

ASSESSMENT REPORT

Cobaki Estate Residential Community Development Project Approval MP08_0200 (MOD 5)

1. INTRODUCTION

This report is an assessment of a request to modify the Project Approval MP08_0200 for a residential community development, referred to as 'the Cobaki Estate' at Cobaki Lakes. The request has been lodged by Leda Manorstead Pty Ltd (the Proponent), pursuant to section 75W of the *Environmental Planning and Assessment Act 1979* (EP&A Act). It seeks approval to amend an approved fencing plan designed to protect environmentally sensitive areas of the site from bulk earthwork activities and to delete a condition relating to a raptor nesting site.

2. SUBJECT SITE

Cobaki Estate is located on the New South Wales - Queensland border approximately 1.5 kilometres west of the Gold Coast Airport and approximately six kilometres north-west of Tweed Heads. Adjoining the site to the east is a wetland protected by *State Environmental Planning Policy No.14 – Coastal Wetlands*, Cobaki Creek and the Cobaki Broadwater. Remnant bushland forest areas lie to the west and north of the site and are zoned for environmental protection. Agricultural land primarily used for cattle grazing adjoins the site to the south and to the north-west. To the south-west is a golf course, which is zoned for rural purposes. The location of the site is shown in **Figure 1**.



Figure 1: Site Location

3. APPROVAL HISTORY

Concept Plan

On 6 December 2010, the then Minister for Planning approved a Concept Plan for Cobaki Estate including a residential development for approximately 5,500 dwellings, a town centre and neighbourhood centre, utility infrastructure, road corridors, open space and environmental protection areas (refer to **Figure 2**).

Condition C4(2) of the Concept Plan approval requires all future applications (whether determined by Council or the Department of Planning and Environment) to include stage-specific Construction Environmental Management Plans (CEMPs) detailing measures to address construction impacts, including the protection of fauna and vegetation to be retained on the site.

The Concept Plan has been the subject of a number of modification requests (refer to **Appendix D**).

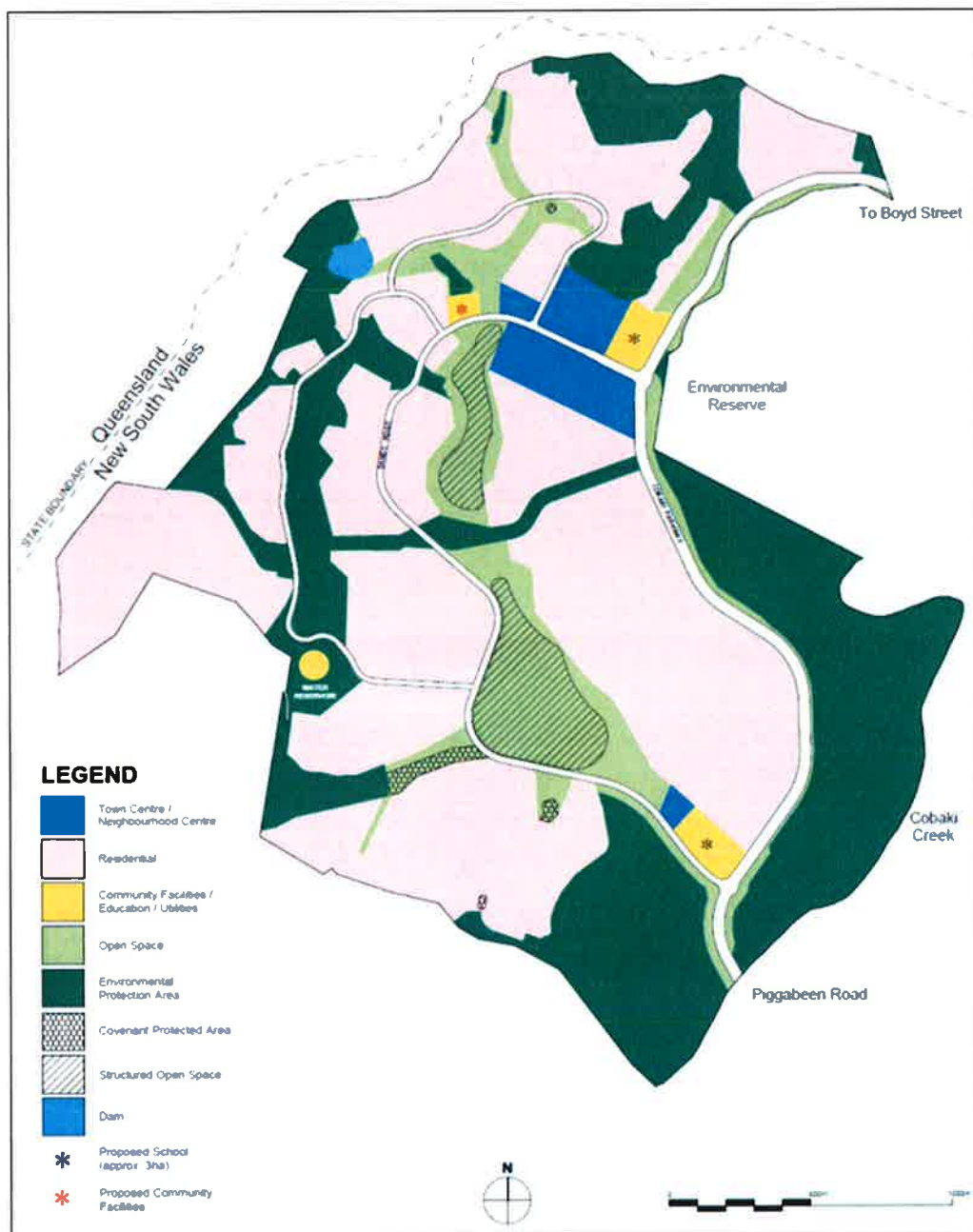


Figure 2: Cobaki Estate – Approved Concept Plan Layout (MP 06_0316)

Project Application

On 28 February 2011, the then Deputy Director-General, as delegate of the Minister for Planning, granted Project Approval for the Central Open Space (COS) Area (MP 08_0200). The approval included the subdivision of the entire Cobaki Estate into seven lots, staged bulk earthworks, re-vegetation and rehabilitation works.

Condition 25 of the Project Approval requires the provision of a CEMP for the bulk earthwork activities in the COS to minimise the potential impacts on existing vegetation and fauna habitat identified within the environmentally sensitive areas of the site.

The Project Approval has been modified on three occasions (refer to **Appendix D**).

Relevant Background

In accordance with Condition 25, a CEMP was prepared for the site in August 2012. It incorporated a fencing plan designed to protect environmentally sensitive areas of the site during the construction of the COS (**Figure 3**).

