

Addendum Report

- a8 [PR-PC] Development Application DA10/0801.02 for an Amendment to Development Consent DA10/0801 for the Cobaki Estate Subdivision of Precinct 6 Comprised of 442 Residential Lots (Including 1 Residual Lot) and Lots for Drainage, Open Space and Urban Infrastructure (JRPP) at Lot 1 DP 570076, Lots 54, Part Lot 199 & Lot 200 DP 755740 Piggabeen Road, Cobaki Lakes; Lot 1 DP 562222, Lot 1 DP 570077, Lot 1 DP 823679, Lot 2 DP 566529, Lots 46, 55, Part 199, 201, 202, 205, 206, 209, 228, 305 DP 755740 Sandy Lane, Cobaki Lakes

SUBMITTED BY: Development Assessment

FILE REFERENCE: DA10/0801 Pt17



Civic Leadership

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- | | |
|-------|------------------------------------------------------------------------------------------------|
| 1 | Civic Leadership |
| 1.2 | Improve decision making by engaging stakeholders and taking into account community input |
| 1.2.1 | Council will be underpinned by good governance and transparency in its decision making process |

SUMMARY OF REPORT:

Updated Information

As detailed in previous reports, the current wording of Condition 63 of Development Consent DA10/0801 (Precinct 6) requires the proponent to provide design details for bridges over the east west fauna corridor to enable fauna to range through the corridor and facilitate east – west connectivity for fauna across the site.

The proponent has put forward a modification of Condition 63, whereby a culvert design is the preferred option with two 2.4m wide x 1.8m high culverts connected with a concrete slab being proposed.

It is considered that a bridge structure as required under the existing Condition 63 is the design solution most closely aligned with the planning intent to maximise habitat connectivity through the environmental area across which the roads are proposed to traverse. The recommendation in relation to Condition 63, to the 6 March 2014 Planning Committee was as follows:

- 63A. Detailed design drawings for all road crossings over the nominated fauna corridor are to be provided illustrating replacement of culverts with bridges submitted to the General Manager or his delegate for approval. Each crossing design shall incorporate three 2.4 x 1.8m culverts (or two 2.4 x 1.8m culverts connected with a slab) in the centre of the corridor and an additional culvert (minimum 2.4 x 1.2m) on either side of the central culverts to enable a range of fauna to cross through the corridor and facilitate east-west connectivity for fauna across the site.

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However, it was resolved at this meeting that the determination of the original report be deferred to the 20 March 2014 Ordinary Council meeting to *'enable the consideration of information with regards to the ecological, engineering and integrity of the various underpass designs'*.

Following the analysis of information and practices from bodies such as the RMS and Queensland Roads on their designs, a memo was provided to the Councillors on 18 March 2014 (refer to Confidential Attachment 1) detailing five main fauna corridor options to consider, including the original bridge requirement of the approved Condition 63. The second most suitable of these options, taking into account cost issues and the intent of maintaining the wildlife corridor, was as follows:

2. *Provide four (4) 3.0m wide x 2.4m high dry passage fauna openings at each road crossing supported by plantings at the underpass entrances, fencing and suitable "furniture" treatments. Such openings should be in addition to any culverts required for drainage purposes.*

At the Ordinary Council meeting of 20 March 2014, Council resolved to defer the item to the 1 May Planning Committee meeting to enable:

1. *The proponent's consultant to have an opportunity to respond to the Council's memo of 18 March 2014.*
2. *Council to provide a series of questions relating to the preparation of the proponent's consultant's report; and*
3. *Council to negotiate with the proponent to determine if an arbitrator could be appointed to resolve the outcome of the openings, with costs to be shared equally between the parties.'*

Council at its Planning Committee meeting of 3 April 2014 recommended as follows:

"that Council reconsiders the application and makes a determination following preparation of a report reflecting the proposed meeting of Leda and Council ecologists."

Leda's ecologist and Council's ecologist met on 14 May 2014 to discuss the matter and to identify issues of agreement and disagreement. A record of the discussion is attached (refer to Confidential Attachment 2). A summary of the points of difference are noted below:

1. There was agreement on the need for structures that will maximise/facilitate/optimize the east-west movement of wildlife across the Cobaki site, but remain in disagreement about the scale and dimensions of such structures.
2. Council's ecologist remains of the view that a bridge structure would be better and have a lower impact than either of the culvert structures suggested by Council or the proponent and is the design solution most closely aligned with the planning intent to maximise habitat connectivity through the environmental area across which the roads are proposed to traverse.
3. There was agreement that maximising year-round dry access within fauna underpasses is an important consideration.
4. There was agreement that if a culvert design is to be adopted, that appropriate habitat and habitat features (dense vegetation clumps, logs, rocks etc) would

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assist utility at the entrances and that ledges and shelves would be beneficial within some of the underpasses.

5. Based on empirical data from monitoring studies Leda's ecologist remains strongly of the opinion that the scale and dimensions of the structures as currently proposed by the proponent exceed the minimum that can already be demonstrated – in conjunction with other measures such as exclusion fencing - to be effective in terms of facilitating fauna movement beneath roads of comparable and even greater widths than are associated with the two road crossings being considered in this instance.
6. Council's ecologist remains of the opinion that neither the published literature nor information provided by Leda's ecologist is sufficient to conclude that the proponent's culvert design (or indeed Council's proposed compromise culvert design) would allow fauna movement and dispersal of a magnitude similar to the total fauna movement and dispersal in the corridor (once established) without any road crossing.
7. There was agreement that the currently approved underpass configuration at the eastern (Cobaki Parkway) end of the easement will potentially constrict the movement of wildlife into and out of the envisaged corridor.

Following the meeting between Leda's and Council's ecologists, the proponent has provided verbal advice to Council's General Manager that based on the advice of their ecologist, that they are not prepared to compromise their latest proposed fauna culvert design, and would defend this position through an appeal in the NSW Land and Environment Court.

It should also be noted from previous legal advice that Council will need to determine a pathway to allow completion of this matter. That is, Council is not able to refer determination on a specific condition of the approval, as Council's decision making function under the Environmental Planning & Assessment Act is indivisible. Refer to Confidential Attachment 3 in this regard.

Despite the proponent maintaining their current position, the discussions between Council's ecologist and the proponent's ecologist were beneficial to the extent that Council sought to reach a solution in good faith that would maintain the intent of the corridor. Therefore in an effort to resolve the issue, Council's ecologist conceded during the discussions and as part of the final report between the parties that the maximum height could be at the proponent's preferred height of 1.8m (rather than 2.4m).

It is therefore concluded that, should Council still wish to support an alternative to the original, preferred bridge option, the following amendment to Condition 63 is required (and has been included in the Recommended Conditions below):

- 63A. Detailed design drawings for all road crossings over the nominated fauna corridor are to be submitted to the General Manager or his delegate for approval. Each crossing design shall incorporate four 3.0m wide x 1.8m high dry passage openings supported by plantings at underpass entrances, fencing and suitable "furniture" treatments where such openings are in addition to any culverts required for drainage purposes to enable a range of fauna to cross through the corridor and facilitate east-west connectivity for fauna across the site.

From an engineering perspective, it is estimated at this stage that only one culvert is likely to be required for drainage purposes, however the number and size will need to be confirmed through further detailed design.

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In addition to the abovementioned amendments to Condition 63, two additional amendments were proposed at Council's Meeting of 20 March 2014, in the form of an amendment to Condition 55 and a new condition.

The proposed amendment of Condition 55 proposed to delete part (d), which requires a mechanism to fund in perpetuity the ongoing maintenance of the environmental protection land, similar to the recently approved Leda Cobaki Precinct 1 and 2 Section 96 application. Item 7 of the recommended conditions below incorporates the deletion of part (d) of Condition 55.

As a result of the above amendment to Condition 55, a new condition (Item 10a in the list of recommended conditions below) is proposed by in relation to the revised timing of an agreement with Council with regard to funding of the environmental protection land, similar to the recently approved Precinct 1 and 2 Section 96 application. The proposed new Condition 64.1 is as follows:

- 64.1 Prior to the issue of a Construction Certificate for Civil Works the proponent must reach an agreement with Council regarding a mechanism to fund in perpetuity the ongoing maintenance of the environment protection land.

Original Report

Council is in receipt of a Section 96 application for proposed modifications to the approved Cobaki Estate subdivision of Precinct 6.

There is no proposed change to the approved subdivision layout of the development or overall number of allotments.

The applicant is seeking to modify the proposed development by way of amending or deleting various conditions of consent.

The application was submitted to Council in October 2011. Request for information was provided to the proponent in May 2012. A response was received by Council in September 2013 enabling further assessment of the application.

Of the 29 proposed modifications, a total of only seven have been supported in the same format as proposed by the applicant. A further 12 of the proposed modifications are supported, subject to further amendments with the majority of the proposed changes having been accepted by the applicant. 10 of the proposed modifications by the applicant are not supported and one new condition is recommended as a result of one of the applicant's proposed modifications.

One of the major issues with the application is in relation to the requirement for a funding mechanism for the ongoing maintenance of the environmental protection land.

There has been considerable discussion on this issue with the applicant, with no clear agreement being achieved to date. There have also been two Councillor workshops to discuss the matter, with the most recent workshop being held on 30 January 2014.

The original conditions of consent were applied as a result of the applicant deciding to not dedicate environmental lands to Council. Concern for the ongoing maintenance of the environmental land (beyond the vegetation/remediation works required by the Site Regeneration and Revegetation Plan) resulted in Condition 55 requiring (amongst other things) a *'mechanism to fund in perpetuity the ongoing maintenance of the environmental protection land not proposed to be dedicated to Council'* prior to the issue of any Construction Certificate.

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Initially the applicant requested the deletion of this component (Clause (d)) of Condition 55. The proposed deletion of Clause (d) has consistently been opposed in discussions with the proponent, as it is considered that the applicant is responsible for the ongoing management of the environmental land until such time that an agreement can be made with Council.

The actual mechanism of the funding (i.e. how the funding can be fairly and equitably achieved) is considered to be a separate matter to the issue of whether the funding requirement should be applied at all.

Since the most recent Councillor workshop, the applicant has proposed a new condition of consent deferring the issue of funding mechanism to prior to the issue of Civil Works Construction Certificate, to allow the issue of Construction Certificate for Bulk Earth Works to proceed.

Whilst the proposed new condition appears to be a reasonable request so that the Bulk Earthworks of Precinct 6 are not unduly held up, it is not supported as the mechanism for ensuring that management continues in perpetuity, needs to be determined prior to the time when the major impact occurs, which is at the Bulk Earthworks stage.

There are several options available to consider as a funding mechanism which have been discussed at previous Councillor workshops. These options are:

- Capital contribution from land sales;
- Planning agreement (for example as applied in Altitude Aspire, Area E);
- Special Levy (for example as applied in Koala Beach);
- Existing rate base (not supported as it defers the cost of new development to existing residents when Council is already facing an asset management shortfall on existing infrastructure, natural assets and open space);
- Ordinary Rate income from the increased assessments derived from the estate (the ability to fund the management of the lands through the Ordinary Rates generated through the additional assessments of the estate can only be determined once clear costings for the management of the land have been accurately estimated and it is modelled along with Council's other asset management and service delivery obligations of the estate);
- A combination of the above; or
- By the lands being retained, managed and funded by the residents of the estate via a community title scheme.

It is considered appropriate that the applicable option be determined at a separate Council meeting, once the costings of the funding has been accurately estimated and a separate report on the matter put to Council for consideration.

RECOMMENDATION:

That:

- A. ATTACHMENTS 1, 2 and 3 are CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because it contains:-**
- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.**
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B. Development Application DA10/0801.02 for an amendment to Development Consent DA10/0801 for the Cobaki Estate subdivision of Precinct 6 comprised of 442 residential lots (including 1 residual lot) and lots for drainage, open space and urban infrastructure (JRPP) at Lot 1 DP 570076, Lots 54, Part Lot 199 & Lot 200 DP 755740 Piggabeen Road, Cobaki Lakes; Lot 1 DP 562222, Lot 1 DP 570077, Lot 1 DP 823679, Lot 2 DP 566529, Lots 46, 55, Part 199, 201, 202, 205, 206, 209, 228, 305 DP 755740 Sandy Lane, Cobaki Lakes be approved and the consent be amended as follows:

1. Delete Condition No. 10 and replace it with Condition No. 10A which reads as follows:

10A In accordance with Condition 38 of Project Application MP08_0200, no works shall be undertaken within the Precinct 6 area that may impact upon (or contribute to an impact upon) the freshwater wetlands and Wallum Froglet habitat area until an appropriate agreement is entered into between the Proponent and the Office of Environment and Heritage that offsets the project's impact on biodiversity. This agreement shall include provision for alternative offsets to be delivered should monitoring indicate that an appropriate wetland environment is not achieved after an appropriate time. Evidence of such an agreement shall be forwarded to the Director General no later than 5 working days prior to works commencing in those areas.

Notwithstanding the above, the proponent shall prepare a detailed Wallum Froglet Compensatory Habitat Plan as per Section 4.3 of the Revised Freshwater Wetland Rehabilitation Plan prepared by James Warren and Associates, dated October 2010. In addition to these requirements, the Wallum Froglet Compensatory Habitat Plan must include the following information on the core breeding habitat areas:

- (i) Detail on how Wallum Froglet core breeding areas will be constructed and maintained;
- (ii) Detail on the design of fauna crossings where the fauna corridor is bisected by a road to ensure Wallum Froglet movement between core breeding habitat ponds is available;
- (iii) How threats to the survival of Wallum Froglet Habitat will be managed;
- (iv) Monitoring and reporting requirements including monitoring of Wallum Froglet usage of the core breeding habitat area, usage of fauna corridors, Wallum Froglet population size and breeding success, water quality, habitat suitability and presence of exotic species (particularly Cane Toad and Gambusia); and
- (v) A contingency planning option in the case of system failure.

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2. Insert new Condition 10.1 as follows:

10.1 The Proponent is responsible for the management of all Offset Areas for conservation purposes and the implementation of ongoing management and maintenance activities specified in all Environmental Management Plans, until such time that an agreement is reached with Council regarding the dedication of that land.

3. Delete Condition No. 11 and replace it with Condition No. 11A which reads as follows:

11A. The proponent must design, construct, operate and maintain the project to ensure that it does not adversely affect any remaining Wallum Froglet populations on, or adjacent the site.

4. Delete Condition No. 19 and replace it with Condition No. 19A which reads as follows:

**19A. Evidence must be submitted to Council prior to the registration of any Plan of Residential Subdivision, demonstrating that works have been commenced in accordance with the Revised Saltmarsh Rehabilitation Plan by James Warren and Associates dated October 2010 and as specified within Condition 65 of MP08_0200.
The works are to be undertaken in accordance with the timing and responsibilities contained within the approved, Final Saltmarsh Rehabilitation Plan.**

5. Delete Condition No. 34 and replace it with Condition No. 34A which reads as follows:

34A. Prior to the issue of a Construction Certificate for civil works the following detail in accordance with Councils Development Design and Construction Specifications shall be submitted to the Principal Certifying Authority for approval.

- (a) copies of compliance certificates relied upon
- (b) four (4) copies of detailed engineering plans and specifications.

