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Dear Sir

Tweed Shire Council Response to Request for advice - Modification to Kings Forest Concept Plan (MP06_0318 MOD 10)

Thank you for the opportunity to comment on Modification to Kings Forest Concept Plan - MP06_0318 MOD 10 which seeks to remove the need for modification applications to amend the membership of the Design Review Panel (DRP) for Kings Forest.

We understand that MP06_0318 MOD 2, which was approved on 11 August 2013 modified condition no. **A3** to include a document which nominated the members of the DRP, being Appendix 26 of the Preferred Project Report, Major Project Application No. 08_0194 Kings Forest, Stage 1 Subdivision and Bulk Earthworks Tweed Shire, prepared by Darryl Anderson Consulting Pty Ltd and dated October 2012.

The applicant for Mod 10 (Sargeant Planning) advises that the approval of Appendix 26 removes the ability of the DRP to function as an independent body, as any change to the panel members now requires a modification application.

They further submit that the DRP is a fundamental part of the future development of Kings Forest (KF), as the Kings Forest Development Code (KFDC) requires a Pre-Approval Certificate from the DRP before a Complying Development Certificate (CDC) can be issued or a Development Application (DA) can be lodged. It is also noted that two of the three approved DRP members gave retired.

The Kings Forest Development Code in Sections 1.0 and 5.8 sets out the requirement for the composition of the DRP, and the functions and responsibilities of site.

1.10 Design Review Panel

The owner of the land that forms the subject of the first DA will establish and implement a Design Review Panel (DRP). The DRP will review all applications requiring a Complying Development Certificate, as well as all DAs. It will use the Concept Plan, the Code, the Design Guidelines (except in the case of a subdivision DA) and the relevant Plan of Development (except in the case of a subdivision DA) in undertaking that review and issuing a Pre-Approval Certificate. After obtaining a Pre-Approval Certificate, applicants then submit their application (with the DRP's formal documentation) to Council or an accredited certifier (see Sections 5.7 and 5.8).

Relevantly in Section 5.8, the following is provided in relation to the composition and operation of the panel:

5.8 Design Review Panel

The developer lodging the first DA will establish and implement a Design Review Panel ('the DRP'). The DRP will review all proposals requiring development consent or a Complying Development Certificate; and will use the Design Guidelines and relevant Plan of Development in making that decision. Applicants must submit their application (with the DRP's formal documentation) to Council or an accredited certifier.

Objectives

- (1) To establish an objective, transparent professional body to undertake merit assessments of development against the Code and Design Guidelines.*
- (2) To establish an architectural design context for merit based decisions.*
- (3) To facilitate timely and consistent assessments and orderly development of the site.*
- (4) To provide professional design advice and education.*
- (5) To provide avenues for dispute resolution.*
- (6) To issue Pre-Approval Certificates as a means of expanding the scope of Complying Development consistent with the principles of the Code.*

Controls

- (1) To establish an objective, transparent professional body to undertake merit assessments of development against the Code and legislative provisions..*
- (2) To establish an architectural design context for merit based decisions.*
- (3) To facilitate timely and consistent assessments and orderly development of the site.*
- (4) To provide professional design advice and education.*
- (5) To provide avenues for dispute resolution.*
- (6) To issue Pre-Design Certificates as a means of expanding the scope of Complying Development consistent with the Code's principles.*
- (7) To enable issue of Design Compliance Certificates after the extinguishment of the Design Review Panel.*

Controls

(1) Establishment:

- (a) A Design Review Panel (DRP) must be established and operated by the owner of the land the subject of the first subdivision Development Application lodged pursuant to the Code; and*
- (b) whilst that owner retains ownership of at least one lot within that proposed subdivision, that owner must operate the DRP, and has sole right to appoint DRP members; and*
- (c) when that owner ceases to own any land within the site, or when that owner notifies Council that they have relinquished their right to appoint DRP members, that owner must cease operation of the DRP; and*
- (d) when the DRP has ceased in accordance with (1)(c) above, a DRP must be established and operated by Council or by an Architect; and*
- (e) the entity in (1)(d) shall be known as the DRP Administrator.*

(2) Membership:

