

**Mayor:** Cr K Milne

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

# Minutes

## **Planning Committee Meeting Thursday 3 October 2019**

held at  
**Harvard Room, Tweed Heads Administration Building, Brett Street, Tweed Heads**  
commencing at 5.30pm

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 - Section 4.15 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 Secretary 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 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, 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.

(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 4.16 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 4.16 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 4.28 (3) and (4).

(3A) **Development control plans**

If a development control plan contains provisions that relate to the development that is the subject of a development application, the consent authority:

- (a) if those provisions set standards with respect to an aspect of the development and the development application complies with those standards—is not to require more onerous standards with respect to that aspect of the development, and
- (b) if those provisions set standards with respect to an aspect of the development and the development application does not comply with those standards—is to be flexible in applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development, and
- (c) may consider those provisions only in connection with the assessment of that development application.

In this subsection, **standards** include performance criteria.

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

Also present were Mr Troy Green (General Manager), Mr David Oxenham (Director Engineering), Mr Vince Connell (Director Planning and Regulation), Ms Tracey Stinson (Director Sustainable Communities and Environment), Mr Michael Chorlton (Executive Manager Finance, Revenue and Information Technology), Mrs Suzanne Richmond (Executive Manager People, Communication and 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 the Rev. Michael Boyd, Tweed Heads Presbyterian Church.

*"I am going to pay in the Christian tradition. If you would like to join with me, please bow your head. Otherwise take a moment for quiet reflection on what will best enable good Council decisions to be made today. We will remain seated."*

*Gracious God,*

*Thank you for the work of Council, elected and staff, as they serve our community. Continue to give them wisdom and courage as they chart a good and just course for the future.*

*We deeply appreciate the natural abundance of our region, so we stand with other local government areas who face critical shortages due to the drought. Please send the relief of rain to the places that desperately need it. Strengthen those communities and their leaders in these difficult times.*

*We pray for the many volunteers in our community who fought recent fires. We acknowledge their service in dangerous conditions. Please keep them safe and bless them when they are called upon again.*

*Bless Council in the conduct of this meeting tonight and the outworking of its decisions into the future.*

*We pray this in the name of Jesus, Amen."*

## **APOLOGIES**

Nil.

## **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 FROM THE DIRECTOR PLANNING AND REGULATION**

- 1 [PR-PC] Development Application DA19/0371 for a Two Lot Boundary Adjustment at Lot 2 DP 850714, No. 1289 Kyogle Road and Lot 92 DP 807666, No. 1317 Kyogle Road Uki

## **ALTERNATE MOTION**

**P 69**

**Cr C Cherry**  
**Cr W Polglase**

### **RECOMMENDED** that:

1. Council, in accordance with its' resolved position of 1 August 2019, provide in principle approval of this application and that a report be bought back to the next Council meeting including recommended conditions of consent.
2. ATTACHMENT 2 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.

The Motion was **Carried**

***FOR VOTE - Unanimous***

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**2 [PR-PC] Planning Proposal PP17/0001 - Review of Development Standards - Response to Public Exhibition**

**P 70**

**Cr C Cherry  
Cr K Milne**

**RECOMMENDED** that Planning Proposal PP17/0001 Review of Development Standards (as provided in Attachment 1 to this report) be sent to the Department of Planning, Industry and Environment to have the plan made under s.3.36 of the *Environmental Planning and Assessment Act 1979*.

The Motion was **Carried**

**FOR VOTE - Unanimous**

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**3 [PR-PC] Planning Proposal PP19/0006 to Amend Tweed Local Environmental Plan 2014 to rezone the Seabreeze Estate Pottsville 'Potential School Site' (Lot 1747 DP 1215252 Seabreeze Boulevard, Pottsville)**

**P 71**

**Cr C Cherry  
Cr K Milne**

**RECOMMENDED** that:

1. Council endorse submission of the attached planning proposal, as amended in accordance with this report, to the NSW Department of Planning, Industry and Environment for Gateway determination, noting the savings provisions in Section 1.8A of the *Tweed Local Environmental Plan 2014* would apply in relation to any Land and Environment Court judgement regarding DA18/0133;
2. The Minister for Planning, Industry and Environment is advised that Tweed Shire Council is not seeking plan making delegations for this planning proposal;
3. Upon receiving an affirmative Gateway Determination Notice all additional studies or work is to be completed prior to public exhibition and made available with the public exhibition documentation;
4. The minimum exhibition period for the Planning Proposal should be for a period of 28 days or advised by the Gateway Determination; and
5. Following public exhibition of the Planning Proposal a report is to be submitted to Council at the earliest time detailing the content of submissions received and if any issues have been addressed.

The Motion was **Carried**

***FOR VOTE - Unanimous***

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**4 [PR-PC] Community Participation Plan Requirements**

This item was dealt with at Item 6

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

**P 72**

**Cr C Cherry  
Cr W Polglase**

**RECOMMENDED** that Council notes the September 2019 Variations to Development Standards under State Environmental Planning Policy No. 1 - Development Standards.