The detailed plans shall include but are not limited to the following:

- Earthworks
 - Clearly showing pre and post development levels (spot levels and contours) at a legible scale.
 - Comply with the provisions of Council's Design Specification D6 – Site Regrading.

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- Batter slopes on drain cross sections and in public open space areas shall not exceed 1:4 (v:h), unless otherwise authorised by Council.
- 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
- Roadworks/furnishings
 - Providing road profiles complying with Council's Design Specification D1 – Road Design, unless approved otherwise by Council.
 - Stormwater drainage
- Water supply works
 - In general accordance with Yeats Consulting Engineers - Water Network Analyses, April 2011, Revision 03, unless modified otherwise by the conditions of this Consent.
- Sewerage works
 - In general accordance with Yeats Consulting Engineers - Master Sewer Reticulation Plan Revision C, unless modified otherwise by the conditions of this Consent.
- Landscaping works
- Sedimentation and erosion management plans
- Location of all service conduits (water, sewer, electricity supply and telecommunication infrastructure)

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.

6. Delete Condition No. 47 and replace it with Condition No. 47A which reads as follows:

47A. Any playgrounds provided must comply with the guidelines established in the Playground Audit for Tweed Shire Council (July 2009). Appendix 3 establishes the procedure for assessing nearby hazards and mitigation measures. The proposed open space areas for this stage as identified in Planit Consulting Drawing Set Dated March 2011 shall be designed to minimise the hazards to designated playground areas consistent with those mitigating features identified in Appendix 3A7 of the Playground Audit for Tweed Shire Council (July 2009). Detailed drawings and reporting outlining mitigation measures to be employed to mitigate risk are to be submitted for approval by the General Manager or his delegate. In proposing mitigation measures consideration of long term maintenance costs shall be considered and evaluated in any reporting.

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7. Delete Condition No. 55 and replace it with Condition No. 55A which reads as follows:

55A One or more detailed Habitat Restoration Plan(s) must be submitted to and approved by Council in accordance with Council's draft guidelines (attached), and in accordance with specific matters listed in Condition C4 of Concept Plan MP 06_0316. Such plan(s) must be prepared for Management Areas 10 and 13 of the Revised Site Regeneration and Revegetation Plan by James Warren and Associates dated April 2013 and representing compensatory offset for loss of habitat and Endangered Ecological Communities on the site in areas adjacent to the development. Where offset areas as detailed in the Revised Site Regeneration and Revegetation Plan are proposed as an alternate use within the subdivision plan (that is, other than as an environmental protection area such as park or drainage reserve lots), additional EEC and habitat offset areas must be designated elsewhere in a location suitable to the vegetation community and/or threatened species to be protected and their habitat restored, with such areas totalling at least as committed within Concept Plan MP06_0316. The Habitat Restoration Plan(s) must also include:

- (a) a schedule and timing of works to be undertaken.
- (b) a statement of commitment by the consent holder to maintain the works until the relevant performance criteria of the Site Regeneration and Revegetation Plan are achieved and until such time as an agreement is reached with Council regarding the dedication of that land.
- (c) a statement of commitment by the consent holder that the works will be completed by qualified and experienced bush regeneration personnel.

8. Insert new Condition 55.1 as follows:

55.1 Following the successful rehabilitation of Management Areas 10 and 13 of the Revised Site Regeneration and Revegetation Plan by James Warren and Associates dated October 2013, the landowner shall offer to dedicate that land to Council.

9. Delete Condition No. 62 and replace it with Condition No. 62A which reads as follows:

62A. Should, following the proponent's best endeavours, National Rental Affordability Scheme (NRAS) (or equivalent) funding be available to provide affordable housing within the development in accordance with the approved Cobaki Estate Affordable Housing Study, a staging plan detailing the location, mix and type of dwellings to be provided as affordable rental accommodation is to be submitted to Council in

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accordance with the recommended strategy contained in the Cobaki Estate Affordable Housing Study (Final Version print date 14.1.2011) prepared for Leda Manorstead Pty Ltd. by Hill PDA and dated November 2010.

10. Delete Condition No. 63 and replace it with Condition No. 63A which reads as follows:

63A. Detailed design drawings for all road crossings over the nominated fauna corridor are to be submitted to the General Manager or his delegate for approval. Each crossing design shall incorporate four 3.0m wide x 1.8m high dry passage openings supported by plantings at underpass entrances, fencing and suitable "furniture" treatments where such openings are in addition to any culverts required for drainage purposes to enable a range of fauna to cross through the corridor and facilitate east-west connectivity for fauna across the site.

- 10a. Insert new Condition No. 64.1 as follows:

64.1 Prior to the issue of a Construction Certificate for Civil Works the proponent must reach an agreement with Council regarding a mechanism to fund in perpetuity the ongoing maintenance of the environment protection land.

11. Delete Condition No. 73 and replace it with Condition No. 73A which reads as follows:

73A. Prior to the commencement of construction works a Construction Environmental Management Plan (CEMP) must be prepared that covers the area of works. The CEMP shall be consistent with the Guideline for the Preparation of Environmental Management Plans (DIPNR, 2004). The CEMP shall include details sufficient to understand and avoid, mitigate and remedy all potential environmental impacts of the proposal during construction. The CEMP must include, but not be limited to all matters specified within Condition 25 of Project Application MP08_0200 and be submitted to and approved by the PCA prior to commencement of construction, or within such period otherwise agreed by the General Manager or delegate.

12. Delete Condition No. 105 and replace it with Condition No. 105A which reads as follows:

105A. 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. Where water is to be discharged from the site the contractor shall nominate a person responsible for monitoring of the quality of such discharge waters on a daily basis and the results

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recorded. Such results shall be made available to Council's Environmental Health Officer(s) upon request.

13. Delete Condition No. 117 and replace it with Condition No. 117A which reads as follows:

117A. The proposed passive parks are to be *progressively* dedicated as passive open space and suitably embellished at no cost to Council in accordance with the approved landscaping plan. Embellishment arrangements shall be in place prior to the issue of a Subdivision Certificate.

14. Delete Condition No. 119 and replace it with Condition No. 119A which reads as follows:

119A. Prior to the issue of a Subdivision Certificate, a *performance* bond equal to 25% of the contract value of the footpath and cycleway construction works shall be lodged for a period of 3 years or until 80% of the lots fronting paved footpaths and cycleways are built on.

Alternatively, the developer may elect to pay a cash contribution to the value of the footpath and cycleway construction works plus 25% in lieu of construction and Council will construct the footpath when the subdivision is substantially built out. The cost of these works shall be validated by a schedule of rates.

15. Delete Condition No. 120 and replace it with Condition No. 120A which reads as follows:

120A. A bond shall be lodged to ensure suitable care and maintenance is provided to plantings and turf over a 12 month establishment period. This care is required to achieve optimal plant establishment and performance. The bond shall be held by Council to ensure that the associated landscaping is maintained by the developer for a period of 12 months from the date of issue of a Subdivision Certificate.

The amount of the bond shall be 20% of the estimated cost of the landscaping.

16. Delete Condition No. 121 and replace it with Condition No. 121A which reads as follows:

121A. Cash Bond/Bank Guarantee

(a) A Cash Bond or Bank Guarantee to ensure that the approved Site Regeneration and Revegetation Plan (SRRP) is implemented and completed, must be lodged with Council prior to the release of the Subdivision Certificate. The amount of such bond will be based on the cost of environmental repair, enhancement and maintenance works *remaining* to be undertaken in accordance

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with the approved SRRP. In this regard, two (2) written quotes from suitably experienced and qualified bush regenerators (to the satisfaction of the General Manager or his delegate) must be submitted to Council which detail the cost of all works associated with the SRRP. The amount of the bond will be equivalent to 100% of the estimated cost of works.

- (b) One third of the Cash Bond or Bank Guarantee will be refunded one year after the initiation of works on submission of certification by a suitably experienced and qualified bush regenerator stating that works are being satisfactorily undertaken in accordance with the approved SRRP. A further one third of the Bond or Bank Guarantee will be refunded 3 years after the initiation of works on submission of certification by a suitably experienced and qualified bush regenerator stating that works have been satisfactorily reached the defined half-way stage of the SRRP. The final one third of the Bond or Bank Guarantee will be released 5 years after the initiation of works on submission of certification by a suitably experienced and qualified bush regenerator stating that the SRRP has been satisfactorily completed.
- (c) Monitoring of the effectiveness of environmental repair, enhancement and maintenance works must be undertaken by an independent and suitably qualified and experienced bush regenerator at yearly intervals following initiation of the Environmental Restoration Plan SRRP works. Reports of this monitoring must provide the basis for the person issuing certification for the bond or bank guarantee refunding stages and must be annually submitted to Council as evidence. Any supplementary or approved adaptive management works deemed necessary by the independent bush regenerator during the life of the SRRP must be undertaken once the need is identified.

17. Delete Condition No. 133 and replace it with Condition No. 133A which reads as follows:

133A. The Plan of Proposed Subdivision shall dedicate the proposed drainage reserve adjacent to that stage of the development at no cost to Council. The proponent shall submit an accurate plan of the proposed drainage reserve to Council 60 days prior to lodgement of Application for Subdivision Certificate to allow the land to be classified.

18. Delete Condition No. 148 and replace it with Condition No. 148A which reads as follows:

148A. The staged embellishment of all areas of casual open space, structured open space, cycleways, pedestrian links and streetscapes

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is to be completed, consistent with the approved landscape plans, to the satisfaction of the General Manager Tweed Shire Council or delegate prior to issue of the Subdivision Certificate.

The Developer will be responsible for maintaining the installed playground equipment and softfall for a period of 6 months after 20% of the relevant stage's allotments have been occupied. A maintenance compliance bond of 5% of the total cost of the installed playground equipment and softfall must be paid to Council prior to the release of the relevant Subdivision Certificate for each stage. The bond will be return upon request at the completion of the maintenance period, if not expended during the maintenance period.

19. Delete Condition No. 155 and replace it with Condition No. 155A which reads as follows:

155A. Prior to the release of a Subdivision Certificate the land owner of the site of the future Cobaki Community Centre under Concept Plan Approval MP06_0316 is to enter into a Deed of Agreement with Council such that the identified land is to be provided with a constructed road frontage and all normal urban services and dedicated to Council at no cost prior to the release of a Subdivision Certificate that would allow the creation of more than 2000 residential lots within the Cobaki development.

20. Delete Condition No. 158 and replace it with Condition No. 158A which reads as follows:

158A. Lots 602, 603 and 605 adjoining the central drain are to be dedicated as drainage reserve, not environmental open space as indicated on the 'Plan of Proposed Subdivision, Precinct 6 Drainage Reserves & Parks', reference Michel Group Services 6400-218, Issue A, dated 24/11/2010.

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REPORT:

Applicant: Leda Manorstead Pty Ltd
Owner: Leda Manorstead Pty Ltd
Location: Lot 1 DP 570076, Lots 54, Part Lot 199 & Lot 200 DP 755740 Piggabeen Road, Cobaki Lakes; Lot 1 DP 562222, Lot 1 DP 570077, Lot 1 DP 823679, Lot 2 DP 566529, Lots 46, 55, Part 199, 201, 202, 205, 206, 209, 228, 305 DP 755740 Sandy Lane, Cobaki Lakes
Zoning: 2(c) Urban Expansion, 7(d) Environmental Protection (Scenic/Escarpment), 7(l) Environmental Protection (Habitat), 6(b) Recreation, 7(a) Environmental Protection (Wetlands & Littoral Rainforests)
Cost: Not Applicable

BACKGROUND

Cobaki Estate has multiple layers of approvals which allow for subdivision of the site, including a town centre, community facilities, sports fields, parks and other infrastructure.

The following table summarises the key and more contemporary approvals issued over the site:

Determining Authority	Approval	Date
Tweed Shire Council	S94/194 approximately 763 lots and Cobaki Parkway	1995
Tweed Shire Council	S97/54 approximately 430 lots (Parcel 7-10)	1997
Tweed Shire Council	K99/1124 approximately 560 lots	2000
Tweed Shire Council	Part 12 – Bulk Earthworks across the whole site	
Tweed Shire Council	1162/2001DA – Bulk Earthworks and Masterplan for Town Centre	2002
Department of Planning	Concept Plan approval for approximately 5000 dwellings	December 2010
Department of Planning	Project Application central open space and drainage corridor	February 2011
Northern Joint Regional Planning Panel	DA10/0800 – 475 Residential Lots (Precinct 1 and 2)	May 2011
Northern Joint Regional Planning Panel	DA10/0801 – 441 Residential Lots (Precinct 6)	May 2011
Department of Planning & Infrastructure	Concept Plan approval for approximately 5000 dwellings – Mod 1	May 2013
Department of Planning & Infrastructure	Project Application central open space and drainage corridor –	May 2013

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Determining Authority	Approval	Date
	Mod 1	
Planning & Infrastructure	Project Application central open space and drainage corridor – Mod 2	Not Yet Determined

Precinct 6 comprises of 441 residential lots (including 1 residual lot) and lots for drainage, open space and urban infrastructure was determined by the Joint Regional Planning Panel, being granted on 30 May 2011.

PROPOSED DEVELOPMENT:

There is no proposed change to the approved layout of the development.

