cobaki Parkway. Boyd Street from the Motorway overpass and Cobaki Parkway (which is the main distributor road running through the site) have been approved under previous consents and certificates.

Precincts 6 to 12 cover an area of approximately 150 hectares. Stage 1 Bulk Earthworks will be undertaken over 33 stages, with each stage required to have a minimum 5ha of exposed areas (as required by the Concept Plan approval). Fill material will be utilised from Precincts 9 and 11 and

dispersed as required across the remaining precincts (as required) to ensure the future residential allotments meet minimum flood provisions.

The form of development proposed is considered to be superior to the existing approvals over the site and subject to compliance with the extensive recommended conditions, the development is recommended for approval.

This report to the JRPP has been broken up into four main sections:

- A - Site Context and Previous Approvals

- B – Concept Plan Assessment

- C – Proposed Development

- D - Main Assessment

REPORT:

Applicant: Leda Manorstead Pty Ltd C/- Planit Consulting Pty td

Owner: Leda Manorstead Pty Ltd

Location: Lot's 46, 54, 55, 200, 201, 202, 205, 206, 209, 199, 228, 305 DP 755740; Lot 1 DP 823679; Lot 1 DP 570077; Lot 1 DP 562222; Lot 2 DP 566529; Lot 1 DP 570076; Sandy Lane and Piggabeen Road, Cobaki Lakes

Zoning: R1 - General Residential RE2 - Private Recreation 7(l) Environmental Protection (Habitat) 7(d) Environmental Protection (Scenic/Escarpment) B2 - Local Centre 7(a) Environmental Protection (Wetlands and Littoral Rainforests)

SECTION A - SITE CONTEXT AND PREVIOUS APPROVALS

SITE AND SURROUNDS:

The site is known as Cobaki Estate and is comprised of 17 precincts. It has a total area of 593.5ha. Precincts 6 to 12 are approximately 150ha in area.

The site is situated approximately 6km west of Tweed Heads. It is within close proximity to the Queensland border and the Gold Coast International Airport, situated a short distance to the north-east.

Existing on-site vegetation includes dry sclerophyll forest, rainforest, woodland, heathland, mangrove forest, grassland and rushland/sedgeland and saltmarsh.

Topography on the site varies significantly including relatively steep slopes and ridges to the north and west and low lying flood planes in the centre of the site. The topography of the site could best be described as a 'basin'.

Residential development is located to the north of the site in Queensland, but physically separated from the site by topography and a linear corridor of existing bushland.

Land to the west and southwest of the site is predominately rural in character and includes adjoining bushland as well as Cobaki Creek. The area east of the site is characterised by remnant bushland and Cobaki Broadwater.

BACKGROUND:

Old Development Consents

Several development consents have been issued over the subject site between 1993 and 2002 for bulk earthworks and residential subdivision.

A summary of existing consents is outlined in the table below. The majority of the bulk earthwork consents have commenced and works have been undertaken.

Consents		
Reference	Description	Date of Consent
D92/315	Boyd Street Extensions	5 January 1993
D94/438	Bulk Earthworks	27 January 1995
S94/194	730 Lot Urban Subdivision Parcels 1 to 5 and 13 Englobo Parcels (The Entrance, The Sand Ridge)	19 September 1995
D96/271	Bridge over Cobaki Creek	8 April 1997
S97/54	430 lot residential subdivision – parcel 7 to 10 (The Knoll, Piggabeen)	21 October 1997
K99/1124	560 Lot Urban Subdivision (The Foothills, The Plateau, Valley East, Valley West, East Ridge)	21 July 2000
1162/2001DA	8 Management Lots and Bulk Earthworks (town centre)	8 October 2002

A number of Construction Certificates (CCs) have also been issued for bulk earthworks and other civil engineering works including construction of Cobaki Parkway.

Concept Plan Approval (MP06_0316)

The Minister for Planning issued a Concept Approval for the site on 6 December 2010 and an amendment (Mod 1) was issued on 29 May 2013. The approval was for the following:

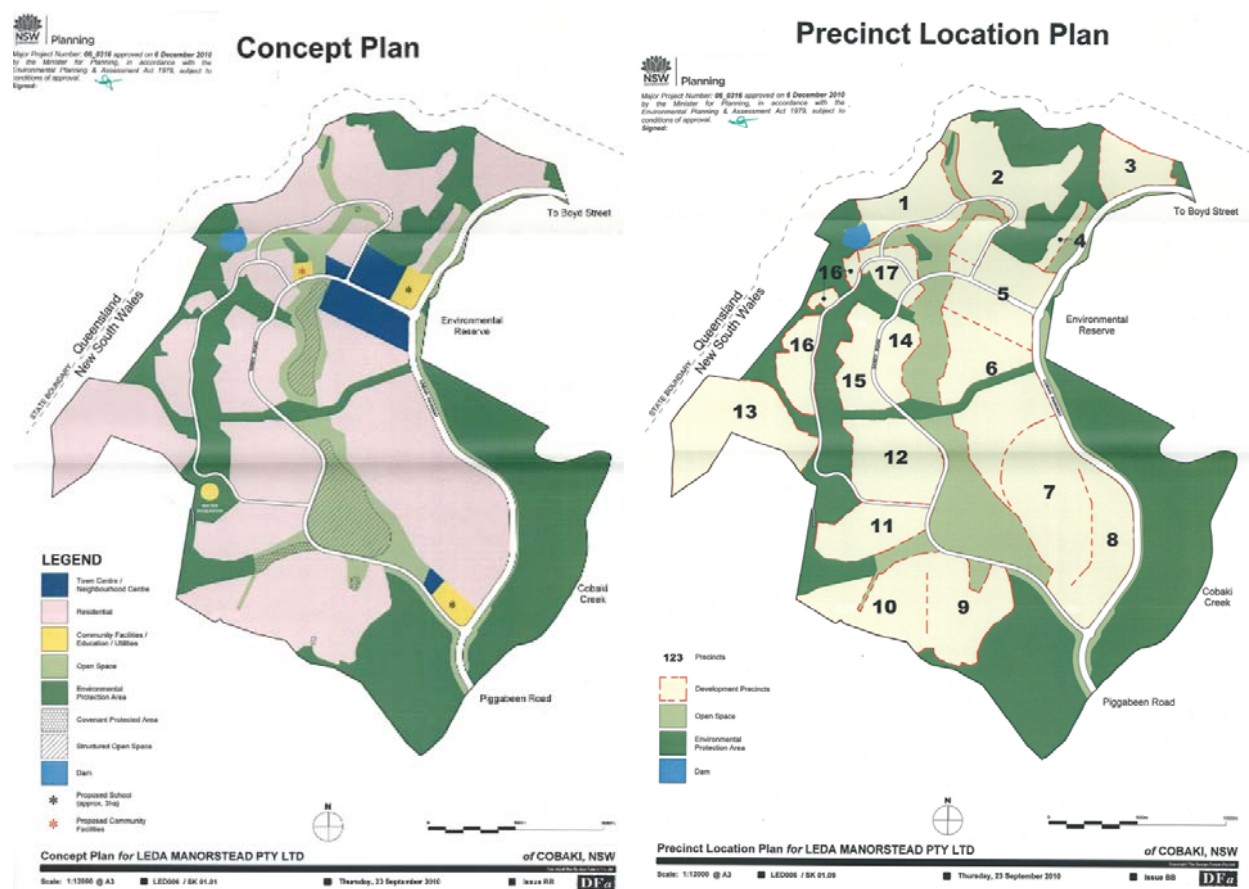
- Residential development for approximately 5,500 dwellings
- Town Centre and neighbourhood centre for future retail and commercial uses

- Community facilities and school sites
- Open space
- Wildlife corridors
- Protection and rehabilitation of environmentally sensitive land
- Road corridors and utility services infrastructure
- Water management areas
- Roads and pedestrian and bicycle network

The Minister stipulated that approval to carry out the project, other than the central open space and Precinct 5, be subject to Part 4 or 5 of the Act, as relevant.

Schedule 2 of the Concept Approval contains modifications to the concept plan and requirements for future applications.

An assessment of the current application against the provisions of the Concept Plan approval and Statement of Commitments is noted later in this report.



Figures 1 & 2 – Approved Concept Plan and Precinct plan

Exempt and Complying Order

An Order was issued by the Minister for Planning on 6 December 2010 declaring that the development within the Cobaki Estate site that satisfies the requirements for exempt or complying development specified in Part A – Exempt and Complying Development in Cobaki Estate Development Code, 15 November 2010, is exempt or complying development, as appropriate.

Development Code

The Development Code was approved by the Director General of the Department of Planning on 15 November 2010. An assessment of the current application against the provisions of the Development Code is noted later in this report.

Project Approval (MP08 0200)

The Deputy Director-General of Development Assessment & Systems Performance issued a Project Approval for the site on 28 February 2011. Amendments have been issued on 29 May 2013 (Mod 1), 3 April 2014 (Mod 2) and 13 February 2015 (Mod 3). The approval was for the following:

Part One - Subdivision

- Subdivision of the entire Cobaki Estate site into seven (7) lots (including one residue lot for future urban development – Lot 807);

Part Two – Bulk Earthworks and Civil Works

- Staged bulk earthworks to create the central open space, riparian corridor, structured open space, and future stormwater drainage area;
- Road forming works and culverts crossing the central open space (including Lot 802); Road forming works across saltmarsh areas, including culverts and temporary trunk; and
- sewer and water services (Lot 804);

Part Three – Environmental Enhancement Works

- Revegetation and rehabilitation of environmental protection areas for coastal Saltmarsh (Lots 805 and 806); and

- Establishment of freshwater wetland and fauna corridors.

The bulk earthworks associated with the approved Central Open Space drainage corridor (refer to Figure 3 below) have largely been completed.

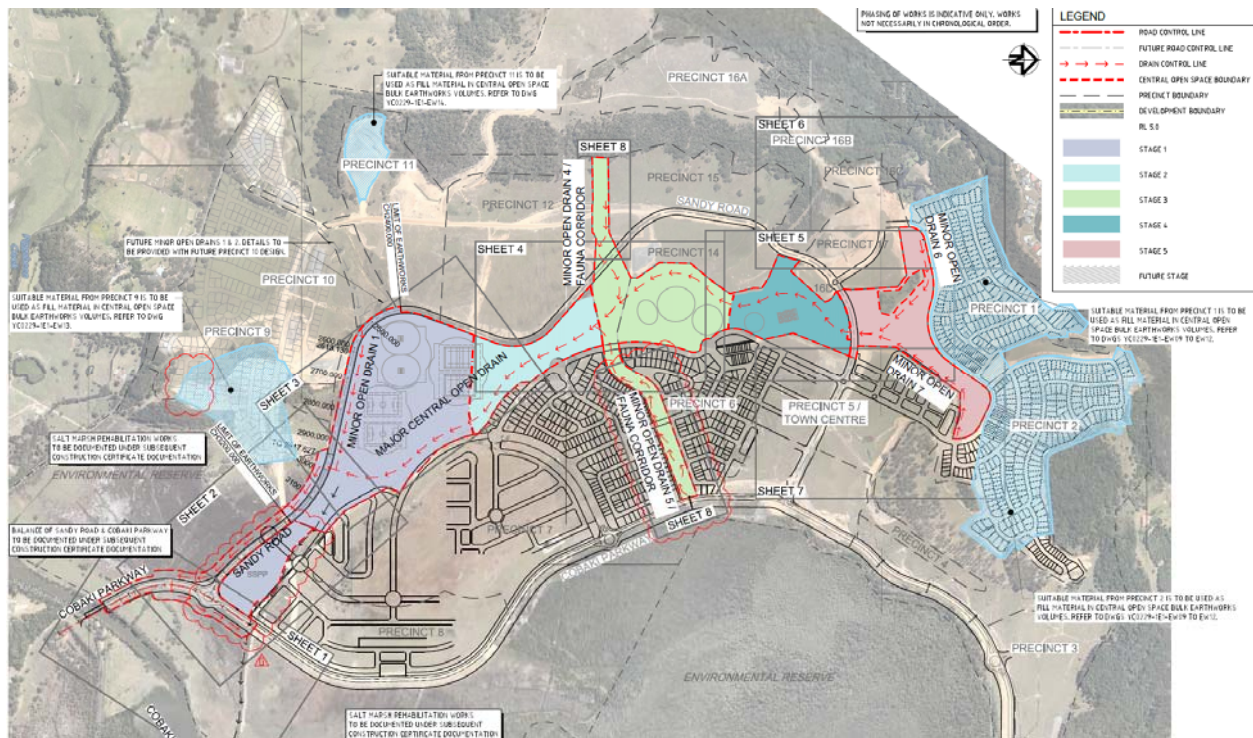


Figure 3 – Approved Project Approval (Mod 3) for the Central Open Space

More recently, approvals over the site include:

- DA10/0800 - Subdivision of Precincts 1&2, comprising of 475 residential lots, lots for drainage, open space and urban infrastructure. Approved by JRPP in May 2011 and amended by Council in March 2014.
- DA10/0801 - Subdivision of Precinct 6, comprising of 442 residential lots, lots for drainage, open space and urban infrastructure. Approved by JRPP in May 2011 and amended by Council in June 2014.
- DA15/0916 - Precinct 6 fauna corridor and culvert crossings. Approved by Council in February 2016.

SECTION B – CONCEPT PLAN ASSESSMENT

Concept Approval

Concept Plan Approval Requirements for Future Applications	Proponent Comments	Council Comments
<p><i>C1 Plan of Development</i></p> <p>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:</p> <ol style="list-style-type: none"> (1) Location and width of Asset Protection Zones. (2) 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. (3) Type of development permissible on each lot, eg: zero lot housing, plex housing, etc. (4) Fill and 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. 	<p>N/A – The proposal is for Bulk Earthworks in Precincts 6, 7, 8, 9, 10, 11 & 12. This application is not for subdivision and as such the requirements of C1 are not triggered. Future applications for subdivision will address this requirement as and if required.</p>	<p>Condition C1 is not considered to be applicable to the proposed development as no subdivision is being proposed. Future Stages will need to address the provisions of C1.</p>
<p><i>C2 Implementation of Part B of the Cobaki Development Code</i></p>		

Concept Plan Approval Requirements for Future Applications	Proponent Comments	Council Comments
<p>All future project/development applications for residential subdivision or for the construction of dwellings or commercial premises must demonstrate consistency with Part B of the Cobaki Development Code.</p>	<p>N/A – The proposal is for Bulk Earthworks in Precincts 6, 7, 8, 9, 10, 11 and 12. This application is not for subdivision or the construction of dwellings or commercial premises and as such the requirements of C2 are not triggered. Future applications for subdivision will address this requirement as and when required.</p>	<p>Condition C2 is not considered to be applicable to the proposed development as no subdivision is being proposed. Future Stages will need to address the provisions of C2.</p>
<p>C3 Housing Densities</p> <p>All future applications for each stage of development for residential subdivision are to provide a plan which:</p> <ol style="list-style-type: none"> (1) Details the mix densities in each precinct; (2) Demonstrates adoption of the neighbourhood planning principles in the Far North Coast Regional Strategy; (3) Details the objectives for the location of housing of various densities; (4) Details the proposed number and size of dwellings in each stage and precinct; (5) Details sites for seniors housing and support facilities (6) Demonstrates the implementation of the levels of accommodation provided for in the approved concept plan; (7) Details sites for higher density development; and (8) Details discussions with Tweed Shire Council. 	<p>N/A – The proposal is for Bulk Earthworks in Precincts 6, 7, 8, 9, 10, 11 and 12. This application is not for subdivision and as such the requirements of C3 are not triggered. Future applications for subdivision will address this requirement as and when required.</p>	<p>Condition C3 is not considered to be applicable to the proposed development as no subdivision is being proposed. Future Stages will need to address the provisions of C3.</p>

Concept Plan Approval Requirements for Future Applications	Proponent Comments	Council Comments
<p><i>C4 Management and Restoration Plans</i></p> <p>(1) All future applications are to include, where relevant, draft stage specific management plan updates to the Site Regeneration and Revegetation Plan, Freshwater Wetland Rehabilitation Plan, Fauna Management Plan, Vegetation Management Plan, Scribbly Gum Management Plan, Principal Buffer Management Plan, Landscape Concept Plan, Stormwater Concept Plan, Cultural Heritage Management Plan, Preliminary Acid Sulfate Soils Management Plan providing, where relevant, details on timelines for implementation of recommended works including maintenance periods, funding arrangements and measurable performance and completion criteria.</p> <p>Each plan is to consider all other existing plans for the site to ensure management strategies do not conflict and each plan can be implemented without negatively impacting on the objectives of another.</p>	<p>Appendix K – ASS Management Plan, Appendix I – ESCP, Appendix G – Fauna Management Plan, Appendix E – GWMP, Appendix C – Vegetation Management Plan.</p>	<p>As noted, the applicant has provided numerous management plans for the proposed Stage 1 bulk earthworks. Specific comments on the management plans have been provided later in this report and applicable conditions have been applied.</p>
<p>(2) Construction Environmental Management Plan (CEMP)</p> <p>All future applications are to include draft stage specific CEMPs that detail measures to address the impacts of construction including, but not limited to: erosion and sediment control (in accordance with Managing Urban Stormwater-Soils & Construction Version 4, Landcom 2004, or the latest version); protection of fauna (generally in accordance with the Fauna Management Plan - Cobaki Lakes PPR</p>	<p>Appendix J – CEMP</p>	<p>As noted, the applicant has provided a CEMP for the proposed Stage 1 bulk earthworks. Specific comments on this management plan have been provided later in this report and applicable</p>

Concept Plan Approval Requirements for Future Applications	Proponent Comments	Council Comments
<p>2009); groundwater and acid sulfate soils; and, protection of trees and vegetation to be retained (generally in accordance with the Vegetation Management Plan, Cobaki Lakes PPR 2009).</p>		<p>conditions have been applied.</p>
<p>(3) Restoration Plans</p> <p>Draft detailed regeneration and revegetation plans for each Rehabilitation and Management Precinct as detailed in the Site Regeneration and Revegetation Plan (SRRP) are to be prepared as per the SRRP.</p> <p>These detailed plans for each Rehabilitation and Management Precinct, as well as the Revised Saltmarsh Rehabilitation Plan and Freshwater Wetland Rehabilitation Plan are to include, but not be limited to:</p> <ul style="list-style-type: none"> a. performance objectives detailing measurable performance and completion criteria; b. Detailed planting species list, composition and density for each vegetation community and, for EECs to be rehabilitated, this is to include ground, mid and canopy species and species composition must be benchmarked against a reference EEC community; c. Details on creek bank erosion management; 	<p>Appendix D – Site Regeneration and Revegetation Plan</p>	<p>As noted, the applicant has provided an SRRP for the proposed Stage 1 bulk earthworks. Specific comments on this management plan have been provided later in this report and applicable conditions have been applied.</p>

