



Department of Planning and Environment

Mr Darryl Anderson
DAC Planning
Suite 7, Corporate House
8 Corporation Circuit
TWEED HEADS SOUTH NSW 2486

File: EF22/1557
Our ref: 06_0318 MOD 9

11 March 2022

Dear Mr Anderson,

Scoping Meeting for Proposed Modification to Concept Plan Approval 06_0318 (as amended)

I refer to the scoping meeting held on 21 January 2022 regarding proposed modifications to Concept Plan Approval 06_0318 (as amended). The following advice has given regard to:

- Extract of Draft Modification Report, dated January 2022, prepared by DAC Planning;
- Draft Kings Forest Development Code, Version 1.4 (proposed modifications)
- Advice from Mills Oakley, dated 7 February 2022 (provided 8 February 2022)
- Extract of revised proposed modifications to the Draft Kings Forest Development Code, Version 1.4 (provided 8 February 2022)

Proposed Modifications:

The proposed modification seeks to clarify the status of Concept Plan Approval CP06_0318 (as modified) and the Kings Forest Development Code (the Code) and their application to future development in Kings Forest. The proposed modification seeks to amend the Code with an intent to provide flexibility in its implementation, and introduces additional land use terms within certain Code precincts. Generally, this includes:

- Amending 06_0318 to refer to the latest version of the Code (as proposed to be amended)
- Inserting a new clause into the Code to confirm its status as the prevailing principal planning instrument regulating development and land use in Kings Forest
- Amending the Code to require the relevant consent authority seek approval of the Secretary of the Department where development is not generally in accordance with CP06_0318 and the Code
- Amending the Code to clarify and include additional land uses within certain precincts.

Comments:

Amending Conditions of Concept Plan approval:

Condition A3(9) of schedule 2 of the Concept Plan approval currently states:

'The project will be undertaken in accordance with the following documents: ...

(9) Kings Forest Development Code Version 1.3 submitted with MP06_0318 MOD5.'

The Department notes your intention to amend this condition to refer to the latest version of the Code as proposed to be amended.

The Department wishes to also highlight condition C26 of the concept plan approval which relates to the application of the Code. Understanding your intention to allow for flexibility in applying the Code's provisions, consideration may need to be given the wording of this condition also.

Principal Planning Instrument Status:

The Department has undertaken a preliminary review of the advice provided by Mills Oakley, dated 7 February 2022 regarding the status of the Concept Plan approval and the Code, in the context of the planning control hierarchy for Kings Forest. The proposed new clause of the Code provided on 8 February 2022, identifying the Concept Plan and the Code as the prevailing instruments where there are inconsistencies with the *Tweed Local Environmental Plan 2000* (TLEP 2000) is noted.

Any future Modification report must clarify the following matters:

- The Mills Oakley advice provides at 1.17 and 1.18 that as per clause 10(a) of Appendix 5 of *State Environmental Planning Policy (State Significant Precincts) 2005* (SSP SEPP), the only provision of the *Tweed Local Environmental Plan 2014* (the TLEP 2014) that applies to the Kings Forest site is clause 4.6. The Department does not agree with this interpretation, (our emphasis in **bold** below). Notwithstanding, the Department agrees that a term of the concept plan approval cannot be varied under any version of ‘clause 4.6’.

“10 Relationship with other environmental planning instruments

The only environmental planning instruments that apply, according to their terms, to or in respect of development within the Kings Forest site are as follows—

- (a) *in the case of development that is a transitional Part 3A project—this Policy and all other State environmental planning policies otherwise applicable to the land, **except clause 4.6** of Tweed Local Environmental Plan 2014,*
- (b) *in the case of all other development—all environmental planning instruments otherwise applicable to the land, **except clause 4.6** of Tweed Local Environmental Plan 2014, but only to the extent that those instruments are not inconsistent with this Policy.”*

- The proposed modification must clearly identify the relationship between the Concept Plan approval, the Code, the SSP SEPP and the TLEP 2000. The Mills Oakley advice makes no explicit reference to the TLEP or the SSP SEPP in the context of establishing the prevailing planning instrument(s) regulating development for Kings Forest.

Approval of the Secretary for Variations:

The Department acknowledges that the Code does not provide for variations to be considered or approved. As discussed in the scoping meeting, the Department would not support provisions of the Code which require the Secretary’s approval/concurrence when a consent authority is considering a variation to the Code. Such provisions would be inconsistent with the purpose of the Code, which is to “*Streamline the approvals process and promote housing affordability*” (Section 1.4). The Department considers variations to the Code could be dealt with by the relevant consent authority without creating an additional ‘approval’ layer.

The revised proposed wording provided on 8 February 2022 is noted to be similarly structured clause 4.6 of the Standard Instrument Local Environmental Plan (SILEP). Any variations to the Code to allow flexibility in the application of Exempt and/or Complying Development controls will not be supported by the Department and this must be reflected in the proposed modification.

Clarifying and including additional land uses:

We understand land use terms within the Code generally conform to those in the SILEP. Any land uses being introduced within the Code’s precincts must be justified and supported by strategically led, plan based evidence, and be consistent with the SSP SEPP and the TLEP 2000. Evidence of



Department of Planning and Environment

consultation with Tweed Shire Council regarding land uses must also be submitted to the Department.

Please note that the above information is not exhaustive and is provided to assist with the preparation of your application. Addressing the above matters in any modification application does not infer approval will be granted, nor prevent the Department from requesting additional information. Any modification application received will be assessed on its merits and exhibited in accordance with the Department's Community Participation Plan.

Your next step will be to lodge your modification application with the Department. To lodge your application or if you have any questions, please contact Kendall Clydsdale, who can be contacted on 9585 6366 or kendall.clydsdale@dpie.nsw.gov.au.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "K T" followed by a flourish.

Keiran Thomas

**Director Regional Assessments
Planning and Assessment**