The proposed modifications to Development Consent DA10/0801 as submitted by the applicant are noted below, along with a summary of whether or not the proposed modification has been supported by Council officers:

- The deletion of **Condition 9** in relation to the modification of old consents in order to achieve consistency with this consent (DA10/0801). The proposed deletion of Condition 9 is not supported;
- The modification of **Condition 10** which relates to Freshwater Wetlands and Wallum Froglet area. The proposed modification of Condition 16 is supported, subject to the inclusion of new Condition 10.1;
- New **Condition 10.1** relates to the management of all offset areas. The proposed new condition is recommended as a result of the proposed modification of Condition 10;
- The modification of **Condition 11** which relates to Wallum Froglet protection. The proposed modification of Condition 11 is supported, subject to further amendments;
- The modification of **Condition 19** which relates to commencement of works required by the Revised Saltmarsh Rehabilitation Plan. The proposed modification of Condition 19 is supported, subject to further amendments;
- The modification of **Condition 23** in relation to the Cobaki Estate Affordable Housing Study. The proposed modification of Condition 23 is not supported;
- The modification of **Condition 34** in relation to the maximum disturbed area. The proposed modification of Condition 34 is supported, subject to further amendments;
- The modification of **Condition 47** with regard to the design requirements for playgrounds. The proposed modification of Condition 47 is supported;
- The modification of **Condition 48** in relation to the maintenance period for grassing/revegetating the Central Open Space. The proposed modification of Condition 48 is not supported;
- The modification of **Condition 51** in terms of the low flow drain realignment. The proposed modification of Condition 51 is not supported;
- The deletion of **Condition 52** with regard to the low flow drain location. The proposed deletion of Condition 52 is not supported;
- The deletion of **Condition 54** which relates to the existing consent conditions across the site. The proposed deletion of Condition 54 is not supported;

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- The modification of **Condition 55** in terms of the requirements of the Habitat Restoration Plans, including mechanism for funding. Components of the proposed modification of Condition 55 are supported, subject to further amendments;
- Proposed new **Condition 55.1** relating to dedication of environmental protection land to Council. The proposed new Condition 55.1 is supported, subject to further amendments;
- The modification of **Condition 62** with regard to affordable housing requirements. The proposed modification of Condition 62 is supported;
- The modification of **Condition 63** which relates to the fauna road crossing requirements. The proposed modification of Condition 63 is supported, subject to further amendments;
- Proposed new **Condition 64.1** with regard to the timing of an agreement with Council in terms of a mechanism to fund in perpetuity land not being dedicated to Council. The proposed new Condition 64.1 is not supported;
- The modification of **Condition 65** which relates to primary revegetation and regeneration works. The proposed modification of Condition 65 is not supported;
- The modification of **Condition 73** in terms of the timing of the Construction Environmental Management Plan (CEMP). The proposed modification of Condition 73 is supported, subject to further amendments;
- The modification of **Condition 105** in relation to requirements for discharged water from the site. The proposed modification of Condition 105 is supported, subject to further amendments;
- The modification of **Condition 117** with regard to the timing of dedication of passive parks. The proposed modification of Condition 117 is supported;
- The modification of **Condition 119** in terms of details regarding the maintenance bond for footpaths and cycleways. The proposed modification of Condition 119 is supported, subject to further amendments;
- The modification of **Condition 120** in relation to details regarding the landscaping bond. The proposed modification of Condition 120 is supported, subject to further amendments;
- The modification of **Condition 121** with regard to the cash bond/bank guarantee for the Site Regeneration and Revegetation Plan. The proposed modification of Condition 121 is supported, subject to further amendments;
- The modification of **Condition 133** in terms of the staging of the dedication of the drainage reserve. The proposed modification of Condition 133 is supported;
- The modification of **Condition 136** in relation to standard requirements for underground telephone supply. The proposed modification of Condition 136 is not supported;
- The modification of **Condition 148** with regard to the embellishment of casual open space. The proposed modification of Condition 148 is supported, subject to further amendments;

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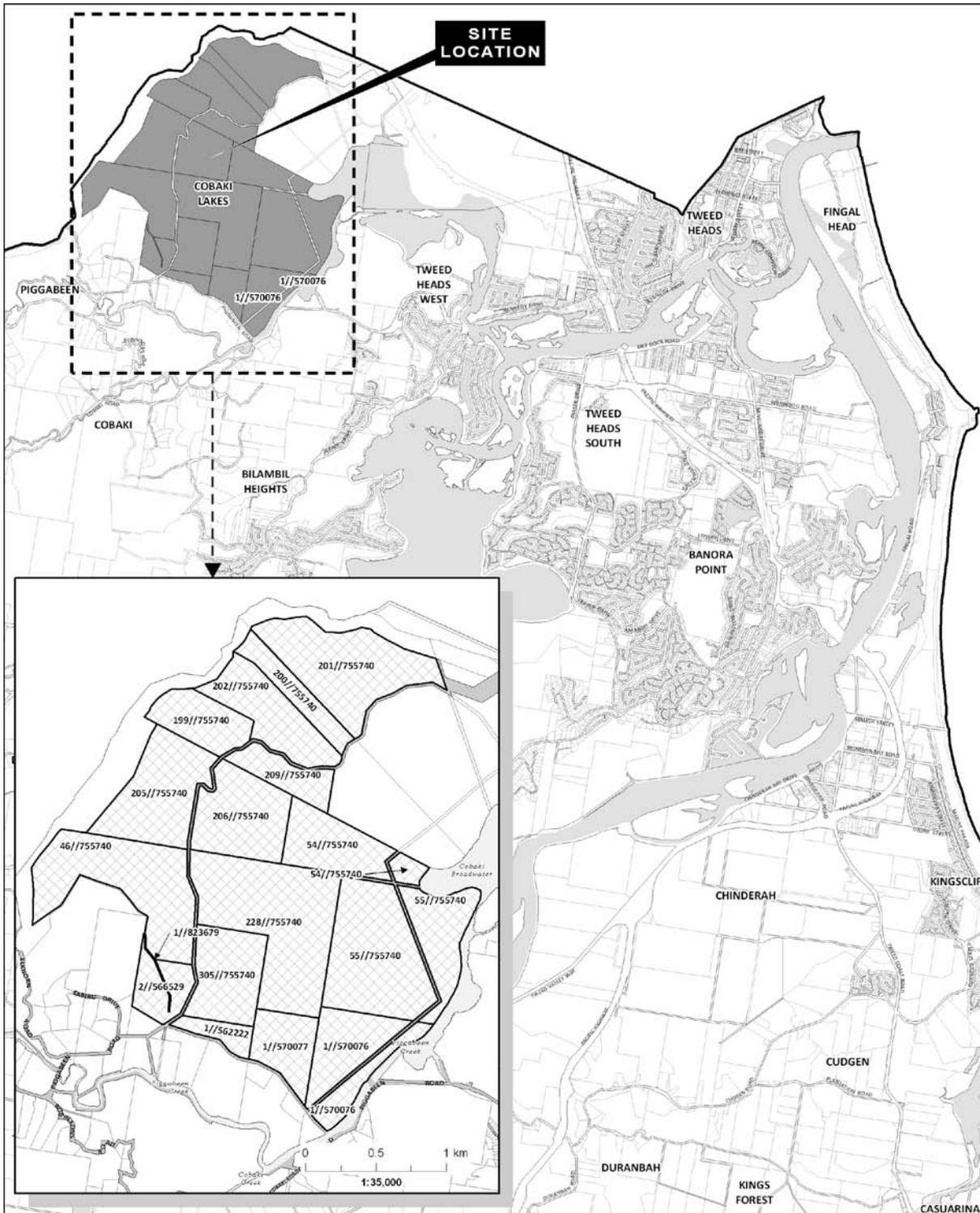
- The modification of **Condition 149** in terms of the length of the maintenance period for the public open space. The proposed modification of Condition 149 is not supported;
- The modification of **Condition 156** in relation to the Community Centre site. The proposed modification of Condition 156 is supported.
- The modification of **Condition 158** with regard to the dedication of the drainage reserve. The proposed modification of Condition 158 is supported.

As noted previously, the applicant has accepted Council's position on a number of the proposed modifications not being supported and they have also accepted a number of the proposed amendments recommended.

A detailed assessment of each of the proposed modifications/deletions has been undertaken as noted later in this report.

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SITE DIAGRAM:



Locality Plan

Lots 46, 54, 55, 199, 200, 201, 202, 205, 206, 209, 228, 305 DP 755740, No. 73 Sandy Lane; Lot 1 DP 570076
 Piggabeen Road, Cobaki Lakes

<p>Disclaimer: While every care is taken to ensure the accuracy of this data, Tweed Shire Council makes no representation or warranty expressed or implied, statutory or otherwise, about its accuracy, reliability, completeness or suitability for any particular purpose and disclaims all responsibility and all liability (including indirect or consequential damage) and costs which may be incurred as a result of data being inaccurate in any way and for any reason. This information is supplied for the general guidance and is to be considered indicative and diagrammatic only. It should not be used for survey or construction purposes and prior to any excavations a "dig before you dig" enquiry must be made by calling 311. The information contained on this document remains valid for 30 days only from the date of supply.</p>	<p>Cadastral: 22 November, 2012 © Land and Property Management Authority (LPMA) & Tweed Shire Council. Boundaries shown should be considered approximate only.</p>	<p>0 0.5 1 1.5 Km 1:50,000 @ A4 Portrait 50 METRE SCALE COPY ONLY - NOT CERTIFIED</p> <p>Map Projections: Universal Transverse Mercator Horizontal Datum: Geoid: datum of Australia 1984 Grid: Map Grid of Australia, Zone 56</p> <p>GDA</p> <p>Author: J. S. Doherty - Planning Information Unit</p>	<p>Civic and Cultural Centre 3 Yumbulgin Road Murwillumbah NSW 2484 PO Box 816 Murwillumbah NSW 2484 T (02) 6670 2400 1300 292 872 F (02) 6670 2429 W www.tweed.nsw.gov.au E planning@tweed.nsw.gov.au</p>	 <p>TWEED SHIRE COUNCIL</p>
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Considerations under Section 79C of the Environmental Planning and Assessment Act 1979:

Proposed Modifications

The proposed modifications are outlined below, together with the applicant's justification and officer assessment.

Condition 9 (Consent conditions)

The applicant proposes to delete Condition 9 which currently reads as follows:

9. *Prior to the issuing of a Construction Certificate under DA10/0801, all existing consents over the Cobaki Estate applicable to Precinct 6, must be modified where relevant, pursuant to Section 80A(1) of the EP&A Act 1979 (as amended) and Regulation, to be consistent with this consent.*

Originally in October 2011, the applicant requested that Condition 9 be deleted and replaced with two specific conditions relating to relevant existing consents. The applicant was advised in May 2012 that because the site has a long history of approvals, the issue of compliance with old consents requires clarification to move forward with the proposed development. As such the proposed deletion of Condition 9 and inclusion of the two new conditions was opposed.

The applicant confirmed in September 2013 that they accept Council's position and that the original deletion is no longer being requested. As such Condition 9 remains in its current form and no further assessment is required.

Condition 10 (Freshwater wetlands and Wallum Froglet area)

The applicant proposes to modify Condition 10 which currently reads as follows:

10. *In accordance with Condition 38 of Project Application MP08_0200, no works shall be undertaken within the Precinct 6 area that may impact upon (or contribute to an impact upon) the freshwater wetlands and Wallum Froglet habitat area until an appropriate agreement is entered into between the Proponent and the Office of Environment and Heritage that offsets the project's impact on biodiversity. This agreement shall include provision for alternative offsets to be delivered should monitoring indicate that an appropriate wetland environment is not achieved after an appropriate time. Evidence of such an agreement shall be forwarded to the Director General no later than 5 working days prior to works commencing in those areas.*

Notwithstanding the above, the proponent shall prepare a detailed Wallum Froglet Compensatory Habitat Plan as per Section 4.3 of the Revised Freshwater Wetland Rehabilitation Plan prepared by James Warren and Associates, dated October 2010. In addition to these requirements, the Wallum Froglet Compensatory Habitat Plan must include the following information on the core breeding habitat areas:

- (i) *Detail on how Wallum Froglet core breeding areas will be constructed and maintained;*
- (ii) *Detail on the design of fauna crossings where the fauna corridor is bisected by a road to ensure Wallum Froglet movement between core breeding habitat ponds is available;*

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- (iii) *How threats to the survival of Wallum Froglet Habitat will be managed;*
- (iv) *Monitoring and reporting requirements including monitoring of Wallum Froglet usage of the core breeding habitat area, usage of fauna corridors, Wallum Froglet population size and breeding success, water quality, habitat suitability and presence of exotic species (particularly Cane Toad and Gambusia);*
- (v) *A mechanism for the on-going funding of this Wallum Froglet Habitat areas to ensure the long-term viability of the population; and*
- (vi) *A contingency planning option in the case of system failure.*

In September 2013 the applicant proposed a modification of Condition 10, in terms of the deletion of the mechanism for on-going funding of the Wallum Froglet area, following the recent deletion of the same wording from Condition 38 of the Project Approval for the Central Open Space.

As such, the applicant has proposed the following modification to Condition 10 (amendments shown in bold):

“10A *In accordance with Condition 38 of Project Application MP08_0200, no works shall be undertaken within the Precinct 6 area that may impact upon (or contribute to an impact upon) the freshwater wetlands and Wallum Froglet habitat area until an appropriate agreement is entered into between the Proponent and the Office of Environment and Heritage that offsets the project's impact on biodiversity. This agreement shall include provision for alternative offsets to be delivered should monitoring indicate that an appropriate wetland environment is not achieved after an appropriate time. Evidence of such an agreement shall be forwarded to the Director General no later than 5 working days prior to works commencing in those areas.*

Notwithstanding the above, the proponent shall prepare a detailed Wallum Froglet Compensatory Habitat Plan as per Section 4.3 of the Revised Freshwater Wetland Rehabilitation Plan prepared by James Warren and Associates, dated October 2010. In addition to these requirements, the Wallum Froglet Compensatory Habitat Plan must include the following information on the core breeding habitat areas:

- (i) *Detail on how Wallum Froglet core breeding areas will be constructed and maintained;*
- (ii) *Detail on the design of fauna crossings where the fauna corridor is bisected by a road to ensure Wallum Froglet movement between core breeding habitat ponds is available;*
- (iii) *How threats to the survival of Wallum Froglet Habitat will be managed;*
- (iv) *Monitoring and reporting requirements including monitoring of Wallum Froglet usage of the core breeding habitat area, usage of fauna corridors, Wallum Froglet population size and breeding success, water quality, habitat suitability and presence of exotic species (particularly Cane Toad and Gambusia);*
- (v) ***A mechanism for the on-going funding of this Wallum Froglet Habitat areas to ensure the long-term viability of the population; and***

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(vi) *A contingency planning option in the case of system failure.*

The applicant proposes to delete clause (v) of Condition 10, removing the requirement for the management plan to provide detail on a mechanism for on-going funding for management of the Wallum Froglet Habitat Area. At this stage, the Wallum Froglet Habitat Management Plan applies only to approximately 2ha of freshwater wetland which is being retained onsite, however negotiations are ongoing with regard to provision of additional offsite offsets for Freshwater Wetland/Wallum Froglet habitat.

The intent of the condition was to ensure that the Wallum Froglet Habitat Area was restored in a timely manner in accordance with approved plans and that these lands are managed for this purpose in perpetuity. It is understood that the applicant proposes to dedicate this area to Council, however no agreement has yet been reached regarding the mechanism for funding of its ongoing management.

In December 2013 the applicant was advised that the proposed modification of Condition 10 was under consideration.

Correspondence from the applicant in January 2014 noted...*"in order to maintain consistency with the Department of Planning, Council is requested to modify Condition 10 as requested."*

Whilst it is acknowledged that the Department of Planning did agree to remove the requirement for on-going funding from Condition 38, it should be noted that the requirement for funding was not removed from the consent. Rather, the Department of Planning incorporated a new Condition 11B(a) as follows:

11B Management and Maintenance of Environmental Lands

- a. *The Proponent is responsible for the management of all Offset Areas for conservation purposes and the implementation of ongoing management and maintenance activities specified in all Environmental Management Plans from the date of the project approval modification (08_0194 Mod 1), until such time that an agreement is reached with Council regarding the dedication of that land.*

Accordingly, to be consistent with the Department of Planning the proposed modification of Condition 10 is supported, subject to the inclusion of a new Condition 10.1 as follows, requiring the landholder to be responsible for the ongoing management and maintenance of the land until an agreement with Council is reached regarding its dedication:

10.1 The Proponent is responsible for the management of all Offset Areas for conservation purposes and the implementation of ongoing management and maintenance activities specified in all Environmental Management Plans, until such time that an agreement is reached with Council regarding the dedication of that land.

Condition 11 (Wallum Froglet)

The applicant is seeking to delete Condition 11 which currently reads as follows:

11. *The proponent must design, construct, operate and maintain the project to ensure that it does not adversely affect Wallum Froglet populations on, or adjacent the site.*

The Applicant proposes to delete Condition 11 stating that it cannot be complied with and is...*"appropriately addressed by Condition 10 and 64"*. Condition 10 pertains to the

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provision of offsets for impacts on Wallum Froglet and the preparation of a management plan for compensatory habitat areas. Condition 11 is a general condition requiring the development to avoid unnecessary impact on Wallum Froglet populations and remains relevant.