Concept Plan Approval Requirements for Future Applications	Proponent Comments	Council Comments
<p>d. timing and responsibilities; and</p> <p>e. developer maintenance period reflecting completion criteria.</p>		
<p>(4) Buffer Management Plan</p> <p>The draft stage specific Buffer Management Plans are to be prepared as per the Overview Buffer Management Plan - Cobaki Lakes - Preferred Project Report (James Warren & Associates 2009) including, but not limited to, rehabilitation and revegetation strategies, bushfire protection measures, weed management, fencing, biodiversity and water quality monitoring and reporting.</p>	<p>Appendix D – Site Regeneration and Revegetation Plan, Appendix C – Vegetation Management Plan.</p>	<p>The applicant has incorporated buffer management provisions within the SRRP, as requested by Council. Specific comments on the management plan have been provided later in this report and applicable conditions have been applied.</p>
<p>(5) Flora and Fauna Monitoring Plan</p> <p>Updates to the Flora and Fauna Monitoring Report are to be provided in accordance with the draft outline to be approved by the Director-General.</p>	<p><i>(The applicant did not address this condition in their SEE).</i></p>	<p>The Director General is yet to approve the initial Flora and Fauna Monitoring Report. The applicant has recently submitted an amended report to the Department for final consideration.</p>
<p>C5 Groundwater and Acid Sulfate Soils Assessment</p> <p>(1) In order to ensure the protection of groundwater quality and the water quality of Cobaki Creek and Broadwater, a detailed Acid Sulfate Soils (ASS) assessment and ASS Management Plan (ASSMP), if required, addressing</p>	<p>Appendix K – ASS Management Plan, Appendix E – GWMP.</p>	<p>As noted, the applicant has provided numerous management plans for the</p>

Concept Plan Approval Requirements for Future Applications	Proponent Comments	Council Comments
<p>groundwater and acid sulfate soils must be submitted prior to issue of the construction certificate for the central open space and prior to issue of future precinct earthworks construction certificates. The ASS assessment report must be carried out generally in accordance with the ASSMAC Guidelines (1988) by a suitably qualified person and must contain the following information, as a minimum:</p> <ol style="list-style-type: none"> A plan showing the locations of all monitoring and test points (boreholes, test pits, wells/groundwater sampling, soils sampling, surface water sampling, monosulfides sampling etc); Plots of water level and quality with time; Spatial and depth distribution of ASS soils, corrected to include TAA plus oxidisable sulphur, and using the ASSMAC recommended action level (>18 mols H+/t) for the site. This should also address the inferred soft ASS marine clays present beneath the sand ridge; Typical treatment levels/distribution of AASS and PASS soils on site (where investigated), to current/correct standards; A detailed ASSMP with actions for determining ASS conditions ahead of excavation, handling of groundwater levels and quality, detailed management procedures for surface waters and flood routing, interaction (short and long 		<p>proposed Stage 1 bulk earthworks. Specific comments on the management plans have been provided later in this report and applicable conditions have been applied.</p>

Concept Plan Approval Requirements for Future Applications	Proponent Comments	Council Comments
<p>term) of the groundwater with surface water in order to prevent the formation of monosulfides, materials evaluation and handling, materials balance, stockpile treatment, validation testing, monitoring systems with trigger levels, contingency actions, protection for structural elements, evaluation of off-site impacts etc.</p> <p>(2) All future applications where the use of groundwater or the interception of the groundwater table is proposed, the proponent, after consulting with the NSW Office of Water, is to submit detailed Site Water and Groundwater Management and Monitoring Plans, supported by baseline groundwater monitoring conducted for an appropriate period, for the approval of the relevant consent authority prior to the issue of a construction certificate.</p>		
<p>C6 Stormwater Management</p> <p>(1) A detailed stormwater management plan must be submitted with each project/development application for subdivision of each precinct in the concept plan generally in accordance with the Stormwater Quality Concept Plan - Cobaki Lakes Development- September 2010 Revision 02- Yeats. The Stormwater Management Plan must address and outline measures, based on Water Sensitive Urban Design Principles which address impacts on the surrounding environment, drainage and water quality controls for the catchment at construction,</p>	<p>Appendix I – ESCP, Appendix E – GWMP.</p>	<p>As noted, the applicant has provided numerous management plans for the proposed Stage 1 bulk earthworks. Specific comments on the management plans have been provided later in this report and applicable conditions have been applied.</p>

Concept Plan Approval Requirements for Future Applications	Proponent Comments	Council Comments
<p>maintenance and operational stages.</p> <p>The stormwater management plans are to be submitted to the satisfaction of the Council following consultation with the DECCW, NSW Office of Water and Industry and Investment (Fisheries).</p> <p>(2) Each stormwater management plan is to include groundwater considerations, a detailed design layout plan for the preferred stormwater treatment train showing location, size and key functional elements of each part of the system. MUSIC modelling, or equivalent, must be undertaken to demonstrate appropriate water quality objectives are being achieved.</p> <p>(3) All future project/development applications for subdivision of each precinct in the concept plan are to demonstrate, through the provision of monitoring and adaptive management plans and commitments, that any proposed surface water/stormwater pollution reduction devices will be monitored to determine their pollutant removal efficiencies and the need for further treatment of drainage to ensure the preservation of water quality in Cobaki Creek and Cobaki Broadwater.</p>		
<p>C7 Geotechnical Assessments</p> <p>(1) In order to ensure the stability of development lots, a detailed geotechnical assessment preliminary geotechnical assessment prepared by a suitably qualified person must be submitted with each future development application for subdivision. The assessments must, at a</p>	<p>Appendix F – Geotechnical Investigation</p>	<p>As noted, the applicant has provided a Geotechnical Report for the proposed Stage 1 bulk earthworks. Specific comments on this Report have been provided</p>

Concept Plan Approval Requirements for Future Applications	Proponent Comments	Council Comments
<p>minimum, include the following:</p> <ul style="list-style-type: none"> a. A geotechnical map of the site clearly showing ground surface contours, geotechnical engineering soil types and geotechnical hazards. The delineation of hazards should include hazard locations and possible hazard impact areas. That map should be occupied by an explanatory text describing the nature and delineation of soil types and hazard types. The map and text should be prepared by a suitably experienced geotechnical practitioner; and b. A synthesis site plan clearly showing ground surface contours and the locations of all test pits, boreholes and monitoring wells drilled on the site to date. <p>(2) Any hillside construction must be in accordance with 'Some Guidelines for Hillside Construction and Practice', Appendix G of Landside Risk Management by Australian Geomechanics 2002.</p>		<p>later in this report and applicable conditions have been applied.</p>
<p>C8 Bushfire Assessment</p> <p>In order to ensure the protection of property and assets, a detailed bushfire assessment and management plan, prepared by a suitably qualified person, must be submitted with each future project/development application for subdivision. The assessment must, at a minimum, demonstrate consistency with the requirements of Planning for Bushfire Protection 2006. All</p>	<p>N/A – The proposal is for Bulk Earthworks in Precincts 6, 7, 8, 9, 10, 11 and 12. This application is not for subdivision and as such the requirements of C8 are not triggered.</p>	<p>The proposed Masterplan and Stage 1 bulk earthworks do not trigger any bushfire assessment from the Rural Fire Services (RFS) as no subdivision is being proposed. The</p>

Concept Plan Approval Requirements for Future Applications	Proponent Comments	Council Comments
asset protection zones must be clearly specified on the Plan of Development and all affected lots are to be encumbered to this effect with a Section 888 instrument under the NSW Conveyancing Act 1919.	Future applications for subdivision will address this requirement as and when required.	conceptual Masterplan may need to be modified in order to meet any RFS provisions of future subdivision stages.
<p>C9 Flooding and Climate Change</p> <p>(1) In order to ensure the protection of life and property during a flood event, a comprehensive flood assessment of the site must be submitted with the first project/development application for residential subdivision. The flood assessment must have regard to the following elements to determine the new flood planning level for Cobaki Estate:</p> <ul style="list-style-type: none"> a. a sea level rise scenario of 0.90 metres; b. a 10% increase in rainfall intensity for sensitivity testing; c. the detailed flood modelling results from the Tweed Valley Flood Study; and d. consideration of freeboard of 0.5 metres. <p>(2) All future applications for each stage of development are to incorporate any re-calibrations of the Tweed Shire Council flood model.</p> <p>(3) A preliminary development landform for the entire site is to be provided with the first project/development application for residential subdivision to allow comprehensive flood modelling to be carried out, but not in such a way as</p>	<p>Appendix H – Extent of Flood Map</p>	<p>As noted, the applicant has provided a map of Flooding extent in relation to the proposed Masterplan and Stage 1 bulk earthworks. Specific comments in relation to flooding have been provided later in this report and applicable conditions have been applied.</p>

Concept Plan Approval Requirements for Future Applications	Proponent Comments	Council Comments
<p>to preclude necessary modifications to land forms in subsequent stages of development.</p> <p>(4) All future applications for residential subdivision shall provide an updated Design Flood Level Map showing peak flood levels for local and regional flood events at 0.1m contours and a detailed flood impact assessment for all flood liable land.</p>		
<p>C10 Affordable Housing</p> <p>The proponent shall provide, with the first application for residential subdivision, a study to determine the need for affordable housing provision for the Cobaki Estate site. The study shall address the following:</p> <ul style="list-style-type: none"> a) The likely future demographics of the population of the Cobaki Estate site and immediate locality by household type, income, employment and tenure; b) The need for affordable housing both for rental and purchase in the Cobaki Estate site and immediate locality; c) A plan showing possible location/s of affordable housing on the Cobaki Estate site in the various precincts; and, d) Investigation of mechanisms for the provision of affordable housing, including any role for community housing providers or the potential use of Voluntary Planning Agreements. <p>The proponent is to consult with Tweed Shire Council and Housing NSW Centre for</p>	<p>N/A – This study has previously been completed as part of the first applications for residential subdivision within Cobaki Lake Estate. The proposal is for Bulk Earthworks in Precincts 6, 7, 8, 9, 10, 11 and 12. This application is not for subdivision and as such the requirements of C11 are not triggered. Future applications for subdivision will address this requirement as and if required.</p>	<p>The provisions of Condition C10 are not considered to this application, given that subdivision is not being proposed. The applicant has noted that C10 has already been satisfied by DA10/0800 (P1&2).</p>

Concept Plan Approval Requirements for Future Applications	Proponent Comments	Council Comments
Affordable Housing in the preparation of the study.		
<p>C11 Traffic Management</p> <p>In order to ensure that the capacity of the surrounding external road network in both Queensland and New South Wales is not exceeded, each future project/development application for subdivision must be accompanied by a detailed traffic assessment in accordance with the RTA's <i>Guide to Traffic Generating Developments</i>. The traffic assessment must take into account both the additional traffic from the Cobaki Estate development as well as the cumulative impacts of any new developments in the Tweed Shire and the Gold Coast City Council area.</p> <p>All traffic assessments undertaken that reveal traffic impacts requiring mitigation on the Queensland road system shall be referred to Queensland authorities for comment. Traffic management works required by the development on the Queensland side of the State's border shall be undertaken in accordance with the requirements of the Queensland authorities and/or deeds with those authorities.</p>	<p>N/A – The proposal is for Bulk Earthworks in Precincts 6, 7, 8, 9, 10, 11 and 12. This application is not for subdivision and as such the requirements of C12 are not triggered. Future applications for subdivision will address this requirement as and if required.</p>	<p>Condition C11 is not considered to be applicable to the proposed development as no subdivision is being proposed. Future Stages will need to address the provisions of C11.</p>

Concept Plan Approval Requirements for Future Applications	Proponent Comments	Council Comments
<p>C12 Road Traffic Noise Impact Assessment</p> <p>In order to determine appropriate noise attenuation requirements adjacent to the Cobaki Parkway, a road traffic noise impact assessment must be undertaken in accordance with RTA guidelines as part of each project/development application for residential subdivision. Details of noise attenuation measures (buffers, mounds, acoustic walls, construction standards) are to be provided as part of each project / development application for residential subdivision.</p>	<p>N/A – The proposal is for Bulk Earthworks in Precincts 6, 7, 8, 9, 10, 11 and 12. This application is not for subdivision and as such the requirements of C13 are not triggered. Future applications for subdivision will address this requirement as and if required.</p>	<p>Condition C12 is not considered to be applicable to the proposed development as no subdivision is being proposed. Future Stages will need to address the provisions of C12.</p>
<p>C13 Open Space</p> <p>All future applications for subdivision are to demonstrate the provision of an adequate area of active and passive open space in accordance with Council's minimum requirements.</p>	<p>N/A – The proposal is for Bulk Earthworks in Precincts 6, 7, 8, 9, 10, 11 and 12. This application is not for subdivision and as such the requirements of C14 are not triggered. Future applications for subdivision will address this requirement as and if required.</p>	<p>Condition C13 is not considered to be applicable to the proposed development as no subdivision is being proposed. Future Stages will need to address the provisions of C13. An overall assessment of open space (with regard to the conceptual Masterplan) has been undertaken and considered the proposal to be acceptable.</p>
<p>C14 Restrictions on Cats</p> <p>All future development applications must demonstrate that the keeping of cats within the Cobaki Lakes site shall be totally</p>	<p>N/A – The proposal is for</p>	<p>Condition C14 is not</p>

Concept Plan Approval Requirements for Future Applications	Proponent Comments	Council Comments
prohibited and that all residential lots are to be encumbered to this effect with a Section 88B instrument under the <i>NSW Conveyancing Act 1919</i> .	Bulk Earthworks in Precincts 6, 7, 8, 9, 10, 11 and 12. This application is not for subdivision and as such on title restrictions will be created. The requirements of C15 are not triggered. Future applications for subdivision will address this requirement as and if required.	considered to be applicable to the proposed development as no subdivision is being proposed. Future Stages will need to address the provisions of C14.
<p>C15 Cultural Heritage Management Plan</p> <p>All future applications for each stage of development are to demonstrate the implementation of the recommendations of the Cultural Heritage Management Plan, including the requirement for site specific management strategies for each of the identified sites of cultural heritage significance as they relate to the area of the application.</p>	<p>Appendix L – Aboriginal Cultural Heritage Report</p>	<p>The applicant did provide an Aboriginal Cultural Heritage report with the initial application. During the assessment process the proposed bulk earthworks were amended to avoid the areas of cultural heritage significance. As such, Condition C15 is no longer considered to apply. Any future bulk earthworks within or adjacent to the Cultural Heritage</p> <p>Parks within Precinct 8 will need to address Condition C15.</p>
<p>C16 Bus Network</p> <p>All future applications for each stage of development for residential subdivision are to ensure that adequate provision has been</p>	<p>N/A – The proposal is for</p>	<p>Condition C16 is not</p>

Concept Plan Approval Requirements for Future Applications	Proponent Comments	Council Comments
made for public transport in accordance with the Cobaki Lakes Access Network Plan and Potential Bus Route Revision EE, dated 23 September 2010.	Bulk Earthworks in Precincts 6, 7, 8, 9, 10, 11 and 12. This application is not for subdivision and as such the requirements of C16 are not triggered. Future applications for subdivision will address this requirement as and if required.	considered to be applicable to the proposed development as no subdivision is being proposed. Future Stages will need to address the provisions of C16.
<p>C17 Contamination Assessment</p> <p>A Stage 2 Contamination Assessment is to be prepared for Precincts 10 and 17. Each Stage 2 Contamination Assessment is to identify any contamination on site and provide for appropriate mitigation measures in accordance with the provisions of <i>State Environmental Planning Policy No.55 Remediation of Land</i>.</p>	The applicant notes that the Stage 2 Contamination Assessment for Precinct 10 is currently being completed and will be submitted to Council for assessment.	The Stage 2 Contamination Assessment has not yet been submitted to Council. Further detail in this regard is provided in the SEPP 55 assessment later in this report.
<p>C18 Tweed Shire Council Development Consents</p> <p>Future project/development applications for each stage of development are to outline the status of Tweed Shire Council development consents DA 92/315, DA 94/438, DA S94/194, DA 96/271, DA S97/54, DA K99/1124 or DA 1262/2001 and include a detailed description of how these consents relate to the application.</p>	<i>(The applicant did not address this condition in their SEE).</i>	The proposed development area is located over existing old consents. An applicable condition of consent will be applied requiring the applicant to reconcile the old consents prior to the issue of a Construction Certificate for Stage 1 Bulk Earthworks.

Concept Plan Approval Requirements for Future Applications	Proponent Comments	Council Comments
<p>C19 Biodiversity Offsets</p> <p>(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.</p> <p>(2) Total offsets for Swamp Sclerophyll on Coastal Floodplain must be as follows:</p> <ul style="list-style-type: none"> 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. <p>¹ Note: The department has noted that using the biobanking calculator, this offset could be in the order of 16 hectares.</p>	<p><i>(The applicant did not address this condition in their SEE).</i></p>	<p>The matter of EEC offsetting is currently being reviewed under Concept Plan Mod 3, whereby the applicant is seeking a reclassification of EEC. Mod 3 is yet to be determined by the Department of Planning. In the meantime, a condition of consent has been recommended with regard to a site wide review of onsite EEC offset commitments.</p>

Statement of Commitments

The Concept Plan approval incorporates a number of Commitments made by the developer with regard to the delivery of the project. The applicant has noted that “...*this staged application is consistent with the approved Statement of Commitments*”, providing a list of the supporting documents (Appendix A – L) in relation to Stage 1 Bulk Earthworks. The applicant also notes that the “...*future subdivision of precincts 6, 7, 8, 9, 10, 11 & 12 are conceptual only in accord with Section 83B of the EP&A Act and as no specific design is being sort or approved the majority of the design specific commitments are not applicable in this instance*”.

Appropriate conditions of consent have been applied with regard to Commitments associated with the proposed works or any impacts arising from such works.

Development Code

As noted above, Condition C2 of the Concept Plan approval requires that all future project / development applications for residential subdivision or the construction of dwellings / commercial premises must demonstrate consistency with Part B of the Cobaki Development Code.

The applicant has noted that “...*the proposal outlines the concept for the future subdivision of precincts 6, 7, 8, 9, 10, 11 & 12 in accord with MP06_0316 and seeks consent for bulk earthworks only. The subdivision of the precincts will be subject to future development applications in accord with Sections 83B of the EP&A Act 1979*”.

A condition of consent has been applied requiring separate development applications for any future subdivision stages associated with the proposed Masterplan. Any future application will need to address the relevant provisions of the approved Development Code.

SECTION C – PROPOSED DEVELOPMENT

MASTERPLAN

The proposed development is a Staged Development Application under Section 83B of the EP&A Act 1979 for the development of Precincts 6, 7, 8, 9, 10, 11 & 12 – Cobaki Lakes (JRPP). Stage 1 (staged bulk earthworks) of the proposal is also part of this development application. The future subdivision of Precincts 6 to 12 will be subject to future applications, with the applicant acknowledging that the development is to be consistent with the concept approved under MP06_0316.

