



13 October 2017

General Manager
Tweed Shire Council
PO Box 816
Murwillumbah NSW 2484
via email: ilonsdale@tweed.nsw.gov.au

Mooball Planning Agreement
Lot 2 in DP534493 and Lot 7 in DP593200

Dear Ian,

The above allotments have been the subject of ongoing liaison with Council officers including the rezoning process for a period of no less than six years now. During this time and since its progression to the adoption of the above Agreement, we have continued to work proactively with Council to ensure the Mooball locality can benefit from an improved housing stock through the development of the above suitable lands.

With reference to our telephone conversation on 12th October 2017 which raised significant concerns in terms of timing of deliverables and subsequent impending delays, we write with regards to the Mooball Planning Agreement (the Deed) particulars as outlined within Clause 31 titled, Development Design Guidelines. Within the clause, there is a requirement for the guideline to be approved prior to the lodgement of any development application over the land. This is contained within Clause 31.3 which states as follows:

31.3 The Developer is not to make, or cause, suffer or permit the making of a Development Application for the Development until the Council has provided its approval in writing of the Design Guidelines.

The concern we have with the above clause is that it is unreasonable to tie up a subdivision development application for design guidelines that refer to dwelling typologies and aesthetics, of which cannot logically occur on the development land until such time as a subdivision development application has been determined. Hence, the clause must be amended.

We refer council to Clause 45 which states in part:

45.1 The Parties agree to review this Deed if either party is of the opinion that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Deed.

45.2 For the purposes of clause 45.1, the relevant changes include (but are not limited to) any change to a law that restricts or prohibits or enables the Council or any other planning authority to restrict or prohibit any aspect of the Development.

45.3 For the purposes of addressing any matter arising from a review of this Deed referred to in clause 45.1, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Deed.

In this regard, we seek Council's support to amend Clause 31.3 of the Deed to defer the approval of the guidelines due to delays or amendments to any relevant provisions pertaining to the content and sign off prior to commencement of use for any DA issued. Indeed, this could be reinforced by way of a deferred commencement condition of consent at the time, if the guidelines are, even by that point, yet to be adopted.

This request for support is justified for the following reasons:-

- a. The guidelines relate to a housing product that can only occur if a DA has been approved – be it subdivision or otherwise. i.e. there is no risk of the intent of the guideline not being met if indeed the adoption of the guideline is deferred;
- b. The guidelines approval timing should not inhibit the lodgement and approval of a subdivision development application that provides improved incentive with regard to the provision of affordable housing choice for the locality, which is a real niche that the Mooball development holds;
- c. Delay of the ability for lodgement of a subdivision development application will obstruct affordable housing choice particularly given what has occurred in the Kings Forest and Cobaki development areas;
- d. There is no precedence set in regards to any other housing estate that Council has restricted an ability to lodge a DA in this manner.

We hereby direct Council's attention to Clause 56 of the Deed, whereby All parties to the Deed must sign the amendment in accordance with cl.25D of the Regulations. Whereby the amendment must then be notified, by virtue of s93G of the Act for a period of not less than 28 days prior to the amended agreement is entered into.

We respectfully request Council's support for this request to ensure the amendment may be executed immediately, and Council's review of the guidelines may continue concurrently with this request.

Should you have any further queries in relation to this proposal please call the undersigned on 02 6674 5001.

Regards,



Simon Halcrow
Senior Town Planner
Planit Consulting Pty Ltd