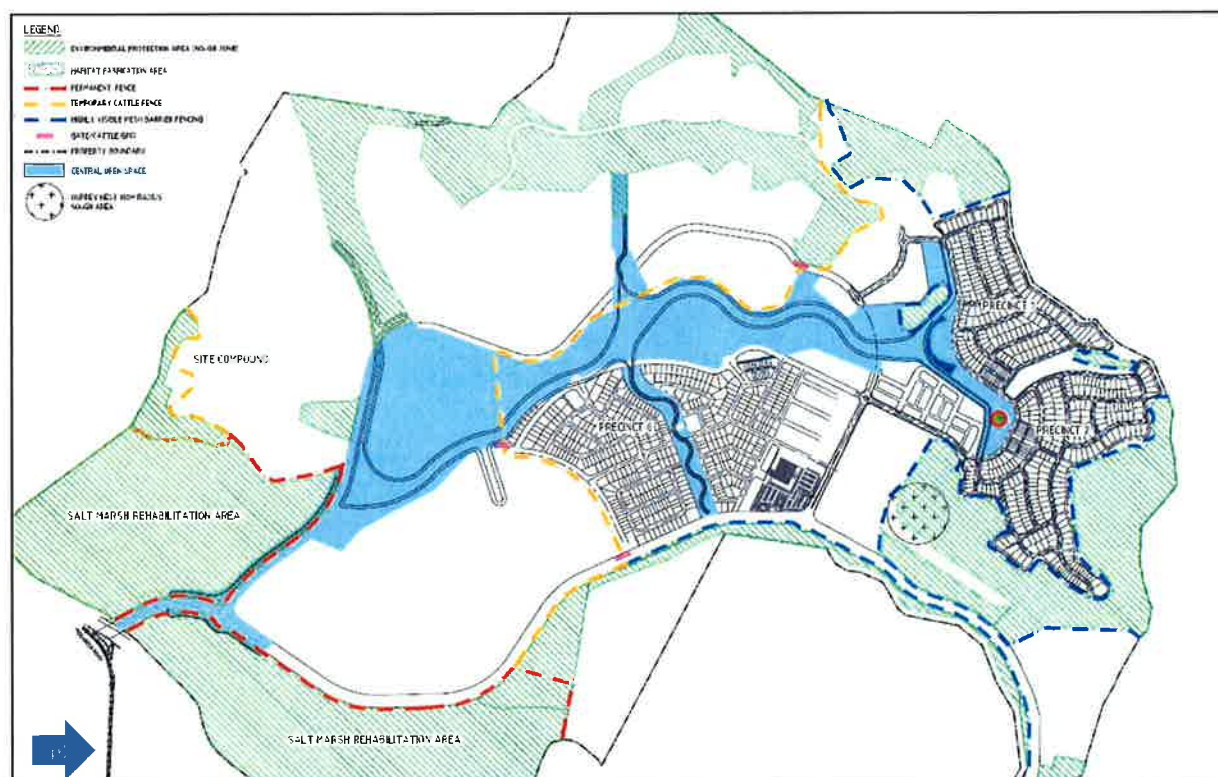


Figure 3: Fencing Plan extracted from original CEMP August 2012.

The approval was subsequently modified in May 2013. The original Project Approval initially restricted bulk earthworks outside the COS. However, the restriction was removed under MOD 1 to allow the extraction of fill from Precincts 1 and 2 in the northern part of the Cobaki Estate to be placed in the COS area. An updated version of the fencing plan, which forms part of the Environmental Assessment for MOD 1 was subsequently approved to protect the environmentally sensitive areas from construction activities and traffic associated with the bulk earthworks (refer to **Figure 4**).

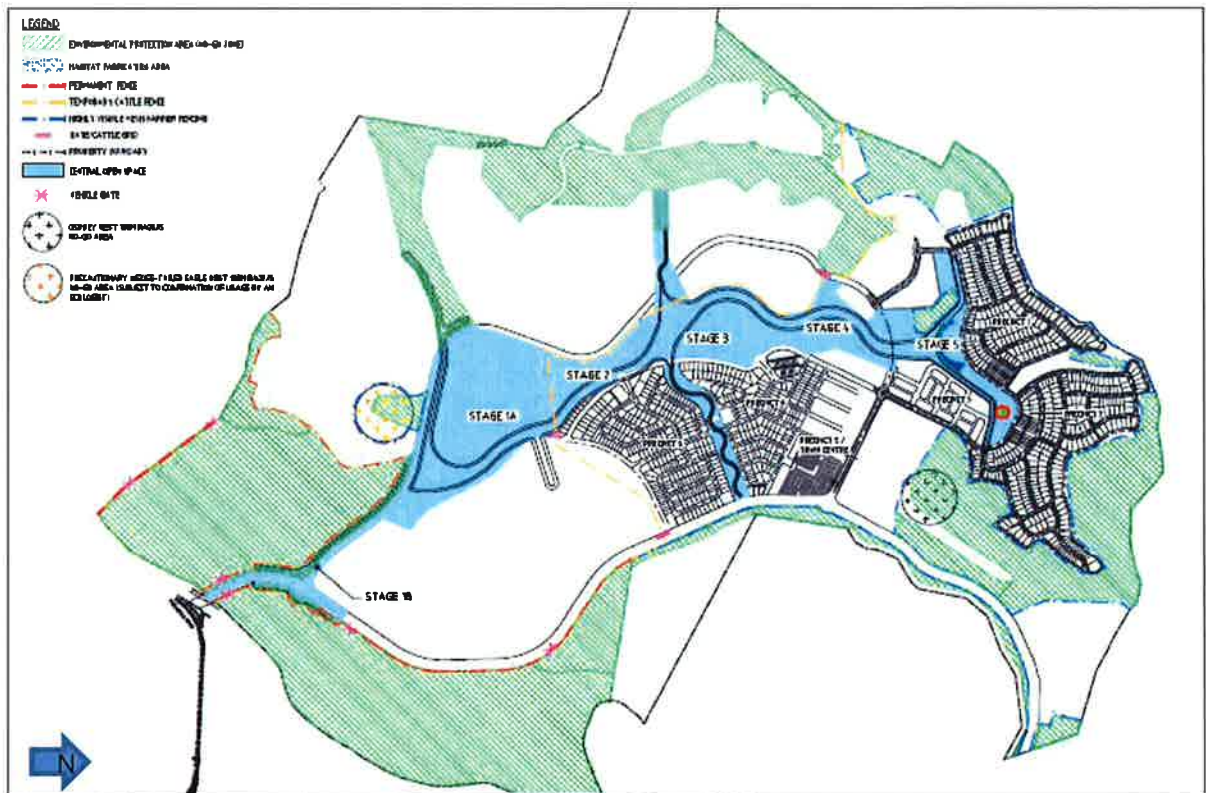


Figure 4: Cobaki Estate – Approved Earthworks Fencing Plan – MOD 1

MOD 2 was then approved in April 2014. It included additional areas for the extraction of fill, (Precincts 9 and 11) to enable completion of the earthworks in the COS. An updated earthworks fencing plan incorporating additional fencing to protect the environmentally sensitive areas in the southern part of the Cobaki Estate was approved as part of a new CEMP submitted with MOD 2 (refer to Figure 5).