The Motion was **Carried**

***FOR VOTE - Unanimous***

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**ADDENDUM ITEMS**

**6 ADDENDUM [PR-PC] Community Participation Plan Requirements**

**ALTERNATE MOTION**

**Cr K Milne  
Cr R Cooper**

**RECOMMENDED** that Council:

1. Endorses the draft Community Engagement and Participation Plan for public exhibition for a minimum period of 28 days with the following amendments:

Add to point 1 With the following changes to section C2 appendix 2

Rural Zones

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Include for advertising and notification:  
Animal boarding or training establishment and Forestry

Include for notification:  
Dwellings and Dual occupancies

Business Zones

Include for advertising and notification:  
neighbourhood supermarket

Include for notification  
Medical centre  
Neighbourhood shops

Recreation Zones

Include for advertising and notification:  
Forestry

Environmental Zones

Include for notification:  
Earthworks

And

1. Council's commitment to an engaged community:

*Tweed Shire Council shares the community's passion and pride in the Tweed. Council is committed to work with the community to preserve the Tweed's lifestyle, its natural environment, its rural landscape and, as partners make better decisions.*

*Council's professional staff guide participants as they strive to achieve their aspirations for the Tweed. This will provide support and result in self development opportunities through their role as partners in decision making.*

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*Council's responsibility is to work in the best interests of the Tweed as a whole and to consider a broad cross-section of views. Councillors can then fulfil their role as elected representatives and make better final decisions. In making the final decision they will be guided on policy, legal and statutory matters by professional staff.*

*The priorities of Tweed communities will differ. The complexity of issues will differ. The format of engagement will be tailored to ensure that input from the community delivers a workable outcome.*

*The Community .....*

2. Objectives of engaging with the community.

*Having the community partners value the professional staff for their guidance role in the engagement process.*

3. Principles of community engagement and participation

Figure 5 to now read:

*.....to provide a framework for ongoing consultation.*

Notifying the public when an item is on exhibition

Text contained in speech bubble on page 20 to now read:

*Community engagement is the process of partnering with people in the decisions that affect their lives.*

2. Considers any public submissions following the public exhibition of the Plan; and
3. In accordance with Section 23 of the *Environmental Planning and Assessment Regulation 2000* a notice be published in the Tweed Link notifying of Council's intent to repeal *Section A11 Public Notification of Development Proposals* of the *Tweed Development Control Plan 2008* and the reasons for the repeal.

The Motion was **Carried**

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

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

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## LATE ITEMS

### LATE ITEM

P 73

**Cr K Milne  
Cr C Cherry**

**RESOLVED** that Item 7 being a late item be dealt with and it be ruled by the Chairman to be of great urgency.

The Motion was **Carried**

**FOR VOTE - Unanimous**

**7 LATE [PR-PC] Development Application DA18/0730 for the Use of Part of the Shed as a Rural Workers Dwelling at Lot 22 DP 1006926 & Lot 23 DP 1006926 Kanes Road, Cudgera Creek**

**ALTERNATE MOTION**

**P 74**

**Cr W Polglase  
Cr R Byrnes**

**RECOMMENDED** that Council approve the application in accordance with A - C below:

- A. The development proposal has been considered in accordance with the relevant provisions of the NSW Environmental Planning and Assessment Act 1979 and on balance is suitable to be determined by way of approval.

Community views were considered as part of the assessment in accordance with Council's Development Control Plan and the NSW Environmental Planning and Assessment Act 1979 requirements for public notification.

- B. Development Application DA18/0730 for a rural workers dwelling at Lot 22 DP 1006926 & Lot 23 DP 1006926 Kanes Road, Cudgera Creek be approve subject to the following conditions:

**"DEFERRED COMMENCEMENT"**

**This consent shall not operate** until the applicant satisfies the consent authority by producing satisfactory evidence relating to the matters set out in Schedule "A". Such evidence is to be provided within six months of the date of notification.

Upon the consent authority being satisfied as to compliance with the matters set out in Schedule "A". The consent shall become operative and take effect from the date of notification under Section 95 of the Environmental Planning and Assessment Regulations subject to the conditions set out in Schedule "B".

**SCHEDULE "A"**

**Conditions imposed pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act, 1979 and Section 95 of the Regulations as amended.**

- A. Lot 22 DP 1006926 and Lot 23 DP 1006926 are to be consolidated into one lot under one title. The plan of consolidation shall be registered with the Land and Property Information (LPI) (formerly the Lands Titles Office).

**SCHEDULE B**

**NOTE: THIS PART OF THE CONSENT WILL NOT BECOME OPERABLE UNTIL COUNCIL ADVISES THAT THE MATTERS CONTAINED IN SCHEDULE A ARE SATISFIED.**

## GENERAL

1. The development shall be completed in accordance with the Statement of Environmental Effects and the following plans:

- Site Plan, prepared by Planit Consulting and dated September 2013;
- Ground Floor Plan, prepared by the applicant;
- Mezzanine Level Plan, prepared by the applicant;
- South & North Elevation, prepared by the applicant; and
- East & West Elevation prepared by the applicant,

except where varied by the conditions of this consent.