The following staging is proposed for the development:

- Stage 1 – Staged Bulk Earthworks (the subject of this application – DA15/1026);
- Stage 2 – Subdivision of Precinct 6 (currently being assessed separately – DA16/0056);
- Stage 3 – Subdivision of Precinct 7 (currently being assessed separately – DA16/0056);
- Stage 4 – Subdivision of Precinct 8 (subject of future application);
- Stage 5 – Subdivision of Precinct 9 (subject of future application);
- Stage 6 – Subdivision of Precinct 10 (subject of future application);
- Stage 7 – Subdivision of Precinct 11 (subject of future application); and
- Stage 8 – Subdivision of Precinct 12 (subject of future application).

The Masterplan for the Staged Development Application is noted below in Figure 4:



Figure 4 – Masterplan for Precincts 6 to 12

STAGE 1 – BULK EARTHWORKS

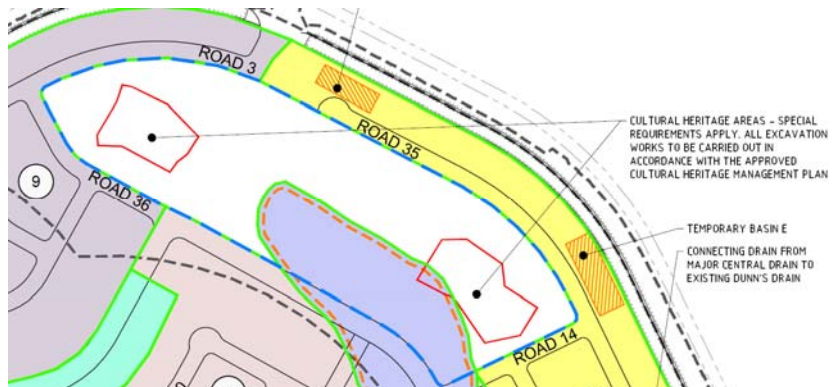
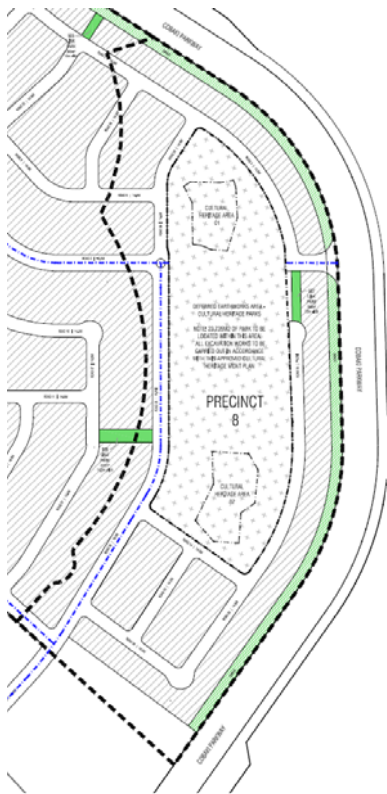
The proposed development incorporates the staged bulk earthworks across Precincts 6 to 12. Initially the proposal incorporated 23 bulk earthworks stages, but this has since been increased to 33 stages to ensure that each stage complies with the minimum 5ha of exposed areas (as required by the Concept Plan approval). Table 3 of the applicant's SEE identifies the breakdown for each stage of bulk earthworks, as shown below:

Table 3 – Bulk Earthworks Staging	
Sub Stage	Area (ha)
1	4.5ha
2	4.2ha
3	4.8ha
4	5.0ha
5	5.0ha
6	3.9ha
7	4.9ha
8	4.4ha
9	4.7ha
10	4.4ha
11	4.9ha
12	4.9ha
13	5.0ha
Scribbly Gum - Stage 1	2.208ha
Scribbly Gum - Stage 2	2.335ha
14	4.6ha
15	3.7ha
16	4.9ha
17	4.7ha
18	5.0ha
19	3.7ha
20	4.5ha
21	3.9ha
22	4.5ha
23	3.7ha
24	5.0ha
25	5.0ha
26	5.0ha
27	4.3ha
28	4.6ha
29	4.8ha
30	3.6ha
31	4.7ha

The bulk earthworks will utilise the majority of material from Precincts 9 and 11 for the purposes of fill across the seven precincts, as required.

The proposed bulk earthworks will necessitate the removal of existing vegetation. This matter is discussed in detail later in the report, with appropriate conditions of consent applied.

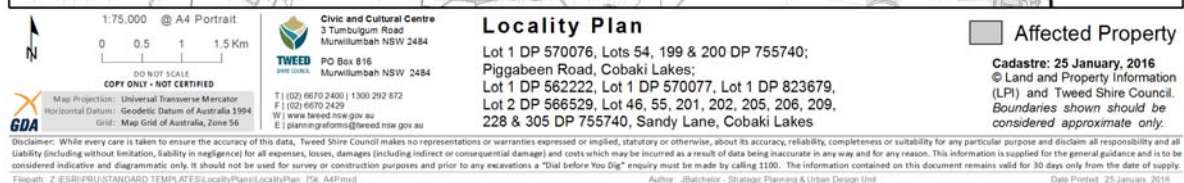
The proposed bulk earthworks have been amended to remove any works within and immediately surrounding the Cultural Heritage Parks (CHP's) within Precinct 8 (refer to Figure 5 and 6 below).



Figures 5 & 6 – Cultural Heritage Parks within Precinct 8

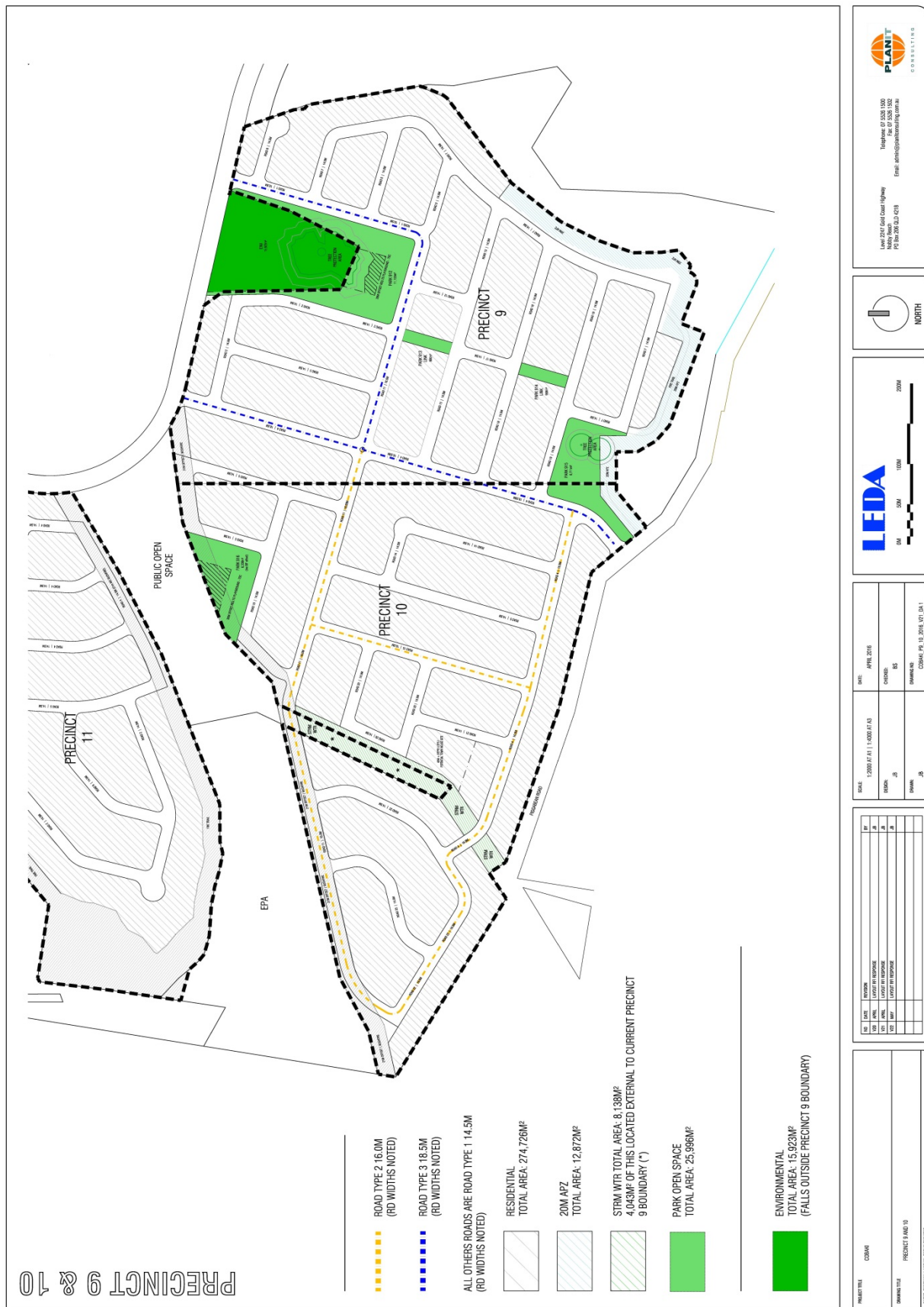
The Department of Planning & Environment is currently assessing a Concept Plan approval modification (Mod 4) which includes proposed amendments to the approved Cultural Heritage Management Plan (CHMP). The CHMP currently incorporates three CHP's. However, the Mod is proposing this be amended to two larger CHP's within Precinct 8. The applicant has chosen to remove earthworks from within the vicinity of the CHP's until such time that a decision is made on Mod 4. Should Mod 4 approve the amendments to the CHMP, the applicant will need to amend this approval in order to incorporate any earthworks around the CHP's, noting that earthworks would not be proposed within the CHP's themselves.

SITE DIAGRAM:



JRPP (Northern Region) Business Paper – Item 1 – 22 June 2016 – 2016NTH001





SECTION D – MAIN ASSESSMENT

CONSIDERATIONS UNDER SECTION 83B OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

83B Staged development applications

The provisions of Clause 83B of the EP&A Act are as follows:

- (1) *For the purposes of this Act, a **staged development application** is a development application that sets out concept proposals for the development of a site, and for which detailed proposals for separate parts of the site are to be the subject of subsequent development applications. The application may set out detailed proposals for the first stage of development.*

The proposed development incorporates the conceptual design of the Masterplan for the subdivision of Precincts 6 to 12 and provides details for Stage 1 of the development – staged bulk earthworks across Precincts 6 to 12.

- (2) *A development application is not to be treated as a staged development application unless the applicant requests it to be treated as a staged development application.*

The development application has specifically been lodged as a staged development application. A normal development application to undertake bulk earthworks (with no link to approval for subdivision) would be defined as “*extractive industry*” and in this instance trigger designated development provisions. Clause 83B allows the bulk earthworks to be linked with a subdivision approval and subsequently be defined as earthworks.

- (3) *If consent is granted on the determination of a staged development application, the consent does not authorise the carrying out of development on any part of the site concerned unless:*
- (a) *consent is subsequently granted to carry out development on that part of the site following a further development application in respect of that part of the site, or*
 - (b) *the staged development application also provided the requisite details of the development on that part of the site and consent is granted for that first stage of development without the need for further consent.*

If granted approval, the development consent will approve the conceptual design of the Masterplan and provide detailed conditions of consent for Stage 1 of the development – staged bulk earthworks across Precincts 6 – 12. Future subdivision stages of the development will be conditioned as requiring separate consent, consistent with the approved Masterplan.

- (4) *The terms of a consent granted on the determination of a staged development application are to reflect the operation of subsection (3).*

As noted above, the development consent will approve the conceptual design of the Masterplan and provide detailed conditions of consent for Stage 1 of the development, with future subdivision stages of the development requiring separate development consent.

CONSIDERATIONS UNDER SECTION 79C OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979:

(a) (i) The provisions of any environmental planning instrument

The subject site incorporates a number of zonings under two LEP's. Although the majority of the development is within land zoned under TLEP 2014, the Environmental Protection Areas adjoining each of the precincts associated with this application are zoned under TLEP 2000. As such, assessment against the relevant clauses of both instruments is noted below.

Tweed Local Environmental Plan 2000

Clause 4 - Aims of the Plan

Clause 4 illustrates that the aims of the TLEP 2000 are to give effect to the desired outcomes, strategic principles, policies and actions of the Tweed Shire 2000+ Strategic Plan. The vision of the plan is "*the management of growth so that the unique natural and developed character of the Tweed Shire is retained, and its economic vitality, ecological integrity and cultural fabric is enhanced*". Clause 4 further aims to provide a legal basis for the making of a DCP to provide guidance for future development and land management, to give effect to the Tweed Heads 2000+ Strategy and Pottsville Village Strategy and to encourage sustainable economic development of the area which is compatible with the Shire's environmental and residential amenity qualities.

The development application is considered suitably in keeping with the above. The Cobaki site has been identified for a new community for many years. The proposed development is considered to be consistent with State Government and Council strategic planning.

Clause 5 - Ecologically Sustainable Development

Clause 5 of the LEP relates to ecologically sustainable development. The TLEP aims to promote development that is consistent with the four principles of ecologically sustainable development, being *the precautionary principle, intergenerational equity, conservation of biological diversity and ecological integrity and improved valuation, pricing and incentive mechanisms*.

Appropriate conditions of consent have been applied, which will ensure that the proposed development will not significantly impact upon the surrounding environment or locality. As such, the proposed development is considered to meet the provisions of Clause 5 of the LEP.

It is also noted that IPART have recently approved a Special Rate Levy for future residents of the Cobaki development, which will ensure funding for the maintenance of the Environmental Protection land in perpetuity.

Clause 8 – Consent Considerations

- (1) This clause specifies that the consent authority may grant consent to development (other than development specified in Item 3 of the table to clause 11) only if:
 - (a) *it is satisfied that the development is consistent with the primary objective of the zone within which it is located, and*
 - (b) *it has considered that those other aims and objectives of this plan (the TLEP) that are relevant to the development, and*
 - (c) *it is satisfied that the development would not have an unacceptable cumulative impact on the community, locality or catchment that will be affected by its being carried out or on the area of Tweed as a whole.*

In this instance, the subject site is zoned 7(a) Environmental Protection (Wetlands and Littoral Rainforests), 7(d) Environmental Protection (Scenic Escarpment) and 7(l) Environmental Protection (Habitat), the primary objectives of which are outlined in Clause 11 assessment below. The proposed development is considered to be consistent with the primary objectives of each zone.

Other relevant clauses of the TLEP have been considered elsewhere in this report and it is considered that the proposed development generally complies with the aims and objectives of each.

The proposal is not considered to contribute to any unacceptable cumulative impact, with impacts upon the environment being managed through management plans, compensatory habitat and restoration.

Clause 11 - Zone objectives

As noted above, the proposed development incorporates residue allotments within the 7(a), 7(d) and 7(l) zones. An assessment of the proposal against each zone objective is noted below.

Zone objectives for Zone 7 (a) Environmental Protection (Wetlands and Littoral Rainforests)

Primary objectives

- *to identify, protect and conserve significant wetlands and littoral rainforests.*
- *to prohibit development which could destroy or damage a wetland or littoral rainforest ecosystem.*

Secondary objectives

- *to protect the scenic values of wetlands and littoral rainforests.*
- *to allow other development that is compatible with the primary function of the zone.*

Zone objectives for Zone 7 (d) Environmental Protection (Scenic/Escarpment)

Primary objectives

- *to protect and enhance those areas of particular scenic value to the area of Tweed, minimise soil erosion from escarpment areas, prevent development in geologically hazardous areas, and maintain the visual amenity of prominent ridgelines and areas.*

Secondary objective

- *to allow other development that is compatible with the primary function of the zone.*

Zone objectives for Zone 7 (l) Environmental Protection (Habitat)

Primary objectives

- *to protect areas or features which have been identified as being of particular habitat significance.*
- *to preserve the diversity of habitats for flora and fauna.*
- *to protect and enhance land that acts as a wildlife corridor.*

Secondary objectives

- *to protect areas of scenic value.*
- *to allow for other development that is compatible with the primary function of the zone.*

Comment:

The proposed development does not incorporate any proposed works within the environmental zones (i.e. all bulk earthworks and future subdivision works are incorporated within the R1 General Residential and B2 Local Centre zones under TLEP 2014). Appropriate conditions of consent have been applied to ensure the protection of any adjoining environmental land. As such, the proposed development is considered to be consistent with the objectives of each of the zones under TLEP 2000.

Clause 20 – Subdivision zones 1(a), 1(b), 7(a), 7(d) and 7(l)

The minimum allotment size in the 7(a), 7(d) and 7(l) zones is 40 hectares. In this regard, the applicant has noted the following:

“As part of future development application when the subdivision of the minimum allotment sizes applicable to the zones under Clause 20 will be considered, If the residual parcels do not meet the minimum size a SEPP No.1 objection will be submitted to ensure the commitments made in regards to the environmental lands within MP06_0316 are ultimate fulfilled or enabled as relevant by this staged development”.

Comment:

It is noted that the proposed Stage 1 Bulk Earthworks does not incorporate any subdivision. The provisions of Clause 20 will need to be addressed in future subdivision stages associated with the Masterplan approved under this consent.

Clause 25 – Development in Zone 7(a) Environmental Protection (Wetlands and Littoral Rainforests) and on adjacent land

The objective of Clause 25 is to ensure that wetlands and littoral rainforests are protected in the environmental and economic interests of the area of the Tweed. The provisions of Clause 25(3) are as follows:

- (3) *Consent must not be granted to the carrying out of development on land within Zone 7 (a) or on land adjacent to land within Zone 7 (a) unless the consent authority has taken into consideration:*
 - (a) *the likely effects of the development on the flora and fauna found in the wetlands or littoral rainforest, and*
 - (b) *the potential for disturbance of native flora and fauna as a result of intrusion by humans and domestic and feral animals, increased fire risk, rubbish dumping, weed invasion and vegetation clearing, and*
 - (c) *a plan of management showing how any adverse effects arising from the development can be mitigated, and*
 - (d) *the likely effects of the development on the water table, and*

- (e) the effect on the wetlands or littoral rainforest of any proposed clearing, draining, excavating or filling.*

Comment:

As noted previously, the proposed Stage 1 Bulk Earthworks do not extend into the land zoned 7(a). It should be noted that the proposed development will be conditioned to be undertaken in accordance with a number of environmental management plans, as required by the Concept Plan approval and associated Statement of Commitments. As such, it is considered that the provisions of Clause 25 have been satisfied.

Clause 26 - Development in Zone 7(d) Environmental Protection (Scenic Escarpment)

The objective of Clause 26 is to ensure that the development of land within Zone 7(d) minimises soil erosion and will preserve or enhance the scenic quality of the land and the locality. The provisions of Clause 26(3) are as follows:

- (3) Consent must not be granted to the erection of a building on land within Zone 7 (d) unless the consent authority is satisfied that:*
 - (a) the scale, height and location of the building, and*
 - (b) the colour, type and reflectivity of materials to be used, will preserve or enhance the scenic quality of the land and the locality.*

Comment:

As noted previously, the proposed Stage 1 Bulk Earthworks does not incorporate any works within the 7(d) land, nor does it propose any buildings. As such, it is considered that the provisions of Clause 26 have been satisfied.