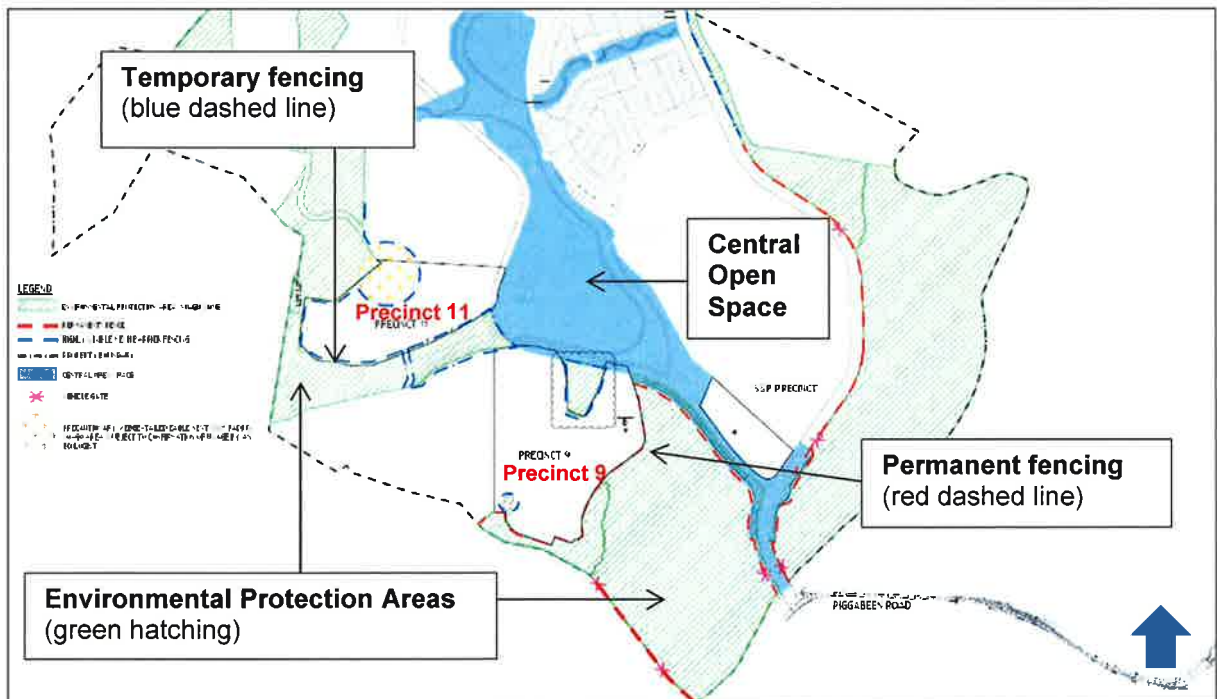


Figure 5: Cobaki Estate – Approved Earthworks Fencing Plan – MOD 2

In addition, the updated fencing plan was specifically referenced in a new condition, as follows:

39(A) Fencing of Environmentally Sensitive Areas – Precinct 9 and 11 Earthworks

Environmentally sensitive areas shall be appropriately fenced during Precinct 9 and 11 earthworks activities, in accordance with the Fencing Plan Precinct 9, 11 and SSP (Drawing No. 3310071E-044) prepared by SMEC Urban and dated 10 December 2013 and submitted as part of the Construction Environmental Management Plan in Precincts 9 and 11 in accordance with the approved earthworks fencing plan in the CEMP.

- (a) *The boundaries of the rehabilitation and covenant areas together with a 5m buffer to existing threatened flora species is required to be surveyed and marked with high visibility meshing/fencing prior to commencement of works in Precincts 9 and 11; and*
- (b) *The establishment of high visibility netting barriers/fencing around the existing Raptor nesting tree (identified on the Bulk Earthworks Cut & Fill Plan Sheet 1 of 2 – Drawing No. YC0229-1E1-EC01 prepared by Sedgman Yeats dated 10 March 2014) is required prior to the commencement of any works in precinct 9. The barriers/fencing must provide a minimum 5 m buffer radius between the existing tree and any physical works.*

A new condition was also imposed specifying the requirements for a buffer area around the raptor nesting site, as follows:

39(B) Buffer to Raptor Nesting Site

The Proponent's Environmental Officer must determine whether the existing Raptor nest (identified on Bulk Earthworks Cut & Fill Plan Sheet 1 of 2 – Drawing No. YC0229-1E1-EC01 prepared by Sedgman Yeats and dated 10 March 2014) is in use by any Raptor species prior to Precinct 9 earthworks being carried out. Should it be determined that the nesting site is being utilised by any Raptor species, no works are permitted to be carried out within a 100m radius of the nesting site to protect it from disturbance and damage.

The approved earthworks fencing plan referred to in Condition 39(A) is shown in **Figure 5** above, and the bulk earthworks plan referred to in Condition 39(B) is shown in **Figure 6** below.

