

Mayor: Cr K Milne

Councillors: P Allsop
R Byrnes (Deputy Mayor)
C Cherry
R Cooper
J Owen
W Polglase

Minutes

Planning Committee Meeting Thursday 5 October 2017

held at
Council Chambers, Murwillumbah Civic & Cultural Centre, Tumbulgum Road, Murwillumbah
commencing at 5.30pm

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.

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The Meeting commenced at 5.33pm.

IN ATTENDANCE

Cr Katie Milne (Mayor), Cr Reece Byrnes (Deputy Mayor), Cr Pryce Allsop, Cr Ron Cooper, Cr James Owen and Cr Warren Polglase

Also present were Mr Vince Connell (Acting General Manager), Ms Liz Collyer (Director Corporate Services), Mr David Oxenham (Director Engineering), Mr Ray Musgrave (Acting Director Planning and Regulation), Ms Tracey Stinson (Director Community and Natural Resources), Mr Shane Davidson (Executive Officer), Mr Neil Baldwin (Manager Corporate Governance) and Miss Janet Twohill (Minutes Secretary).

ABORIGINAL STATEMENT

The Mayor acknowledged the Bundjalung Aboriginal Nation with the following statement:

"We wish to recognise the generations of the local Aboriginal people of the Bundjalung Nation who have lived in and derived their physical and spiritual needs from the forests, rivers, lakes and streams of this beautiful valley over many thousands of years as the traditional owners and custodians of these lands."

PRAYER

The meeting opened with a Prayer read by Pastor Jacob Van Der Steen, Murwillumbah Christian Community Church.

"Gracious God,

We thank you for this great land that we live in, for the peace and security we enjoy, especially as we reflect on the upheaval and appalling loss of life we see in over-seas countries. We thank you for the beauty of the Tweed Valley in which we live, the richness of this land and the provisions that you give each day. You uphold a rich diversity of life. You give us the power to work, leisure to rest, and the capacity to love and be loved by others.

We pray that you will help those appointed to represent us in this chamber that they may govern with compassion and justice.

Protect our Councillors from the temptation to seek wrongful gain and grant them an insight into the needs of our community, to make decisions and implement policies that will benefit the Tweed and our nation.

Give all who work for this Council the skill to serve our community efficiently and effectively. Help decision-makers weigh up diverse interests and govern for the wider benefit of our community and natural environment.

And help us as a community, to respect, honour and encourage those who undertaken civic service on our behalf.

In the name of Jesus Christ, we ask these things, Amen."

APOLOGIES

Attendee Cr C Cherry has informed the General Manager that her absence is caused by a family occasion.

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Cr P Allsop
Cr R Cooper

RESOLVED that the apology of Cr C Cherry be accepted and the necessary leave of absence be granted.

The Motion was **Carried**

FOR VOTE - Unanimous
ABSENT. DID NOT VOTE - Cr C Cherry

DISCLOSURE OF INTEREST

Nil.

ITEMS TO BE MOVED FROM ORDINARY TO CONFIDENTIAL - CONFIDENTIAL TO ORDINARY

Nil.

SCHEDULE OF OUTSTANDING RESOLUTIONS

Nil.

ORDERS OF THE DAY

Nil.

REPORTS THROUGH THE GENERAL MANAGER

Nil.

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

1 [PR-PC] Development Application DA16/0795 for a Two Lot Subdivision and Dwelling at Lot 7 DP 1178620 No. 2041 Kyogle Road, Terragon

ALTERNATE MOTION

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Cr K Milne
Cr R Byrnes

RECOMMENDED that:

1. Council notes:
 - a) the alternate dwelling site identified as suitable on Lot 17 is also within the 7(l) zoning on the property and would also require clearing for the required APZ;
 - b) HMC consultants have identified the current elevated dwelling site on Lot 17 as superior for the treatment of on-site waste;
 - c) the applicant has indicated a willingness to enter into a binding agreement with Council to replace any trees required to be removed for the APZ around the existing dwelling at a ratio of 1:16 within the two lots ensuring there is no net loss of habitat within the 7(l) zone;
 - d) both lots are permitted to have a dwelling given that they are equal to or above 40 ha;
 - e) the applicant has demonstrated their dedication to biodiversity conservation on the site by voluntarily taking part in bush regeneration agreements, and
2. Council prepares draft conditions for approval for this subdivision and existing dwelling to be bought back to a future Council meeting.