Clause 28 - Development in Zone 7(l) Environmental Protection (Habitat)

The objective of Clause 28 is to protect wildlife habitat from the adverse impacts of development. The provisions of Clause 28(4) are as follows:

- (4) The consent authority must not grant consent to development on or adjacent to land within Zone 7 (l) unless it has taken into consideration:*
 - (a) the likely effects of the development on the flora and fauna found in the locality, and*
 - (b) the potential for disturbance of native flora and fauna as a result of intrusion by humans and domestic and feral animals, increased fire risk, rubbish dumping, weed invasion and vegetation clearing, and*
 - (c) a plan of management showing how any adverse effects arising from the development are to be mitigated.*

Comment:

As stated previously, the proposed Stage 1 Bulk Earthworks does not incorporate any works within the 7(l) land. It should be noted that the proposed development will be conditioned to be undertaken in accordance with a number of environmental management plans, as required by the Concept Plan approval and associated Statement of Commitments. As such, it is considered that the provisions of Clause 28 have been satisfied.

Clause 31 – Development Adjoining Water Bodies

The objectives of Clause 31 are to protect waterways, provide adequate public access to waterways and minimise impact on development from known biting midge and mosquito breeding areas.

The proposed Stage 1 Bulk Earthworks will be conditioned to be undertaken in accordance with a number of management plans, as required by the Concept Plan approval and associated Statement of Commitments, noting that mosquito management is triggered by the Stage 2&3 subdivision application (as per the Statement of Commitments). As such, it is considered that the provisions of Clause 31 have been satisfied

Clause 34 - Flooding

Clause 34 of the TLEP provides objectives to minimise future potential flood damage by ensuring only appropriate compatible development occurs on flood liable land. Refer to flooding comments under the TLEP 2014 assessment later in this report.

Clause 35 - Acid Sulfate Soils

Clause 35 relates to Acid Sulfate Soil (ASS) management. Council's GIS indicates that the site is classified as Class 2, 3 and 5 soils. Refer to detailed comments under the TLEP 2014 assessment later in this report.

Clause 39 – Remediation of Contaminated Land

Clause 39 relates to the remediation of any contaminated land prior to development occurring. Refer to detailed comments under the SEPP 55 assessment and the TLEP 2014 assessment later in this report.

Clause 39A Bushfire Protection

The objective of Clause 39A is to minimise bushfire risk to built assets and people and to reduce bushfire threat to ecological and environmental assets. Refer to detailed comments under the TLEP 2014 assessment later in this report.

Clause 44 – Development of land within likely or known archaeological sites

Clause 44 requires the consent authority to consider an assessment of how the proposed development would affect the conservation of the site and any relic known or likely to be located at the site. Refer to detailed comments under the TLEP 2014 assessment later in this report.

Clause 54 – Tree Protection Order

The proposed Stage 1 Bulk Earthworks do propose the removal of vegetation. Refer to detailed comments under the TLEP 2014 assessment later in this report.

Tweed Local Environmental Plan 2014

Part 1 Preliminary

1.2 Aims of Plan

The aims of this plan as set out under Section 1.2 of this plan are as follows;

- (1) This Plan aims to make local environmental planning provisions for land in Tweed in accordance with the relevant standard environmental planning instrument under section 33A of the Act.
- (2) The particular aims of this Plan are as follows:
 - (a) *to give effect to the desired outcomes, strategic principles, policies and actions contained in the Council's adopted strategic planning documents, including, but not limited to, consistency with local indigenous cultural values, and the national and international significance of the Tweed Caldera,*
 - (b) *to encourage a sustainable, local economy, small business, employment, agriculture, affordable housing, recreational, arts, social, cultural, tourism and sustainable industry opportunities appropriate to Tweed Shire,*
 - (c) *to promote the responsible sustainable management and conservation of Tweed's natural and environmentally sensitive areas and waterways, visual amenity and scenic routes, the built environment, and cultural heritage,*
 - (d) *to promote development that is consistent with the principles of ecologically sustainable development and to implement appropriate action on climate change,*

- (e) *to promote building design which considers food security, water conservation, energy efficiency and waste reduction,*
- (f) *to promote the sustainable use of natural resources and facilitate the transition from fossil fuels to renewable energy,*
- (g) *to conserve or enhance the biological diversity, scenic quality, geological and ecological integrity of the Tweed,*
- (h) *to promote the management and appropriate use of land that is contiguous to or interdependent on land declared a World Heritage site under the Convention Concerning the Protection of World Cultural and Natural Heritage, and to protect or enhance the environmental significance of that land,*
- (i) *to conserve or enhance areas of defined high ecological value,*
- (j) *to provide special protection and suitable habitat for the recovery of the Tweed coastal Koala.*

The proposed development is considered to be generally in accordance with the aims of this plan, subject to conditions of consent. The Cobaki site has been identified for a new community for many years. The proposed development is considered to be consistent with State Government and Council strategic planning.

1.4 Definitions

Under this Plan, the proposed development for Stage 1 Bulk Earthworks is considered to be 'earthworks', defined as follows;

earthworks means excavation or filling.

The proposed bulk earthworks are being proposed within the R1 General Residential zone and the B2 Local Centre zone. Earthworks are permitted with consent in both of these zones.

The applicant has noted that the "...the conceptual subdivision of Precinct 6, 7, 8, 9, 10, 11 & 12 will be consistent with the definition of subdivision contained within the Environmental Planning and Assessment Regulation 2000".

Part 2 Permitted or prohibited development

2.1 Land use zones

Although the proposed development area for Stage 1 is zoned as R1 General Residential and B2 Local Centre, the subject development lots associated with Precincts 6 to 12 also incorporate lands zoned RE2 Private Recreation and Deferred Matters under the provisions

of this plan (TLEP 2014). The Deferred Matters are environmental zones that need to be assessed under the provisions of TLEP 2000, as noted in the assessment above.

2.3 Zone objectives and Land Use Table

The objectives of the **R1 General Residential** zone are:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage the provision of tourist accommodation and related facilities and services in association with residential development where it is unlikely to significantly impact on amenity or place demands on services beyond the level reasonably required for residential use.*

The proposed Masterplan is considered to be generally consistent with the above objectives, by virtue of providing additional housing for the community, with a variety of housing types and densities. The proposed Stage 1 Bulk Earthworks will enable future subdivision stages to meet the same objectives.

The objectives of the **B2 Local Centre** zone are:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To provide for tourism and residential opportunities that contribute to the vitality of the local centre.*

The proposed Masterplan is considered to be generally consistent with the above objectives, by virtue of providing future retail / commercial opportunities for the local area.

The objectives of the **RE2 Private Recreation** zone are:

- *To enable land to be used for private open space or recreational purposes.*

- *To provide a range of recreational settings and activities and compatible land uses.*
- *To protect and enhance the natural environment for recreational purposes.*

The proposed Masterplan is considered to be generally consistent with the above objectives, by virtue of incorporating the Central Open Space area (approved under the Project Approval), which will be utilised as a combined drainage corridor / structure open space area associated with future subdivisions.

Overall, the proposed Masterplan and Stage 1 Bulk Earthworks are considered to be consistent with the R1, B2 and RE2 zone objectives.

2.6 Subdivision – consent requirements

Stage 1 of the development is bulk earthworks only and does not incorporate any subdivision component. Clause 2.6 will be applicable to the future applications (Stages 2 – 8 of the Masterplan) for the subdivision of Precincts 6 to 12.

Part 5 Miscellaneous provisions

5.5 Development within the coastal zone

This clause states that development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority has considered the following;

- (a) *existing public access to and along the coastal foreshore for pedestrians (including persons with a disability) with a view to:*
 - (i) *maintaining existing public access and, where possible, improving that access, and*
 - (ii) *identifying opportunities for new public access, and*

The proposed Masterplan and Stage 1 Bulk Earthworks are not considered to have any impact on public access to foreshore areas.

- (b) *the suitability of the proposed development, its relationship with the surrounding area and its impact on the natural scenic quality, taking into account:*

- (i) *the type of the proposed development and any associated land uses or activities (including compatibility of any land-based and water-based coastal activities), and*
- (ii) *the location, and*
- (iii) *the bulk, scale, size and overall built form design of any building or work involved, and*

The proposed development is permissible on the subject site, with appropriate conditions of consent being recommended to minimise / mitigate any potential impacts resulting from the proposed bulk earthworks.

- (c) *the impact of the proposed development on the amenity of the coastal foreshore including:*
 - (i) *any significant overshadowing of the coastal foreshore, and*
 - (ii) *any loss of views from a public place to the coastal foreshore,*

The proposed development is not considered to impact on the amenity of the foreshore by virtue of overshadowing or a loss of views. The subject application is considered to be acceptable having regard to the above considerations.

- (d) *how the visual amenity and scenic qualities of the coast, including coastal headlands, can be protected, and*

The proposed development is not considered to compromise the scenic qualities of the coast as it represents an acceptable development on appropriately zoned land.

- (e) *how biodiversity and ecosystems, including:*
 - (i) *native coastal vegetation and existing wildlife corridors, and*
 - (ii) *rock platforms, and*
 - (iii) *water quality of coastal waterbodies, and*
 - (iv) *native fauna and native flora, and their habitats, can be conserved, and*

The subject application has been reviewed in detail by Councils' Natural Resource Management Unit elsewhere in this report, with it being determined that the proposal is acceptable subject to the application of appropriate conditions of consent.

- (f) *the cumulative impacts of the proposed development and other development on the coastal catchment.*

Subject to the imposition of the recommended conditions of consent, the proposed development is not considered to result in an unacceptable cumulative impact on the coastal catchment.

This clause goes on to further state;

- (3) *Development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority is satisfied that:*
 - (a) *the proposed development will not impede or diminish, where practicable, the physical, land-based right of access of the public to or along the coastal foreshore, and*

As outlined elsewhere in this report, the proposal is not considered to impede or diminish the right of access of the public either to or along the public foreshore.

- (b) *if effluent from the development is disposed of by a non-reticulated system, it will not have a negative effect on the water quality of the sea, or any beach, estuary, coastal lake, coastal creek or other similar body of water, or a rock platform, and*

The proposed Masterplan incorporates connection to Council's reticulated sewer system through future subdivision applications.

- (c) *the proposed development will not discharge untreated stormwater into the sea, or any beach, estuary, coastal lake, coastal creek or other similar body of water, or a rock platform, and*

Stormwater management is detailed elsewhere in this report, with no untreated stormwater being discharged to the adjoining creek or nearby Cobaki Broadwater. Having regard to this, it is considered that the subject application would be in accordance with the above controls, subject to conditions of consent.

- (d) *the proposed development will not:*
 - (i) *be significantly affected by coastal hazards, or*
 - (ii) *have a significant impact on coastal hazards, or*
 - (iii) *increase the risk of coastal hazards in relation to any other land.*

The proposed development is considered to be acceptable having regard to coastal hazards as outlined above due to its nature, permissibility and the spatial separation between the site and coastal hazards at this location.

5.9 - Preservation of Trees or Vegetation

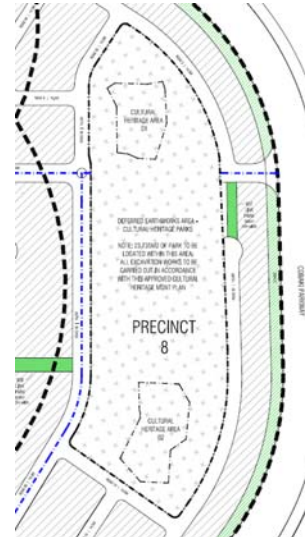
The objective of this clause is to preserve the amenity of the area, including biodiversity values, through the preservation of trees and other vegetation. As noted later in this report, the proposed development incorporates the removal of a Scribbly Gum Reserve within Precinct 8, which the applicant incorrectly states has already been approved for removal under the Concept Plan approval. This matter is discussed in detail later in the report. Council's Natural Resource Management Unit have reviewed this application with respect to potential ecological impacts, with it being determined that subject to the provision of appropriate conditions of consent, the development is acceptable from an ecological perspective. Therefore, the proposal is considered to comply with this clause.

5.10 – Heritage conservation

The objectives of this clause are as follows:

- (a) to conserve the environmental heritage of Tweed,*
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*
- (c) to conserve archaeological sites,*
- (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.*

As noted above, the subject site currently incorporates three Cultural Heritage Parks (CHP's) within Precinct 8. Any development within these CHP's must comply with the Cultural Heritage Management Plan (CHMP) approved under the Concept Plan approval (refer to Figure 7 below).



Figures 7 & 8 – Approved CHP's (3) and Proposed CHP's (2)

The initial application was supported by an Aboriginal Cultural Heritage Supplementary Report (Everick September 2015), which notes the high cultural significance of the sand ridge (which incorporates the CHP's) within Precinct 8. The Supplementary Report identifies the concerns of proposed fill across the CHP's and notes how the initial proposal was amended to ensure that no cut or fill occurs within the CHP's.

The applicant's Heritage consultant has been in consultation with local Aboriginal stakeholders, in relation to modifying the CHMP in terms of there now only being two CHP's proposed (refer Figure 8 above). This requires a Modification of the Concept Plan (Mod 4), which is currently being considered by the Department of Planning & Environment.

Subsequently, the applicant has chosen to defer any bulk earthworks within and immediately surrounding the CHP's, as identified in the Masterplan and bulk earthworks staging plans. This will allow the proposed development to be determined, with proposed filling around the CHP's to be addressed if and when Mod 4 approves the proposed amendments to the CHMP. It is envisaged that an amendment to Masterplan and Stage 1 Bulk Earthworks would then be required for the filling of residential land surrounding the CHP's.

The provisions of Clause 5.10(8) require the consent authority to:

- (a) consider the effect of the proposed development on the heritage significance of the place and any Aboriginal object known or reasonably likely to be located at the place by means of an adequate investigation and assessment (which may involve consideration of a heritage impact statement), and*
- (b) notify the local Aboriginal communities, in writing or in such other manner as may be appropriate, about the application and take into consideration any response received within 28 days after the notice is sent.*

Given that the proposed development does not incorporate any bulk earthworks within the immediate area of the CHP's, the provisions of Clause 5.10(8) are not considered to be applicable. If Mod 4 of the Concept Plan approval is supported by the Department of Planning & Environment (i.e. the CHMP incorporates only two CHP's rather than three), any amendment to this approval will need to address the specific provisions of Clause 5.10.

It should also be noted that all works within and adjacent to the CHP's must comply with the requirements of the CHMP, which include (but are not limited to):

- *Temporary fencing be in place along the boundaries of the CHP's;*
- *The CHP's are not impacted by any construction works; and*
- *Signage and landscaping of the CHP's.*

5.11 - Bush fire hazard reduction

Although the subject site is bushfire prone, the proposed development does not trigger referral to the NSW Rural Fire Service (RFS), given that subdivision is not being proposed.

The proposed Masterplan identifies asset protection zones (APZ's) within Precincts 9, 10, 11 and 12, adjacent to the Environmental Protection land. The detailed design for these areas has not been undertaken and as such the required APZ distances are not yet known.

Stage 1 Bulk Earthworks are proposed within the Environmental Buffer / APZ's. No detailed mapping has been provided to date with regard to the Buffer / APZ zone in terms of management intent etc. Further detail is required to determine the extent of earthworks allowable within this area in order to meet the APZ requirements of Planning for Bushfire Protection Guidelines as well as Buffer management requirements. A condition of consent has been applied in this regard.

Part 7 Additional local provisions

7.1 Acid sulfate soils

The subject site demonstrates Class 2, 3 and 5 Acid Sulfate Soils (ASS) in accordance with the provisions of this clause. The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.

The application has been reviewed by Council's Environmental Health Unit who provided the following comment with respect to Acid Sulfate Soils:

"An ASS assessment and management plan for Precincts 7,8 and 9 has been prepared by SMEC dated September 2015 and submitted with the Application.

This Assessment and Management plan have been assessed have been prepared generally in accordance with the provisions of the ASSMAC Guidelines 1998 in accordance with the requirements of Condition C5 with the exception that in Section 6.5 of the ASS Management Plan, there is a statement that says "For budgetary and planning purposes the different sections of the site have been shown on the Site Plans with the predicted liming rates for each section where excavation and filling are proposed."

While the ASS Management Plan contains Tables 5,6 and 7 that relates to preliminary liming rates in each of Precincts 7,8 and 9 respectively it would be beneficial if the Site Plans that are referred to in the above statement can be included within the ASS Management Plan.

It is also noted that precincts 10,11 and 12 are not affected by known ASS hence the ASS Management Plan does not relate to these Precincts.

The applicant was requested to incorporate the Site Plans that were referenced into the Acid Sulfate Soils Management Plan (ASSMP). In response to Council's request, the applicant submitted an amended ASSMP with updated tables. The applicant noted that "...due to the volume of data involved it was not practical to present in map format. This has now been presented in a series of tables".

Council's Environmental Health Unit reviewed the submitted information, raising no objections to the amended ASSMP.

As such, the provisions of Clause 7.1 are considered to have been satisfied, subject to recommended conditions of consent.

7.2 Earthworks

The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

The provisions of Clause 7.2(3) require the consent authority to consider the following matters:

- (a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,*
- (b) the effect of the development on the likely future use or redevelopment of the land,*
- (c) the quality of the fill or the soil to be excavated, or both,*
- (d) the effect of the development on the existing and likely amenity of adjoining properties,*
- (e) the source of any fill material and the destination of any excavated material,*
- (f) the likelihood of disturbing relics,*
- (g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,*
- (h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development,*
- (i) the proximity to, and potential for adverse impacts on, any heritage item, archaeological site, or heritage conservation area.*

Council's Development Engineer has undertaken an assessment of the proposed development against the provisions of Clause 7.2, noting the following:

"In regards to Clause 7.2 of the Tweed LEP:

- *Land Stability*
 - *A Geotechnical Assessment has been prepared which indicates that the site has a low likelihood of instability.*
- *Source of Fill Materials*
 - *The borrow areas are all within the subject lands.*
- *Heritage Impacts*
 - *The proposed works have been tailored to compliment the prepared Supplementary Aboriginal Cultural Heritage Assessment.*
- *Water Quality Impacts*
 - *A Ground Water Management Plan and Erosion and Sediment Control Plan has been prepared to support the application.*

All works are intended to be undertaken to comply with the above documents.