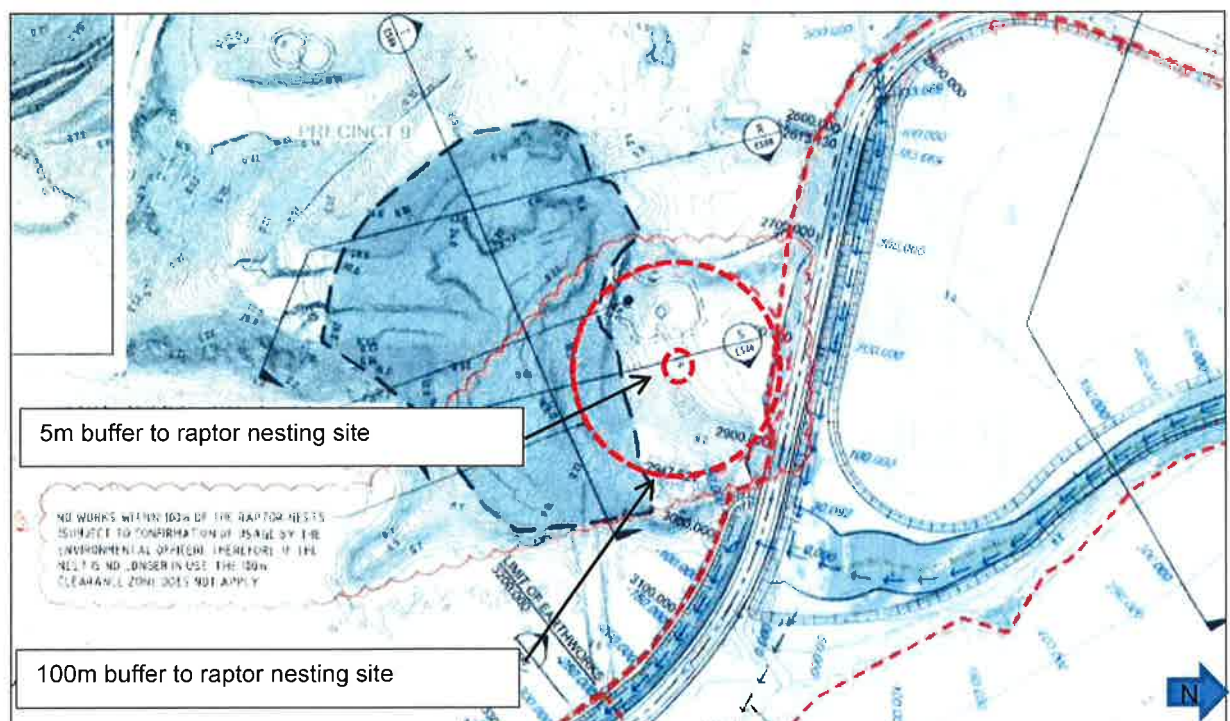


Figure 6: Extract from Approved Bulk Earthworks Plan – Precincts 9 and 11

4. PROPOSED MODIFICATION

The Proponent lodged a section 75W modification request seeking to amend an approved earthworks fencing plan referred to in Condition 39(A) of the approval. Despite the fencing already being erected on the site (in accordance with the MOD 2 CEMP and the previously approved fencing plans) the Proponent has requested the plan be amended by removing fences from six specific areas of the site as shown in **Figure 7**. The revised fencing plan is shown in **Figure 8**.

The Proponent advises all of the fences have been erected on the site and there is no intention to remove them in the future. However, the Proponent seeks to delete the fences from the approved plan as it considers they are not necessary to protect the environmentally sensitive areas of the site. Further, the Proponent is concerned that if vandals trespass onto the site and damage the fences, it may be found to be non-compliant with the approval. The Proponent also considers the various versions of the fencing plan are only relevant to the works approved in each particular modification request. The Proponent is of the view that the fences shown on the plan submitted with MOD 2 were inadvertently carried over from previously approved plans and are not relevant to the specific works approved by MOD 2.

The Proponent also seeks to delete Condition 39B of the approval which requires a determination to be made as to whether a former Raptor nesting site is being used prior to the commencement of works in Precinct 9. Should it be determined that the nesting site is being used, no works are permitted within a 100 metre buffer around the nesting site.

Further justification put forward by the Proponent for the proposed changes is outlined in **Table 1**.

Table 1: Proponent's justification for specific proposed changes

Area 1	The Proponent considers the land is not considered to be environmentally sensitive, is in very poor condition, will require revegetation and incorporation of a drainage line in the future. The Proponent considers it is not adjacent or connected to the borrow pit areas in Precincts 9 or 11.
Area 2	This area incorporates two old growth trees. Although the trees are required to be protected, this will be achieved through a covenant. This area is also not related to the earthworks in Precincts 9 and 11.
Area 3	This area is not adjacent to or close to the borrow pit in Precinct 9
Areas 4, 5 and 6	This fencing is not connected with the filling of the COS. The fences were inadvertently carried over from an overarching fencing plan for the site.
Raptors' Nesting Tree in Precinct 9	The Proponent originally sought deletion of Conditions 39A(b) and 39B on the basis that the condition related to a tree in Precinct 11 which had subsequently been felled. However, the conditions relate to a tree adjacent to Precinct 9, which still exists. The Proponent now seeks deletion of Condition 39B on the basis that no raptor species has been observed in the tree or the precinct since monitoring commenced in 2013.
Raptors' Nesting Tree in Precinct 11	The approved fencing plan includes a 100 metre wide buffer around a raptors' nesting tree in Precinct 11, which as noted above has been felled since the modification was approved. Although the tree no longer exists, two Ospreys have made a new nest in a nearby tree. The fencing plan has therefore been updated to reflect a buffer around the new nesting tree.

Examples of existing fences on the site adjacent to environmentally sensitive areas are shown in **Figures 9 – 11**.