- (a) a minimum of 1 and a maximum of 4 members, including a chairperson; and
- (b) the Chairperson must be an Architect; and
- (c) any person appointed to the DRP shall retain their position until that person resigns from the DRP or has their appointment revoked in accordance with (4)(b) below; and

(3) Meetings:

- (a) must be held when necessary to perform the DRP's duties; and
- (b) must be convened by the Chairperson after written notice of the date, time and place of the meeting, to DRP members by post, facsimile, or e-mail at least three (3) days prior to the meeting date (unless all members, prior to the meeting, agree to dispense with written notice in which case, notice may be given verbally); and
- (c) one member of the DRP, being the Chairperson, constitutes a quorum for any meeting of the DRP; and

(4) Decision making:

- (a) the DRP, Administrator and any consultants appointed by the DRP must at all times perform their DRP duties in a timely and professional manner and conform to the provisions of the code; and
- (b) decisions at DRP meetings must be by a majority on a show of hands by all members present; and
- (c) each member of the DRP must have one vote, however, in the case of a tie in votes, the Chairperson will have the casting vote; and
- (d) the DRP may hold its meetings by telephone conference call or e-mail if all members agree in writing to do so, and
- (e) any member of the DRP who is unable to attend a DRP meeting may appoint another DRP member of the as his or her proxy by prior written notice to the DRP Chairperson, such notice signed by the person appointing proxy ; and
- (f) a minute signed by a quorum of the DRP constitutes a DRP resolution; and
- (g) only development proposals that vary from the Code will be considered by the DRP.

(5) Consultants and contractors:

- (a) consultants and/or contractors may be appointed to the DRP by a quorum of the DRP or the Administrator to assist the DRP in carrying out its duties; and
- (b) the Administrator or a quorum of the DRP may remove consultants and/or contractors from the DRP with prior written notice to the consultants and/or contractors and the DRP; and
- (c) any member of the DRP may be a consultant to the DRP; and
- (d) the DRP or the Administrator may revoke the appointment of a consultant;

(6) Fees:

- (a) the DRP may request an applicant to pay a submission fee upon lodgement of a Complying Development proposal, Development Application, or alteration to a previously submitted proposal, to cover the DRP's assessment costs; and (b) inspection of approved completed developments subject to a construction performance bond (see (7) below) is subject to a fee payable by an applicant to the DRP; and
- (c) the DRP or the Administrator may absorb the assessment costs in whole or in part to either, reduce or negate the necessity of an application fee, although it is under no obligation to do so; and

- (d) the schedule of fees established under the Design Guidelines, may be adjusted from time to time by the DRP or Administrator to cover reasonable additional costs incurred; and
- (e) an applicant may be directed by the DRP to pay a DRP fee directly to a DRP consultant; and
- (f) a DRP Compliance Certificate does not take effect until all relevant submission fees listed in the schedule of fees have been paid to the DRP or consultant; and
- (f) third party access to the DRP's records may be subject to a fee (see (8)(f) below).

(7) Construction performance bond:

- (a) the Administrator or the DRP may decide, from time to time, to require an applicant to lodge with it a construction performance bond administered and held in trust by the DRP; and
- (b) the bond is required to be paid to the DRP by or on behalf of the owner of the land the subject of the application; and
- (c) upon completion of the approved development, the owner must request the DRP to inspect the development; and
- (d) the DRP must inspect the approved completed development within 14 working days of a request in (c) above, in order to determine whether the development has been constructed in accordance with the DRP Pre-Approval Certificate; and
- (e) if the development has been constructed in accordance with (d) above, the DRP must immediately release the construction performance bond with interest to the payee; and
- (f) if the development has not be(en) constructed in accordance with the approved development, the DRP must notify the owner in writing of the works required to be completed prior to the release of the bond and give the owner reasonable time to complete those works; and
- (g) the above process may be repeated until the bond is released; and
- (h) the DRP is under no obligation to release the bond until the development has been constructed in accordance with the approved development; and
- (i) if the DRP has notified the owner in accordance with (f) above and the works remain incomplete, the DRP may garnish the bond from the Trust Account, for the use by the DRP for operating the DRP, including background research or the like and the general assessment function of the DRP.

