



Ms Carolyn McNally
Secretary
Department of Planning and Environment
GPO Box 39
SYDNEY NSW 2001

12 April 2017

Dear Ms McNally

**Determination of Modification Application
Cobaki Estate Residential Community Development MP08_0200 (MOD 5)**

Thank you for Department's letter received on 5 April 2017 referring the above modification application to the Planning Assessment Commission for determination under Ministerial delegation of 14 September 2011. I constituted the Commission to determine the modification request.

Leda Manorstead Pty Ltd (Proponent) seeks to modify an approved earthworks fencing plan and to delete a condition relating to works in proximity to a raptor nesting site.

The key matters of consideration for this modification request include:

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

The Proponent is seeking to remove fences from six areas of the site that have already been erected, in accordance with a condition of its Project Approval and previously approved fencing plans. The Proponent also seeks to delete a condition of consent that the Department considers has already been satisfied.

I have carefully considered the Department's environmental assessment report, the information provided by the Proponent, recommendations from government agencies, and section 75W of the *Environmental Planning and Assessment Act 1979*.

I have reviewed the Department's assessment of these matters and am satisfied with its recommendations, which include:

- 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/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.

For the reasons set out above, the Commission accepts the Department's recommendation that this proposal be refused. Consequently, the Commission has determined to refuse consent to the modification request for the reasons set out above and in the instrument of refusal.

A handwritten signature in black ink, appearing to read 'Lynelle Briggs', with a stylized, cursive script.

Ms Lynelle Briggs AO
Chair of the Commission

cc. The Hon. Anthony Roberts, MP
 Minister for Planning
 GPO Box 5341
 SYDNEY NSW 2001