



TWEED
SHIRE COUNCIL

Mayor: Cr K Milne

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

Minutes

Planning Committee Meeting Thursday 1 June 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 5.36pm.

IN ATTENDANCE

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

Also present were Mr Troy Green (General Manager), Ms Liz Collyer (Director Corporate Services), Mr David Oxenham (Director Engineering), Mr Vince Connell (Director Planning and Regulation), Ms Tracey Stinson (Director Community and Natural Resources), Mr Shane Davidson (Executive Officer), Mr Neil Baldwin (Manager Corporate Governance) and Ms Ann Mesic (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 the Manager Corporate Governance.

APOLOGIES

Attendee Cr R Byrnes has informed the General Manager that his absence is caused by being away interstate.

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Cr C Cherry
Cr R Cooper

RESOLVED that the apology of Cr R Byrnes be accepted and the necessary leave of absence be granted.

The Motion was **Carried**

FOR VOTE - Unanimous
ABSENT. DID NOT VOTE - Cr R Byrnes

DISCLOSURE OF INTEREST

Cr C Cherry declared a Non-Significant, Non-Pecuniary conflict of interest in Item 2 [PR-PC] Development Applications T4/2794.06, D94/0015.09 and PN1074.09 for an amendment to Development Consents T4/2794, D94/0015 and PN1074 for Extensions to an Existing Caravan Park to Accommodate a Total of 107 Movable Dwelling Sites at Lot 11 DP 1206666 No. 2 Barneys Point Road, Banora Point.

The nature of this interest is that her family also owns a holiday park in the Tweed Shire and this application seeks to improve their site and increase their business.

Cr C Cherry will vacate the Chambers during discussion and voting.

Cr K Milne declared a Non-Significant, Non-Pecuniary conflict of interest in Item 4 [PR-PC] Council Submission on the Independent Pricing and Regulatory Tribunal (IPART) Application for a Network Operators and Retail Suppliers Licence for the Cobaki Waste Water Treatment Plant and Reticulation Network at 425 Piggabeen Road, Piggabeen.

The nature of this interest is due to legal matters with the Chairman of Leda Developments, Mr Ell.

Cr K Milne will remain in the Chambers during discussion and will vote on the merits of the item.

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

Nil.

SCHEDULE OF OUTSTANDING RESOLUTIONS

Nil.

REPORTS THROUGH THE GENERAL MANAGER

Nil.

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

- 1 [PR-PC] Development Application DA17/0003 for the Use of Site (Including Existing Sheds and Shipping Container) as Depot and Associated Office at Lot 41 DP 870680 No. 606 Pottsville Road, Sleepy Hollow**

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Cr W Polglase
Cr P Allsop

PROPOSED that Development Application DA17/0003 for the use of site (including existing shed and unconstructed shed) as depot and associated office at Lot 41 DP 870680 No. 606 Pottsville Road, Sleepy Hollow be deferred and request the applicant to provide additional information within 61 days of notification and report the application back to Council at its 3 August 2017 Planning Committee meeting.

AMENDMENT 1

P 56

Cr K Milne
Cr C Cherry

RECOMMENDED:

- A. Development Application DA17/0003 for the use of site (including existing shed and unconstructed shed) as depot and associated office at Lot 41 DP 870680 No. 606 Pottsville Road, Sleepy Hollow be refused for the following reasons:
1. Pursuant to Section 79C (1) (a)(i) the development proposal has not demonstrated compliance with Clause 2.3(2) of Tweed Local Environmental Plan 2014, as the proposal is inconsistent with the objectives of the RU2 Rural landscape zone.
 2. Pursuant to Section 79C (1) (a)(i) the development proposal has not demonstrated compliance with Clause 7.10 of Tweed Local Environmental Plan 2014 as vehicular access to and from the site with sight distances to the north considered to be dangerous and not compliant.
 3. Pursuant to Section 79C (1) (a)(iii) the proposed development is contrary to the provisions of Tweed Shire Council Development Control Plan Section A2- Site Access and Parking Code, as minimum sight distance to access the site, is not considered adequate.
 4. Pursuant to Section 79C (1) (b) the depot is considered to create unacceptable impacts on the built environment and social impacts having regard to vehicular access, noise, amenity issues, waste collection and disposal, storage and disposal of asbestos, onsite sewerage management, which have not been adequately addressed or resolved in the subject application.
 5. Pursuant to Section 79C (1) (c) the site is considered not to be suitable for the development proposal, as the site is zoned RU2 Rural Landscape and is surrounded by RU2 land. The proposed depot is not compatible with the rural nature of the site and surrounding land.
 6. Pursuant to Section 79C (1) (e) the development proposal is not considered to be in the public interest having regard to potential impacts with respect to vehicular access, noise, amenity issues, waste collection and disposal, storage and disposal of Asbestos, onsite sewerage management, which have not been adequately addressed or resolved in the subject application.
- B. The depot use is to cease and all related machinery and equipment is to be removed from the site within 90 days from the date of notification or Council will investigate legal action for the proposed unauthorised activity unless a new Development Application is submitted within the 90 days.