The applicant was advised in May 2013 that Condition 11 requires the project to be managed to avoid impact on Wallum Froglets. The location of the Wallum Froglet Habitat area needs to be finalised and endorsed by Council and rehabilitation works commenced, prior to any works that will damage existing habitat areas commencing. At the moment that is still not clear or agreed. Therefore, the proposed modification of Condition 11 was not supported.

Correspondence submitted by the applicant in September 2013 acknowledged that an area of approximately 2ha of compensatory freshwater wetland habitat is to be provided on the eastern side of the Cobaki Parkway. The applicant reiterated their original comments that the intent of Condition 11 is more effectively covered by Conditions 10 and 64 and request that Condition 11 be deleted.

It is noted that the Department of Planning's recent approval of the Project Approval modification incorporates amended Condition 39 which reads as follows (amendment shown in bold):

39. *The proponent must design, construct, operate and maintain the project to ensure that it does not adversely affect any **remaining** Wallum Froglet populations on, or adjacent the site.*

Accordingly, to be consistent with the Department of Planning it is recommended that Condition 11 of DA10/0801 be amended in a similar fashion, as opposed to the applicants request for deletion altogether. The proposed modification of Condition 11 (amendments shown in bold) is as follows:

- 11A.** *The proponent must design, construct, operate and maintain the project to ensure that it does not adversely affect **any remaining** Wallum Froglet populations on, or adjacent the site.*

Condition 19 (Saltmarsh Rehabilitation Plan)

The applicant proposes to modify Condition 19 which currently reads as follows:

19. *Evidence must be submitted to Council prior to the registration of any plan of residential subdivision, demonstrating that works have been undertaken in accordance with the Revised Saltmarsh Rehabilitation Plan by James Warren and Associates dated October 2010 and as specified with Condition 65 of MP08_0200.*

It appears that the applicant may have misinterpreted the timing of this condition as being prior to the issue of a Construction Certificate, rather than the registration of any plan of residential subdivision. The applicant was advised in May 2012 that the proposed modification of Condition 19 was opposed. However, an alternative modification of Condition 19 was proposed by Council officers (amendments shown in bold):

- 19A.** *Evidence must be submitted to Council prior to the registration of any Plan of Residential Subdivision, demonstrating that works have been **undertaken commenced** in accordance with the Revised Saltmarsh Rehabilitation Plan by James Warren and Associates dated October 2010 and as specified within Condition 65 of MP08_0200.*
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The works are to be undertaken in accordance with the timing and responsibilities contained within the approved, Final Saltmarsh Rehabilitation Plan.

The applicant confirmed in September 2013 that they accept the abovementioned modification of Condition 19, as proposed.

Condition 23 (Affordable Housing Study)

The applicant is seeking to modify Condition 23 which currently reads as follows:

23. *The recommended strategy contained in the Cobaki Estate Affordable Housing Study (Final Version print date 14.1.2011) prepared for Leda Manorstead Pty Ltd. by Hill PDA and dated November 2010 is to be undertaken.*

The Affordable Housing Strategy was required through Concept Plan approval requirement C11. The applicant states: "*...the strategy to provide affordable rental housing within the Cobaki Estate is not mandatory under the Concept Plan conditions, but it is conditional upon the approval of NRAS funding or equivalent, in order to make the concept financially viable. Council will note that the Affordable Housing Strategy includes the following statement. 'In this regard it is important to note that should Leda Manorstead not be successful in achieving NRAS funding for the provision of affordable housing dwellings, it may not be reasonable to assist upon their provision at sub market rent or value for reasons of financial viability. At this preliminary stage of the project there is insufficient detail available for Hill PDA to test this position using a development feasibility model.'*"

The applicant goes on to assert that Condition 23 does not recognise this important element of the Strategy, which has substantial impact upon the viability of the proposal and requests the following modification to Condition 23 (amendments shown in bold):

- "23A. Subject to the successful application for NRAS funding, the recommended strategy contained in the Cobaki Estate Affordable Housing Study (Final Version print date 14.1.2011) prepared for Leda Manorstead Ply Ltd by Hill PDA and dated November 2010 is to be undertaken."***

The Hill PDA Affordable Housing Study has been reviewed by Council officers with the following advice provided to the applicant in May 2012:

"Council is of the opinion that the requested amendment to the two related conditions (23 and 62 regarding affordable housing) would appear to weaken the commitment recommended in the Hill PDA Nov 2010 Cobaki Estate Affordable Housing Study. Among other things the Hill PDA Study commits to "NRAS funding or the equivalent" and Leda Manorstead using their "best endeavours". As such, Council objects to the proposed modification of Condition 23."

Correspondence submitted by the applicant in September 2013 accepts Council's position in terms of Condition 23. As such Condition 23 remains in its current form and no further assessment is required.

Condition 34 (Maximum disturbed area)

The applicant is seeking to modify Condition 34 which currently reads as follows:

34. *Prior to the issue of a **Construction Certificate** for civil works the following detail in accordance with Councils Development Design and Construction Specifications shall be submitted to the Principal Certifying Authority for approval.*

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- (a) *copies of compliance certificates relied upon*
- (b) *four (4) copies of detailed engineering plans and specifications. The detailed plans shall include but are not limited to the following:*
- *Earthworks*
 - *Clearly showing pre and post development levels (spot levels and contours) at a legible scale.*
 - *Comply 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 authorised by Council.*
 - *The maximum disturbed area (that has not been permanently vegetated) at any time shall not exceed 5ha.*
 - *Roadworks/furnishings*
 - *Providing road profiles complying with Council's Design Specification D1 – Road Design, unless approved otherwise by Council.*
 - *Stormwater drainage*
 - *Water supply works*
 - *In general accordance with Yeats Consulting Engineers - Water Network Analyses, April 2011, Revision 03, unless modified otherwise by the conditions of this Consent.*
 - *Sewerage works*
 - *In general accordance with Yeats Consulting Engineers - Master Sewer Reticulation Plan Revision C, unless modified otherwise by the conditions of this Consent.*
 - *Landscaping works*
 - *Sedimentation and erosion management plans*
 - *Location of all service conduits (water, sewer, electricity supply and telecommunication infrastructure)*

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.

The applicant is seeking to modify the limitation on disturbing only 5 hectares at a time as it is considered, "unreasonable" and proposes the deletion of the five hectare requirement.

Initially Council provided to the applicant in May 2012 acceptance of the proposed modification, as ultimately the development needs to comply with the requirements of D7 and Council's Engineers would be on site for the majority of the development period to ensure compliance. These initial comments were made when Council was the certifying authority for the development.

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Following the withdrawal of the Construction Certificate from Council and the use of a Private Certifier who is responsible for inspecting the site, and only visiting the site once every two weeks, the applicant was advised in December 2013 that the proposed deletion of Condition 34 was no longer supported.

The applicant responded in January 2014, noting the following:

“Further to Council’s intention to limit the extent of any disposed area in an earthworks operations exercise to 5Ha in area Leda make the following points:

- *A 5Ha limit makes a cut to fill earthworks operation in these precincts inefficient and impractical when the volumes of material and length of leads (haulage distances) are considered;*
- *A detailed sediment and erosion control management regime has been successfully implemented for the Central Open Space Corridor and it is proposed that a similar system is established for these precincts; and*
- *Even though a Private Certifier only inspects the site on a fortnightly basis, Leda’s engineering consultants, Sedgman Yeats, are working directly under his instruction and carry out additional inspections at a greater frequency. Sedgman Yeats are effectively the certifier’s eyes and ears on the ground and are able to attend site and respond to both the certifier’s and Council Officers’ requests as and when needed. As such there is no lesser control of the construction activities due to the involvement of the Private Certifier than is the case for developments where Council is the certifying authority.*

For the above reasons and since Council’s comments discriminate against the use of Private Certification Leda maintains the original request to delete Condition 34.”

The proposal to delete the requirement of Condition 34 to limit exposed areas to 5ha is not supported. The success of the applicant’s "Sediment and Erosion Control Management" is not valid as the site has not yet been subjected to significant rain events to test the proposed regime. Given that dust management on the subject site in relation to current earthworks associated with the Central Open Space approval has been a continuing problem (resulting in Council receiving several dust complaints from nearby residents), it is not considered to be acceptable to allow additional land to be "opened up" with no maximum limit in place.

It is noted that Planning & Infrastructure's (former NSW Department of Planning & Infrastructure) Project Approval for the Central Open Space corridor limits the maximum exposed areas with the following condition of consent:

21A(b) Bulk earthworks for the site are to be limited to a maximum exposed disturbed area (that has not been permanently vegetated) not exceeding a maximum of 5Ha at any time to reduce exposed areas, unless otherwise approved by the Director-General.

As such, it is considered reasonable to modify Condition 34 in a similar fashion, as recommended below (amendment shown in bold). This will effectively allow a certain degree of flexibility for the applicant if they can provide a plan to Council showing the proposed extent of maximum exposed areas for Precinct 6.

34A. *Prior to the issue of a Construction Certificate for civil works the following detail in accordance with Councils Development Design and Construction Specifications shall be submitted to the Principal Certifying Authority for approval.*

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- (a) *copies of compliance certificates relied upon*
- (b) *four (4) copies of detailed engineering plans and specifications. The detailed plans shall include but are not limited to the following:*
- *Earthworks*
 - *Clearly showing pre and post development levels (spot levels and contours) at a legible scale.*
 - *Comply 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 authorised by Council.*
 - *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***
 - *Roadworks/furnishings*
 - *Providing road profiles complying with Council's Design Specification D1 – Road Design, unless approved otherwise by Council.*
 - *Stormwater drainage*
 - *Water supply works*
 - *In general accordance with Yeats Consulting Engineers - Water Network Analyses, April 2011, Revision 03, unless modified otherwise by the conditions of this Consent.*
 - *Sewerage works*
 - *In general accordance with Yeats Consulting Engineers - Master Sewer Reticulation Plan Revision C, unless modified otherwise by the conditions of this Consent.*
 - *Landscaping works*
 - *Sedimentation and erosion management plans*
 - *Location of all service conduits (water, sewer, electricity supply and telecommunication infrastructure)*

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.

Condition 47 (Playgrounds)

The applicant is seeking to modify Condition 47 which currently reads as follows:

47. *Any playgrounds provided must comply with the guidelines established in the 'Playground Audit for Tweed Shire Council' (July 2009). Appendix 3 of this establishes a procedure for assessing nearby hazards and mitigation measures. New subdivisions approved after development of these guidelines must ensure*
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no playground facility has a Facility Risk Rating exceeding 13 as defined in Table 3A7 of that document, unless otherwise approved by the General Manager or delegate.

The applicant states that this condition cannot be achieved without modifying the approved lot layout and request that the following condition is imposed instead:

“47A. Any playgrounds provided must comply with the guidelines established in the Playground Audit for Tweed Shire Council (July 2009). Appendix 3 of this establishes the procedure for assessing nearby hazards and mitigation measures. ~~New subdivisions approved after development of these guidelines must ensure no playground facility has a Facility Risk Rating exceeding 13 as defined in Table 3A7 of that document, unless otherwise approved by the General Manager or delegate.~~ The proposed open space areas for this stage as identified in Planit Consulting Drawing Set Dated March 2011 shall be designed to minimise the hazards to designated playground areas consistent with those mitigating features identified in Appendix 3A7 of the Playground Audit for Tweed Shire Council (July 2009). Detailed drawings and reporting outlining mitigation measures to be employed to mitigate risk are to be submitted for approval by the General Manager or his delegate. In proposing mitigation measures consideration of long term maintenance costs shall be considered and evaluated in any reporting.”

In this instance, it is considered that the proposed modification of Condition 47 is acceptable.

Note - this is a cooperative approach by Council to assist the developer in overcoming initial design problems. The developer has been advised that playgrounds and park design in future stages must meet the minimum requirements rather than depend on mitigation measures.

Condition 48 (Grassing/Revegetation of the Central Open Space)

The applicant is seeking to modify Condition 48 which currently reads as follows:

48. Further consideration is required regarding the grassing or revegetation of the central drain, and the two northern branches of this drain. A consultant skilled in natural area as well as landscape design is to assess the options available and, with particular reference to minimising maintenance requirements and weed incursion, recommend an appropriate planting plan. The plan is to be prepared to the satisfaction of the General Manager or his delegate and incorporated into the amended landscape plans for the public open space. Areas identified for planting or regeneration will require a 3 year maintenance period, and areas to be grassed will require 12 months maintenance after the Subdivision is registered with the Land Titles Office.

The applicant proposes again references clause 80A(6)(c) of the EP&A Act and states that they are willing to accept a three year maintenance period for environmental areas (pursuant to approved ecological reports and management plans accompanying the concept plan) but considers the maintenance period for the grassed areas should be...*“subject to the normal statutory limits applying to maintenance bonds for the work”*.

Accordingly, the applicant proposed the following modification to Condition 48:

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“48A. Further consideration is required regarding the grassing or revegetation of the central drain, and the two northern branches of this drain. A consultant skilled in natural area as well as landscape design is to assess the options available and, with particular reference to minimising maintenance requirements and weed incursion, recommend an appropriate planting plan. The plan is to be prepared to the satisfaction of the General Manager or his delegate and incorporated into the amended landscape plans for the public open space. Areas identified for planting or regeneration will require a 3 year maintenance period, and areas to be grassed will require ~~12~~ 6 months maintenance after the Subdivision is registered with the Land Titles Office.

The applicant was advised in May 2012 that it was not agreed that clause 80A(6)(c) relates to maintenance bonds, but relates only to defects to public work and that the proposed modification to six months is not supported.

Correspondence submitted by the applicant in September 2013 accepts Council's position in terms of Condition 48. As such Condition 48 remains in its current form and no further assessment is required.

Condition 51 (Low Flow Drain Realignment)

The applicant is seeking to modify Condition 51 which currently reads as follows:

51. *The low flow drain adjacent to park 6 in the central drainage area, and the drain adjacent to park 5 (fauna corridor) must be realigned to be a minimum of 30m from playground equipment and softfall.*

The applicant notes that the location of the swale in the fauna corridor was altered at the request of Council during the assessment of the development application. The applicant also notes that the drain is only 'wet' during a rainfall event and as such presents minimal hazard to the park. As such, the applicant proposes to modify Condition 51, as referenced below:

“51A. ~~The low flow drain adjacent to park 6 in the central drainage area, and the drain adjacent to park 5 (fauna corridor) must be realigned to be a minimum of 30m from playground equipment and softfall. The proposed open space area identified as Park 5 and Park 6 in Planit Consulting Drawing Set Dated March 2011 shall be designed to minimise the hazards to designated playground areas consistent with those mitigating features identified in Appendix 3A7 of the Playground Audit for Tweed Shire Council (July 2009). Detailed drawings and reporting outlining mitigation measures to be employed to mitigate risk are to be submitted for approval by the General Manager or his delegate.~~”

The applicant was advised in May 2012 that the low flow drain within the central drainage reserve should be so located so as to allow the play equipment in the park to be at least 30m distance. It was also noted that Park 6 is proposed as a larger district park and is likely to have more play equipment and higher usage than other parks. Therefore, Council objects to the proposed modification of Condition 51.

