



Enquiries: Tina Maltby-Wells  
Direct Phone: 07 5433 2915  
Our Ref: DA/2021/4205  
Your Ref: J000005  
Date: 3 November 2021

JH Northlakes Pty Ltd  
C/- Mecone  
Level 2, 235 Edward Street  
BRISBANE CITY QLD 4000

Dear Applicant

**Re: Property Location:** North Lakes Golf Club 33 Bridgeport Drive  
**NORTH LAKES**  
**Property Description:** Lot 1, 3, 4, 5, 6 SP148201, Lot 2 SP291250, Lot  
12,13,14,15,16,17,18, 19, 20 SP150148  
**Development Type:** Preliminary approval that includes a variation (to  
vary the effect of the Sector Plan 003-1000 –  
Central Open Space Sector of the Mango Hill  
Infrastructure Development Control Plan) and a  
material change of use (retirement facility and  
residential care facility)

Thank you for your recent Development Application lodged on 19 October 2021.

Council refuses to receive the Development Application on the basis that it is not properly made.<sup>1</sup>

The following deficiencies in the Development Application mean that it is not properly made:

- 1 The Development Application seeks to vary the Mango Hill Infrastructure Development Control Plan (**Mango Hill DCP**), but a variation request seeking to vary the Mango Hill DCP cannot be made as a matter of law.
  - (a) The Moreton Bay Regional Council Planning Scheme 2016 (**Planning Scheme**) commenced on 1 February 2016, while the *Sustainable Planning Act 2009* (Qld) (**SPA**) was in force.
  - (b) Section 86(2) of the SPA provided that section 23 of the *Statutory Instruments Act 1992* (Qld) applied to the DCP. Section 23 of the *Statutory Instruments Act 1992* (Qld) permitted (and still permits) a statutory instrument to make provision for a matter by '**applying, adopting or incorporating** (with or without modification) the provisions of:
    - (i) an Act, statutory instrument or other law; or
    - (ii) another document (whether of the same or a different kind).'

<sup>1</sup> Section 3.2.1(8) of the *Integrated Planning Act 1997* (Qld) (**IPA**).

- (c) Section 86(4) of SPA provided that a planning scheme could ‘**apply or adopt**’ a DCP by including a statement that the DCP applies to the part of the planning scheme area to which the DCP applies (making it an ‘adopted DCP’).
- (d) Section 86(3) of the SPA provided that a DCP could not be ‘**incorporated**’ into the text of the planning scheme itself.
- (e) At the time of commencement of the Planning Scheme, the Mango Hill DCP was applied or adopted, but not incorporated, into the Planning Scheme.
- (f) The Mango Hill DCP is therefore not incorporated as part of the Planning Scheme but is an extraneous document applied or adopted by the Planning Scheme.
- (g) Section 316 of the *Planning Act 2016* (Qld) (**PA**) does not have the effect of incorporating the Mango Hill DCP into the Planning Scheme, nor does any other part of the PA. Section 316 of the PA continues to apply or adopt the Mango Hill DCP to the Planning Scheme.
- (h) A ‘variation request’ means part of a development application for a preliminary approval of premises that seeks to vary the effect of any ‘local planning instrument’ in effect for the premises.<sup>2</sup>
- (i) a ‘local planning instrument’ is a planning instrument made by a local government and is either:
  - (i) a planning scheme; or
  - (ii) a TLPI; or
  - (iii) a planning scheme policy.<sup>3</sup>
- (j) The Mango Hill DCP is not:
  - (i) a planning scheme, because it is neither:
    - (A) incorporated into and part of the Planning Scheme; nor
    - (B) a planning scheme in its own right because it does not set out integrated State, regional and local planning and development assessment policies for all of a local government area;
  - (ii) a TLPI, because it does not set out planning and development assessment policies to protect all or part of a local government area from adverse impacts in urgent or emergent circumstances; nor
  - (iii) a planning scheme policy, because it is not a policy that supports:
    - (A) planning and development assessment policies under planning schemes;

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<sup>2</sup> *Planning Act 2016* (Qld) Sch 2 definition of ‘variation request’.