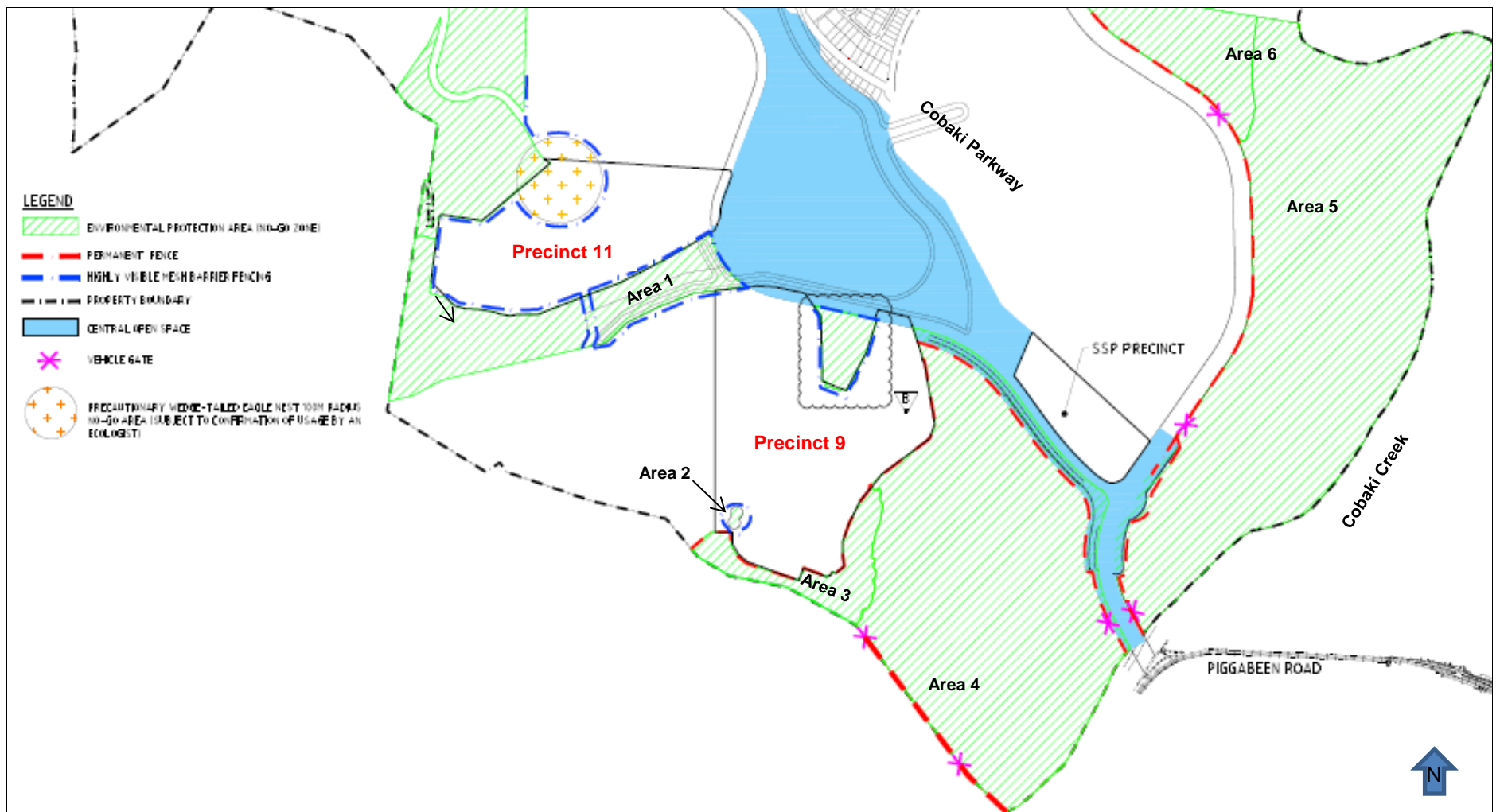


Figure 7: Approved Fencing Plan showing the areas adjacent to the fences proposed for removal

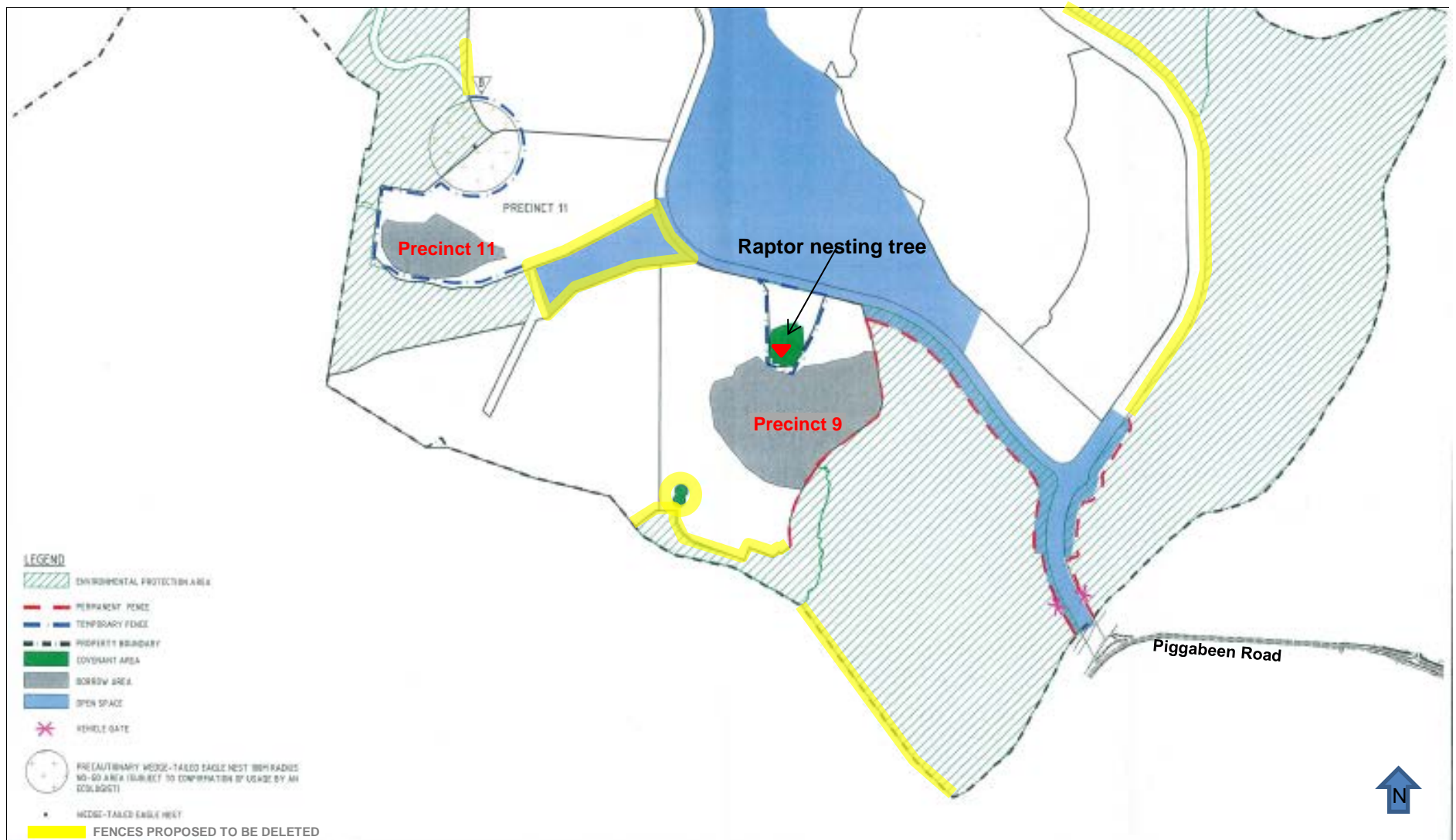


Figure 8: Proposed Amended Earthworks Fencing Plan (areas where fencing would be deleted from the plan shown in yellow)



Figure 9: Existing Fence adjacent to Cobaki Parkway



Figure 10: Existing Fence adjacent to Cobaki Parkway and saltmarsh rehabilitation area



Figure 11: Existing Fence adjacent to saltmarsh rehabilitation area

5. STATUTORY CONSIDERATION

5.1 Section 75W

The application was originally approved under Part 3A of the EP&A Act. Although Part 3A was repealed on 1 October 2011, the project remains a 'transitional Part 3A project' under Schedule 6A of the EP&A Act, and hence any modification to this approval must be made under the former section 75W of the Act.

The Department is satisfied the proposed changes are within the scope of section 75W of the EP&A Act, and do not constitute a new application.

5.2 Approval Authority

The Minister for Planning is the approval authority for the modification request. However, the Planning Assessment Commission (the Commission) may determine the request under delegation as Tweed Shire Council (Council) objects to an aspect of the proposal.

6. CONSULTATION

The Department made the proposal publicly available on its website, notified surrounding residents and consulted with Council and Office of Environment and Heritage (OEH) about the proposed modification.

Council originally objected to the proposed amendments to the fencing plan. However, following a meeting with the Proponent, the Council now supports the proposal to modify the earthworks fencing plan, noting it would maintain the protection of the environmentally sensitive areas adjoining Precinct 9 and 11 during earthwork activities.