The applicant confirmed in September 2013 that they accept Council's position. As such Condition 51 remains in its current form and no further assessment is required.

Condition 52 (Low Flow Drain Location)

The applicant is seeking to delete Condition 52 which currently reads as follows:

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52. *The low flow drain within the central drain is to be located a minimum of 30 metres from the top of the eastern batter in areas adjacent to the sportsfields.*

The applicant advises that the swale presents minimal hazard to the park users and has been located in the current position to share the cycleway as an access path for Council maintenance access. The applicant states that the specified 30m setback would make it unable to deliver the multiple sports fields and would remove proposed all weather access for Council maintenance. Hence the applicant proposed to delete Condition 52.

The applicant was advised in May 2012 that "...Council staff have continuously stated that, following the developers insistence on the small sportsfield being located adjacent to the central drain, design must ensure there is no issue with sportsfield use and the central drain. The latest design of the central drainage area has the low flow drain within approximately 14 metres of the likely edge of the sportsfield despite requests to address the matter. Council considers that compliance with this condition is achievable. The intent of the rock lined drain is to create a minimal maintenance situation and 'easy' all weather maintenance access is not sufficient justification for the location of the drain." As such, the proposed deletion of Condition 52 is not supported.

The applicant confirmed in September 2013 that they accept Council's position. As such Condition 52 remains in its current form and no further assessment is required.

Condition 54 (Consent Conditions)

The applicant is seeking to delete Condition 54 which currently reads as follows:

54. *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) *1262/2001DA.02 Condition 9, 16, 17, 18.*

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.

The applicant is seeking to delete Condition 54 and argues that this condition is..."seeking to enforce unrelated development consents for subdivisions that will not be implemented to

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completion, does not relate to the area affected by the proposed development and which is inconsistent with the Concept Plan Approval’.

The applicant goes on to assert that no further work is to be undertaken in accordance with the old bulk earthworks consent D94/438 and asserts that the item A4(2) of the Minister’s Concept Plan Approval will prevail to the extent of any inconsistency.

As discussed above in relation to Condition 9, the applicant was advised in May 2012 that that because the site has a long history of approvals, the issue of compliance with old consents requires clarification to move forward with the proposed development. As such the proposed deletion of Condition 54 was opposed.

The applicant confirmed in September 2013 that they accept Council’s position. As such Condition 54 remains in its current form and no further assessment is required.

It should also be noted that the applicant has submitted a compliance report in relation to the provisions of Condition 54 of DA10/0801. An assessment of the documentation has been completed and the applicant advised that Condition 54 is now considered satisfied.

Condition 55 (Habitat Restoration Plans)

The applicant is seeking to modify Condition 55 which currently reads as follows:

55. *One or more detailed Habitat Restoration Plan(s) must be submitted to and approved by Council in accordance with Council’s draft guidelines (attached), and in accordance with specific matters listed in Condition C4 of Concept Plan MP 06_0316. Such plan(s) must be prepared for Management Areas 10 and 13 of the Revised Site Regeneration and Revegetation Plan by James Warren and Associates dated October 2010 and representing compensatory offset for loss of habitat and Endangered Ecological Communities on the site in areas adjacent to the development. Where offset areas as detailed in the Revised Site Regeneration and Revegetation Plan are proposed as an alternate use within the subdivision plan (that is, other than as an environmental protection area such as park or drainage reserve lots), additional EEC and habitat offset areas must be designated elsewhere in a location suitable to the vegetation community and/or threatened species to be protected and their habitat restored, with such areas totalling at least as committed within Concept Plan MP06_0316. The Habitat Restoration Plan(s) must also include:*
- (a) a schedule and timing of works to be undertaken.*
 - (b) a statement of commitment by the consent holder to funding the proposed works for a minimum 5 year period.*
 - (c) a statement of commitment by the consent holder that the works will be completed by qualified and experienced bush regeneration personnel.*
 - (d) a mechanism to fund in perpetuity the ongoing maintenance of the environmental protection land not proposed to be dedicated to Council.*

The applicant has a concern with the maintenance period of five years, as well as funding in perpetuity of the environmental protection land not proposed to be dedicated to Council.

The applicant asserts that the regeneration areas are to be maintained for three years (as per the Ecological Reports and Management Plans accompanied the Concept Plan).

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Furthermore, the applicant states that funding of works to comply with a condition of consent on private land is...*“not a matter for Council to be involved in and the requirement to fund the maintenance in perpetuity is onerous and unprecedented.”* The applicant asserts that a more logical approach would be for Council to use its power under the EP&A Act to ensure compliance with consent conditions. Accordingly, the applicant proposed the following modification to Condition 55:

“55A *One or more detailed Habitat Restoration Plan(s) must be submitted to and approved by Council in accordance with Council’s draft guidelines (attached), and in accordance with specific matters listed in Condition C4 of Concept Plan MP 06_0316. Such plan(s) must be prepared for Management Areas 10 and 13 of the Revised Site Regeneration and Revegetation Plan by James Warren and Associates dated October 2010 and representing compensatory offset for loss of habitat and Endangered Ecological Communities on the site in areas adjacent to the development. Where offset areas as detailed in the Revised Site Regeneration and Revegetation Plan are proposed as an alternate use within the subdivision plan (that is, other than as an environmental protection area such as park or drainage reserve lots), additional EEC and habitat offset areas must be designated elsewhere in a location suitable to the vegetation community and/or threatened species to be protected and their habitat restored, with such areas totalling at least as committed within Concept Plan MP06_0316. The Habitat Restoration Plan(s) must also include:*

- (a) a schedule and timing of works to be undertaken.*
- (b) a statement of commitment by the consent holder to funding the proposed works for a minimum 5 3 year period.*
- (c) a statement of commitment by the consent holder that the works will be completed by qualified and experienced bush regeneration personnel.*
- ~~*(d) a mechanism to fund in perpetuity the ongoing maintenance of the environmental protection land not proposed to be dedicated to Council.*~~
- (d) a statement of commitment that any environmental protection land that is not proposed to be dedicated to Council is to be maintained to a reasonable standard by the landowner.”***

The intent of the applied condition was to ensure that environmental protection lands were restored in a timely manner in accordance with approved plans and that these lands are managed for conservation outcomes in perpetuity.

The applicant was advised in May 2012 of the following:

“Condition 55 requires Habitat Restoration plans for Management Areas 1, 2, 3, 4 and 13, and that such plans must include funding for a minimum 5 year period and provide a mechanism to fund in perpetuity. Council reads the wording of the approved James Warren Plan as 2-3 years to achieve canopy closure, then an additional three years of maintenance after canopy closure. Also, Council guidelines have been accepted and specify minimum 5 years.

The intent of the applied condition was to ensure that the land parcels which were earmarked for protection or offset at the Concept Plan stage were restored in a timely manner and managed for conservation outcomes in perpetuity. The manner in which

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this outcome is achieved is open to negotiation, so long as a reasonable degree of certainty can be gained from such negotiation. No such certainty is yet available. As such, Council objects to the proposed modification of Condition 55."

Correspondence was submitted by the applicant in September 2013, noting that the habitat restoration areas are to be dedicated to Council and that there is no power under the EP&A Act to require, 'maintenance' other than defects liability, which is limited to 6 months. Notwithstanding this, the applicant has given an undertaking to revegetate/remediate the management areas until all agreed completion criteria are met in accordance with the Site Regeneration and Rehabilitation Plan (SRRP).

The applicant also noted that the proposed funding in perpetuity is "*...not authorised under a Section 94 Plan and would be beyond the scope of Section 94 (as it would relate to maintenance rather than capital cost of establishment). It is also beyond the scope of Section 80A of the Environmental Planning and Assessment Act. Therefore there is no power in the Environmental Planning and Assessment Act, 1979 (as amended) for Council to lawfully impose such a condition.*"

Accordingly, the applicant proposed the following revised modification of Condition 55:

"55A *One or more detailed Habitat Restoration Plan(s) must be submitted to and approved by Council in accordance with Council's draft guidelines (attached), and in accordance with specific matters listed in Condition C4 of Concept Plan MP 06_0316. Such plan(s) must be prepared for Management Areas 10 and 13 of the Revised Site Regeneration and Revegetation Plan by James Warren and Associates dated ~~October 2010~~ April 2013 and representing compensatory offset for loss of habitat and Endangered Ecological Communities on the site in areas adjacent to the development. Where offset areas as detailed in the Revised Site Regeneration and Revegetation Plan are proposed as an alternate use within the subdivision plan (that is, other than as an environmental protection area such as park or drainage reserve lots), additional EEC and habitat offset areas must be designated elsewhere in a location suitable to the vegetation community and/or threatened species to be protected and their habitat restored, with such areas totalling at least as committed within Concept Plan MP06_0316. The Habitat Restoration Plan(s) must also include:*

- (a) a schedule and timing of works to be undertaken.*
- ~~**(b) a statement of commitment by the consent holder to funding the proposed works for a minimum 5 year period**~~
- (b) a statement of commitment by the consent holder to maintain the works until the relevant performance criteria of the Site Regeneration and Rehabilitation Plan are achieved.*
- (c) a statement of commitment by the consent holder that the works will be completed by qualified and experienced bush regeneration personnel.*
- ~~**(d) a mechanism to fund in perpetuity the ongoing maintenance of the environmental protection land not proposed to be dedicated to Council.**~~

The applicant also advised that they intend to offer to dedicate the environmental protection land to Council following rehabilitation in accordance with the endorsed Management Plans, proposing the following new Condition 55B:

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“55B Following the successful rehabilitation of Management Areas 10 and 13 of the Revised Site Regeneration and Revegetation Plan by James Warren and Associates dated October 2013, the landowner shall offer to dedicate that land to Council in accordance with Tweed Section 94 Plan No. 10.”

The applicant was advised in December 2013 that the proposed modification of Condition 55 to delete the requirement for a funding mechanism is not supported. In addition the applicant was advised that the proposed new condition regarding the dedication of environmental land was under consideration, noting that a map delineating the proposed staging of management areas to be dedicated to Council (linked to each precinct) is required.

Correspondence submitted by the applicant in January 2014 noted that the ‘funding in perpetuity’ issue is not able to be agreed at this point. While the applicant reserved the right to further challenge the matter, as a *“...practical interim measure and so that the matter does not unduly prevent the issue of a Construction Certificate”* the applicant requested that the funding in perpetuity issue be deferred until the Subdivision Certificate stage, asserting that the *“...implementation and finalisation of the funding mechanism is not required until such time as the rehabilitation works have been undertaken, which is well after Subdivision certificate stage.”*

As a result, the applicant has proposed the following revised modification of Condition 55:

“55A One or more detailed Habitat Restoration Plan(s) must be submitted to and approved by Council in accordance with Council’s draft guidelines (attached), and in accordance with specific matters listed in Condition C4 of Concept Plan MP 06_0316. Such plan(s) must be prepared for Management Areas 10 and 13 of the Revised Site Regeneration and Revegetation Plan by James Warren and Associates dated ~~October 2010~~ April 2013 and representing compensatory offset for loss of habitat and Endangered Ecological Communities on the site in areas adjacent to the development. Where offset areas as detailed in the Revised Site Regeneration and Revegetation Plan are proposed as an alternate use within the subdivision plan (that is, other than as a an environmental protection area such as park or drainage reserve lots), additional EEC and habitat offset areas must be designated elsewhere in a location suitable to the vegetation community and/or threatened species to be protected and their habitat restored, with such areas totalling at least as committed within Concept Plan MP06_0316. The Habitat Restoration Plan(s) must also include:

- (a) a schedule and timing of works to be undertaken.*
- ~~***(b) a statement of commitment by the consent holder to funding the proposed works for a minimum 5 year period.***~~
- (b) a statement of commitment by the consent holder to maintain the works until the relevant performance criteria of the Site Regeneration and Rehabilitation Plan are achieved.*
- (c) a statement of commitment by the consent holder that the works will be completed by qualified and experienced bush regeneration personnel.*
- ~~***(d) a mechanism to fund in perpetuity the ongoing maintenance of the environmental protection land not proposed to be dedicated to Council.***~~

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In response to Council comments in relation to the proposed new Condition 55B, the applicant noted that the proposed areas to be dedicated are the same areas to be rehabilitated as shown on the approved application plans and detailed in the Revised Site Regeneration and Revegetation Plan by James Warren and Associates dated April 2013. As such, the applicant suggests that no staging plan is required.

In terms of the proposed new Condition 55B (which is now being called new Condition 55.1) it should be noted that there is no objection to the offer of land dedication, although it is not considered necessary to condition such dedication. However, should a condition be required, the following wording of new Condition 55.1 is recommended:

55.1 Following the successful rehabilitation of Management Areas 10 and 13 of the Revised Site Regeneration and Revegetation Plan by James Warren and Associates dated October 2013, the landowner shall offer to dedicate that land to Council.

In addition to the above, the applicant proposed the following new Condition 159:

“159. Prior to the issue of a Subdivision Certificate the proponent must reach an agreement with Council regarding a mechanism to fund in perpetuity the ongoing maintenance of the environmental protection land not proposed to be dedicated to Council.”

Following the 30 January 2014 Council workshop attended by Council officers and Leda representatives to discuss the issue of funding for the environmental land, the applicant submitted further correspondence in February 2014. It was acknowledged that concept of deferring the funding in perpetuity issue was not preferred by Council officers on the basis of...*“potential delays to the issuing of a Subdivision Certificate could result if the matter was not resolved prior to that stage.”*

As an alternative, the applicant now proposes to a deferment of the funding in perpetuity issue to prior to the issue of a Construction Certificate for Civil Works, to *“...allow the matter to be separated from the immediate need to obtain a construction certificate for Bulk Earthworks so that works may progress on the site.”*

This results in a new Condition 64.1 being proposed by the applicant as noted below. There are no further changes to the modifications noted above to Condition 55 (as requested by the applicant in January 2014).

“64.1 Prior to the issue of a Construction Certificate for Civil Work the proponent must reach an agreement with Council regarding a mechanism to fund in perpetuity the ongoing maintenance of the environmental protection land not proposed to be dedicated to Council.”

For the purposes of clarity, the applicant has noted that if the proposed new Condition 64.1 is adopted then the previously requested new Condition 159 would no longer be required.

The applicant's proposed modification of clause (b) in Condition 55 is considered to align more closely with the current wording of the SRRP and is considered acceptable subject to the following recommended amendments (shown in bold):

- b) a statement of commitment by the consent holder to maintain the works until the relevant performance criteria of the Site Regeneration and **Revegetation** Plan are achieved **and until such time as an agreement is reached with Council regarding the dedication of that land.***

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With regard to the proposed deletion of the funding mechanism in Clause (d) of Condition 55, it should be noted that the Concept Approval to carry out the project was determined according to the requirement to:

- Ensure adequate mitigation of environmental impacts of future development, and
- Ensure protection and restoration of threatened species and their habitat.