It is noted that the submitted Geotech Report (by Douglas Partners) is for Precincts 7, 8, 10 & 12. The Report advises that:

- *No evidence of any previous movement, seepage, soil creep, etc, was observed during the site walkover.*
- *In the absence of any compaction control documentation, the existing fill encountered on site over these Precinct are to be deemed "uncontrolled". Where Level 1 certification of these areas cannot be provided (PCC), the Proponent will be required to carry out rectification works by way of removal of the existing fill, back to a competent natural strata and re-compaction or replacement with a select fill, in accordance with Section 7.4 of the Geotech Report. This will be conditioned accordingly.*
- *Groundwater to a depth as low as 0.6m was encountered in some of the bore holes. The submitted Engineering Plans however indicate that significant fill (+1.0m) is proposed in these areas, so the future interception of groundwater will become less likely.*
- *Rock breakers may be required for removal of buried concrete, if encountered, subject to trafficability. As per above, this can be assessed at CC Stage.*

- *“all cut and fill batters incorporate surface drainage at the crest and toe, and be covered with topsoil and vegetation to provide long term erosion protection.”*
- *“The use of a portable crusher may be required” to be able to re-use cut material. Applicable consent conditions will be imposed.*
- *It is noted that new fill will undergo settlement due to self-weight, with settlements of about 1% of fill thickness anticipated over a twenty year period. With filling expected in the order of 2m, that equates to 20mm.*
- *In regards to Landslip / Slope Instability, Precinct 12 was the only concern and the assessment indicates that the site has a 'very low to low' likelihood of instability.*

LEDA has invited Council to formulate an appropriate condition requiring all geotech investigations to be correlated into one single document. This is supported – PCC.

The Bulk Earthworks Staging Plans have been amended to reference earthworks staging with a maximum area of 5ha which aligns with Council’s standard condition which will be imposed”.

Having regard to the above advice, the proposal is considered to be in accordance with the provisions of Clause 7.2, subject to conditions of consent.

7.3 Flood planning

The objectives of this clause are as follows:

- (a) to minimise the flood risk to life and property associated with the use of land,*
- (b) to allow development on land that is compatible with the land’s flood hazard, taking into account projected changes as a result of climate change,*
- (c) to avoid significant adverse impacts on flood behaviour and the environment.*

This clause goes on to further state that development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:

- (a) is compatible with the flood hazard of the land, and*
- (b) will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) incorporates appropriate measures to manage risk to life from flood, and*

- (d) *will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and*
- (e) *is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.*

Council's Development Engineer provided the following advice with regard to flooding:

"Portions of the site are flood prone. This has been addressed by the Concept Plan requirements and the submission of an updated Flood Map and RFI clarifying the modelling undertaken".

Having regard to this advice, the proposal is considered to be in accordance with the provisions of this clause, subject to conditions of consent.

Clause 7.6 - Stormwater Management

The objective of this clause is to minimise the impacts of urban stormwater on land to which this clause applies and on adjoining properties, native bushland and receiving waters.

Council's Development Engineer has undertaken a review of the proposed development with regard to stormwater management, noting that Commitment 6.1.1 and Condition C6 of the Concept Plan require the submission of a Stormwater Management Plan (SWMP).

Council issued a further information request for a SWMP that demonstrates that appropriate water quality objectives can be achieved. The applicant's response was to request a condition of consent be applied requiring future development applications to be consistent with the initial SWMP endorsed under the Concept Plan approval.

Council's Development Engineer has recommended an appropriate condition of consent for the submission of a detailed SWMP prior to the issue of a Construction Certificate for Stage 1 Bulk Earthworks.

Other matters in relation to the size and location of swales along Cobaki Parkway, sedimentation ponds and drainage reserves have all been requested to be conditioned by the applicant. Further, the applicant has acknowledged that the proposed Masterplan is conceptual only and that they recognise that there may be a decrease in yield to cater for infrastructure. As such, Council's Development Engineer has applied an appropriate condition of consent requiring such detail design prior to the issue of a Construction Certificate.

Subject to the application of the recommended conditions of consent, the proposal is considered to be acceptable with respect to the requirements of this clause.

7.9 - Development in areas subject to aircraft noise

This clause applies to development that:

- (a) *is on land that:*

- (i) is near the Gold Coast Airport, and
- (ii) is in an ANEF contour of 20 or greater, and
- (b) the consent authority considers is likely to be adversely affected by aircraft noise.

The subject site is located near the Gold Coast Airport, however Precincts 6 to 12 are not affected by any ANEF contours. Council's Environmental Health Unit assessed the proposed development with regard to Clause 7.9, noting the following:

"Aircraft Noise is not an issue with respect to this Application which is for bulk earthworks".

Future subdivision applications will need to address the provisions of Clause 7.9.

7.10 - Essential Services

This clause outlines that consent must not be granted to development unless the consent authority is satisfied that essential services such as water, electricity, sewerage, stormwater drainage and vehicular access are available or that adequate arrangements have been made to make them available when required.

The subject application has been reviewed by Council's Development Engineer and the Water and Wastewater Unit with regard to the provision of essential services. As noted above, appropriate conditions have been applied to the effect that Council will be provided with sufficient information will be provided at PCC stage to be satisfied that the proposal is acceptable in terms of stormwater. Future subdivision stages will also need to address the provisions of this clause, including water / sewer, electricity and access.

Having regard to the above assessment, the subject application is considered to be generally in accordance with the provisions of the Tweed Local Environmental Plan 2014.

State Environmental Planning Policies

NCREP (LEP 2000 only)

Clause 15: Rivers, streams and wetlands

Potential exists for the adjacent Cobaki Broadwater to be adversely affected by runoff, erosion and sedimentation during the bulk earthworks phase of the development, although it is noted that no earthworks are proposed within the environmental zones that are triggering the NCREP assessment. In any case, the risk is able to be managed through a Construction Environmental Management Plan (CEMP) which is required by the Concept Plan approval. Appropriate conditions of consent have been applied in this regard.

Clause 29A: Natural areas and water catchment

Clearing is not proposed in environmental protection zones.

Clause 32B: Coastal Lands

The Coastal Policy contains actions to control impacts of development in the coastal zone. The relative impacts of the proposal are able to be mitigated construction techniques and management practices.

The site is not subject to coastal hazards such as beach erosion, as such this is not considered relevant.

SEPP No. 14 - Coastal Wetlands

SEPP 14 Wetlands exist adjacent to the overall Cobaki site. The provisions of the SEPP are not triggered by the proposed Stage 1 Bulk Earthworks as there is no clearing, draining, filling or levee construction in the mapped SEPP 14 wetland.

SEPP No. 44 - Koala Habitat Protection

The potential impact of the overall development upon the subject site (with regard to SEPP 44) was addressed at the Concept Plan approval stage, with a Commitment that threatened fauna species be appropriately managed via the implementation of the approved SEPP 44 Assessment and Fauna Management Plan. Appropriate conditions of consent have been applied in this regard.

SEPP No. 55 - Remediation of Land

The applicant has made reference to the original Contamination Assessment (*Gilbert and Sutherland, May 2008*) undertaken for the Concept Plan approval, which identified two areas area of potential contamination in Precinct 17 and Precinct 10. The original assessment noted that Stage 2 Contamination Assessment would be required for both of these precincts. The SEE notes that in accordance with Condition C17 of the Concept Plan approval, the “...Stage 2 assessment of precinct 10 is currently being completed and will be submitted to

COBAKI LAKES CONSTRAINTS MAP

DECOMMISSIONED CATTLE DIP LOCATION

SITE COMPOUND
• SHEDS
• FUEL STORAGE

DWELLING(S)
SHEDS
FUEL STORAGE
ON-SITE WASTEWATER DISPOSAL

30m Agricultural Buffer

SPRAY RAGE
• CHEMICAL STORAGE

PLAN No.: 6400-170A
SCALE= 1:7500 @ A1
DATE: 12/10/2008
ZONE AMENDS

2. RESIDENTIAL
(202) (R) URBAN EXPANSION

6. OPEN SPACE
(602) (B) RECREATION

7. ENVIRONMENTAL PROTECTION
(702) (a) ENVIRONMENTAL PROTECTION (Wetlands & Littoral Habitats)
(702) (b) ENVIRONMENTAL PROTECTION (Grass / Pastureland)
(702) (c) ENVIRONMENTAL PROTECTION (Coastal Lands)

(514) SEPPI14 - COASTAL WETLANDS
(B) Restriction On Use (DPR105/1004)
Lowland Rainforest on Floodplain

CONSTRAINTS

100 Year Flood Event

Potential Acid Sulfate Soil distribution

30m Agricultural Buffer

Contaminated as shown

Scrubby Gum Reserve

20m APZ

20m + 40m APZ

Ecological Buffer to EPZ (width to be determined)

EIC Buffer (20m shown)

Note: Ecological Buffers and APZs in area of approval amend consent TK9051124 per conditions of that consent.

Scale: 1:7500 or lengths are in Meters

Legend:
North Arrow
Scale Bar
Site Compound
Sheds
Fuel Storage
On-site Wastewater Disposal
30m Agricultural Buffer
Spray Range
Chemical Storage
Decommissioned Cattle Dip Location
Cobaki Lakes
Coastal Wetlands
Ecological Buffer to EPZ
EIC Buffer
APZ
Scrubby Gum Reserve
Potential Acid Sulfate Soil distribution
100 Year Flood Event
Contaminated as shown
30m Agricultural Buffer

Submitted by:
KOA True
47016-175 E
662009.538 N
scale Factor 0.999927

Michel
Landscape Architecture
T: 07 8888 3338

Council's Environmental Health Unit assessed the proposed development with regard to contamination, noting the following:

The following condition is therefore recommended to be placed on any Consent issued:

JRPP (Northern Region) Business Paper – Item 1 – 22 June 2016 – 2016NTH001

Subject to the inclusion of the recommended condition noted above, the proposed development is considered to meet the provisions of SEPP 55.

SEPP No 71 – Coastal Protection

The matters for consideration are the following:

- (a) *The aims of this Policy set out in Clause 2:*

The proposed development is considered to be consistent with the aims of the policy as set out in clause 2.

- (b) *Existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved*

The proposal development will not alter or restrict the public's access to the foreshore reserve areas.

- (c) *Opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability*

The proposal does not generate any additional opportunities to improve public access to foreshore reserve areas and the like.

- (d) *The suitability of the development given its type, location and design and its relationship with the surrounding area*

The proposed development is sited and designed in general accord with the relevant Council controls and is considered unlikely to create any form of adverse imposition upon the immediate area in terms of size, scale or design.

- (e) *any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore*

The proposed development is not considered impact on the amenity of the coastal foreshore. In particular there is considered to be no loss of views or overshadowing associated with this application.

- (f) *the scenic qualities of the New South Wales coast, and means to protect and improve these qualities*

The proposal is unlikely to impact upon the scenic quality of the NSW coast.

- (g) *measures to conserve animals (within the meaning of the Threatened Species Conservation Act 1995) and plants (within the meaning of that Act), and their habitats;*

Council's Natural Resource Management Unit have reviewed the application with respect to ecological matters and raised no objection, subject to the imposition of conditions of consent.

- (h) *measures to conserve fish (within the meaning of Part 7A of the Fisheries Management Act 1994) and marine vegetation (within the meaning of that Par), and their habitats*

The proposal is unlikely to have an adverse impact upon marine environments or habitats, subject to the application of the recommended conditions of consent.

- (i) *existing wildlife corridors and the impact of development on these corridors,*

Appropriate conditions of consent have been applied to ensure the protection of existing wildlife corridors.

- (j) *the likely impact of coastal process and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards;*

The subject site is not located within an area affected by Coastal Erosion and is landward of the defined Coastal Erosion Zones. The development is unlikely to have an adverse impact upon Coastal Processes or be affected by Coastal Processes.

- (k) *measures to reduce the potential for conflict between land-based and water-based coastal activities;*

The proposal is not considered to cause any conflict between land-based and water-based activities.

- (l) *measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals;*

The subject site does have an identified cultural place within Precinct 8. As discussed earlier in this report, the applicant has chosen to exclude any proposed bulk earthworks from the Cultural Heritage Parks.

(m) likely impacts of development on the water quality of coastal waterbodies,

The subject application is not considered to have any significant impact upon the water quality of coastal waterbodies, subject to the application of the recommended conditions of consent.

(n) the conservation and preservation of items of heritage, archaeological or historic significance,

As noted above, no works are proposed within or immediately adjacent to the known CHP's.

(o) only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities;

Not applicable to the subject application.

(p) only in cases in which a development application in relation to proposed development is determined:

*(i) the cumulative impacts of the proposed development on the environment;
and*

The proposed development is not considered to have a negative cumulative impact on the environment, subject to the imposition of recommended conditions of consent.

(ii) measures to ensure that water and energy usage by the proposed development is efficient.

Not applicable to the subject application.

With regard to Clause 18 of the SEPP, as there is no subdivision proposed as part of this application, a Master Plan or Master Plan Waiver from the Minister is not triggered. Future subdivision stages of this development will need to address Clause 18 of the SEPP.

The proposal is generally consistent with the matters for consideration as it does not impede public access to the foreshore nor result in any unacceptable loss of view or overshadowing. The proposal has a minimal impact on flora or fauna and the proposed development will not

impact upon known areas of Aboriginal significance. As such, the provisions of SEPP 71 are considered satisfied.

SEPP (Infrastructure) 2007

Clause 45 of this SEPP relating to Electricity Transmission or Distribution is not considered to apply to the proposed Stage 1 works. The future subdivision applications will need to address this clause.

Clause 104 of this SEPP relating to Traffic Generating Development outlines that this clause applies to development specified in Column 1 to the Table of Schedule 3 that involves the subdivision of land incorporating 200 or more allotments where the subdivision includes the opening of a public road.

As the proposed Stage 1 Bulk Earthworks do not incorporate any subdivision, nor does it involve 200 or more motor vehicles for “any other purpose”, referral to the Roads and Maritime Services (RMS) is not required.

Future subdivision stages will trigger referral to the RMS.

The proposed development is considered to be acceptable having regard to the provisions of this SEPP.

(a) (ii) The Provisions of any Draft Environmental Planning Instruments

There are no Draft EPI's applicable to the proposed development.

(a) (iii) Development Control Plan (DCP)

Tweed Development Control Plan

The Cobaki Estate Development Code is to be read in conjunction with the following parts of the Tweed DCP.

A2 - Site Access and Parking Code

As noted previously, access to the site will initially be from the north via Boyd Street in Tugun. Boyd Street from the Motorway overpass and Cobaki Parkway (which is the main distributor road running through the site) have been approved under previous consents and

construction certificates. At some point of the site's development, connection to Piggabeen Road (to the south) will occur, providing access to Kennedy Drive etc. Cobaki Parkway provides the main access to Precincts 6 to 12. The provision of roadways within these precincts will be addressed in detail by future subdivision applications.

Parking requirements relating to DCP Section A2 are not applicable to the proposed Masterplan and Stage 1 Bulk Earthworks.

A3 - Development of Flood Liable Land

Council's Development Engineer and Flooding Engineer have raised no objections to the proposed development with regard to flooding, subject to conditions of consent.

A5 - Subdivision Manual

No subdivision works are proposed as part of this application. As such, the provisions of DCP Section A5 are not triggered. All future subdivision stages will need to ensure compliance with the Subdivision Manual.

A11 - Public Notification of Development Proposals

Exhibition of the proposed Masterplan and Stage 1 Bulk Earthworks was undertaken in accordance with the DCP. No submissions were received.

(a) (iv) Any Matters Prescribed by the Regulations

Clause 92(a) Government Coastal Policy

The proposed development is located within the area covered by the Government Coastal Policy, and has been assessed with regard to the objectives of this policy. The Government Coastal Policy contains a strategic approach to help, amongst other goals, protect, rehabilitate and improve the natural environment covered by the Coastal Policy. It is not considered that the proposed development contradicts the objectives of the Government Coastal Policy, given its permissible nature on a site identified for development works.

Clause 92(b) Applications for demolition

There is no demolition proposed as part of this application.

Clause 93 Fire Safety Considerations

Clause 93 is not applicable to the proposed development.

Clause 94 Buildings to be upgraded

Clause 94 is not applicable to the proposed development.

(a) (iia) Any Planning Agreement (or draft Planning Agreement) that has been entered into under section 93F

Please refer to the detailed assessment later in this report with regard to the background / proposed removal of the existing Scribbly Gum Reserve.

Clause 93F of the Environmental Planning & Assessment Act relates to the provisions for a planning agreement being a voluntary agreement or other arrangement between a planning authority and a person (the developer).

Clause 93I(3) allows a consent authority to require a planning agreement to be entered into as a condition of a development consent if that is a commitment made by the proponent in a statement of commitments made under Part 3A.

Commitment No. 4.8.1 of the Concept Plan notes that the proponent will enter into a Planning Agreement with OEH for the offset onsite and/or offsite for impacts “...*on existing trees within the Scribbly Gums Reserve should this occur*”. The timing of the commitment is noted as being “...*Before any works are commenced that may cause or contribute to the relevant impact*”.

Following an assessment of the proposed removal of the Scribbly Gums and in accordance with Clause 93I(3), it is considered appropriate to apply a condition of consent requiring a Voluntary Planning Agreement to be in place between the proponent and OEH prior to the issue of a Construction Certificate for bulk earthworks in the vicinity of the existing scribbly gum tree community.

LEDA has recently advised that they are currently working on the draft VPA and hope to have a copy to the OEH by the end of June. Verbal advice from OEH is that it could take six to twelve months to finalise the VPA.

Until such time that the VPA is completed, the Scribbly Gum Reserve will need to be conserved and managed as per the provisions of the approved Scribbly Gum Management Plan.

Management protocols for the retained Scribbly gums during the bulk earth works include:

- *All trees to be retained will be fenced with high visibility plastic mesh;*
- *All contractors to be informed of the retention of the selected Scribbly gums;*
- *Management will include regular maintenance and some basic monitoring of each of the retained trees, as per the provisions of the Management Plan.*

- (a) (v) **Any coastal zone management plan (within the meaning of the *Coastal Protection Act 1979*)**

Tweed Shire Coastline Management Plan 2005

This Plan applies to the Shire's 37 kilometre coastline and has a landward boundary that includes all lands likely to be impacted by coastline hazards plus relevant Crown lands. The primary objectives of the Coastal Management Plan are to protect development; to secure persons and property; and to provide, maintain and replace infrastructure.

The proposed development is not considered to impact upon that coastline with regard to demands and issues identified within the Plan for the whole of the Tweed coastline.

Tweed Coast Estuaries Management Plan 2004

This Plan applies to the Cudgen Creek and Cudgen Lake, Cudgera Creek and Mooball Creek systems and does not apply to the subject site.

Coastal zone Management Plan for Cobaki and Terranora Broadwater (adopted by Council at the 15 February 2011 meeting)

The subject site is located within the Cobaki Broadwater Catchment under this Management Plan. Specifically the site is located within the Estuarine zone of this catchment.

The Cobaki Broadwater has high conservation, cultural, tourism and economic values and provides habitat for a variety of threatened species including migratory birds and endangered ecological communities. The area contains pristine bushland, rainforest communities and wetland areas including endangered ecological communities and forms part of important regional fauna corridors. The waters provide valuable nursery and breeding grounds for fisheries.

