

Chair: Tr K Milne

Trustees: G Bagnall (Deputy Chair)
C Byrne
B Longland
W Polglase
P Youngblutt

Agenda

Tweed Heads Jack Evans Boat Harbour Reserve Trust Meeting Thursday 21 April 2016

held at Murwillumbah Cultural and Civic Centre
commencing at 5.00pm

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Items for Consideration of the Trust:

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REPORTS THROUGH THE ACTING EXECUTIVE MANAGER OF THE TRUST

REPORTS FROM DIRECTOR PLANNING AND REGULATION

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 - SECT 79C

79C Evaluation

(1) Matters for consideration-general In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) the provisions of:
 - (i) any environmental planning instrument, and
 - (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and
 - (iii) any development control plan, and
 - (iiia) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and
 - (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and
 - (v) any coastal zone management plan (within the meaning of the Coastal Protection Act 1979),

that apply to the land to which the development application relates,

- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,
- (c) the suitability of the site for the development,
- (d) any submissions made in accordance with this Act or the regulations,
- (e) the public interest.

Note: See section 75P (2) (a) for circumstances in which determination of development application to be generally consistent with approved concept plan for a project under Part 3A.

The consent authority is not required to take into consideration the likely impact of the development on biodiversity values if:

- (a) the development is to be carried out on biodiversity certified land (within the meaning of Part 7AA of the Threatened Species Conservation Act 1995), or
- (b) a biobanking statement has been issued in respect of the development under Part 7A of the Threatened Species Conservation Act 1995 .

- (2) Compliance with non-discretionary development standards-development other than complying development If an environmental planning instrument or a regulation contains non-discretionary development standards and development, not being complying development, the subject of a development application complies with those standards, the consent authority:
- (a) is not entitled to take those standards into further consideration in determining the development application, and
 - (b) must not refuse the application on the ground that the development does not comply with those standards, and
 - (c) must not impose a condition of consent that has the same, or substantially the same, effect as those standards but is more onerous than those standards,

and the discretion of the consent authority under this section and section 80 is limited accordingly.

- (3) If an environmental planning instrument or a regulation contains non-discretionary development standards and development the subject of a development application does not comply with those standards:
- (a) subsection (2) does not apply and the discretion of the consent authority under this section and section 80 is not limited as referred to in that subsection, and
 - (b) a provision of an environmental planning instrument that allows flexibility in the application of a development standard may be applied to the non-discretionary development standard.

Note: The application of non-discretionary development standards to complying development is dealt with in section 85A (3) and (4).

- (4) Consent where an accreditation is in force A consent authority must not refuse to grant consent to development on the ground that any building product or system relating to the development does not comply with a requirement of the Building Code of Australia if the building product or system is accredited in respect of that requirement in accordance with the regulations.
- (5) A consent authority and an employee of a consent authority do not incur any liability as a consequence of acting in accordance with subsection (4).
- (6) Definitions In this section:
- (a) reference to development extends to include a reference to the building, work, use or land proposed to be erected, carried out, undertaken or subdivided, respectively, pursuant to the grant of consent to a development application, and
 - (b) "non-discretionary development standards" means development standards that are identified in an environmental planning instrument or a regulation as non-discretionary development standards.

1 [PR-JEBH] aquaSplash

SUBMITTED BY: Development Assessment and Compliance

SUMMARY OF REPORT:

A request for a letter of support to establish a recreation facility (inflatable aqua park) (aquaSplash) for a trial period in Jack Evans Boat Harbour between November 2016 and March 2017 has been received. aquaSplash has established similar approved facilities in Queensland (including Southport Broadwater), and are also currently seeking approvals in other NSW LGAs.

In initial discussions with aquaSplash, there was a suggestion made by Council to consider the use of an alternative location in the Tweed River, adjacent to the former Aquatic Club site, Dry Dock Road, Tweed Heads West. Whilst aquaSplash favour Jack Evans Boat Harbour, they have agreed to discuss their proposal with the owners of the former Aquatic Club site.

A letter of support from the Trust is required so the proponents can commence their Crown Land licence application procedures. The proposed activity will require development consent from Council and approvals from the Department of Primary Industry - Lands and Council as owners and or managers of Jack Evans Boat Harbour. These processes are separate to the current request and any initial indication of support does not pre-empt the statutory processes.