This necessitates both immediate and ongoing management of the proposed environmental lands in the face of ongoing pressures from the development. Restoration and management of these lands is proposed by the applicant as the key mechanism for mitigating the impacts of removal of threatened species habitat and Endangered Ecological Communities from the site. It is appropriate that the mechanism for ensuring that management continues in perpetuity needs to be determined prior to the time that the major impact occurs, which is at the Bulk Earthworks stage.

At the time of writing of the original condition, it was understood that the applicant was to retain the environmental protection land. The applicant now proposes to offer dedication of the environmental protection areas to Council once the performance criteria in the SRRP are reached. The offer of dedication is not opposed, provided the cost burden of management of these lands does not fall on existing ratepayers whether or not these lands are dedicated to Council.

The proposed new Condition 64.1 is not supported in the form proposed by the applicant. The proposed deferment of the agreement to prior to Civil Earthworks Construction Certificate is not considered to be appropriate and should be resolved prior to Bulk Earthwork Construction Certificate. This outcome is essentially the same as that required under the current provisions of clause (d) of Condition 55. As such, the new Condition 64.1 is not considered to be necessary and the deletion of clause (d) from Condition 55 is not considered to be acceptable.

If however, it should be determined that clause (d) is to be deleted, it is highly recommended that Condition 64.1 be approved with the following amendments shown in bold:

- 64.1 Prior to the issue of a Construction Certificate for **Bulk Earthworks** the proponent must reach an agreement with Council regarding a mechanism to fund in perpetuity the ongoing maintenance of the environmental protection land not proposed to be dedicated to Council.

The proposed amendment of the date of the Revised Site Regeneration and Revegetation Plan to the most recent version (April 2013) is not opposed.

For the purposes of clarity, the following wording of Condition 55 is recommended by Council officers:

- 55A** *One or more detailed Habitat Restoration Plan(s) must be submitted to and approved by Council in accordance with Council's draft guidelines (attached), and in accordance with specific matters listed in Condition C4 of Concept Plan MP 06_0316. Such plan(s) must be prepared for Management Areas 10 and 13 of the Revised Site Regeneration and Revegetation Plan by James Warren and Associates dated ~~October 2010~~ April 2013 and representing compensatory offset for loss of habitat and Endangered Ecological Communities on the site in areas adjacent to the development. Where offset areas as detailed in the Revised Site Regeneration and Revegetation Plan are proposed as an alternate use within the subdivision plan (that is, other than as an environmental*

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protection area such as park or drainage reserve lots), additional EEC and habitat offset areas must be designated elsewhere in a location suitable to the vegetation community and/or threatened species to be protected and their habitat restored, with such areas totalling at least as committed within Concept Plan MP06_0316. The Habitat Restoration Plan(s) must also include:

- (a) a schedule and timing of works to be undertaken.
- ~~(b) a statement of commitment by the consent holder to funding the proposed works for a minimum 5 year period.~~
- (b) a statement of commitment by the consent holder to maintain the works until the relevant performance criteria of the Site Regeneration and Revegetation Plan are achieved **and until such time as an agreement is reached with Council regarding the dedication of that land.**
- (c) a statement of commitment by the consent holder that the works will be completed by qualified and experienced bush regeneration personnel.
- (d) a mechanism to fund in perpetuity the ongoing maintenance of the environmental protection land not proposed to be dedicated to Council.

Condition 62 (Affordable Housing Study)

The applicant is seeking to modify Condition 62 which currently reads as follows:

- 62. A staging plan detailing the location, mix and type of dwellings to be provided as affordable rental accommodation is to be submitted to Council in accordance with the recommended strategy contained in the Cobaki Estate Affordable Housing Study (Final Version print date 14.1.2011) prepared for Leda Manorstead Pty Ltd by Hill PDA and dated November 2010.

The applicant asserts that the strategy to provide affordable rental housing within the Cobaki Estate is not mandatory under the Concept Plan conditions, but is conditional upon the approval of NRAS funding. The applicant refers to the following statement from the affordable rental strategy as justification to modify this condition:

“In this regard it is important to note that should Leda Manorstead not be successful in achieving NRAS funding for the provision of affordable housing dwellings, it may not be reasonable to insist upon their provision at sub market rent or value for reasons of financial viability. At this preliminary stage of the project there is insufficient detail available for Hill PDA to test this position using a development feasibility model.”

The applicant proposes the following modification of Condition 62 (amendments shown in bold):

- “62A. Subject to the successful application for NRAS funding, a Staging Plan detailing the location, mix and type of dwellings to be provided as affordable rental accommodation is to be submitted to Council in accordance with the recommended strategy contained in the Cobaki Estate Affordable Housing Study (Final Version print date 14.1.2011) prepared for Leda Manorstead Pty Ltd by Hill PDA and dated November 2010.”**

As noted for Condition 23, The Hill PDA Affordable Housing Study was reviewed by Council officers with applicant being advised in May 2012 that no change to the wording of Condition 62 is supported as the Hill PDA Study commits to “NRAS funding or the equivalent” and

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Leda Manorstead using their “*best endeavours*”. As such, the proposed modification of Condition 62 is not supported.

In September 2013 the applicant responded by way of suggesting additional clarification so that there is no misconception as to when an affordable housing plan is required. The following amendment to Condition 62 was proposed by the applicant (amendments shown in bold):

“62A. Should, following the proponent’s best endeavours, NRAS (or equivalent) funding be available to provide affordable housing within the development in accordance with the approved Cobaki Estate Affordable Housing Study, a staging plan detailing the location, mix and type of dwellings to be provided as affordable rental accommodation is to be submitted to Council in accordance with the recommended strategy contained in the Cobaki Estate Affordable Housing Study (Final Version print date 14.1.2011) prepared for Leda Manorstead Pty Ltd by Hill PDA and dated November 2010.”

The proposed modification provides an acceptable outcome in terms of the applicant using their ‘best endeavours’ to deliver an NRAS program. As such, the applicant’s latest proposed modification of Condition 62, as shown above, is supported.

Condition 63 (Fauna Road Crossing)

The applicant is seeking to delete Condition 63 which currently reads as follows:

63. Detailed design drawings for all road crossings over the nominated fauna corridor are to be provided illustrating replacement of culverts with bridges to enable a range of fauna to range through the corridor and facilitate east-west connectivity for fauna across the site.

The applicant proposes to delete Condition 63 asserting that it is not acceptable to the developer and the proposed culverts in the flora and fauna assessment were found to be suitable. In addition, despite the additional cost associated with bridges, the applicant asserts “...*construction of bridges within Precinct 6 would not remove the culverts that are to be constructed across the same fauna corridor at the Cobaki Parkway*”.

The applicant was advised in May 2012 that the reasoning for deletion of the condition based on cost is not supported by Council officers. The east/west corridor should remain as open as possible to provide the best fauna connection possible in the only east-west location provided on the site and to maximise the conveyance of stormwater. The inclusion of a box culvert crossing across this corridor will segment the corridor and take up dedicated open space. As such, Council objects to the proposed deletion of Condition 63.

Following an exchange of correspondence, the applicant was advised in August 2012 of an acceptable fauna crossing, incorporating three 2.4 x 1.8m culverts in addition to two smaller culverts at section H and three smaller culverts at section I as shown in Figure 1 below:

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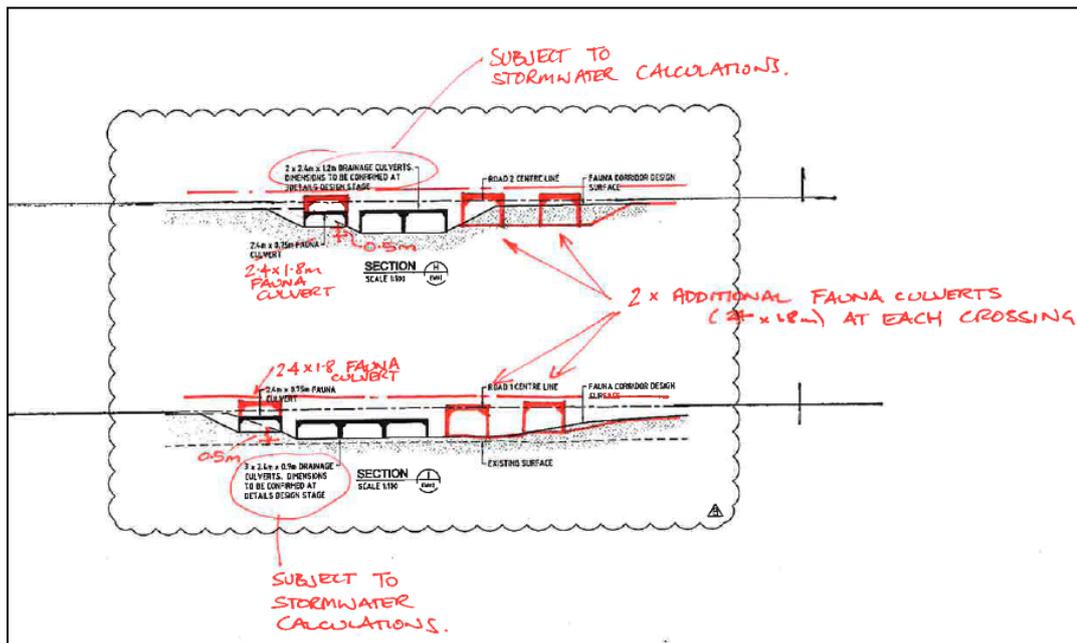


Figure 1: Applicant’s fauna crossing plan with Council markup in red (August 2012).

Correspondence submitted by the applicant in September 2013 proposed a new culvert design incorporating the requested number of culverts, but reduced sizes.

The applicant was advised in December 2013 that their request to use culverts (instead of bridges), has been accepted on the basis of providing additional culverts with dimensions of 2.4m x 1.8m. The proposed reduction in height of the culverts (from 1.8m to 1.2m) is not supported.

Correspondence submitted by the applicant in January 2014 notes that the required size of culverts is excessive...“due to the fact that only one (1) 2.4m wide x 1.8m high culvert is required under the adjacent approved Cobaki Parkway South road crossing.”

The applicant also notes that the higher fauna culverts will impact on the surrounding road network. As an alternative, the applicant now proposes two x 2.4m x 1.8m culverts with a link slab to create three x 2.4m wide and 1.8m high openings, with the culverts at either end having a fauna ledge to provide dry passage, as noted below in Figure 2:

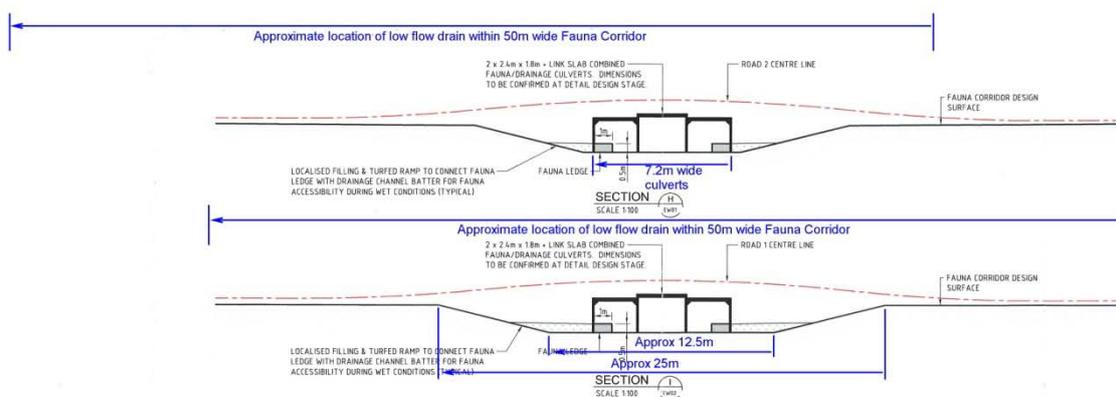


Figure 2: Applicant’s fauna crossing plan submitted Jan 2014 (Part of Plan No YC0229-11E1-FC01 Revision E) with blue notation added for clarity by Council

Accordingly, the applicant now proposes to modify Condition 63 as follows:

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~~“63A Detailed design drawings for all~~The design of the road crossings over the nominated fauna corridor are to be ~~provided illustrating replacement of culverts with bridges to enable a range of fauna to range through the corridor and facilitate east-west connectivity for fauna across the site consistent with the concept sketches prepared by Yeats Consulting No YC0229-11E1-FC01 Revision E, dated 20 January 2014.”~~

It is not considered that any further compromise is available regarding the number of openings forming each road crossing. The use of two 2.4 x 1.8m culverts connected with a slab is acceptable, and it is suggested that this approach be used at the centre of each crossing with three 2.4 x 1.8m culverts connected with two slabs. The addition of one or two (minimum 2.4 x 1.2m) culverts at the edge of each crossing will be necessary to meet Council's requirements. The use of ledges in culverts is supported.

The justification for a reduction in available crossing opportunity based on cost, the size of fauna likely to use the crossing or the single culvert under Cobaki Parkway is not accepted. As such the proposed modification of Condition 63 is not supported. However the following amendment to Condition 63 is recommended (amendments shown in bold).

63A. Detailed design drawings for all road crossings over the nominated fauna corridor are to be **provided illustrating replacement of culverts with bridges submitted to the General Manager or his delegate for approval. Each crossing design shall incorporate three 2.4 x 1.8m culverts (or two 2.4 x 1.8m culverts connected with a slab) in the centre of the corridor and an additional culvert (minimum 2.4 x 1.2m) on either side of the central culverts** to enable a range of fauna to cross through the corridor and facilitate east-west connectivity for fauna across the site.

Condition 65 (Primary Revegetation & Regeneration Works)

The applicant is proposing to modify Condition 65 which currently reads as follows:

65. Primary revegetation and regeneration works for all areas indicated as representing offset for loss of Swamp Sclerophyll Forest EEC in Figure 4 of the Revised Site Regeneration and Revegetation Plan by James Warren and Associates dated October 2010 must be undertaken to the satisfaction of Council prior to the loss of any Swamp Sclerophyll Forest on site. Such areas are to total at least 15.25ha as committed within MP06_0316.

The applicant proposes to replace the word “undertaken” with the word “commenced”, to remove any ambiguity to Condition 65. As such, the applicant proposes to modify Condition 65 as referenced below:

“65A *Primary revegetation and regeneration works for all areas indicated as representing offset for loss of Swamp Sclerophyll Forest EEC in Figure 4 of the Revised Site Regeneration and Revegetation Plan by James Warren and Associates, dated October 2010 must be **undertaken commenced** to the satisfaction of Council prior to the loss of any Swamp Sclerophyll Forest on site. Such areas are to total at least 15.25ha as committed within MP06_0316.*

The applicant was advised in May 2012 that Condition 65 requires Primary revegetation and regeneration works for all areas indicated as representing offset for loss of Swamp Sclerophyll Forest EEC prior to the loss of any Swamp Sclerophyll Forest on site. The key word is “primary” revegetation or regeneration which means the first stage, i.e. for revegetation it means that planting has been completed and the area in under maintenance.

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For regeneration, it means the first thorough weed removal work has been completed throughout the nominated site. Such works are considered a reasonable stage to have been reached before clearing of additional habitat. Therefore, the proposed modification of Condition 65 is not supported.