The subject site is located directly adjacent to Cobaki Creek, which discharges into Cobaki Broadwater to which this management plan relates. Subject to conditions of consent specifically relating to erosion and sedimentation control and stormwater management, the proposed development is considered to be consistent with the objectives of the Plan.

- (b) **The likely impacts of the development and the environmental impacts on both the natural and built environments and social and economic impacts in the locality**

Visual

Statement of Commitment No 2 in Schedule 3 of the Concept Plan approval relates to Visual Impact, whereby key attributes of natural landscape are to be retained and rehabilitated and the visual impact of subdivision and building development is to be managed. The Commitment requires the applicant to retain and rehabilitate areas not identified as urban development areas within the Concept Plan and Development Code and to ensure consistency with development controls, at each relevant stage of development.

Applicable management plans have been submitted in accordance with the requirements of the Concept Plan, which relate specifically to the rehabilitation and management of areas of natural visual landscape. Comments on the management plans are provided elsewhere in this report. The proposed Masterplan and Stage 1 Bulk Earthworks are considered to comply with the requirements of the Statement of Commitments with regard to visual impact, subject to conditions of consent.

Earthworks

As noted in the TLEP 2014 assessment above, Council's Development Engineer is satisfied with the proposed earthworks associated with Stage 1 of the proposed development, subject to appropriate conditions being applied.

Groundwater / Dewatering

Council's Environmental Health Unit undertook a review of the applicant's proposal in terms of groundwater management and dewatering, noting the following:

"Condition C5 of the Cobaki Estate Concept Plan approval 06/0316 states that where groundwater is intercepted then a Groundwater Management and Monitoring Plan shall be submitted to the relevant consent authority prior to the issue of a construction certificate.

A Groundwater Management Plan relating to Precincts 7,8,9,10,11 and 12 prepared by SMEC and dated June 2015 has been submitted with the Application.

This Plan has been reviewed and is considered adequate.

Condition recommended".

With regard to the absence of groundwater monitoring bores in Precincts 9, 10, 11 and 12, the Environmental Health Unit provided the following advice:

"Section 6.2.5 of the Plan states: 'It is understood that excavation earthworks will involve trimming of the topsoil to create a drainage system throughout the site. It is also understood that dewatering is not proposed to occur at the site, such that no groundwater extraction processes are proposed nor will any infrastructure be installed below the water table."

Groundwater flows (as a result of studies over the site) are expected to flow from Precincts 9, 10, 11 and 12 across the low-lying areas towards Cobaki creek. The GW monitoring wells situated along the boundary of Precincts 9,10,11 and 12 (being) GW1, GW2A, GW20, GW19, GW17, GW24 and GW26 are the (historical) wells that would be used to monitor any Groundwater impacts resulting from any earthworks carried out on Precincts 9,10,11 and 12. Of these only GW19, GW20, GW24 and GW26 remain operational. GW levels recorded in these wells range between 1.2-1.8m depth below ground. It is therefore unlikely that earthworks proposed to be carried out on Precincts 9,10,11 and 12 would intercept groundwater hence the reason why GW monitoring wells were not established on these precincts.

However the Groundwater Management Plan does contain trigger values, monitoring and management options in the event that GW is intercepted and dewatering is required.

On the basis of the above, I considered that the Groundwater Management Plan was satisfactory”.

Although an Integrated Referral to the NSW Office of Water (NOW) is not triggered, pursuant to Section 75P(2)(b) of the EP&A Act, any required permits pertaining to dewatering must be obtained (from NOW) prior to such works being undertaken. An applicable condition of consent has been applied in this regard.

Flora and Fauna

Council’s Natural Resources Management (NRM) Unit has undertaken an assessment of the proposed Masterplan and Stage 1 Bulk Earthworks. A number of issues raised through Council’s request for further information were not addressed adequately and have been conditioned accordingly. The following assessment covers a variety of matters raised in terms of flora and fauna.

Proposed Removal and offsetting of Scribbly Gum Reserve

As noted above, the applicant proposes to remove the existing Scribbly Gum Reserve within Precinct 8 (refer to Figure 10 below). Although the Scribbly Gums are not threatened species, Council has previously identified that the trees are of high conservation significance and have irreplaceable old-growth biodiversity value.

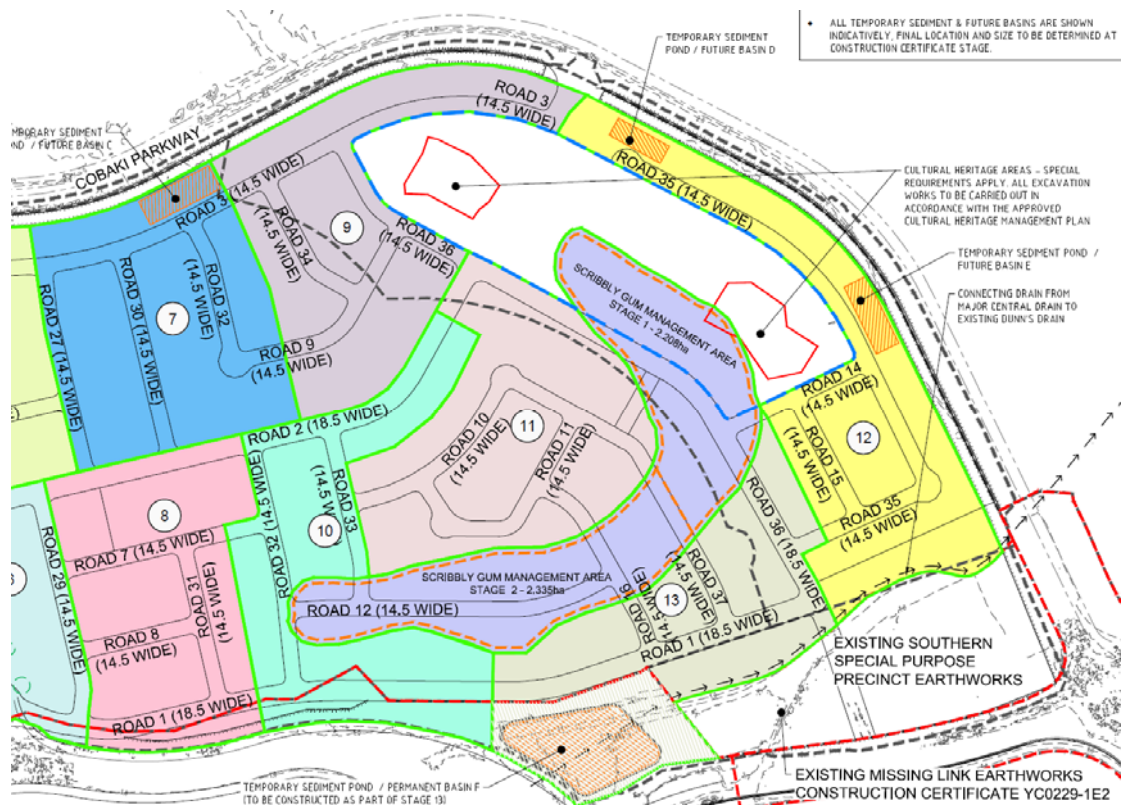


Figure 10 – Scribbly Gum Reserve in Precinct 8 (shown in purple)

In terms of history, Council's records indicate that an older subdivision consent over this area of the site (S94/0194) required the Scribbly Gum Reserve to be retained and enhanced. However, the more recent Concept Plan approval does not have such a requirement. Rather, the Concept Plan approval anticipates the removal of the trees, subject to a Planning Agreement with OEH being in place prior to any impact to the Scribbly Gums. Development consent is still required for the removal of the trees, which is one of the aims of this application.

During the assessment of the Concept Plan, Council argued for the retention of the Scribbly Gum Reserve area. It was recognised during this process that a number of trees were likely to decline and die in the medium-term, due to natural processes and the impact of prior grazing and earthworks.

Following submissions from public and State Agencies, amendments to the Concept Plan and Statement of Commitments were proposed by the proponent, whereby an offset arrangement was put in place. As part of the approval of the Concept Plan, the Department of Planning was satisfied with the applicant's proposed commitment to enter into a Planning Agreement with OEH for the offset onsite and/or offsite for impacts on existing trees within the Scribbly Gums Reserve.

It was Council's initial understanding from the Department's assessment that the anticipated off sets were to provide for the semi-natural decline of the trees over time, any subsequent

removal of the trees would only arise through public safety requirements, rather than through residential development.

It is further noted that the Scribbly Gums were not zoned 'Environmental Protection', there are no covenants in this location and there is no Concept Plan approval condition requiring the conservation of the subject trees. One of the Concept Plan's Statements of Commitment states that "...Areas of Scribbly Gum trees are conserved and managed", requiring the provisions of the Scribbly Gum Management Plan (SGMP) to be implemented. As noted previously, the intent of the SGMP is to "...provide management guidelines for the conservation and maintenance of the Scribbly Gums on the site until such time as the off-site offset has become established".

In the assessment of the current application, Council has also received correspondence dated 2 May 2016 from the North-East Regional Office of the NSW Office of Environment and Heritage (OEH) confirming that the OEH are continuing to advance a Voluntary Planning Agreement (VPA) with the proponent LEDA for a suitable off-set arrangement for the proposed removal of the remaining scribbly gum trees. As part of that correspondence, the OEH stated:

"Whilst the OEH would prefer that scribbly gums are protected in situ, I understand that if the scribbly gums are to be impacted then in accordance with section 4.8 of the Statement of Commitments of the Concept Plan approval, the proponent will enter into a Planning Agreement with the OEH. The Planning Agreement will detail how the scribbly gum impacts will be off set."

Council supports the applicant's proposal to enter into an off-set agreement with the OEH and, in accordance with the Concept Plan approval, an appropriate condition of consent has been applied with regard to the timing of the VPA and the associated restrictions to earthworks in the immediate stages of bulk earthworks (i.e. Stages 9, 10, 11, 12 and 13).

Extent of earthworks in Buffer/APZ areas

It is considered that the management intent of Environmental Buffer/APZ areas (Precincts 9, 10, 11, 12) requires further clarification. Council's NRM Unit has noted that the amended Site Regeneration & Revegetation Plan (SRRP) has provided further detail in its maps with regard to the width and location of the interface between residential development and Environmental Protection area, but no information on initial or ongoing management has been included.

The following NRM comments are noted in this regard:

"These areas have been, until now, identified broadly as "Ecological Buffers Coincide with APZ", and have had no detailed mapping. The approved Overview Buffer Management Plan states that:

"Buffer areas that contain existing native vegetation will, where necessary and appropriate to bushfire Asset Protection Zone requirements, be rehabilitated to enhance the existing natural values of the buffer areas..."

An area of particular uncertainty exists in the south west of Precinct 9 / Rehabilitation Area 9, where the management intent of existing vegetation and buffer areas within the proposed park, APZ, Ecological Buffer and Covenant Area requires clarification and direction”.

The area of concern in Precinct 9 is shown in Figure 11 below.

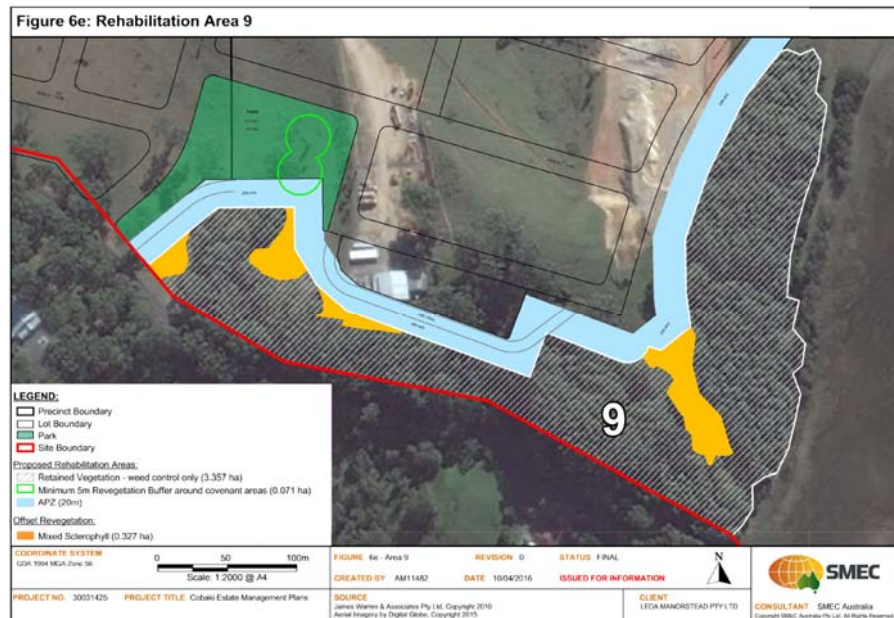


Figure 11 – APZ / Buffer areas in P9 (adjacent to Rehabilitation Area 9)

Rather than delay the determination of this application, it is considered appropriate to apply conditions of consent requiring the applicable management plans to be updated (prior to the issue of a Construction Certificate for bulk earthworks). Whilst it is recognised that the detailed design for the final subdivision of these Precincts has not yet been finalised, the conditions will require the Management Plans to address the Overview Buffer Management Plan in terms of identifying APZ areas (consistent with Planning for Bushfire Guidelines) and detailing management requirements for these areas.

Mapping detail within Fauna Management Plan and Vegetation Management Plan

Council's NRM Unit have identified that there is insufficient detail with regard to mapping in the Fauna Management Plan (FMP) and the Vegetation Management Plan (VMP). An appropriate PCC condition has been applied in this regard.

Endangered Ecological Community Offsets

Council's NRM Unit noted the following with regard to offsetting provisions:

“The current SRRP proposes revegetation of cleared areas for offset purposes. In some cases, the proposed vegetation community differs from those approved under the Concept Plan. For example, the SRRP identifies the offset area within Rehabilitation Area 8, in Precinct 9, as more suitable for creation of a Freshwater Wetland community than the Lowland Subtropical Rainforest EEC proposed and approved by the Concept Plan. This has implications for the proponent in meeting their approved offset requirements”.

An applicable condition of consent has been applied in terms of requiring a site wide review of onsite EEC offset commitments.

Outstanding Request for Further Information issues

There were a number of issues raised by Council’s further information request of 10 March 2016, which have not been adequately addressed in the amended Management Plans. Appropriate conditions of consent have been applied to ensure that such management plans are further revised to Council’s satisfaction prior to the issue of a Construction Certificate for bulk earthworks.

Water Supply / Wastewater

Council’s Water and Wastewater Unit undertook a review of the applicant’s proposal for the Masterplan and Stage 1 Bulk Earthworks, noting that the application made no reference at all to water supply or wastewater. Whilst it was recognised that the application was largely based on the Stage 1 Bulk Earthworks (rather than subdivision), a certain degree of satisfaction is considered to be a requirement with regard to approving the proposed Masterplan for the overall development of Precincts 6 to 12.

As such a request for further information was issued with regard to a revised Water and Sewer Strategy Report and the requirement for an indicative design to provide Council’s Water and Wastewater Unit with a level of comfort that the future development can be serviced by water supply and sewer reticulation, as per Council’s requirements.

The applicant’s response to Council’s request for further information did not provide any of the detail requested. Rather, the response requested that appropriate conditions be applied *“...requiring the applicant to demonstrate water and sewer works as part of future staged applications”*.

In addition to the above response and at the specific request of Council, the applicant provided the following acknowledgement in an effort to provide comfort to Council to proceed without the requirement for detailed design prior to determination:

“LEDA confirm and acknowledge that the current urban layout across Cobaki Precincts 6-12 are conceptual only. The current urban design as detailed in this DA15/1026 has been laid out to facilitate bulk earthworks across the site and designed so any potential Urban Design changes will have a minimal impact on the overall bulk earthworks.

Accordingly as more detailed plans are developed during the Construction Certificate stage for each precinct Leda confirm that the risk associated with changes to the urban design that may decrease yield in order to achieve compliance with the Cobaki Development Code and Council's Subdivision Manual in regards to infrastructure sizing e.g. Bio-retention basins, batters, buffers, etc. will be borne by Leda".

Council's Water and Wastewater Unit have accepted the applicant's request to provide design detail at future subdivision stages, largely based on the applicant's acknowledgement that amendments to bulk earthworks will be required at a later stage. An appropriate condition of consent has been applied in this regard.

It should also be noted that the applicant has only recently advised that they are considering utilising a private water utility supplier rather than connecting to Council's water supply and reticulated sewer system. Given that the details of such a proposal are not yet known (noting that approval would be required from IPART), Council has assessed the proposal as being connected to Council's reticulation systems and conditions of consent have been applied accordingly. If the applicant ultimately decides to use a private water utility, any approval will likely need to be amended. The applicant is aware of this scenario.

Stormwater Drainage

As noted in the TLEP 2014 assessment above, Council's Development Engineer is satisfied with the proposed stormwater drainage associated with Stage 1 of the proposed development, subject to appropriate conditions being applied.

Flooding

As noted in the TLEP 2014 assessment above, Council's Development Engineer and Flooding Engineer are satisfied with the proposed development in terms of flooding, subject to appropriate conditions being applied.

Noise / Amenity

A review of the proposed development was undertaken by Council's Environmental Health Unit, with the following comments provided in relation to noise and amenity:

"A Construction Environment Management Plan prepared by SMEC relating to Precincts 7, 8, 9, 10, 11 and 12 and dated September 2015 has been submitted with the Application. This Plan has been reviewed and is considered adequate.

As the Application is for bulk earthworks standard amenity conditions are suggested.

It is noted that hours of work will be limited to 7.00am to 5.00pm Mondays to Saturdays with no work on Sundays or public holidays. Exceptions to these hours are in

the case of emergency, essential services need to access the site, the works are approved in the Construction Environmental Management Plan”.

Subject to the application of the recommended conditions, the proposal is considered to be acceptable in terms of noise and amenity impacts.

Open Space

Council’s Recreation Services has reviewed the proposed Masterplan with regard to open space provisions, noting the following:

“There appears to be a number of casual open space areas/parks nominated in the general location covered by these bulk earthworks plans. It is not possible at this time to assess the suitability of such open space areas without further landscape and recreation planning information.

Recreation Services response to the bulk earthworks plan is that any approval must not create a precedent or expectation that the slopes, location, size and function of these open space/park areas will be set or limited by the bulk earthworks approval. We will still require open space/parks that meet our casual open space guidelines”.

As noted previously, the proposed Masterplan is conceptual only and subject to change with future detail design requirements. For the purposes of this application, the proposed open space provisions are considered to be adequate. However, detailed design at the subdivision stages may trigger the need for additional open space requirements, in order to comply with Council’s standards. The applicant has been advised that future subdivision applications will need to review the open space provisions for the entire project, rather than a precinct by precinct approach.

(c) Suitability of the site for the development

The site has been zoned for urban purposes for at least twenty years with current development consents and construction certificates for subdivision in operation. The site is bounded by rural, rural residential, sensitive wetlands, the Cobaki Broadwater, Crown Land and residential development across the Queensland NSW State border.

Appropriate conditions of consent have been applied to ensure compliance with all relevant legislation and the provisions of the approved Concept Plan.