Prior to advancing any support for individual proponents such as aquaSplash, Council will need to conduct a Tender process to provide an equitable opportunity for other commercial proponents to use Jack Evans Boat Harbour.

It is therefore considered that at this stage, the Trust is only in a position to provide a letter of support to enable aquaSplash to investigate the recreational facility concept, but that it cannot commit to any commercial agreement or owners consent for a future development application until a tender process for the use of Jack Evans Boat Harbour has been determined.

It is recommended that the Trust provides the letter of conditional support.

RECOMMENDATION:

That the Executive Manager of the Trust advises the firm aquaSplash in writing of the following:

- 1. The Trust generally supports that aquaSplash continue to investigate the concept and any necessary licences/approvals from the Department of Primary Industry – Lands for a trial use at Jack Evans Boat Harbour.**
- 2. It is noted that the proposed activity requires development consent from Tweed Shire Council and the above support does not pre-empt or fetter any discretion Council exercises for the assessment and determination of a development**

application or any other statutory function Council has for Jack Evans Boat Harbour.

- 3. It is further noted, that prior to advancing any support for individual proponents such as aquaSplash, Council will need to conduct a tender process to provide an equitable opportunity for other commercial proponents to use Jack Evans Boat Harbour.**

REPORT:

A request has been lodged by the proponents of an inflatable water park known as 'aquaSplash' to provide a letter of support for the proponents to advance their proposal with the Department of Primary Industries (Lands) for a Short Term Licence. aquaSplash facilities have already been established at Airlie Beach and the Southport Broadwater.

The proponents wish to undertake a trial from November 2016 to March 2017.

Jack Evans Boat Harbour is Crown Land with part of it administered by Council. The location of the facility within the Harbour has not been determined yet but would be subject to consultation and suitability/capability assessment. It is recommended the proponents be advised that the future development application is to include the results of consultation with stakeholders, acoustic, carparking, traffic and environmental reports.

In initial discussions with aquaSplash, there was a suggestion made by Council to consider the use of an alternative location in the Tweed River, adjacent to the former Aquatic Club site, Dry Dock Road, Tweed Heads South. Whilst aquaSplash favour Jack Evans Boat Harbour, they have agreed to discuss their proposal with the owners of the former Aquatic Club site.

A letter of support from the Trust is required so the proponents can commence their Crown Land licence application procedures. The proposed activity will require development consent from Council and approvals from the Department of Primary Industry - Lands, the Jack Evans Boat Harbour Trust and Council as owners and or managers of Jack Evans Boat Harbour. These processes are separate to the current request and any initial indication of support does not pre-empt the statutory processes.

Prior to advancing any support for individual proponents such as aquaSplash, Council will need to conduct a Tender process to provide an equitable opportunity for other commercial proponents to use Jack Evans Boat Harbour.

It is therefore considered that at this stage, the Trust is only in a position to provide a letter of support to enable aquaSplash to investigate the recreational facility concept, but that it cannot commit to any commercial agreement or owners consent for a future development application until a tender process for the use of Jack Evans Boat Harbour has been determined.

OPTIONS:

1. Provide a letter of support in accordance with the recommendation.
2. Provide a letter of support with other identified information/conditions.
3. Not offer a letter of support.

CONCLUSION:

Council has two functions with Jack Evans Boat Harbour being an administrator of the foreshore and part of the waterway under the Crown Lands Act and as the consent authority under the Environmental Planning and Assessment Act. The proponent has requested a letter of support from Council and the Trust for the facility to enable them to commence the process with the Department of Primary Industries- Lands. Prior to any such support being

provided it is noted that Council will need to undertake a Tender process to provide an equitable opportunity for other commercial proponents to use Jack Evans Boat Harbour.

IMPLICATIONS:

a. Policy:

Any proposal will need to be assessed against the Jack Evans Boat Harbour Plan of Management.

b. Budget/Long Term Financial Plan:

There is an opportunity to gain additional income in respect of this proposal.

c. Legal:

Statutory approvals for this proposal are required under both the Crown Lands Act and the Environmental Planning and Assessment Act.

d. Communication Engagement

The subject proposal has already generated substantial media and public interest. It is expected that any advancement of this proposal would require a community engagement process.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Nil.

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