Council does not support removing the requirement to provide a 5 metre buffer fence around the Raptor nesting tree in Precinct 9, even though it has not been used for some time. Council advises it has identified previous use of this site by Ospreys and therefore the requirement should be retained to protect the subject tree during the earthwork activities, because it may be used for nesting in the future.

Council also advised it does not support removing the requirement for the 100 metre 'no work' zone for the Raptor nest. Council notes the 100m buffer provisions only apply if the Proponent's Environmental Officer identifies that the nesting site in Precinct 9 is being utilised and as such, Council does not consider it is necessary to delete Condition 39B.

OEH does not support the Proponent's request to amend the fencing plan and recommends the Department refuse the request. Despite some of the rehabilitation areas being in a degraded condition, OEH considers these areas should be protected by fencing to minimise accidental intrusion and disturbance and deter intruders from causing environmental harm.

OEH considers the protection afforded by fencing would enable the rehabilitation area to regenerate naturally, and reduce the cost of future rehabilitation. OEH also noted that the site is regularly slashed and recommends slashing of any rehabilitation areas should be ceased to encourage natural regeneration to occur.

No public submissions were received.

7. RESPONSE TO SUBMISSIONS

The Proponent submitted a Response to Submissions (RtS) to address the issues raised by Council and OEH. The Proponent indicated it does not accept the concerns raised by Council as there is no Raptor nest site within Precinct 9 based on advice from its environmental consultant. The Proponent submitted a statement from its environmental consultant advising no wedge tailed eagles had been observed flying near or within Precinct 9 since monitoring commenced in 2013, and no Raptor nesting site has been recorded.

The Proponent considers the concerns raised by OEH about the protection of rehabilitation areas are not relevant to the proposed modification because the proposed amendments to the earthworks fencing plan relate to Precincts 9 and 11 only and not the rehabilitation areas across the entire site.

8. ASSESSMENT

The Department considers the key issues associated with the proposal are:

- environmental protection achieved by the fencing;
- the status of the fencing plans;
- the Proponent's concerns about possible compliance action; and
- the requirements to protect raptors' nesting sites.

8.1 Environmental protection achieved by the fencing

Cobaki Estate is a planned mixed use residential community with environmental protection areas containing threatened flora and fauna species listed under the *Threatened Species Conservation Act 1995* and endangered ecological communities. The site also lies adjacent to Cobaki Broadwater which is identified as Coastal Wetlands under SEPP 14 – Coastal Wetlands.

The purpose of the fencing plans is to protect environmentally sensitive areas of the site which have been identified for protection and/or rehabilitation from the approved earthworks. The fences clearly delineate the environmentally sensitive areas from earthwork activities and trafficable areas of the site.

The Proponent argues some of the fenced areas are degraded, in poor condition and therefore, fencing to protect these areas is not required.

OEH have advised it does not support any changes to the approved earthworks fencing plan because the rehabilitation areas in poor condition should be protected from further degradation to allow for natural regeneration to occur.

The Department notes all of the areas where the Proponent seeks to delete fencing from the plan were identified in a Site Regeneration and Revegetation Management Plan approved as part of the original Concept Plan. All of these areas require protection or regeneration and exclusionary fencing was required as part of the regeneration measures under that plan. The Department therefore considers the environmentally sensitive areas across the site, and the need for exclusionary fencing, has long been established by previous studies, and reflected in the approved Concept Plan.

The Department considers the approved fencing provides a practical mitigation measure to protect the environmentally sensitive areas of the site during the bulk earthwork activities across the site. To now amend the plan, allowing some fences to be removed would result in unacceptable risks to areas of the site identified for protection and/or rehabilitation, as it would:

- remove the requirement to provide a clear delineation between earthworks activities and environmentally sensitive areas of the site which have long been identified for protection and/or rehabilitation;
- increase the likelihood of disturbance from construction and earthwork activities, resulting in environmental harm to environmentally sensitive areas of the site; and

- reduce the potential for natural regeneration of these environmentally sensitive areas.
- Specific consideration has also been given to each of the fences (Areas 1 to 6) sought to be deleted from the fencing plan (**Appendix A**). In summary, the Department considers fencing for each of the six areas should be maintained, given the sites' environmental sensitivity and close proximity to construction activities.

The Department's assessment therefore concludes the environmentally sensitive areas of the site should be protected by fencing to prevent potential disturbance from earthwork activities and to allow the areas to naturally regenerate. Consistent with OEH's position, the Department does not support amending the approved fencing plan.

8.2 Status of the approved fencing plans

The Proponent argues the fences shown on the plan submitted with MOD 2 were inadvertently carried over from previous fencing plans and are not relevant to the works approved by MOD 2. The Proponent considers the various versions of the fencing plan are linked to '*development precinct specific modification applications*', with the plan revised as relevant to each request.

However, modification requests do not form separate approvals for construction works which operate independently of each other. Rather, each request modifies the original approval, expanding the extent of construction and earthworks on the site. As each modification request has been sought, the fencing plan has been progressively expanded to take into account the additional works incorporated into the overall approval. Therefore, the Department considers the fencing was not inadvertently carried over in the fencing plan for MOD 2 but extended to reflect additional works sought by each modification.

The Department also considers (regardless of the wording of Condition 39A) the Proponent is required to comply with all versions of the fencing plan, as they all form part of the approval (being part of the documents referred to in Conditions 3 and 4, and the CEMP required by Condition 25). Where there is a conflict in the plans, the most recent version applies to the extent of any inconsistency. This ensures appropriate fencing is provided to protect the environmentally sensitive areas from the approved construction and earthworks being carried out across the site.

The Department's assessment therefore concludes the fences shown on the fencing plan, approved as a part of MOD 2, accurately reflect the fencing required to protect the environmentally sensitive areas of the site from the approved construction activities.

8.3 Compliance Action

The Proponent advises trespassers regularly enter the site causing damage to the fences/gates and it does not wish to be found in breach of the approval (due to damaged fencing) where reference is made to an incorrect fencing plan.

The Department considers it is reasonable for the Proponent to maintain fences on the site in accordance with the approval. Allowing the fences to be removed would only increase the potential risk associated with intruders disturbing areas identified for protection and/or rehabilitation. Further, amending the approved fencing plan to avoid potential compliance action (if the fences are damaged by trespasses) is not a sufficient reason to justify allowing the fences to be removed.

8.4 Raptors' Nest

The Proponent seeks to delete Condition 39B of the approval. The condition requires the Proponent's Environmental Officer to determine whether an existing raptor nest is being used prior to the commencement of works in Precinct 9. Should it be determined that the nesting site is being used by any raptor species, 'no works' are permitted within a 100 metre buffer around the site. If no raptors are present, Condition 39A(b) requires a 5 metre buffer to be provided around the nesting site (refer to **Figure 6**).