<sup>3</sup> *Planning Act 2016* (Qld) s 8(3).

- (B) action by a local government in making or amending local planning instruments; or
  - (C) action by a local government under the development assessment system.
- (k) Consequently, because the Mango Hill DCP is not a local planning instrument, it cannot be varied by a variation request, and the Development Application is not properly made.
- 2 The development application does not identify the “development” sought to be approved by the preliminary approval part of the development application. The application forms state that a material change of use is sought to be approved and describes the proposed use as “Variation request to vary the effect of the effect of the Sector Plan 002-1000 – Central Open Space Sector of the Mango Hill Infrastructure Development Control Plan”. This does not amount to a use of land. Although correcting this issue will not address the deficiency in 1. above, it is included for completeness.

Further and in any event, even if the Development Application can be lawfully made, the Development Application is not properly made for the following reasons:

- 3 The Development Application was not made in the approved form.
- (a) The Approved Forms are those approved by the Chief Executive under the *Integrated Planning Act 1997* (Qld) (**IPA**) (**IPA Forms**);<sup>4</sup>
  - (b) The forms submitted with the Development Application are those approved by the Chief Executive under section 282 of the PA; and
  - (c) The IPA Forms are the appropriate forms to be submitted with the Development Application because the land the subject of the Development Application is within the area the subject of the Mango Hill DCP. Development Applications on land within the Mango Hill DCP are to be processed in accordance with the Integrated Development Assessment System process, as set out in the IPA, pursuant to:
    - (i) section 316 of PA;
    - (ii) section 857(3) of SPA; and
    - (iii) section 6.1.28 of IPA.
- 4 The mandatory requirements part of the approved form has not been completed correctly.
- (a) Given that the incorrect forms have been provided, the mandatory requirements of the IPA Forms have not been completed correctly.
  - (b) Notably, the planning report submitted with the Development Application does not address the correct assessment regime.

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<sup>4</sup> as defined by section 5.9.1 of IPA.

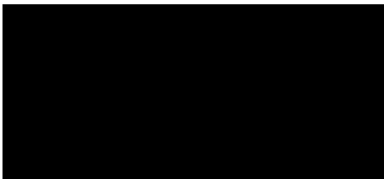
- (c) Council is required to assess development applications on land within the Mango Hill DCP against the matters identified in section 6.1.29(3) of IPA, to the extent relevant.
  - (d) Council is required to decide a development application in respect of land within the Mango Hill DCP against section 6.1.30(3) of IPA, which requires the development application to be assessed in accordance with the relevant sections of the *Local Government (Planning and Environment) Act 1990* (Qld) (**P&E Act**).
- 5 The Development Application was not accompanied by the fee for administering the application<sup>5</sup>.

Although the Council is of the view that the application cannot be made under the Planning Act process for the reasons set out above, please be aware that for completeness, Council has also issued an action notice pursuant to section 3.2 of the *Development Assessment Rules* under the PA.

Should you require any further information about this notice, please contact Tina Maltby-Wells on 07 5433 2915 or via email [tina.maltby-wells@moretonbay.qld.gov.au](mailto:tina.maltby-wells@moretonbay.qld.gov.au) and [mbrc@moretonbay.qld.gov.au](mailto:mbrc@moretonbay.qld.gov.au).

Please direct any enquiries regarding the assessment of this application to Glenn Hammill on 07 5433 2751 or via email [glenn.hammill@moretonbay.qld.gov.au](mailto:glenn.hammill@moretonbay.qld.gov.au) and [mbrc@moretonbay.qld.gov.au](mailto:mbrc@moretonbay.qld.gov.au).

Yours faithfully



Dan Staley  
**Manager Development Services**

Enclosure

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<sup>5</sup> Noting that an invoice for the application was levied on 1 November 2021.