The Motion was **Carried**

FOR VOTE - Cr R Byrnes, Cr R Cooper, Cr K Milne, Cr W Polglase, Cr P Allsop

AGAINST VOTE - Cr J Owen

ABSENT. DID NOT VOTE - Cr C Cherry

2 [PR-PC] Development Application DA17/0497 for an Extended Use of a Temporary Structure for a Film Production at Lot 7007 DP 1056645 and Lot 7335 DP 1154509 Tweed Coast Road, Hastings Point

P 108

**Cr W Polglase
Cr P Allsop**

RECOMMENDED that Development Application DA17/0497 for the construction and installation of a temporary structure for a film production at Lot 7007 DP 1056645 and Lot 7335 DP1154509 Tweed Coast Road, Hastings Point for a period exceeding 30 days be approved.

The Motion was **Carried**

FOR VOTE - Cr R Byrnes, Cr R Cooper, Cr J Owen, Cr W Polglase, Cr P Allsop

AGAINST VOTE - Cr K Milne

ABSENT. DID NOT VOTE - Cr C Cherry

3 [PR-PC] Fingal Head Building Height Review - Outcomes and Recommendations

P 109

**Cr K Milne
Cr R Cooper**

RECOMMENDED that:

1. The Council expresses its gratitude to those community attendees and contributors who participated and assisted staff with the Fingal Head Height of Building Review.
2. The attached Community Conversation 02 Feedback Fingal Head Building Height Review is received and noted.
3. The existing 9 metre building height limit under *Tweed Local Environmental Plan 2014* for Fingal Head is to be retained.
4. *Tweed Development Control Plan 2008*, Section A1 *Residential and Tourist Development Code* is to be amended to include a 2 storey 'character' design height limit to operate in concert with existing 9 metre height of building limit under the *Tweed Local Environmental Plan 2014*, for all residential or mixed-use development in Fingal Head; and

5. The amendment described above is to include:
 - a. character statements describing the existing and desired future character of Fingal Head, those elements that distinguish it as a unique place to live and are highly valued by the community that lives there; and
 - b. planning principles to guide the design of new development, having specific regard to the varying contextual conditions and constraints; including, flood liable land, sloping sites and smaller (village) allotments; and
6. The 2 storey 'character' design height limit described above is to be incorporated into the *Tweed Local Environmental Plan 2014*, at the earliest practicable time.
7. Roof-deck design guidelines are to be prepared for incorporation into the *Tweed Development Control Plan 2008*, Section A1 *Residential and Tourist Development Code*, as a uniform code for any development in the Shire, at the earliest practicable time.
8. A locality plan be prepared for the Fingal Head and Chinderah localities at the completion of the Kingscliff Locality Plan.

The Motion was **Carried**

FOR VOTE - Unanimous

ABSENT. DID NOT VOTE - Cr C Cherry

4 [PR-PC] Draft Aboriginal Cultural Heritage Management Plan 2017

P 110

Cr W Polglase

Cr P Allsop

RECOMMENDED that:

1. Council endorses the Draft Aboriginal Cultural Heritage Management Plan 2017 for public exhibition for a minimum 60 days;
2. Community and industry information sessions, as outlined within the report, be held during the exhibition period;
3. The NSW Department of Planning and Environment be requested to provide advice on the best means for implementing or giving effect to an Aboriginal Cultural Heritage Management Plan within the Tweed's Local Environmental Plans, or other State environmental planning instruments; and

4. Following review of submissions received during public exhibition a further report be submitted for Council's consideration detailing the submissions and any proposed amendments.

The Motion was **Carried**

FOR VOTE - Unanimous
ABSENT. DID NOT VOTE - Cr C Cherry

- 5 **[PR-PC] Short-term Holiday Letting - Tweed Council's Submission Reply to the NSW Department of Planning and Environment's Option Paper**

ALTERNATE MOTION

P 111

Cr K Milne
Cr R Byrnes

RECOMMENDED that the report on Short-term Holiday Letting - Tweed Council's Submission Reply to the NSW Department of Planning and Environment's Option Paper be deferred for a workshop.

