



Office of
Environment
& Heritage

Your reference MP06_0318 MOD 4
MP08_0194 MOD 2
Our reference: DOC14/11200
Contact: Krister Waern 6640 2503

Mr Ray Lawlor
Planner, Industry, Social Projects & Key Sites
Department of Planning and Infrastructure
GPO Box 39
Sydney NSW 2001

Dear Mr Lawlor

Re: Residential Development Kings Forest, Kingscliff Modification Requests in relation to Concept Plan (MP06_0318 MOD 4) and Stage 1 Project Approval (MP08_0194 MOD 2).

Thank you for your letter of 5 February 2014 inviting comments from the NSW Office of Environment and Heritage (OEH) on the above modification proposals. I appreciate the opportunity to provide input.

OEH has reviewed the proposed modifications including the Modification Reports dated December 2013 prepared by Darryl Anderson Consulting for the Concept Plan and Stage 1 Project Approval and detailed comments are provided in Attachment 1. The key issues raised by OEH for consideration by the Department of Planning and Infrastructure (DP&I) are:

- The acknowledgement by DP&I that the dedicated lands form part of an offset for various biodiversity impacts;
- The use of 'Prior to the issue of construction certificate' as a suitable trigger for various conditions;
- The environmental loss associated with the scaling back of environmental works to areas adjacent to bulk earthworks only;
- Retention of the current Koala Plan of Management Condition 45, and;
- Retention of Condition 50 requiring a bond to be held by Council to ensure that the environmental management plans are implemented.

If you require further information or clarification, please contact Mr Krister Waern, Senior Operations Officer, on (02) 6640 2503.

Yours sincerely

11 March 2014

DIMITRI YOUNG
Senior Team Leader Planning, North East
Regional Operations

Attachment 1: Detailed OEH Comments Residential Development Kings Forest, Kingscliff Modification Requests.

Comments

The following comments are in response to Modification Reports dated December 2013 prepared by Darryl Anderson Consulting for the Concept Plan and Stage 1 Project Approval.

- 5.1 Definitions for lands to be dedicated to Council – The applicant is seeking amendments to the current definition of land to be provided to Council to 'potential Council land' as opposed to 'Land to be dedicated to Council...' The naming of the lands to be dedicated to Council does not appear to be a significant matter.

OEH recommends that the lands to be dedicated to Council be referred to as *environmental conservation lands*, which is their intended purpose. It is noted that in amendment 5.4 the application is proposing to refer to land dedicated to OEH as 'future OEH land'. Alternatively, if the term *environmental conservation land* is not to be used, the land to be dedicated to Council could be referred to as 'future Council land'.

- 5.3 Maintenance Period – The applicant suggests that the definition of maintenance period should be deleted as the term does not appear to be used in Schedules 1 and 2 of the instrument of Approval. The terms 'maintenance', 'maintenance phase' and others are used throughout the Project Approval but not 'maintenance period'. OEH recommends that the definition and wording is amended to take into account the intent of the conditions and definitions rather than deleting the definition altogether.
- 5.4 Land to be dedicated to OEH – Similar to 5.1 above, OEH is not significantly concerned about the term used to identify the agreed dedication areas, and as identified above, the term *environment conservation lands* may be better suited.

In this proposed definition change the applicant is seeking to change the term 'Offset Area' with 'future OEH land'. The applicant states that the use of the term 'Offset Area' is a "misnomer" as the lands were not offsets but were offered on a voluntary basis. While OEH does not object to the change of term used to identify the lands to be dedicated, OEH disagrees with the suggestion that these lands have not been part of an offset.