The applicant confirmed in September 2013 that they accept Council's position. As such Condition 65 remains in its current form and no further assessment is required.

Condition 73 (CEMP)

The applicant is seeking to modify Condition 73 which currently reads as follows:

73. *Prior to the commencement of construction works a Construction Environmental Management Plan (CEMP) must be prepared that covers the area of works. The CEMP shall be consistent with the Guideline for the Preparation of Environmental Management Plans (DIPNR, 2004). The CEMP shall include details sufficient to understand and avoid, mitigate and remedy all potential environmental impacts of the proposal during construction. The CEMP must include, but not be limited to all matters specified within Condition 25 of Project Application MP08_0200 and be submitted to and approved by the PCA no later than one month prior to commencement of construction, or within such period otherwise agreed by the General Manager or delegate.*

The applicant asserts that the requirement for approval of the CEMP one month prior to commencement is an anomaly and may potentially delay commencement of works. The following modification is recommended by the applicant:

- 73A** *Prior to the commencement of construction works a Construction Environmental Management Plan (CEMP) must be prepared that covers the area of works. The CEMP shall be consistent with the Guideline for the Preparation of Environmental Management Plans (DIPNR, 2004). The CEMP shall include details sufficient to understand and avoid, mitigate and remedy all potential environmental impacts of the proposal during construction. The CEMP must include, but not be limited to all matters specified within Condition 25 of Project Application MP08_0200 and be submitted ~~to and approved for approval~~ by the PCA no later than one month prior to commencement of construction, or within such period otherwise agreed by the General Manager or delegate."*

The applicant was advised in May 2012 that the proposed modification of Condition 73 is not supported as CEMP's generally have pre-construction recommendations. It was noted that the applicant's request to remove the reference of "no later than one month" is supported, as it is the responsibility of the developer to manage the project to ensure that all Prior to Commencement of Works (PCW) matters are addressed prior to the commencement of works. As such, the following modification is recommended (amendments shown in bold):

- 73A.** *Prior to the commencement of construction works a Construction Environmental Management Plan (CEMP) must be prepared that covers the area of works. The CEMP shall be consistent with the Guideline for the Preparation of Environmental Management Plans (DIPNR, 2004). The CEMP shall include details sufficient to understand and avoid, mitigate and remedy all potential environmental impacts of the proposal during construction. The CEMP must include, but not be limited to all matters specified within Condition 25 of Project Application MP08_0200 and be submitted to and approved by the PCA ~~no later than one month~~ prior to commencement of*

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construction, or within such period otherwise agreed by the General Manager or delegate.

The applicant confirmed in September 2013 that they accept the abovementioned modification of Condition 73, as proposed.

Condition 105 (Discharged Water)

The applicant is seeking to modify condition 105 which currently reads as follows:

105. All waters that are to be discharged from the site 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.

The applicant does not consider this condition to be practical during wet weather events and proposes the following modification:

*"105A. All waters that are to be discharged from the site **during dry weather periods** shall have a pH between 6.5 and 8.5 and suspended solids not greater than 50mg/l. **Where water is to be discharged from the site** 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."*

As per Council's Design Specification D7 – Stormwater Quality, the control on stormwater discharge is imposed up to the Q3 month rain event.

The applicant was advised in May 2012 that the proposed modification of Condition 105 was not supported. However, the following modification (amendments shown in bold) was suggested:

*105A. 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. **Where water is to be discharged from the site** 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.*

The applicant confirmed in September 2013 that they accept the abovementioned modification of Condition 100, as proposed.

Condition 117 (Dedication of Passive Parks)

The applicant is seeking to modify condition 117 which currently reads as follows:

117. The proposed passive parks are to be dedicated as passive open space and suitably embellished at no cost to Council in accordance with the approved landscaping plan.

*Where a developer pays Council to acquire and install play equipment, Council will **NOT** install the equipment until a minimum of 20% of the lots in that stage of the development are occupied. Embellishment arrangements shall be in place prior to the issue of a Subdivision Certificate.*

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The applicant argues that for marketing purposes, it will be important that park embellishment relevant to each stage be provided up front. The applicant proposes the following replacement condition:

*"117A. The proposed passive parks are to be **progressively** dedicated as passive open space and suitably embellished at no cost to Council in accordance with the approved landscaping plan. ~~Where a developer pays Council to acquire and install play equipment, Council will NOT install the equipment until a minimum of 20% of the lots in that stage of the development are occupied.~~ Embellishment arrangements shall be in place prior to the issue of a Subdivision Certificate."*

The applicant's proposed modification of Condition 117 is supported.

Condition 119 (Maintenance Bond)

The applicant is seeking to amend Condition 119 which currently reads as follows:

119. Prior to the issue of a Subdivision Certificate, a maintenance bond equal to 25% of the contract value of the footpath and cycleway construction works shall be lodged for a period of 3 years or until 80% of the lots fronting paved footpaths and cycleways are built on.

Alternatively, the developer may elect to pay a cash contribution to the value of the footpath and cycleway construction works plus 25% in lieu of construction and Council will construct the footpath when the subdivision is substantially built out. The cost of these works shall be validated by a schedule of rates.

The applicant is concerned with this condition as outlined below:

"The provision of the proposed cycleway network will be progressively constructed in accordance with the development program and will not be delayed until the construction of dwellings in that stage have been substantially completed.

The maintenance of the cycleways will be limited to material and workmanship and will not extend to damage caused by construction activities on private lots fronting the cycleway. Such damage should reasonably be the responsibility of the builder and/or owner of the adjoining lot.

Condition 80A(6)(c) of the Environmental Planning and Assessment Act 1979 (as amended) prescribes a time limit for conditions of development consent that relate to the holding of security to remedy any defects that may occur to public works, that period being 6 months. It is also considered that the amount of the bond should be equal to 5% of the value of the work. Accordingly the following modification is proposed."

The applicant proposes the following modification to Condition 119:

*"119A. Prior to the issue of a Subdivision Certificate, a maintenance bond equal to ~~25%~~ **5%** of the contract value of the footpath and cycleway construction works shall be lodged for a period of ~~3 years or until 80% of the lots fronting paved footpaths and cycleways are built on~~ **6 months**.*

Alternatively, the developer may elect to pay a cash contribution to the value of the footpath and cycleway construction works plus 25% in lieu of construction and Council will construct the footpath when the subdivision

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~~*is substantially built out. The cost of these works shall be validated by a schedule of rates.*~~

The imposition of a Defects Liability Bond in accordance with Section 80A(6)(c) is imposed under Condition 118, not 119 (or 120). Condition 118 imposes the appropriate 6 months timeframe, however it is noted that Section 80A(6)(c) doesn't reference a limit on the percentage that can be applied, however Council have already imposed the requested 5% amount.

Council's imposition of conditions equivalent to Condition 119 became a standard condition in order to resolve the damage that was occurring to concrete footpaths in new developments. Concrete footpaths were being damaged and it was extremely difficult to prove who caused the damage.

The applicant was advised in May 2012 that the condition was designed to encourage the construction of the paths after much of the house building was complete. It is not linked in any way to the standard 5% defect security bond to protect Council against faulty workmanship (i.e. Condition 118). The confusion may exist because Condition 119 contains the word "maintenance bond". To rectify this, it is suggested that as part of this s96 application, the words "maintenance bond" are replaced with "performance bond" in Condition 119A.

Under Section 80A(6)(b) Council may impose a condition (as per Condition 119) allowing the Consent Authority to enter into an agreement with the applicant, for the applicant to provide security for the payment of the cost to complete any public works. Section 80A(6)(b) does not limit to the amount or timeframe of this security, other than the security shall be of a reasonable amount, as determined by the Consent Authority.

As such, the applicant's proposed modification to Condition 119 is not supported. However, in order to remove any ambiguity between Condition 118 and Condition 119, it is recommended that Condition 119 is amended as follows:

*119A. Prior to the issue of a Subdivision Certificate, a **maintenance performance bond** equal to 25% of the contract value of the footpath and cycleway construction works shall be lodged for a period of 3 years or until 80% of the lots fronting paved footpaths and cycleways are built on.*

Alternatively, the developer may elect to pay a cash contribution to the value of the footpath and cycleway construction works plus 25% in lieu of construction and Council will construct the footpath when the subdivision is substantially built out. The cost of these works shall be validated by a schedule of rates.

The applicant confirmed in September 2013 that they accept the abovementioned modification of Condition 119, as proposed.

Condition 120 (Landscaping Bond)

The applicant is seeking to modify Condition 120 which currently reads as follows:

120. A bond shall be lodged prior to the issue of the Subdivision Certificate to ensure that the associated landscaping is maintained by the developer for a period of 12 months from the date of issue of a Subdivision Certificate. The amount of the bond shall be 20% of the estimated cost of the landscaping or \$3000 whichever is the greater.

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As per with Condition 119, the applicant indicates that Condition 80A(6)(c) of the Environmental Planning and Assessment Act 1979 (as amended) states that the holding of security to remedy any defects that may occur to public works, is limited to a period of 6 months and that the bond should be equal to 5% of the value of the work.

Accordingly the Applicant proposes to modify Condition 120 as follows:

"120A. A bond shall be lodged prior to the issue of the Subdivision Certificate to ensure that the associated landscaping is maintained by the developer for a period of ~~12~~ 6 months from the date of issue of a Subdivision Certificate. The amount of the bond shall be ~~20%~~ 5% of the estimated cost of the landscaping or \$3000 whichever is the greater.

As noted in Condition 119 above, the imposition of a Defects Liability Bond in accordance with Section 80A(6)(c) is imposed under Condition 118, not 120 (or 119).

Under Section 80A(6)(b), Council may impose a condition (as per Condition 119), allowing the Consent Authority to enter into an agreement with the applicant, for the applicant to provide security for the payment of the cost to complete any public works.

Section 80A(6)(b) does not limit to the amount or timeframe of this security, other than the security shall be of a reasonable amount, as determined by the Consent Authority.

The amendment regarding maintenance period cannot be supported as Council's Development Design Specification D14 'Landscaping Public Open Space' specifies 12 months maintenance for any Landscape Works (Appendix H, Sect.7).

Note the 'maintenance period' refers to plant establishment and care, and is not related to defects as referenced in Section 80A(6)(c).

The amount of 20% is recorded in Council's 'standard condition PSC 0235'.

Similar to that with Condition 119, the confusion with Condition 120 lies within the condition's current reference of the word "maintained", possibly being interpreted by the applicant as "maintenance". To rectify this, it is suggested that as part of this s96 application, Condition 120 be amended to clarify that it does not refer to defects/maintenance (i.e. Section 80A(6)(c)) but "establishment and performance" (i.e. Section 80A(6)(b)).

The applicant was advised in May 2012 that the proposed modification to Condition 120 was not supported; however, in order to remove any ambiguity between Condition 118 and Condition 120, it is recommended that Condition 120 is amended as follows.

120A. A bond shall be lodged ~~prior to the issue of the Subdivision Certificate to ensure that the associated landscaping is maintained by the developer for a period of~~ to ensure suitable care and maintenance is provided to plantings and turf over a 12 month establishment period. This care is required to achieve optimal plant establishment and performance. The bond shall be held by Council to ensure that the associated landscaping is maintained by the developer for a period of 12 months from the date of issue of a Subdivision Certificate.

The amount of the bond shall be 20% of the estimated cost of the landscaping ~~or \$3000 whichever is the greater.~~

The applicant confirmed in September 2013 that they accept the abovementioned modification of Condition 120, as proposed.

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Condition 121 (Cash bond / Bank Guarantee – SRRP)

The applicant is seeking to modify Condition 121 which currently reads as follows:

121. Cash Bond/Bank Guarantee

- (a) *A Cash Bond or Bank Guarantee to ensure that the approved Site Regeneration and Revegetation Plan (SRRP) is implemented and completed, must be lodged with Council prior to the release of the Subdivision Certificate. The amount of such bond will be based on the cost of environmental repair, enhancement and maintenance works to be undertaken in accordance with the approved SRRP. In this regard, two (2) written quotes from suitably experienced and qualified bush regenerators (to the satisfaction of the General Manager or his delegate) must be submitted to Council which detail the cost of all works associated with the SRRP. The amount of the bond will be equivalent to 100% of the estimated cost of works.*
- (b) *One third of the Cash Bond or Bank Guarantee will be refunded one year after the initiation of works on submission of certification by a suitably experienced and qualified bush regenerator stating that works are being satisfactorily undertaken in accordance with the approved SRRP. A further one third of the Bond or Bank Guarantee will be refunded 3 years after the initiation of works on submission of certification by a suitably experienced and qualified bush regenerator stating that works have been satisfactorily reached the defined half-way stage of the SRRP. The final one third of the Bond or Bank Guarantee will be released 5 years after the initiation of works on submission of certification by a suitably experienced and qualified bush regenerator stating that the SRRP has been satisfactorily completed.*
- (c) *Monitoring of the effectiveness of environmental repair, enhancement and maintenance works must be undertaken by an independent and suitably qualified and experienced bush regenerator at yearly intervals following initiation of the Environmental Restoration Plan SRRP works. Reports of this monitoring must provide the basis for the person issuing certification for the bond or bank guarantee refunding stages and must be annually submitted to Council as evidence. Any supplementary or approved adaptive management works deemed necessary by the independent bush regenerator during the life of the SRRP must be undertaken once the need is identified.*

The applicant acknowledges that the regeneration areas will require a 3 year maintenance period, as per the Ecological Reports and Management Plans that accompanied the Concept Plan, however they believe that under Section 80A(3), the maintenance period should legally be limited to 6 months.

The applicant also states that the bond should relate to ‘uncompleted works’ only (if applicable) and ‘maintenance’.

Accordingly, the applicant proposes to modify Condition 121 as follows:

“121A. Cash Bond/Bank Guarantee

- (a) *A Cash Bond or Bank Guarantee to ensure that the approved Site Regeneration and Revegetation Plan (SRRP) is **implemented and***

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completed **and maintained for 3 years** must be lodged with Council prior to the release of the Subdivision Certificate. The amount of such bond will be based on the cost of **environmental repair, enhancement uncompleted work (if any)** and maintenance work to be undertaken in accordance with the approved SRRP. In this regard, two (2) written quotes from suitably experienced and qualified bush regenerators (to the satisfaction of the General Manager or his delegate) must be submitted to Council which detail the cost of all works associated with the SRRP. The amount of the **uncompleted work** bond will be equivalent to 100% of the estimated cost of **the uncompleted works and the maintenance work bond will be 5% of the value of the work.**

- (b) ~~One third of the Cash Bond or Bank Guarantee~~ **The uncompleted work bond will be refunded one year after the initiation of works** on submission of certification by a suitably experienced and qualified bush regenerator stating that works have been satisfactorily completed in accordance with the approved SRRP. ~~A further one third of the Bond or Bank Guarantee will be refunded 3 years after the initiation of works on submission of certification by a suitably experienced and qualified bush regenerator stating that works have been satisfactorily reached the defined half-way stage of the SRRP. The final one third of the Bond or Bank Guarantee will be released 5 years after the initiation of works on submission of certification by a suitably experienced and qualified bush regenerator stating that the SRRP has been satisfactorily completed.~~
- (c) ~~Monitoring of the effectiveness of environmental repair, enhancement and maintenance works must be undertaken by an independent and suitably qualified and experienced bush regenerator at yearly intervals following initiation of the Environmental Restoration Plan SRRP works. Reports of this monitoring must provide the basis for the person issuing certification for the bond or bank guarantee refunding stages and must be annually submitted to Council as evidence. Any supplementary or approved adaptive management works deemed necessary by the independent bush regenerator during the life of the SRRP must be undertaken once the need is identified. The maintenance bond will be refunded after 3 years and on submission of certification by a suitably experienced and qualified bush regenerator stating that works have been maintained in accordance with the approved SRRP."~~

Condition 121 requires a cash bond or bank guarantee based on the value of restoration works, to be progressively refunded based upon success shown by monitoring reports.