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

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

Amendment 1 on becoming the Motion was **Carried** on the Casting Vote of the Mayor - (Minute No P 56 refers)

FOR VOTE - Cr C Cherry, Cr R Cooper, Cr K Milne

AGAINST VOTE - Cr J Owen, Cr W Polglase, Cr P Allsop

ABSENT. DID NOT VOTE - Cr R Byrnes

- 2 [PR-PC] Development Applications T4/2794.06, D94/0015.09 and PN1074.09 for an amendment to Development Consents T4/2794, D94/0015 and PN1074 for Extensions to an Existing Caravan Park to Accommodate a Total of 107 Movable Dwelling Sites at Lot 11 DP 1206666 No. 2 Barneys Point Road, Banora Point**

DECLARATION OF INTEREST

Cr C Cherry declared a Non-Significant, Non-Pecuniary conflict of interest in Item 2 [PR-PC] Development Applications T4/2794.06, D94/0015.09 and PN1074.09 for an amendment to Development Consents T4/2794, D94/0015 and PN1074 for Extensions to an Existing Caravan Park to Accommodate a Total of 107 Movable Dwelling Sites at Lot 11 DP 1206666 No. 2 Barneys Point Road, Banora Point.

The nature of this interest is that her family also owns a holiday park in the Tweed Shire and this application seeks to improve their site and increase their business.

Cr C Cherry will vacate the Chambers during discussion and voting.

Cr C Cherry temporarily left the meeting at 06:12 PM.

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Cr W Polglase

Cr J Owen

RECOMMENDED that:

1. ATTACHMENT 3 is CONFIDENTIAL in accordance with Section 10A(2)(d) of the Local Government Act 1993, because it contains:-
 - (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.
2. Development Applications T4/2794.06, D94/0015.09 and PN1074.09 for an amendment to Development Consents T4/2794, D94/0015 and PN1074 for extensions to allow an additional 10 sites to an existing caravan park at Lot 11 DP 1206666 No. 2 Barneys Point Road, Banora Point be deferred and a report be brought back to 6 July 2017 Planning Committee meeting.

The Motion was **Carried**

FOR VOTE - Unanimous

ABSENT. DID NOT VOTE - Cr R Byrnes, Cr C Cherry

3 [PR-PC] DA12/0170 Halcyon House and Paper Daisy Restaurant - Lot 100 DP 1208306 No. 19-25 Cypress Crescent, Cabarita Beach

An email was received from Planit Consulting Pty Ltd requesting deferral of this item.

Cr C Cherry has returned from temporary absence at 06:16 PM

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Cr W Polglase

Cr P Allsop

RECOMMENDED that:

1. ATTACHMENT 4 is CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because it contains:-
(a) personnel matters concerning particular individuals (other than councillors)
2. Council defer this item and a report be brought back to 6 July 2017 Planning Committee meeting.
3. A warning letter be issued by the General Manager to the owners of Halcyon House and Paper Daisy restaurant that any further breaches of the hours of use or noise limits will result in fines or civil enforcement.

The Motion was **Carried**

FOR VOTE - Unanimous

ABSENT. DID NOT VOTE - Cr R Byrnes

4 [PR-PC] Council Submission on the Independent Pricing and Regulatory Tribunal (IPART) Application for a Network Operators and Retail Suppliers Licence for the Cobaki Waste Water Treatment Plant and Reticulation Network at 425 Piggabeen Road, Piggabeen

Cr R Cooper temporarily left the meeting at 06:24 PM.

Cr R Cooper has returned from temporary absence at 06:25 PM

DECLARATION OF INTEREST

Cr K Milne declared a Non-Significant, Non-Pecuniary conflict of interest in Item 4 [PR-PC] Council Submission on the Independent Pricing and Regulatory Tribunal (IPART) Application for a Network Operators and Retail Suppliers Licence for the Cobaki Waste Water Treatment Plant and Reticulation Network at 425 Piggabeen Road, Piggabeen.

The nature of this interest is due to legal matters with the Chairman of Leda Developments, Mr Ell.

Cr K Milne will remain in the Chambers during discussion and will vote on the merits of the item.

P 59

Cr W Polglase
Cr C Cherry

RECOMMENDED that Council endorse the attached submission (Attachment 1) to IPART, in response to the public exhibition of the Network Operators and Retail Suppliers Licence under the Water Industry Competition Act 2006 for the Cobaki development with the addition of due consideration to be given to localised flooding and drainage issues associated with the proposed waste water treatment plant site.

The Motion was **Carried**

FOR VOTE - Unanimous
ABSENT. DID NOT VOTE - Cr R Byrnes

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

Cr W Polglase temporarily left the meeting at 06:35 PM.

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Cr P Allsop
Cr J Owen

RECOMMENDED that Council notes the April 2017 Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards.