The site is considered to be suitable for the proposed development.

(d) Any submissions made in accordance with the Act or Regulations

The application was placed on public exhibition (advertised) for a 14 day exhibition period. During this period Council did not received any public submissions.

Public Authority Submissions

Essential Energy

Essential Energy provided comment on the proposed Masterplan and Stage 1 Bulk Earthworks, as well as the Stage 2 & 3 Subdivision application (currently being assessed). Essential Energy noted no objection to the proposed development, subject to a number of recommended conditions. The applicable condition (relating specifically to this application) has been incorporated into the list of recommended conditions of consent.

(e) Public interest

The subject site has been identified as a Greenfield development site for over twenty years. The location of the site adjacent to Cobaki Creek and the existing environmental protection lands throughout the site requires appropriate management and controls of potential impacts. It is considered that such impacts can be mitigated, subject to conditions of consent, such that the development can proceed and public interest issues are balanced.

Contribution Charges for the subject development

Contribution charges are not applicable at this stage of the development, with no new allotments being created. Future subdivision stages will attract applicable contribution charges.

OPTIONS:

1. Approve the application in accordance with the recommendation; or

2. Refuse the application with stated reasons for refusal.

Option 1 is recommended.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

The applicant has the right of appeal in the NSW Land Environment Court if dissatisfied with the determination.

POLICY IMPLICATIONS:

Nil

CONCLUSION:

The proposed Staged Development Application is considered suitable for the site as it is a permissible form of development and relevant planning considerations have been taken into account in the assessment of the application. It represents a significant component of the large residential development that is part of the Concept Approval issued by the Minister for Planning. The Cobaki development site is a key strategic site for the Tweed, the Far North Coast and NSW. It is considered that the proposed development accords with the Concept Plan approval and incorporates appropriate measures to mitigate any potential adverse impacts arising from the proposal.

UNDER SEPARATE COVER:

Nil

RECOMMENDATION:

That Development Application DA15/1026 for a staged development application under Section 83B of the EP&A Act 1979 development of precincts 6, 7, 8, 9, 10, 11 & 12 – Cobaki Lakes (JRPP), stage 1 – staged bulk earthworks at Lots 46, 54, 55, 200, 201, 202, 205, 206, 209, 199, 228, 305 DP 755740; Lot 1 DP

823679; Lot 1 DP 570077; Lot 1 DP 562222; Lot 2 DP 566529; Lot 1 DP 570076; Sandy Lane and Piggabeen Road, Cobaki Lakes, be approved subject to the following conditions: -

GENERAL

1. The development shall be carried out and completed in accordance with the following Plans and Reports listed below, except where varied by the conditions of this consent.

PLANS

- **Master Plan for Precinct 6 to 12 - Context Plan**, Dwg No: Cobaki_P6-12_2016_V21_DA1, prepared by Planit Consulting and dated May 2016;
- **Master Plan for Part Precinct 6, 7 and 8**, Dwg No: Cobaki_P678_2016_V21_DA1 prepared by Planit Consulting and dated May 2016;
- **Master Plan for Precinct 9 and 10**, Dwg No: Cobaki_P9_10_2016_V21_DA1 prepared by Planit Consulting and dated May 2016;
- **Master Plan for Precinct 11 and 12**, Dwg No: Cobaki_P11_12_2016_V21_DA1 prepared by Planit Consulting and dated May 2016;
- **Bulk Earthworks Staging Plan (Sheet 1 of 3)**, Dwg No. A443-BE-0-0101 Rev C, prepared by Sedgman and dated 24 May 2016;
- **Bulk Earthworks Staging Plan (Sheet 2 of 3)**, Dwg No. A443-BE-0-0102 Rev C, prepared by Sedgman and dated 24 May 2016;
- **Bulk Earthworks Staging Plan (Sheet 3 of 3)**, Dwg No. A443-BE-0-0103 Rev C, prepared by Sedgman and dated 24 May 2016;

[GEN0005]

2. The use of crushing plant machinery, mechanical screening or mechanical blending of materials is subject to separate development application.

[GEN0045]

3. Approval is given subject to the location of, protection of, and/or any necessary approved modifications to any existing public utilities situated within or adjacent to the subject property.

[GEN0135]

4. Council advises that the site is flood liable pre bulk earthworks, with Design Flood Levels as illustrated on the 0.1m contour "Q100 - Extent of Flooding" Drawing A443-BE7-SK01 Rev B (prepared by Sedgman) intended post bulk earthworks.

The "Q100 - Extent of Flooding" Drawing (also referred to as the Design Flood Level Map) shall be updated to include Works As Executed levels for bulk earthworks and any other works that may affect flood behaviour and submitted to Council for endorsement at the completion of each bulk earthworks phase and prior to issue of any future Subdivision Certificate.

[GEN0195]

5. The development is to be carried out in accordance with Council's relevant Development Design and Construction Specifications unless otherwise altered by the provisions of the Cobaki Estate Development Code.

[GEN0265]

6. This consent is subject to the fulfilment of all relevant, existing Deed obligations.

[GENNS01]

7. Prior to the issuing of a Construction Certificate under DA15/1026, all existing approvals over the Cobaki Development applicable to Precincts 6, 7, 8, 9, 10, 11 & 12, must to be amended, pursuant to Section 80A(1) of the EP&A Act 1979 (as amended), to delete any inconsistency with DA15/1026.

[GENNS02]

8. All approvals, licenses and consents from applicable Government Agencies and Authorities are to be obtained, where required.

[GENNS03]

9. Works for future residential subdivisions over Precincts 6, 7, 8, 9, 10, 11 & 12 cannot commence until the bulk earthworks associated with the footprint of the residential subdivision has been completed and accepted by the PCA.

Numerous Construction Certificates for staged Bulk Earthworks may be issued over Precincts 6, 7, 8, 9, 10, 11 & 12 under this consent, provided each of the Construction Certificates are compatible and each application addresses all relevant consent conditions.

[GENNS04]

10. This development consent approves the Masterplan and Stage 1 only of the development, being staged bulk earthworks across Precincts 6 - 12. Future subdivision stages of the development require separate development consent, consistent with the approved Masterplan.
11. The approved Masterplan is conceptual only. Subject to further detail design at Construction Certificate stage for bulk earthworks and future subdivision stages, the overall concept may require amendment.
12. Bulk Earthworks will be required to be modified where detailed design requirements for infrastructure (including water supply and sewerage) cannot be met.
13. No works may be undertaken within areas adjacent to Precincts 6 to 12 that will result in removal of native vegetation from Environmental Protection zoned land.
14. Development must be undertaken in accordance with the requirements of any approved Site Regeneration and Restoration Plans, Habitat Restoration Plans, Threatened Species Management plans and all other approved management plans relevant to the Precinct 6 to 12 development.
15. Any existing encumbrances in favour of Essential Energy (or its predecessors) noted on the title of the subject site to be complied with.

[GENNS05]

PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

16. Each Construction Certificate Application for Bulk Earthworks shall include a detailed Stormwater Management Plan (SWMP) complimentary to the SWMP endorsed under the Concept Plan for the construction and post construction phase of the Bulk Earthworks, prepared in accordance with Section D7.B2 of Council's *Development Design Specification D7 - Stormwater Quality*. Such plans are to include measures, monitoring and adaptive management actions to ensure appropriate stormwater quality outcomes are achieved.

Stormwater quality treatment shall comply with the *Tweed Urban Stormwater Quality Management Plan* and Council's *Development Design Specification D7 - Stormwater Quality and Code of Practice for Soil and Water Management on Construction Works*.

Treatment basins must be provided with a facility to bypass major stormwater flow events (greater than the Q3 month storm event), or otherwise cater for major storm flows without disturbing captured pollutants or damaging the structure.

Proposed treatment measures must be supported by engineering calculations, to confirm that acceptable capacity and efficiency is achieved, and water quality objectives are achieved.

Shake down area/s are to be installed within the property, immediately prior to any vehicle entering or exiting the site, prior to any earthworks being undertaken.

[PCC0165]

17. Prior to the issue of a Construction Certificate for Bulk Earthworks, a Cash Bond or Bank Guarantee (unlimited in time) shall be lodged with Council for an amount based on 1% of the value of the works associated with the Construction Certificate, as set out in Council's fees and charges at the time of payment.

The bond may be called up at any time and the funds used to rectify any non-compliance with the conditions of this consent which are not being addressed to the satisfaction of the General Manager or his delegate.

The bond will be refunded, if not expended, when a Final Practical Inspection is undertaken by the PCA and the works associated with the bond are accepted by Council.

[PCC0275]

18. In accordance with Section 109F(i) of the Environmental Planning and Assessment Act 1979 (as amended), a Construction Certificate for SUBDIVISION WORKS OR BUILDING WORKS shall NOT be issued until any Long Service Levy payable under Section 34 of the Building and Construction Industry Long Service Payments Act, 1986 (or where such levy is payable by instalments, the first instalment of the levy) has been paid (as applicable). Council is authorised to accept payment. Where payment has been made elsewhere, proof of payment is to be provided.

[PCC0285]

19. Where earthworks result in the creation of batters and/or cuttings greater than 1m high and/or slopes within allotments 17^O (1:3.27) or steeper, such slopes shall be stabilised accordingly with permanent steep batters densely planted in accordance with a detailed Landscaping Plan endorsed by Council. This Plan shall accompany the Construction Certificate application and shall be consistent with all other Management Plans.

Such plans shall generally incorporate the following and preferably be prepared by a landscape architect:

- (a) Contours and terraces where the height exceeds 1m.
- (b) Cover with topsoil and large rocks/dry stone walls in terraces as necessary.
- (c) Densely plant with appropriate native species to suit the aspect/micro climate. Emphasis to be on trees and ground covers which require minimal maintenance. Undergrowth should be weed suppressant.
- (d) Mulch heavily (minimum 300mm thick) preferably with unwanted growth cleared from the estate and chipped. All unwanted vegetation is to be chipped and retained on the subdivision.

[PCC0455]

20. All earthworks shall be graded at a minimum of 1% so that it drains to approved, permanent drainage systems. The works must at no time result in additional runoff or ponding occurring within neighbouring properties.

All earthworks shall be contained wholly within the subject land. Detailed engineering plans of cut/fill levels and perimeter drainage shall be submitted with the applicable Construction Certificate application for approval by the Principal Certifying Authority (PCA).

[PCC0485]

21. Prior to the issue of a Construction Certificate, documentary evidence shall be submitted to the PCA demonstrating that a Controlled Activity Approval (CAA) under the Water Management Act 2000 has been obtained for any works within 40m of waterfront land (as defined under the Water Management Act 2000) or any works that involve an aquifer interference activity as defined under the Water Management Act 2000.

[PCC0575]

22. Site regrading and associated drainage is to be designed to address internal drainage on the site, as well as the conveyance of external catchments up to the Q100 storm event through the site, in a manner that does not adversely impact on upstream or downstream watercourses, ~~or~~ property or stormwater treatment management.

[PCC0675]

23. A Traffic Control Plan in accordance with AS1742 and the latest version of the RTA publication "Traffic Control at Work Sites" shall be prepared by an RTA accredited person and shall be submitted to the PCA prior to issue of the Construction Certificate (as applicable). Safe public access shall be provided at all times.

[PCC0865]

24. Prior to the issue of a Construction Certificate for Bulk Earthworks, the following detail in accordance with Council's Development Design and Construction Specifications shall be submitted to the Principal Certifying Authority for approval.

- (a) copies of compliance certificates relied upon

(b) Detailed engineering plans and specifications, *prepared in accordance with Development Design Specification D13 - particularly Section D13.09*. The detailed plans shall include (but are not limited to) the following, unless approved otherwise by the PCA:

- Earthworks
 - Clearly showing pre and post development levels (spot levels and contours) at a legible scale.
 - Compliance with the provisions of Council's Design Specification D6 - Site Regrading.
 - Batter slopes on drain cross sections and in public open space areas shall not exceed 1:4 (v:h), unless otherwise endorsed by Council.
 - Compliance with the provisions of NSW RFS Planning for Bushfire Protection Guidelines 2006.
 - The maximum disturbed area (that has not been permanently vegetated) at any time shall not exceed 5ha, unless otherwise approved by the General Manager or his delegate.
 - Detailing how the Cultural Heritage Parks permanently free drain and will not be subject to flooding inundation.
 - Cross sections provided through each proposed sedimentation basin to confirm suitable free drainage and capacity.
 - Details confirming the permanent drainage of Rehabilitation / Management Area 8.
 - Including supporting calculations of proposed drainage swales to confirm compliance with the provisions of Council's Design Specification D5 - Stormwater Drainage Design (unless provided within the required SWMP)
- Stormwater drainage
- Landscaping works (as applicable)
- Sedimentation and erosion management plans
- Location of all service conduits (water, sewer, electricity supply and telecommunication infrastructure), as well as details and locations of any significant electrical servicing infrastructure - such as transformers and substations

The Environmental Planning and Assessment Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 and Section 138 of the Roads Act to be certified by an Accredited Certifier.

25. Each Construction Certificate application for Bulk Earthworks shall include a detailed Erosion and Sediment Control Plan (ESCP), complimentary to the ESCP endorsed under the Concept Plan for the construction phase of the Bulk Earthworks, prepared in accordance with Section D7.07 of *Development Design Specification D7 - Stormwater Quality*.

Construction phase erosion and sediment control shall be designed, constructed and operated in accordance with *Tweed Shire Council Development Design Specification D7 - Stormwater Quality* and its Annexure A - "Code of Practice for Soil and Water Management on Construction Works". All sedimentation basins are to be located offline of major storm event flowpaths, unless approved otherwise by the PCA.

[PCC1155]

26. An application shall be lodged together with any prescribed fees including inspection fees and approved by Tweed Shire Council under Section 68 of the Local Government Act for the installation of any permanent stormwater quality control devices (including bio-filtration basins), prior to the issue of any associated Construction Certificate.

Where Council is requested to issue a Construction Certificate for subdivision ~~civil~~ works associated with this consent, the abovementioned works can be incorporated as part of the Construction Certificate application, to enable one single approval to be issued. Separate approval under section 68 of the LG Act will then NOT be required.

[PCC1195]

27. Prior to the issue of a Construction Certificate for Bulk Earthworks, all applicable Geotechnical Investigation Reports (prepared by registered Geotechnical Engineers) are to be consolidated into one single document and submitted to the PCA for endorsement.

In the absence of any compaction control documentation, any existing fill encountered on site over the Precincts applicable to this application shall be deemed "uncontrolled". Where Level 1 certification of these areas cannot be provided, the Proponent will be required to carry out rectification works by way of removal of the existing fill, back to a competent natural strata and re-compaction or replacement with a select fill, in accordance with Section 7.4 of the *Report On Geotechnical Investigation* Report, prepared by Douglas Partners, dated August 2015.

[PCCNS02]

28. Prior to the issue of a Construction Certificate for Stages 22 and 23 of the proposed bulk earthworks, the Stage 2 Contamination Assessment for Precinct 10 is to be submitted to Council. The Assessment must identify any contamination on site and provide for the completion of appropriate mitigation measures, as required by Condition C17 of the Concept Plan approval MP06_0316.

[PCCNS03]

29. The Site Regeneration and Revegetation Plan (SRRP), Vegetation management Plan (VMP) and Earthworks Plans are to be revised, to the satisfaction of Council, to address the requirements of the approved Overview Buffer Management Plan, including, but not limited to:

- Identification and retention of areas of existing vegetation, compatible with APZ requirements and consistent with Planning for Bushfire Protection guidelines.

- Detailed provisions for management of these areas during earthworks and on an ongoing basis.
30. The Vegetation Management Plan and Fauna Management Plan are to be revised, to the satisfaction of Council, to include detailed, precinct-scale maps at minimum 1:2000 scale at A4 size. Maps are to clearly identify:
- the boundaries of earthworks in relation to existing vegetation
 - vegetation to be retained
 - vegetation (including hollow-bearing trees) to be removed
 - location of fencing in relation to existing vegetation
31. A site-wide review of onsite Endangered Ecological Community offset commitments is to be prepared, along with a revised offset package if the approved offsets are no longer able to be met.
32. The following management plans require amendment to the satisfaction of Council prior to the issue of a Construction Certificate:

Fauna Management Plan

- Revise Figure 7 Potential Habitat Trees to clearly distinguish between habitat trees to be retained and those to be removed.
- Currently two habitat trees that are protected by a covenant area are identified as trees to be removed. This figure and any associated earthworks plans require revision to identify these as trees to be retained.
- Update the Plan to reflect the outcome of the Modification to the EPBC approval relating to offsets for Grey-headed Flying Fox habitat removal.
 - Table 6 management measures - Nest boxes to be installed for microbats (n = 4-5) and owls (n = at least 3). The plan currently states that the number and location of these nest boxes will be determined after baseline survey. Table 8 states that baseline survey has been completed. Therefore, the number of boxes and suitable locations for these boxes should be identified within this plan. Installation of these boxes is to be included as a “prior to construction” action in Table 7 Implementation Table.
 - Salvage of hollows is to be identified as a management measure.
 - Proposed suitable locations for installation of salvaged hollows and compensatory nest boxes are to be provided in the plan. The plan is to provide guidance in terms of recipient tree selection. The plan is to provide an indication of the likely quantity of salvaged hollows and nest boxes so that timing and resources for relocation, nest box construction and monitoring can be estimated. The plan should detail the minimum compensatory requirements for each Precinct, to assist with monitoring and reporting.

- List installation of osprey nest poles in Table 7 - implementation table. Revise the plan to indicate which pole has been installed, and detail timing for installation of the other.
- Revise the corrective actions/responses table to reflect performance criteria and include actions or a commitment to undertaking action to rectify identified failures.
- Incorporate the provisions of the approved Fauna Management Plan for Precinct 6.

Vegetation Management Plan

- The action that is currently provided for situations where “sufficient area is not available to provide a buffer” (p16). Is to be removed.
- Mapping of the boundaries of Precinct 9 and the covenant area within Management Area 8 requires revision to remove overlap.
- Actions in the VMP are to be presented as precinct-specific. It should be made clear in the plan which actions relate to each precinct. For example, the plan should detail where hollow-bearing trees to be removed are located and where associated hollows and/or nest boxes are to be installed.
- The amount of fencing and number of nest boxes required are to be included in the plan.
- “As required” is stated as a frequency for a number of monitoring actions. More specific timing is requested for each action, and a reference to the location of further detail, if directed by another plan.
- Incorporate the provisions of the approved Vegetation Management Plan for Precinct 6.