The dedication lands have been referred to as offset areas since negotiations and discussions started, and the dedicated lands have specifically been used as an offset for Freshwater Wetland Endangered Ecological Community, the wallum froglet and sedgefrog, the bush-stone curlew, and scribbly-gum forest offset for the Cobaki development. More broadly, during negotiations, the dedication of the lands was considered as part of the whole development package (including less quantifiable biodiversity values such as indirect impact, corridor impacts, edge effects, etc...) with the overall impact being considered acceptable in light of the dedication proposed. OEH recommends that a note is retained within the approval document that indicates that the dedicated lands are part of an offset for biodiversity impacts.

- 5.6 Condition A13 Management and Maintenance of Environmental Land – The current condition requires the applicant to manage and maintain environmental lands from the date of the Project Approval (11 August 2013). The applicant is proposing to amend this condition to require the management and maintenance of the environmental lands from the commencement of bulk earthworks and only in relation to environmental lands adjacent to the proposed precinct to be developed, not the whole site.

OEH recommends that the trigger for the commencement of the management and maintenance should be 'prior to the issue of Construction Certificate for bulk earthworks.' This would be consistent with other conditions of approval such as condition 37, 48, and 50. This also provides a detectable point in time, whereas the commencement of bulk earthworks has the potential to be difficult to clearly define.

The proposed change to only undertake management of environmental land adjacent to a precinct that has commenced earthworks will have a negative environmental outcome for the remainder of the environmental lands not adjacent to the bulk earthworks areas. This proposed change will delay the appropriate management of other environmental areas, particularly in relation to weed and pest control and revegetation, and has the potential to compound environmental problems. OEH recommends that, as a minimum, some key management actions such as weed and pest control and revegetation should be undertaken in relation to all environmental lands as a priority.

- 5.11 Condition 37 Baseline Monitoring – The current condition states that all baseline monitoring needs to be commenced prior to the issue of a construction certificate for bulk earthworks. The proposed amendments seek to commence baseline monitoring three months prior to the commencement of bulk earthworks.

Again, OEH recommends that the current condition is not changed and the trigger should be prior to the issue of the construction certificate for the reasons outlined above.

- 5.12 Condition 45 Koala Plan of Management – The proposed amended condition seeks to limit the planting of suitable koala food trees to within each stage of the development progressively rather than planting across the whole site.

The applicant states that earthworks will be required in some cases before plantings can be undertaken and as such there is a need to amend the condition. However the current condition states that koala food trees should only be planted in *suitable* locations across the site. Any suitable location would not include an area which would require significant future bulk earthworks which would impact on planted koala food trees.

The second part of the proposed amended condition would restrict the planting of koala food trees to only the active stage, where the current condition requires the planting across the whole site. There is a biodiversity loss associated with the proposed change in this condition as there will be a delay in planting koala food trees. OEH recommends this condition retains its current wording.

- 5.15 Condition 50 Bond for Environmental Restoration Works – The applicant is proposing to delete this condition which requires the applicant to submit a bond to Council to ensure that all environmental management plans are implemented. The applicant has put forward no compelling reasons for the deletion of this condition. OEH recommends this condition remains. A bond is an effective method to ensure works are undertaken as conditioned. The bond can be used by Council to ensure works are undertaken to an acceptable standard. A bond is a more efficient method for Council to enforce compliance rather than commencing action to ensure compliance with all environmental management plans, which in some cases could be for relatively minor matters.

Recommendations

In summary, OEH recommends that:

1. The lands to be dedicated to Council should be referred to as *environmental conservation lands*, which is their intended purpose, or as *future Council land*.
2. The definition and wording of the term *maintenance period* is amended to take into account the intent of the conditions and definitions rather than deleting the definition altogether.
3. A note is retained within the approval document that indicates that the dedicated lands are part of an offset for biodiversity impacts.
4. As a minimum, some key management actions such as weed and pest control and revegetation should be undertaken in relation to all environmental lands as a priority
5. The current condition for Baseline Monitoring is not changed and the trigger should be prior to the issue of the construction certificate.
6. The current condition for planting koala food trees is not changed.
7. The current condition requiring a bond for environmental restoration works is not changed.