The Motion was **Carried**

FOR VOTE - Unanimous
ABSENT. DID NOT VOTE - Cr R Byrnes, Cr W Polglase

CONFIDENTIAL COMMITTEE

P 61

Cr C Cherry

Cr P Allsop

RESOLVED that Planning Committee resolves itself into a Confidential Committee in accordance with Section 10A(2) of the Local Government Act 1993 (as amended) and that the press and public be excluded from the whole of the Committee Meeting, because, in the opinion of the Committee, publicity of the proceedings of the Committee would be prejudicial to the public interest, by reasons of the confidential nature of the business to be transacted.

Cr W Polglase has returned from temporary absence at 06:37 PM

The Motion was **Carried**

FOR VOTE - Unanimous

ABSENT. DID NOT VOTE - Cr R Byrnes

CONFIDENTIAL ITEMS FOR CONSIDERATION

The General Manager reported that the Confidential Committee had excluded the press and public from the whole of the Committee Meeting because, in the opinion of the Committee, publicity of the proceedings of the Committee would be prejudicial to the public interest, by reason of the confidential nature of the business to be transacted, and made the following recommendations to Council:-

REPORTS THROUGH THE GENERAL MANAGER IN COMMITTEE

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION IN COMMITTEE

C1 [PR-PC] Unauthorised Works within Crown Road Reserve, Zara Road, Limpinwood

REASON FOR CONFIDENTIALITY:

This report concerns legal matters that could influence the appeal process.

Local Government Act

This report is **CONFIDENTIAL** in accordance with Section 10A(2) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following: -

- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

PC 18

That in respect to unauthorised works within Crown Road Reserve, Zara Road, Limpinwood:

1. Council engages its solicitors to assist with the further investigations in accordance with the advice received against the person, persons or entity that undertook the unauthorised work within the Crown Road Reserve and adjacent land;
2. The General Manager writes to the relevant State Ministers with responsibility for the Office of the Environment and Heritage (including Environment Protection Authority – Forestry) and the Department of Industry - Lands seeking their support and assistance with Council's legal action where required by Council and or Council's lawyers; and
3. To support the legal action, consultants be engaged to undertake the appropriate assessment where required.

The Motion was **Carried**

FOR VOTE - Unanimous
ABSENT. DID NOT VOTE - Cr R Byrnes

C2 [PR-PC] Unauthorised Works at Lot 1 DP 783892 No. 1110 Urliup Road, Urliup

REASON FOR CONFIDENTIALITY:

This report concerns legal matters that could influence the appeal process.

Local Government Act

This report is **CONFIDENTIAL** in accordance with Section 10A(2) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following: -

- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

PC 19

That:

1. Council engages its solicitors to assist with the further investigations in accordance with the advice received against the person, persons or entity that undertook and/or is responsible for the unauthorised work within Lot 1 DP 783892 No 1110 Urliup Road, Urliup;
2. To support the legal action, consultants be engaged to undertake the appropriate assessment where required.

The Motion was **Carried**

FOR VOTE - Unanimous
ABSENT. DID NOT VOTE - Cr R Byrnes

LATE ITEM

PC 20

That Item aC3 being an Addendum item be dealt with and it be ruled by the Chairman to be of great urgency.

The Motion was **Carried**

FOR VOTE - Unanimous

ABSENT. DID NOT VOTE - Cr R Byrnes

aC3 [PR-PC] Land and Environment Court Proceedings Update - DA16/0527 for the Demolition of Existing Structures and Erection of a Residential Flat Building (Seven Units) and Swimming Pool at Lot 14 Section 5 DP 758571 No. 204 Marine Parade, Kingscliff and Building Height and FSR Control LEP Expedited Amendment to Redress Interpretation of Inconsistency and Application Resulting in 4-Storey Residential Development

REASON FOR CONFIDENTIALITY:

The development application is subject to a current Land and Environment Court proceeding

Local Government Act

This report is **CONFIDENTIAL** in accordance with Section 10A(2) of the Local Government Act 1993, which permits the meeting to be closed to the public for business relating to the following: -

- (g) advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.

PC 21

Cr W Polglase

Cr P Allsop

PROPOSED that Council, in respect of the current Class One appeal in the Land and Environment Court relating to DA16/0527 No. 204 Marine Parade, Kingscliff, endorse the following:

1. Authority is delegated to the General Manager to act in full capacity of Council in assisting the NSW Land and Environment Court with these proceedings and in particular negotiating a planning outcome that would be more acceptable to the community and that is more in keeping with the Council's development planning guidelines.

AMENDMENT 1

PC 22

That this item be deferred to an Extraordinary meeting to be held Monday 5 June 2017 at 5.30pm.

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

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

Amendment 1 on becoming the Motion was **Carried** on the Casting Vote of the Mayor -
(Minute No PC 22 refers)

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

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Cr K Milne
Cr P Allsop

RECOMMENDED that the recommendations of the Confidential Committee be adopted.

The Motion was **Carried**

FOR VOTE - Unanimous
ABSENT. DID NOT VOTE - Cr R Byrnes

There being no further business the Planning Committee Meeting terminated at 7.20pm