The Proponent seeks to delete Condition 39B on the basis that no raptor species have been observed in the tree during the time the ecologist was on the site between August 2012 to June 2014.

Council advises the Raptor nesting tree in Precinct 9 is still present and it has evidence the tree has previously been used by Ospreys. Council therefore recommends the 5 metre buffer fencing should be retained to protect the tree during construction works in Precinct 9. However, the Department notes the 5 metre buffer would be retained in accordance with Condition 39A(b) as the proposed fencing plan incorporates a fence around the nesting site (**Figure 8**).

Council also advised it does not support removing the requirement for the 100 metre 'no work' zone for the Raptor nest. Council notes the 100 metre buffer provisions only apply if the Proponent's Environmental Officer identifies that the nesting site in Precinct 9 is being utilised. As such, Council does not consider it is necessary to delete Condition 39B.

The Department has carefully considered the requirements of Condition 39B and considers the condition only requires a 100 metre buffer to be provided if raptors were found to be using the nesting site prior to the commencement of earthworks in Precinct 9. The condition does not create a future requirement to provide a 100 metre buffer if the site is used by a raptor species after the works commence.

Given the Proponent's ecologist advises it did not observe raptors using the nesting site prior to the commencement of earthworks in Precinct 9, the Department considers the condition has been satisfied and there is no requirement for a 100 metre 'no work' zone. As such, the Department considers the deletion of Condition 39B is unnecessary as the condition has already been satisfied.

The Proponent also seeks approval to make a minor change to the approved fencing plan to incorporate a 100 metre wide buffer around a new raptors nesting tree in Precinct 11, adjacent to a previously felled nesting tree. No objection is raised to this aspect of the modification. Nonetheless, the Department is satisfied the existing plan would provide a sufficient buffer to protect the new nesting site, as it lies adjacent to the previously felled nesting tree.

9. CONCLUSION

The Department has assessed the modification request and supporting information in accordance with the relevant requirements in the EP&A Act. The Department does not support the proposed amendments to the earthworks fencing plan on the basis it would:

- remove the requirement to provide clear delineation between earthworks activities and environmentally sensitive areas of the site which have long been identified for protection and/or rehabilitation;
- increase the likelihood of intrusion from construction and earthwork activities into these areas, resulting in environmental harm;
- increase the potential risk of accidental disturbance or environmental harm to these areas caused by potential intruders to the site; and
- reduce the potential for natural regeneration of these areas which have been identified for rehabilitation and regeneration.

The Department considers the approved fencing provides a practical mitigation measure to protect the environmentally sensitive areas of the site during the bulk earthwork activities across the site and therefore does not support the proposed amendments to the fencing plan.

Consequently, it is recommended the modification request be disapproved.

10. RECOMMENDATION

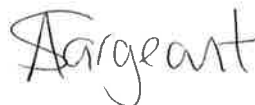
It is recommended the Planning Assessment Commission, as delegate of the Minister for Planning:

- **considers** the findings and recommendations of this report, noting the Department considers the modification be disapproved for the following reasons;
 - The proposed modification of the fencing plan would result in unacceptable risks to areas of the site identified for protection and/or rehabilitation, as it would:
 - remove the requirement to provide clear delineation between earthworks activities and areas of the site which have long been identified for protection and/or rehabilitation;
 - increase the likelihood of intrusion from construction and earthwork activities into these areas, resulting in potential environmental harm;
 - increase the risk of accidental disturbance or environmental harm to these areas caused by potential intruders to the site; and
 - reduce the potential for natural regeneration of these areas which have been identified for rehabilitation and regeneration.
 - The proposed modification of the fencing plan would result in unacceptable risks to threatened species and ecological communities listed under the *Threatened Species Conservation Act 1995*.
 - The Proponent has not demonstrated there is any necessity to remove the fencing requirements which would justify the potential environmental risks associated with the proposal.
 - The deletion of Condition 39B is unnecessary as the condition has already been satisfied; and
- **determines** the Proponents request is a modification under 75W of the EP&A Act; and
- if the Commission determines to disapprove the modification request, **signs** the notice of disapproval (**Appendix B**).

Prepared by: Thomas Mithen
Planning Consultant



Anthony Witherdin
Director
Modification Assessments



Anthea Sargeant 23/3/17
Executive Director
Key Sites and Industry Assessment

APPENDIX A: ASSESSMENT OF THE NEED FOR SPECIFIC FENCES

Area	Description*	Proponent's Justification	Department's consideration
1	<ul style="list-style-type: none"> • Low closed grassland with scattered trees in very poor condition • Proposed revegetation area and Freshwater Wetland Management Area for Swamp Sclerophyll Forest on Floodplain 	<ul style="list-style-type: none"> • It is not considered to be environmentally sensitive land. The Site Regeneration and Revegetation Management Plan approved as part of the original Concept Plan and revised version approved under MOD 1 identified this area as being in very poor condition. • It is zoned for Private Recreation purposes and not environmental protection. • Existing vegetation will be required to be removed to allow for regeneration and a 30 m wide drainage line. • It is not adjacent or connected to the borrow pit areas in Precincts 9 and 11. 	<ul style="list-style-type: none"> • The Site Regeneration and Revegetation Management Plan approved as part of the original Concept Plan maps this part of the site as 'Endangered EEC Offset Area - Swamp Sclerophyll Forest on Floodplain'. It also recommends the area be managed using assisted regeneration and revegetation. Assisted regeneration is described in the plan as incorporating exclusion fencing, weed control and monitoring. • Exclusion fencing has therefore always been envisaged for vegetation management on this part of the site. • The Department considers that rehabilitation areas, even those in in poor condition, should be protected from further degradation to allow for natural regeneration as much as possible. • Future drainage through this part of the site has been approved in concept only, and will be the subject of a future application, most likely in conjunction with the development of Precinct 10, well after the works under this Project Application have been completed. The best way to manage vegetation during the construction of any future drainage line through the site will be a matter for consideration as part of that application. The potential future drainage is not considered to provide sufficient justification for removal of fencing at this time. • The Department considers the site is in close proximity to the construction and bulk earthwork activities to warrant fencing to protect the area from accidental intrusion.
2	<ul style="list-style-type: none"> • Two old growth trees proposed to be retained 	<ul style="list-style-type: none"> • It will be protected by covenant to preserve the two old growth trees and is not related to the earthworks in Precincts 9 and 11. 	<ul style="list-style-type: none"> • Aerial images show that construction activities and bulk earthworks on the site have been progressing closer towards the trees, within approximately 70 metres of the trees. The access way to the site compound used by all construction vehicles is within approximately 30 metres of the trees. • Retention of fencing around the trees ensures they remain clearly delineated so as not to be encroached upon by construction vehicles.
3	<ul style="list-style-type: none"> • Sclerophyll forest and woodland and mixed rainforest species • Moderate to very good condition • Existing vegetation to be retained and proposed revegetation area 	<ul style="list-style-type: none"> • It is not adjacent to or close to the borrow pit in Precinct 9. 	<ul style="list-style-type: none"> • The fence adjacent to Area 3 delineates an environmentally sensitive area from the site compound immediately adjacent on the northern side of the fence. The compound includes the site offices, parking area, access to the site and storage of heavy machinery. • The Department considers it is appropriate to delineate the compound / working area from the environmentally sensitive woodland area on the site.
4	<ul style="list-style-type: none"> • Predominately grassland and scattered trees • Primarily moderate to good condition • Saltmarsh rehabilitation area with retained vegetation and 	<ul style="list-style-type: none"> • The fencing is not relevant to the earthworks approved in the Project Application for the COS and in the subsequent modifications. 	<ul style="list-style-type: none"> • The fence separates a saltmarsh rehabilitation area from Piggabeen Road, one of two access points to the site. Worker and construction vehicles (including those associated with the works in Precincts 9 and 11) use Piggabeen Road to access the site. • Aerial images of the site show extensive clearing and vehicle movements in recent times within the rehabilitation area, immediately adjacent to this fence.