Procedures and record keeping:

- (a) the DRP must date stamp all applications received and that date is the date of receipt of an application; and
- (b) where an application is received by hand or digital means on a day other than a business day, that date stamp shall be 9:00 am on the next business day; and
- (c) if a fee required to paid upon submission of an application remains unpaid, the DRP may notify the applicant of the required fee, and the date of receipt of the application will be the date stamp of receipt of the fee.
- (d) the Chairperson must keep a current records of all current members of the DRP, including postal and e-mail addresses and, telephone and facsimile numbers; and
- (e) all applications to the DRP must include the contact details of the land owner and applicant; and
- (f) where contact details are not provided with an application, the DRP shall at the earliest opportunity make all reasonable attempts to obtain them, and is not required to assess the application until those details are obtained; and

- (g) the DRP shall correspond only with the land owner/applicant, unless otherwise directed by the owner in writing to the DRP; and
- (h) within 10 business days of receipt of an application that contains all information required to be provided by the Design Guidelines, the required fee and contact details, the DRP must confirm receipt of the application; and,
- (i) the DRP shall make all reasonable attempts to confirm receipt of incomplete applications within 10 business days of receipt of the application, except that there may be minor delays; and
- (j) the DRP or the Administrator shall keep copies of all applications until the site has been the subject of an application to the DRP; and
- (k) all records kept by the DRP remains the confidential property of the DRP or the Administrator, subject to inspection by other applicants for development of the site, and such inspection shall not be unreasonably denied, although a fee may be payable to the DRP; and
- (l) the process of making an application to the DRP implies the right of the DRP to make copies of the proposal as may be required to carry out its duties of assessment, and

(8) Assessment:

- (a) the DRP must issue a Pre-Approval Compliance Certificate to an applicant in the case of compliant and complete applications; or
- (b) the DRP in the case of non-compliant and/or incomplete applications, must issue to an applicant a written statement of matters of concern, specifying additional information required to be submitted to the DRP to achieve compliance prior to issue of a Pre-Approval Compliance Certificate; and
- (c) the DRP may provide suggested solutions for non-compliant and/or incomplete applications in written or sketch form, but these suggestions shall be made with all due care but no responsibility on the part of the DRP, and the applicant must make its own determination of an appropriate response to the DRP; and
- (d) in the case of non-compliant and/or incomplete applications, the assessment steps in (8)(a) to (c) above must recommence each time additional information is received;
- (e) the DRP must assess all applications against the relevant provisions of the Code including the relevant Design Guidelines; and,

(9) Merit based assessment:

- (a) The DRP must take into consideration in a consistent and unbiased manner such of the following matters as relevant to the development the subject of an application, and
- (b) Will the proposal result in a negative impact on the wider community or adjoining properties, and, if so, can the impact be offset by any positive impacts of the proposal for the wider community and/or adjoining properties, and
- (c) Is the proposal consistent with other comparable approved developments on the site; and
- (d) Would the proposal be a desirable outcome for the site; and
- (e) Is the proposal consistent with the Code's vision and development objectives; and
- (f) Is the proposal compatible with its surrounding land and any proposed surrounding proposals; and
- (g) Are there any known reasonable objections to the proposal, and, if so, have the objectors' concerns been ameliorated by amendments to the proposal or conditions of the Pre-Approval Compliance Certificate, and

(h) *Does the application include sufficiently details of compliance with all relevant provisions of the code.*

(10) Dispute resolution:

- (8) *In the event of disputes between an applicant and the DRP regarding a proposal and/or any DRP decision about a Pre-Approval Compliance Certificate or condition, the applicant, at its own cost, shall lodge a Development Application with Council for a non-complying development; and*
- (9) *In the event of a dispute between an applicant and the DRP about a the applicant shall submit with a Development Application to Council for the proposal arguments for the proposal and a copy of the DRP's review.*

(11) Extinguishment of the DRP:

- (a) *the DRP or Adminstrator, upon all land the subject of the Code being the subject of approved applications to the DRP, extinguish the DRP, and notify Council in writing of the extinguishment; and*
- (b) *the Administrator may extinguish the DRP where it is demonstrated that the DRP has ceased to undertake its duties in accordance with the code; and*
- (c) *the Administrator, in extinguishing the DRP in accordance with (b) above, must within 14 days of the decision, notify Council in writing of the reasons for the decision; and*
- (d) *the Administrator must advise the Council of any alternative mechanism to the DRP or the establishment of a new DRP; and*
- (e) *where the DRP has been extinguished in accordance with (b) above, the Administrator or consultant must finalise all applications in abeyance at the time of extinguishment.*
- (d) *where the DRP has been extinguished in accordance with provisions (a) – (c) above, and applications are being assessed by an Architect of the applicant's choosing, similar to the manner in which privately Accredited Certifiers review building applications, the Architect shall be in possession of and be familiar with the current Design Guidelines, Concept Plan and Development Code for all land under the jurisdiction of the Concept Plan, and shall confirm their compliance with this control on the Pre-Approval Compliance Certificate.*

It is not considered that removing the need for a modification application to amend the membership of the DRP will impact on the functioning of the panel – which must be in accordance with the Code, and which must be chaired by an architect.

It is noted that the panel will have scope to endorse variations to controls where proposals do not achieve any stated control in the Code, but the applicant must provide reasonable justification in terms of achievement of the relevant control objective(s). The Code also requires the panel to operate a consistent and unbiased manner and to consider the merit assessment matters set out above.

As such Council has no objection to the nomination of the panel being outside of a formal modification application to the Concept Approval through the removal of Appendix 26 of the Preferred report from the list of approved documents.

However it is imperative that Council would be consulted on the membership of the panel, and any changes to same, and that the chairperson remains a suitably qualified architect.

In relation to the proposed amendment of condition A3, it should be noted that the reference to the Kings Forest Development Code in Condition A3(9) in the modification report appears to be incorrect – and does not match the reference in the current consent, nor the Code – both of which were submitted with the application.

Extract from Modification report prepared by Sargeant Planning:

- (9) ~~Kings Forest Development Code~~
- (9) Kings Forest Development Code ~~as amended by condition B6~~ Version 1.3 submitted with MP06_0318 MOD 5.
- (10) Project Application Environmental Assessment Report, Kings Forest Stage 1 Subdivision and Bulk Earthworks (MP08_0194), prepared by JBA Planning dated November 2011.
- (11) Preferred Project Report, Major Project Application No. 08_0194 Kings Forest, Stage 1 Subdivision and Bulk Earthworks Tweed Shire, prepared by Darryl Anderson Consulting Pty Ltd dated October 2012.

Extract from the consolidated modified consent submitted with the current application:

- (9) ~~Kings Forest Development Code~~
- (9) Kings Forest Development Code ~~as amended by condition B6~~ Version 1.4 submitted with the additional information dated 17 November 2022 with MP06_0318 MOD 9.
- (10) Project Application Environmental Assessment Report, Kings Forest Stage 1 Subdivision and Bulk Earthworks (MP08_0194), prepared by JBA Planning dated November 2011.
- (11) Preferred Project Report, Major Project Application No. 08_0194 Kings Forest, Stage 1 Subdivision and Bulk Earthworks Tweed Shire, prepared by Darryl Anderson Consulting Pty Ltd dated October 2012.

Extract from the Code submitted with the current application:

Approved: Original Approval 12 December 2010

Version 1.1 – as amended by Condition B6 of Concept Plan Approval No. 06_0318 (MOD 2) issued on 11 August 2013

Version 1.2 – as amended by Condition A3 of Concept Plan Approval No. 06_0318 (MOD 4) issued on 20 November 2014

Version 1.3 – as amended by Condition A3 of Concept Plan Approval No. 06_0318 (MOD 5) issued on 10 November 2015

Version 1.4 – as amended by Condition A3 of Concept Plan Approval No. 06_0318 (MOD 9) issued on 25 January 2023 (Final approval by DoPE 28 April 2023)

This matter should be resolved/clarified, and the most recently approved Code referred to in Condition A3(9).

If you have any questions in relation to the above, please do not hesitate to contact me at 02 6670 2605.

Yours sincerely



Valerie Conway

Team Leader Development Assessment