The applicant states that the bond should relate to 'uncompleted works' only (if applicable) and 'maintenance' because the work is to be commenced prior to the issue of the Construction Certificate.

The condition actually reads "prior to the release of the Subdivision Certificate", i.e. after the construction is complete.

The applicant was advised in May 2012 that the proposed modification of Condition 121 was not supported. However, the following modification of Condition 121 (amendments shown in bold) was proposed:

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121A. Cash Bond/Bank Guarantee

- (a) *A Cash Bond or Bank Guarantee to ensure that the approved Site Regeneration and Revegetation Plan (SRRP) is implemented and completed, must be lodged with Council prior to the release of the Subdivision Certificate. The amount of such bond will be based on the cost of environmental repair, enhancement and maintenance works **remaining** to be undertaken in accordance with the approved SRRP. In this regard, two (2) written quotes from suitably experienced and qualified bush regenerators (to the satisfaction of the General Manager or his delegate) must be submitted to Council which detail the cost of all works associated with the SRRP. The amount of the bond will be equivalent to 100% of the estimated cost of works.*
- (b) *One third of the Cash Bond or Bank Guarantee will be refunded one year after the initiation of works on submission of certification by a suitably experienced and qualified bush regenerator stating that works are being satisfactorily undertaken in accordance with the approved SRRP. A further one third of the Bond or Bank Guarantee will be refunded 3 years after the initiation of works on submission of certification by a suitably experienced and qualified bush regenerator stating that works have been satisfactorily reached the defined half-way stage of the SRRP. The final one third of the Bond or Bank Guarantee will be released 5 years after the initiation of works on submission of certification by a suitably experienced and qualified bush regenerator stating that the SRRP has been satisfactorily completed.*
- (c) *Monitoring of the effectiveness of environmental repair, enhancement and maintenance works must be undertaken by an independent and suitably qualified and experienced bush regenerator at yearly intervals following initiation of the Environmental Restoration Plan SRRP works. Reports of this monitoring must provide the basis for the person issuing certification for the bond or bank guarantee refunding stages and must be annually submitted to Council as evidence. Any supplementary or approved adaptive management works deemed necessary by the independent bush regenerator during the life of the SRRP must be undertaken once the need is identified.*

The applicant confirmed in September 2013 that they accept the abovementioned modification of Condition 121, as proposed.

Condition 133 (Dedication of Drainage Reserve)

The applicant is seeking to modify Condition 133 which currently reads as follows:

133. Prior to the release of the Subdivision Certificate the proponent shall:

- (a) *Dedicate the proposed drainage reserve at no cost to Council.*
- (b) *Submit an accurate plan of the proposed drainage reserve to Council 60 days prior to lodgement of Application for Subdivision Certificate to allow the land to be classified.*

The applicant proposes to modify Condition 133, to clarify staging dedication requirements, as follows:

*~~“133A. Prior to the release of the Subdivision Certificate the proponent~~ **The Plan of Proposed Subdivision** shall dedicate the proposed drainage reserve **adjacent***

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to that stage of the development at no cost to Council. The proponent shall submit an accurate plan of the proposed drainage reserve to Council 60 days prior to lodgement of Application for Subdivision Certificate to allow the land to be classified.”

The applicant’s proposed modification of Condition 133 is supported.

Condition 136 (Underground Telephone Supply)

The applicant is seeking to modify Condition 136 which currently reads as follows:

136. The production of written evidence from the local telecommunications supply authority certifying that the provision and commissioning of underground telephone supply at the front boundary of all allotments associated with the Subdivision Certificate has been completed.

The applicant proposes to amend the reference for the “provision and commissioning of underground telephone supply” to be provided to the “satisfactory arrangements have been made”, believing that this is Council’s standard.

As such, the applicant proposed to modify Condition 136 as follows:

“136A. The production of written evidence from the local telecommunications supply authority certifying that ~~the provision and commissioning satisfactory arrangements have been made for the provision~~ of underground telephone supply ~~at the front boundary of all allotments associated with the Subdivision Certificate has been completed for each Subdivision Certificate Application.~~”

The applicant was advised in May 2012 that the current wording of Condition 136 has been Council’s standard wording since 19 August 2009 and as such, the proposed modification of Condition 136 is not supported.

Correspondence submitted by the applicant in September 2013 accepts Council’s position in terms of Condition 136. As such Condition 136 remains in its current form and no further assessment is required.

Condition 148 (Embellishment of Casual Open Space)

The applicant is seeking to modify Condition 148 which currently reads as follows:

148. Embellishment of all areas of casual open space, structured open space, cycleways, pedestrian links and streetscapes is to be completed, consistent with the approved landscape plans, to the satisfaction of the General Manager Tweed Shire Council or delegate prior to issue of the Subdivision Certificate. Installation of playground equipment and softfall however will not occur until 20% of the relevant stage’s allotments are occupied. The developer must contribute the appropriate financial contribution for these items as a bond prior to the release of the relevant Subdivision Certificate for each stage. Council will undertake the installation at the appropriate time.

For marketing purposes, the applicant intends to embellish the parks with each stage. The applicant does not propose to utilise Council to acquire and install the equipment.

As such, the following replacement condition is proposed by the applicant:

*“148A. **The staged** embellishment of all areas of casual open space, structured open space, cycleways, pedestrian links and streetscapes is to be completed,*

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consistent with the approved landscape plans, to the satisfaction of the General Manager Tweed Shire Council or delegate prior to issue of the Subdivision Certificate. ~~Installation of playground equipment and softfall however will not occur until 20% of the relevant stage's allotments are occupied. The developer must contribute the appropriate financial contribution for these items as a bond prior to the release of the relevant Subdivision Certificate for each stage. Council will undertake the installation at the appropriate time.~~

The applicant was advised in May 2012 that the proposed modification of Condition 148 was not supported, with the exception of the inclusion of the word 'staged'. Council officers propose the following modification to Condition 148 (amendments shown in bold):

148A. *The **staged** embellishment of all areas of casual open space, structured open space, cycleways, pedestrian links and streetscapes is to be completed, consistent with the approved landscape plans, to the satisfaction of the General Manager Tweed Shire Council or delegate prior to issue of the Subdivision Certificate.*

The Developer will be responsible for maintaining the installed playground equipment and softfall for a period of 6 months after 20% of the relevant stage's allotments have been occupied. A maintenance compliance bond of 5% of the total cost of the installed playground equipment and softfall must be paid to Council prior to the release of the relevant Subdivision Certificate for each stage. The bond will be return upon request at the completion of the maintenance period, if not expended during the maintenance period.

The applicant confirmed in September 2013 that they accept the abovementioned modification of Condition 148, as proposed.

Condition 149 (Maintenance Period)

The applicant is seeking to modify Condition 149 which currently reads as follows:

149. The developer is to undertake maintenance operations on all casual and structured public open space for a minimum of 12 months after the Subdivision is registered with the Land Titles Office. Such maintenance will include all soft landscaping, particularly mowing and weed control. Any power and water consumption costs during this period must also be met by the developer.

Similar to that for Condition 48, the applicant proposes to amend this condition to replace the currently proposed 12 month maintenance period on all casual and structures public open space to "the standard" 6 months period. (The applicant references Section 80A(3) of the EP&A Act as justification).

The applicant proposed to modify Condition 149 as follows:

*"~~149A.~~ The developer is to undertake maintenance operations on all casual and structured public open space for a minimum of ~~12~~ **6** months after the Subdivision is registered with the Land Titles Office. Such maintenance will include all soft landscaping, particularly mowing and weed control. Any power and water consumption costs during this period must also be met by the developer."*

The applicant was advised in May 2012 that the proposed modification of Condition 149 was not supported. Council's Development Design Specification D14 'Landscaping Public Open Space' specifies 12 months maintenance for any Landscape Works (Appendix H, Sect.7). It

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is also noted the 'maintenance period' refers to plant establishment and care, and is not related to defects as referenced in Section 80A(6)(c).

Correspondence submitted by the applicant in September 2013 accepts Council's position in terms of Condition 149. As such Condition 149 remains in its current form and no further assessment is required.

Condition 156 (Community Centre Site)

The applicant is seeking to modify Condition 156 currently reads as follows:

156. The land designated as the community centre site is to be dedicated to Council at no cost in accordance with the Section 94 Plan No. 10 Cobaki Lakes Public Open Space and Community Facilities.

The applicant notes that the community centre site is not proposed within Precincts 6. As it is located within Precinct 17 it is not subject to a lot layout or infrastructure planned for under the development consent.

As such, the applicant proposes to modify Condition 156 as follows:

*"156A. The land designated as the community centre site is to be dedicated to Council at no cost in accordance with the Section 94 Plan No. 10 – Cobaki Lakes Public Open Space and Community Facilities. **The land will be unserviced and will have frontage to Sandy Lane in its present state.**"*

The applicant was advised in May 2012 that the proposed modification of Condition 156 was not supported. Although it is acknowledged that the Community Centre Site is not located within Precinct 6, it is noted that it is not located within Precinct 17 either. The approved Concept Plan indicates that the site is within the Central Open Space. Despite this, S94 No 10 – Cobaki Lakes Public Open Space and Community Facilities requires 150m² of floor area at the start of the development. This would require the site to be serviced. As a result of being inconsistent with the section 94 plan, as the proposed modification of Condition 156 is not supported.

In September 2013 the applicant responded, noting that the construction of services to the Community Centre is not economically viable unless it is associated with the creation of residential lots. The applicant proposed the following amendment to Condition 156 (amendments shown in bold):

*"156A. ~~The land designated as the community centre site is to be dedicated to Council at no cost in accordance with the Section 94 Plan No. 10 – Cobaki Lakes Public Open Space and Community Facilities.~~ **Prior to the release of a Subdivision Certificate the land owner of the site of the future Cobaki Community Centre under Concept Plan Approval MP06_0316 is to enter into a Deed of Agreement with Council such that the identified land is to be provided with a constructed road frontage and all normal urban services and dedicated to Council at no cost prior to the release of a Subdivision Certificate that would allow the creation of more than 2000 residential lots within the Cobaki development.**"*

The applicant's proposed Condition 156A is not considered to be consistent with the intention of Contribution Plan 10 in that the land will not be dedicated and a 150m² Multipurpose Hall will not be constructed at the initial stages of the development.

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However, as there are significant financial impediments to providing the land, the likely use of this hall will be limited, and the Hall may detract from the ultimate facility intended for this site, provision of the land at the 2000 lot stage and construction of a facility sometime after this stage is considered an appropriate strategy. As such, the applicant's proposed modification of Condition 156 is supported.

Condition 158 (Dedication of Drainage Reserve)

The applicant is seeking to modify condition 158 which currently reads as follow:

158. Lots 602, 603 and 605 adjoining the central drain are to be dedicated as drainage reserve, not environmental open space as indicated on the 'Plan of Proposed Subdivision, Precinct 6 Drainage Reserves & Parks' reference Michel Group Services 6400-218 Issue A dated 24/11/2010. In this regard additional offset for Swamp Sclerophyll Forest totalling 2936m² is to be included in the site specific Site Regeneration and Revegetation Plan.

The applicant considers that the requirement of additional off-set land is addressed in modified Condition 55A. As such, the Applicant proposes to modify Condition 158 as follows:

"158A. Lots 602, 603 and 605 adjoining the central drain are to be dedicated as drainage reserve, not environmental open space as indicated on the 'Plan of Proposed Subdivision, Precinct 6 Drainage Reserves & Parks', reference Michel Group Services 6400-218, Issue A, dated 24/11/2010. ~~In this regard additional offset for Swamp Sclerophyll Forest totalling 2936m² is to be included in the site specific Site Regeneration and Revegetation Plan.~~"

The applicant's proposed modification of Condition 158 is supported.

Considerations under Section 96 of the Environmental Planning and Assessment Act 1979:

Although the original application was determined by the Joint Regional Planning Panel (JRPP), this S96(1a) application can be determined by Council.

Section 96(1A) of the Act states that in order to grant consent, the consent authority must consider the following:

- "(a) it is satisfied that the proposed modification is of minimal environmental impact, and*
- (b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (c) it has notified the application in accordance with:*
 - (i) the regulations, if the regulations so require and*
- (d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations."*

Likely Environmental Impact

An extensive assessment has been undertaken with regard to the proposed modifications to the approved residential subdivision development, as noted in the 79C assessment above.

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In conclusion, the proposed amendments that have been supported are not considered to result in any significant environmental impact, subject to appropriate conditions of consent.

Substantially the Same Development

The proposed modifications being recommended for approval are considered unlikely to result in any significant changes to the originally approved development, with no additional parcels of land being proposed. As such, the proposed modifications are considered to be substantially the same development as that originally approved.

Consideration of Submissions

The application did not require advertising or notification. As such, no submissions were received.

Public interest

The proposed modifications to Development Consent DA10/0801 which are being supported are considered to be acceptable in terms of public interest. The proposed modifications being supported are not considered to result in a significant negative impact upon the surrounding area, subject to the recommended conditions of consent.

OPTIONS:

1. Approve the proposed modifications, subject to the recommended conditions of consent; or
2. Refuse the proposed modifications; or
3. Approve the proposed modifications as proposed by the applicant; or
4. Approve/Refuse individual condition modifications.

Council officers recommend Option 1.

CONCLUSION:

This assessment has had regard for all of the issues raised by the applicant in terms of potential impact and acceptability of the proposal. As a result, the proposed modifications which are being supported are considered to be acceptable and it is considered that the proposal warrants approval, subject to the recommended amendments to Development Consent DA10/0801.

COUNCIL IMPLICATIONS:

a. Policy:

Policies/Controls as detailed in the body of the report.

Section 8 (Charter) of the Local Government Act 1993 states that "...to have regard to the long term and cumulative effects of it's decisions.

To bear in mind that it is the custodian and trustee of public assets and to effectively plan for, account for, and manage the assets for which it is responsible."

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b. Budget/Long Term Financial Plan:

As detailed in the summary and body of the report.

c. Legal:

The applicant has identified that they reserve the right to challenge several of the conditions being proposed for modification.

d. Communication/Engagement:

Not Applicable.

UNDER SEPARATE COVER/FURTHER INFORMATION:

(Confidential) Attachment 1. Memo to Councillors dated 18 March 2014 (ECM 3377784).

(Confidential) Attachment 2. Record of the discussion between Leda's ecologist and Council's ecologist on 14 May 2014 (ECM 3376736).

(Confidential) Attachment 3. Legal Advice from Maddocks dated 25 March 2014 (ECM 3376737).