	proposed natural regeneration		<ul style="list-style-type: none"> The Department considers retention of the fence in this part of the site would assist with reducing intrusions into the rehabilitation area and therefore assist with rehabilitation of this part of the site.
5	<ul style="list-style-type: none"> Predominately grassland and scattered trees and mangrove Ranges mainly from poor good condition Saltmarsh rehabilitation area with retained vegetation and proposed natural regeneration 	<ul style="list-style-type: none"> The fencing is not relevant to the earthworks approved in the Project Application for the COS and in the subsequent modifications. The fencing was inadvertently carried over from an overarching fencing plan for the entire site 	<ul style="list-style-type: none"> The fence separates a rehabilitation area from the Cobaki Parkway, an internal roadway used by workers and construction vehicles for construction and earthworks approved under the project approval as modified (including some vehicle movements which are ancillary to those associated with the works in Precincts 9 and 11). The Department considers retention of the fence in this part of the site would assist with ensuring the area is clearly delineated and identified as a 'no-go' zone for all workers and visitors to the site.
6	<ul style="list-style-type: none"> Slashed grassland and sclerophyll woodland Moderate to poor condition Retained vegetation and proposed natural revegetation 	<ul style="list-style-type: none"> The fencing is not relevant to the earthworks approved in the Project Application for the COS and in the subsequent modifications. The fencing was inadvertently carried over from an overarching fencing plan for the entire site 	<ul style="list-style-type: none"> As above

* Revised Site Rehabilitation and Revegetation Plan prepared by James Warren and Associates, dated October 2010

APPENDIX B MODIFICATION REFUSAL

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

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7906

APPENDIX C: SUPPORTING INFORMATION

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

1. Modification request

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7906

2. Submissions

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7906

3. Response to Submissions

http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=7906

APPENDIX D: APPLICATION HISTORY

Concept Plan

On 6 December 2010, the then Minister for Planning approved the Concept Plan for Cobaki Estate and included zoning amendments to the Tweed Local Environment Plan (LEP) 2000 and the adoption of the site specific Code to guide future development and built form across the Cobaki Estate (refer to **Figure 2**).

Concept approval was granted to develop 605.45 ha of land as a residential development comprising:

- residential development to cater for approximately 5,500 dwellings;
- town centre and neighbourhood centre for future retail and commercial uses;
- community facilities and school sites;
- open space;
- wildlife corridors and the protection and rehabilitation of environmentally sensitive land;
- road corridors and utility services infrastructure including water management areas; and
- roads and pedestrian and bicycle networks.

The Concept Plan is also subject of a number of modification requests as follows:

Table 1: Summary of Modification requests

MOD	Modification	Date Approved/Current Status
1	<ul style="list-style-type: none">• include new biodiversity offset arrangements and various administrative changes to conditions	29 May 2013
2	<ul style="list-style-type: none">• accommodate a university campus on the site	SEARs issued 20/04/15
3	<ul style="list-style-type: none">• reclassification of the vegetation community	SEARs issued 30/07/15
4	<ul style="list-style-type: none">• various changes including new school site and extension to the Town Centre	Exhibition 21/11/16 - 16/12/16
6	<ul style="list-style-type: none">• increase the building heights	SEARs issued 10/11/16
7	<ul style="list-style-type: none">• modify the Cobaki Development Code	EIS received March 2017

Project Application

On 28 February 2011, the then Deputy Director-General, as delegate of the Minister for Planning, granted a Project Approval for the Central Open Space Area (MP 08_0200). The approval allowed for the carrying out of the following:

- subdivision of the entire Cobaki estate into 7 lots (including residue lot for future urban development);
- staged bulk earthworks to create the central open space (COS) area, riparian corridor, structured open space, and future stormwater drainage area;
- road forming works and culverts crossing the central open space;
- road forming works across saltmarsh areas, including culverts and trunk sewer and water services;
- revegetation and rehabilitation of environmental protection areas for coastal saltmarsh; and
- establishment of freshwater wetland and fauna corridors.

The Project Approval has been modified on three occasions. **Table 1** provides a summary of the modifications.

Table 1: Summary of Modifications

MOD	Modification	Date Approved
1	<ul style="list-style-type: none"> amendments to proposed offsetting arrangements for Freshwater Wetlands and Wallum Froglet, including subsequent changes to the relevant management plans; and approval for the use of fill from Precincts 1 & 2 for the formation of the COS area. 	29 May 2013
2	<ul style="list-style-type: none"> the winning of 600,000m³ of fill from Precincts 9 & 11 (500,000m³ from Precinct 9 to complete Stage 1 earthworks within the COS area and 100,000m³ from Precinct 11 to complete Stages 2 & 3 earthworks within the COS area). 	3 April 2014
3	<ul style="list-style-type: none"> bulk earthworks to fill a 4.3 hectare area located within the southern part of the Cobaki Estate, known as the Southern Special Purpose Precinct (SSPP) 	13 February 2015
4	<ul style="list-style-type: none"> changes to conditions to allow a Private Waste Water Treatment Plant to service the Cobaki Estate. 	Under assessment

Development Applications

Table 2 provides a summary of the development applications (DA) determined by the Northern Joint Regional Planning Panel approved by Council:

Table 2: DA Approvals

DA Reference	Consent Authority	Description	Date Approved
10/0800	Northern Joint Regional Planning Panel	Subdivision of precinct 1 and 2 comprising 475 residential lots (including one residual lot) and lots for drainage, open space and urban infrastructure	30 May 2011
10/0801	Northern Joint Regional Planning Panel	Subdivision of precinct 6 comprising 442 residential lots (including one residual lot) and lots for drainage, open space and urban infrastructure	30 May 2011