Site Regeneration and Revegetation Plan

- The following detail is required: area measurements of buffer plantings, transparent overlays for APZ area and buffer polygons in Rehabilitation Areas 8 and 9, covenant area and associated planting buffer in the south of Precinct 9.
- Amend the plan to clearly identify areas that will not respond to assisted regeneration and schedule planting to occur as an initial action rather than after 12 months of assisted regeneration in these areas.
- Area 7 - The eastern portion of Rehabilitation Area 7 currently contains a road, sediment basin, and has been subject to significant modification. Engineering drawings depict drainage infrastructure overlapping the covenant protected area in the south. Figure 9 identifies this area as part of Rehabilitation Zone 7b. Figure 6 indicates intent to plant Swamp Sclerophyll Forest in the area currently occupied by a road, while Figure 9 does not include the road in any Rehabilitation Zone. The Plan requires amendment to clarify the intent of this Rehabilitation Area, including the covenant area, providing information regarding timing of works in this area and identify and justify any inconsistencies with the restoration intent as approved by the Concept Plan. Maps are to be updated accordingly.

- Area 8 - Text requires amendment to reference the appropriate planting list for the target community. An additional planting list may be required for Freshwater Wetland planting.
- Incorporate the provisions of the approved Site Regeneration and Revegetation Plan for Precinct 6.

Construction Environmental Management Plan

- The CEMP will require amendment to reflect changes in all other management plans.
33. Prior to the issue of a Construction Certificate the Acid Sulfate Soils Management Plan (ASSMP) is to be amended to the satisfaction of Council to incorporate the provisions of the approved ASSMP for Precinct 6.
 34. Prior to the issue of a Construction Certificate the Groundwater Management Plan (GWMP) is to be amended to the satisfaction of Council to incorporate the provisions of the approved GWMP for Precinct 6.
 35. In accordance with Condition C18 of Concept Plan MP06_0316, a detailed description is to be provided to the satisfaction of the General Manager or delegate demonstrating compliance with previous Tweed Shire Council consent conditions intended to preserve wildlife corridors and protect and offset threatened species, populations and ecological communities and their habitats outside of the Concept Plan habitat requirements, or relevant reasons (such as subsequent amendments) as to why compliance was not required or may be transferred to current DAs. Such description is to include extracts of all relevant plans referred to in the conditions listed below sufficient to understand the land areas of relevance to the conditions and any overlap with current applications. Additional offset must be proposed if clearing of native vegetation has been undertaken not in accordance with the below development consents. Conditions to be addressed are as follows:
 - (a) D94/0438.04 Conditions 23, 24, 34a, 35, 36a, 37 and 38.
 - (b) K99/1124.06 Conditions 10, 15A, 30, 31, 41, 81, 83A, 90, 91, 92A, 93, 94A, 95A, 96, 97, 98, 99, 100, 101, 102A, 103, 104, 105, 106, 107, 108, 109 and Schedule B (National Parks imposed conditions via concurrence for Species Impact Statement.
 - (c) S94/0194 (as amended 29/08/2003) Conditions 42, 43, 45, 48, 50, 106, 110, 116, 162, 168, 211, 260, 310, 358 and 365.
 - (d) S97/0054.02 Conditions 19, 21, 26, 74, 80 and 82.

Where required the development consents are to be modified in accordance with Section 80A(1) of the Environmental Planning and Assessment Act and Regulations to be consistent with this consent.

[PCCNS04]

36. A Voluntary Planning Agreement between the applicant and OEH is to be approved prior to the issue of a Construction Certificate for bulk earthworks associated with stages immediately adjacent to the existing Scribbly Gum Reserve (Stages 9, 10, 11, 12 and 13).

[PCCNS05]

PRIOR TO COMMENCEMENT OF WORK

37. The proponent shall accurately locate and identify any existing sewer main, stormwater line or other underground infrastructure within or adjacent to the site and advise the Principal Certifying Authority of its location and depth prior to commencing works and ensure there shall be no conflict between the proposed development and existing infrastructure prior to start of any works.

[PCW0005]

38. Prior to commencement of work all actions or prerequisite works required at that stage, as required by other conditions or approved management plans or the like under this development application, shall be installed/operated in accordance with those conditions or plans.

[PCW0015]

39. **Prior** to the commencement of works, the applicant shall ensure that a Site-Specific Safety Management Plan and Safe Work Methods for the subject site have been prepared and put in place in accordance with either:-

- (a) Occupation Health and Safety and Rehabilitation Management Systems Guidelines, 3rd Edition, NSW Government, or
- (b) AS4804 Occupation Health and Safety Management Systems - General Guidelines on Principles Systems and Supporting Techniques.
- (c) WorkCover Regulations 2000

[PCW0025]

40. Where any pumps used for dewatering operations are proposed to be operated on a 24-hour basis, the owners of adjoining premises shall be notified accordingly prior to commencement of such operations.

[PCW0125]

41. Prior to work commencing, a "Notice of Commencement of Building or Subdivision Work and Appointment of Principal Certifying Authority" shall be submitted to Council at least **2 days** prior to work commencing.

[PCW0225]

42. Bulk Earthworks in accordance with the development consent must not be commenced until:

- (a) a Construction Certificate for the Bulk Earthworks has been issued in accordance with Council's Development Construction Specification C101 by:
 - (i) the Consent Authority, or
 - (ii) an Accredited Certifier, and
- (b) the person having the benefit of the development consent:
 - (i) has appointed a Principal Certifying Authority,
 - (ii) has appointed a Certifying Engineer to certify the compliance of the completed works.

The Certifying Engineer shall be a Professional Engineer (Civil) with National Engineering Register (NER) or a Registered Surveyor. Documentary evidence is to be provided to Council demonstrating currency of the above accreditation, and

- (iii) has notified the Consent Authority and the Council (if the Council is not the Consent Authority) of the appointment,
- (iv) a sign detailing the project and containing the names and contact numbers of the Developer, Contractor and Certifying Engineer is erected and maintained in a prominent position at the entry to the site in accordance with Councils Development Design and Construction Specifications. The sign is to remain in place until the Subdivision Certificate is issued, and
- (c) the person having the benefit of the development consent has given at least 2 days' notice to the Council of the person's intention to commence the work.

[PCW0815]

43. The proponent shall provide to the PCA copies of Public Risk Liability Insurance to a minimum value of \$10 Million for the period of commencement of works until a Final Practical Inspection has been undertaken by the PCA and the works accepted.

[PCW0835]

44. Prior to commencement of work on the site, all erosion and sedimentation control measures are to be installed and operational including the provision of a "shake down" area (where required) to the satisfaction of the Principal Certifying Authority. These measures are to be in accordance with the approved Erosion and Sedimentation Control Plan and adequately maintained throughout the duration of the approved works.

[PCW0985]

45. All relevant Terms of Approval of the Cobaki Estate Concept Plan (MP06_0316) approved by the Minister on 2 December 2010, and of Approval of the Cobaki Estate Project Application - Open Space (08_0200) approved by the Minister on 28 February 2011 must be satisfactorily completed, as applicable, prior to bulk earthworks commencing within areas of Precincts 6, 7, 8, 9, 10, 11 and 12, as applicable.

[PCWNS01]

DURING CONSTRUCTION

46. All proposed works are to be carried out in accordance with the conditions of development consent, approved Management Plans, approved Construction Certificates, drawings and specifications.

[DUR0005]

47. During construction, all works required by other conditions or approved management plans or the like shall be installed and operated in accordance with those conditions or plans.

[DUR0015]

48. If during construction works any Aboriginal object or relic is disturbed or uncovered, works are to cease and the Department of Environment, Climate Change and Water are to be notified immediately, in accordance with the provisions of the National Parks and Wildlife Act 1974.

[DUR0025]

49. Construction work including the entering and leaving of vehicles is limited to the following hours, unless otherwise permitted by Council:

Monday to Saturday from 7.00am to 6.00pm

No work to be carried out on Sundays or Public Holidays

The proponent is responsible to instruct and control subcontractors regarding hours of work.

[DUR0205]

50. All reasonable steps shall be taken to muffle and acoustically baffle all plant and equipment. In the event of complaints from the neighbours, which Council deem to be reasonable, the noise from the construction site is not to exceed the following:

A. Short Term Period - 4 weeks.

$L_{Aeq, 15 \text{ min}}$ noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 20dB(A) at the boundary of the nearest likely affected residence.

B. Long term period - the duration.

$L_{Aeq, 15 \text{ min}}$ noise level measured over a period of not less than 15 minutes when the construction site is in operation, must not exceed the background level by more than 15dB(A) at the boundary of the nearest affected residence.

[DUR0215]

51. All pumps used for onsite dewatering operations are to be installed on the site in a location that will minimise any noise disturbance to neighbouring or adjacent premises and be acoustically shielded to the satisfaction of Council's General Manager or his delegate so as to prevent the emission of offensive noise as a result of their operation.

[DUR0225]

52. The Principal Certifying Authority is to be given a minimum of 48 hours notice prior to any critical stage inspection or any other inspection nominated by the Principal Certifying Authority via the notice under Section 81A of the Environmental Planning and Assessment Act 1979.

Failure to comply with this condition may result in a stop work notice being issued and/or rejection of the works undertaken.

[DUR0405]

53. It is the responsibility of the applicant to restrict public access to the construction works site, construction works or materials or equipment on the site when construction work is not in progress or the site is otherwise unoccupied in accordance with WorkCover NSW requirements and Work Health and Safety Regulation 2011.

[DUR0415]

54. All earthworks and filling shall be carried out in accordance with AS 3798 (current version) to a Level 1 inspection regime and testing in accordance with Table 8.1.

The earthworks and filling shall also be undertaken in accordance with the recommendations

provided in the consolidated **Geotechnical Investigation** (as required by Consent Condition No. 28) and monitored by a Registered Geotechnical Testing Consultant.

[DUR0795]

55. The use of vibratory compaction equipment (other than hand held devices) within 100m of any dwelling house, building or structure is strictly prohibited.

[DUR0815]

56. No soil, sand, gravel, clay or other material shall be disposed of off the site without the prior written approval of Tweed Shire Council's General Manager or his delegate.

[DUR0985]

57. The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material deposited on the roadway by construction vehicles will be at the Developers expense and any such costs are payable prior to the PCA undertaking of a Final Practical Inspection of the works.

[DUR0995]

58. All work associated with this approval is to be carried out so as not to impact on the neighbourhood, adjacent premises or the environment. All necessary precautions, covering and protection shall be taken to minimise impact from:

- Noise, water or air pollution.
- Dust during filling operations and also from construction vehicles.
- Material removed from the site by wind.

[DUR1005]

59. All practicable measures must be taken to prevent and minimise harm to the environment as a result of the construction and operation of the development.

[DUR1025]

60. Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742 (Manual of Uniform Traffic Control Devices). The contractor or property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works.

[DUR1795]

61. Any damage caused to public infrastructure (roads, footpaths, services, etc) during construction of the development shall be repaired in accordance with Council's Development Design and Construction Specifications prior to the PCA undertaking of a Final Practical Inspection of the works.

[DUR1875]

62. The PCA shall be given a minimum 24 hours notice to carry out the following compulsory inspections in accordance with the approved Cobaki Estate Development Code, in conjunction with Tweed Shire Council's Development Control Plan, Part A5 - Subdivision Manual, Appendix D.

Inspection fees are based on the rates contained in Council's current Fees and Charges:

Stormwater Quality Control Devices (other than proprietary devices)

For detail refer to Water By Design - Technical Guidelines

- (a) Earthworks and filter media
- (b) Structural components
- (c) Operational establishment
- (d) Mechanical/electrical
- (e) Commissioning - On Maintenance
- (f) Off Maintenance

The PCA's role is limited to the above mandatory inspections and does **NOT** include supervision of the works, which is the responsibility of the Developers Supervising Consulting Engineer.

The EP&A Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an "Accredited Certifier".

The fee for the abovementioned inspections shall be invoiced upon completion of all subdivision works, and subject to the submission of an application for a 'Subdivision Works Compliance Certificate'.

[DUR1895]

63. The developer/contractor is to maintain a copy of the development consent, approved Management Plans and Construction Certificate approvals including plans and specifications on the site at all times.

[DUR2015]

64. Regular inspections shall be carried out by the Supervising Engineer on site to ensure that adequate erosion control measures are in place and in good condition both during and after construction.

Additional inspections are also required by the Supervising Engineer after each storm event to assess the adequacy of the erosion control measures, make good any erosion control devices and clean up any sediment that has left the site or is deposited on public land or in waterways.

This inspection program is to be maintained until the 1% Compliance Bond is released or until Council is satisfied that the site is fully rehabilitated.

[DUR2375]

65. All waters that are to be discharged from the site during dry weather periods and wet weather periods up to the Q3 month rain event (as defined in Council's Design Specification D7 - Stormwater Quality) shall have a pH between 6.5 and 8.5 and suspended solids not greater than 50mg/l. The contractor shall nominate a person responsible for monitoring of the quality of such discharge waters on a daily basis and the results recorded. Such results shall be made available to Council's Environmental Health Officer(s) upon request.

[DUR2435]
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66. Dust and Erosion Management

- (a) Site earthworks are to be limited to a 5ha maximum at any time to reduce exposed areas. Completed area's are to be topsoiled and seeded immediately to protect them from water and wind erosion.
- (b) All topsoil stockpiles are to be sprayed with dust suppression material such as "hydromulch", "dustex" or equivalent. All haul roads shall be regularly watered or treated with dust suppression material or as directed on site.
- (c) All construction activities that generate dust shall cease when average wind speeds exceed 15m/s (54 km/h). The applicant shall be responsible for the monitoring of on-site wind speeds and be able to produce this data to the PCA on request.

[DUR2825]

67. The Developer must establish a monitoring program, including reporting to determine the pollutant removal efficiencies of the proposed treatment devices, as per section D7.A12 of the TSC Development Design Specification - D7 Stormwater Quality and if further treatment of the stormwater drainage system is required to ensure the preservation of water quality in Cobaki Creek and Cobaki Broadwater.

Additionally;

- water shall not be released from detention basins until samples have been analysed and shown to meet the criteria outlined in the ESC Program, and.
- regular (three monthly) water quality testing is to be undertaken within the wetland in the vicinity of any discharge points to ensure that acceptable water quality parameters are maintained.

[DURNS01]

68. Erosion and Sediment Control

All erosion and sediment control measures are to be effectively implemented and maintained at or above design capacity for the duration of the construction works, and until such time as all ground disturbed by the works has been stabilised and rehabilitated so that it no longer acts as a source of sediment.

All activities on the site shall be undertaken with the objective of preventing discharge of sediment and other pollutants to lands and/or waters (the receiving environment) during construction activities. In particular the proponent shall ensure all practicable measures are taken to prevent contaminated stormwater from adversely affecting the water quality of Cobaki Creek and Cobaki Broadwater.

[DURNS02]

69. All land for residential development is to be filled to a level no less than the next highest 0.1m Design Flood Level contour, as determined from the latest, approved Cobaki Design Flood Level Map - "Q100 - Extent of Flooding" Drawing A443-BE7-SK01 Rev B (prepared by Sedgman), unless notified otherwise by Council.

[DURNS03]

70. All works shall be carried out in accordance with the Acid Sulfate Soils Management Plan or amendments to this Plan as prepared by SMEC dated September 2015.
71. Where groundwater is intercepted as a result of earthwork operations, groundwater discharges and or dewatering operations shall be managed in accordance with the Groundwater Management Plan prepared by SMEC dated June 2015.
72. All works shall be carried out in accordance with the provisions of the Construction Environment Management Plan prepared by SMEC dated September 2015.
73. A registered Fauna spotter-catcher is to be present during all vegetation clearing works to ensure safe dispersal of fauna.

[DURNS04]

PRIOR TO COMMENCEMENT OF FUTURE RESIDENTIAL SUBDIVISIONS OVER PRECINCTS 6, 7, 8, 9, 10, 11 & 12

74. Prior to commencement of future residential subdivisions over Precincts 6, 7, 8, 9, 10, 11 & 12, all works/actions/inspections etc required by other conditions or approved Management Plans or the like shall be completed in accordance with those conditions or plans.
75. Prior to commencement of future residential subdivisions over Precincts 6, 7, 8, 9, 10, 11 & 12, Work as Executed Plans of the undertaken Bulk Earthworks shall be submitted in accordance with the provisions of Tweed Shire Council's Development Control Plan Part A5 - Subdivision Manual and Council's Development Design Specification, D13 - Engineering Plans.

The plans are to be endorsed by a Registered Surveyor OR a Consulting Engineer Certifying that:

- (a) undertaken earthworks are consistent with the approved Bulk Earthworks Construction Certificates and are contained wholly within the subject site;
- (b) the plans accurately reflect the Work as Executed.

Note: Where works are carried out by Council on behalf of the developer it is the responsibility of the DEVELOPER to prepare and submit works-as-executed (WAX) plans.

76. Prior to commencement of future residential subdivisions over Precincts 6, 7, 8, 9, 10, 11 & 12 and prior to request for a Final Practical Inspection for each completed portion of Bulk Earthworks, a certificate of compliance, certifying that ;
 - the site is stable,
 - 100% of primary consolidation settlement (where applicable) is completed / achieved,
 - the earthworks and filling have been inspected and compacted to a Level 1 standard in accordance with AS 3798 (current version), and
 - the site is considered suitable for its intended use.

The submission shall include copies of all undertaken test results.

77. Prior to commencement of future residential subdivisions over Precincts 6, 7, 8, 9, 10, 11 & 12, the PCA must undertake a Final Practical Inspection of the complete bulk earthworks and be satisfied that all conditions of consent have been complied with.
78. All approved landscaping requirements must be completed to the satisfaction of the PCA prior to request for a Final Practical Inspection of the applicable Bulk Earthworks.
79. Any damage to property (including pavement damage) is to be rectified to the satisfaction of the General Manager or his delegate prior to request for a Final Practical Inspection of the applicable Bulk Earthworks. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the applicable Final Practical Inspection being undertaken.
80. The applicant must apply to Council (or PCA if applicable) for a Compliance Certificate for Subdivision Works. This may require obtaining individual Compliance Certificates for various civil works components such as (but not limited to) the following:
 - (a) Drainage
 - (b) Bulk Earthworks
 - (c) Retaining Walls

Note:

1. All compliance certificate applications for Subdivision Works must be accompanied by documentary evidence from the developers Certifying Engineer, certifying that the specific work for which a certificate is sought has been completed in accordance with the terms of the development consent, the Construction Certificate, Tweed Shire Council's Development Control Plan Part A5 - Subdivisions Manual and Councils Development Design and Construction Specifications.
 2. The EP&A Act, 1979 (as amended) makes no provision for works under the Water Management Act 2000 to be certified by an "Accredited Certifier".
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81. At the completion of each bulk earthworks phase and prior to issue of any future Subdivision Certificate the "Q100 - Extent of Flooding" Drawing (also referred to as the Design Flood Level Map) shall be updated to include Works As Executed levels for bulk earthworks and any other works that may affect flood behaviour and submitted to Council for endorsement.

The submission shall be certified by a practising Civil Engineer with National Engineers Register (NPER) registration.
 82. Bulk Earthworks shall not be accepted by the PCA until all applicable consent conditions have been satisfactorily addressed and the PCA has conducted a Final Practical Inspection and issued a Certificate of Compliance noting no outstanding matters to be addressed.