The Motion was **Carried**

FOR VOTE - Unanimous
ABSENT. DID NOT VOTE - Cr C Cherry

- 6 **[PR-PC] Unlawful Development and Land Use - Lot 5 DP 631620 No. 656 Upper Crystal Creek Road Upper Crystal Creek**

P 112

Cr J Owen
Cr P Allsop

PROPOSED that in relation to the unlawful construction at No. 656 Upper Crystal Creek Road, Upper Crystal Creek:

1. Council endorse the issuing an Order (Order No.2) for *demolition* via Section 121B of the Environmental Planning and Assessment Act 1979 No 203;
 2. Council endorse the issue of a Penalty Infringement Notice for *Development Without Development Consent* via Section 76A(1)(A) of the Environmental Planning and Assessment Act 1979 No 203 for the unlawful *construction* of the building without consent; and
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3. Council endorse the issue of a Penalty Infringement Notice for *Development Without Development Consent* via Section 76A(1)(A) of the Environmental Planning and Assessment Act 1979 No 203 for the unlawful use of the building without consent.

AMENDMENT 1

P 113

**Cr K Milne
Cr R Byrnes**

RECOMMENDED that the matter be deferred for a site visit.

Amendment 1 was **Carried**

**FOR VOTE - Cr R Byrnes, Cr R Cooper, Cr K Milne, Cr P Allsop
AGAINST VOTE - Cr J Owen, Cr W Polglase
ABSENT. DID NOT VOTE - Cr C Cherry**

Amendment 1 on becoming the Motion was **Carried** - (Minute No P 113 refers)

**FOR VOTE - Cr R Byrnes, Cr R Cooper, Cr K Milne, Cr P Allsop
AGAINST VOTE - Cr J Owen, Cr W Polglase
ABSENT. DID NOT VOTE - Cr C Cherry**

- 7 [PR-PC] Unauthorised Land Use and Development at Lot 5 DP 871177 No. 102 Crooks Valley Road, Crystal Creek**

P 114

**Cr J Owen
Cr W Polglase**

PROPOSED that in relation to the unauthorised land use and development at Lot 5 DP 871177 No. 102 Crooks Valley Road, Crystal Creek, legal advice be sought regarding options for action (including but not limited to Orders to prevent continued unauthorised activities and possible punitive action for the events already carried out and the unauthorised works/structure) against the owners of Lot 5 DP 871177 No. 102 Crooks Valley Road, Crystal Creek.

AMENDMENT 1

P 115

**Cr K Milne
Cr R Byrnes**

RECOMMENDED that this item be deferred to 2 November 2017 Planning Committee meeting.

Amendment 1 was **Carried** on the Casting Vote of the Mayor.

FOR VOTE - Cr R Byrnes, Cr R Cooper, Cr K Milne
AGAINST VOTE - Cr J Owen, Cr W Polglase, Cr P Allsop
ABSENT. DID NOT VOTE - Cr C Cherry

Amendment 1 on becoming the Motion was **Carried** on the Casting Vote of the Mayor (Minute No P 115 refers).

FOR VOTE - Cr R Byrnes, Cr R Cooper, Cr K Milne
AGAINST VOTE - Cr J Owen, Cr W Polglase, Cr P Allsop
ABSENT. DID NOT VOTE - Cr C Cherry

8 [PR-PC] Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards

Cr W Polglase temporarily left the meeting at 6.32pm.

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Cr K Milne
Cr P Allsop

RECOMMENDED that Council notes there are no variations for the month of August 2017 to Development Standards under State Environmental Planning Policy No. 1 - Development Standards.

The Motion was **Carried**

FOR VOTE - Unanimous
ABSENT. DID NOT VOTE - Cr C Cherry, Cr W Polglase

Cr W Polglase returned to the meeting at 6.34pm.

There being no further business the Planning Committee Meeting terminated at 6.34pm.