[GEN0005]

2. The issue of this Development Consent does not certify compliance with the relevant provisions of the Building Code of Australia.

[GEN0115]

3. A roof catchment water supply source shall be provided for domestic purposes where a Council reticulated supply is unavailable. Any domestic water supply roof collection system should be fitted with a first flush device and adequately maintained to ensure a safe and suitable drinking water supply, where applicable. The minimum storage tank capacity shall reflect the dry seasonal periods experienced in the locality and shall be in addition to any fire fighting capacity requirements stipulated by the NSW Rural Fire Services. The minimum storage capacity required shall be to the satisfaction of the General Manager or delegate. This storage is independent to any required for fire-fighting purposes.

[GEN0310]

## PRIOR TO COMMENCEMENT OF WORK

4. An application to carry out plumbing and drainage works, together with any prescribed fees including inspection fees, is to be submitted to and approved by Council prior to the commencement of any building works on the site.

[PCW1065]

5. Prior to the commencement of any work on site the applicant shall obtain approval to install an onsite sewage management system under Section 68 of the Local Government Act 1993. Any approval to install an on-site sewage treatment system and disposal system shall comply with the recommended on site sewage treatment and disposal method as detailed in the On-site Sewage Management Design Report Proposed Farm Building for Lot 22 DP 1006926, 148 Kaners Road, Cudgera Creek prepared by HMC Environmental Consulting (ref: HMC2018.105) and dated May 2018 including all recommendations of that report and any addendum to the report or to the satisfaction of Councils General Manager or his delegate.

[PCWNS01]

## DURING CONSTRUCTION

6. Commencement of work, including the switching on and operation of plant, machinery and vehicles is limited to the following hours, unless otherwise permitted by Council:

Monday to Saturday from 7.00am to 6.00pm

No work to be carried out on Sundays or Public Holidays

The proponent is responsible to instruct and control subcontractors regarding hours of work.

[DUR0205]

7. All work associated with this approval is to be carried out so as not to impact on the neighbourhood, adjacent premises or the environment. All necessary precautions, covering and protection shall be taken to minimise impact from:

- Noise, water or air pollution.
- Dust during filling operations and also from construction vehicles.
- Material removed from the site by wind.

[DUR1005]

8. The builder must provide an adequate trade waste service to ensure that all waste material is suitably contained and secured within an area on the site, and removed from the site at regular intervals for the period of construction/demolition to ensure no material is capable of being washed or blown from the site.

[DUR2185]

9. All waste shall be collected, stored and disposed of in accordance with the provisions of Tweed Shire Council Development Control Plan Section 15 - Waste Minimisation and Management.

[DUR2195]

10. Overflow relief gully is to be located clear of the building and at a level not less than 150mm below the lowest fixture within the building and 75mm above finished ground level.

[DUR2545]

11. Install smoke detectors in the dwelling in accordance with part 3.7.2 of the National Construction Code and Australian Standard AS3786. The smoke detectors must be energised by the energy supply system which is available to the dwelling and shall be interconnected.

Provide certification from the licensed Electrician after installation of the smoke detectors which confirms compliance with AS 3786.

[DURNS01]

12. The exportation or importation of waste (including VENM & ENM) from or to the site must be in accordance with the provisions of the Protection of the Environment Operations Act 1997 and the NSW Environmental Protection Authority "Waste Classification Guidelines".

[DURNS02]

### **PRIOR TO ISSUE OF OCCUPATION CERTIFICATE**

13. A person must not commence occupation or use of the whole or any part of a new building or structure (within the meaning of Section 6.9 and 6.10 unless an

occupation certificate has been issued in relation to the building or part (maximum 25 penalty units).

[POC0205]

14. A final occupation certificate must be applied for and obtained within 6 months of any Interim Occupation Certificate being issued, and all conditions of this consent must be satisfied at the time of issue of a final occupation certificate (unless otherwise specified herein).

[POC0355]

15. Prior to occupation or commencement of use a drinking water quality management plan or drinking water quality assurance program prepared in accordance with the Private Water Supply Guidelines, NSW Health 2016 and the Public Health Regulation 2012 shall be prepared and maintained on site. All activities shall comply with the adopted assurance program and the program shall be made available to Council's Authorised Officer upon request.

[POC0950]

16. Prior to occupation the applicant or business operator is to be registered in Council's Private Water Supply Register and pay the appropriate fee under Council's schedule of fees and charges.

[POC0955]

17. Prior to the occupation of any building and prior to the issue of any occupation certificate a final inspection report is to be obtained from Council to verify the satisfactory installation of all plumbing and drainage and the on-site sewage management facility.

[POC1035]

18. Prior to the occupation and prior to the issue of any occupation certificate for the dwelling, the applicant shall obtain approval to operate the on-site sewage management facility under Section 68 of the Local Government Act 1993.

[POC1040]

19. Prior to the issue of an occupation certificate for the Rural Workers cottage the Applicant shall obtain a Building Information Certificate from Council. The Building Information Certificate will not be released until the following matters have been satisfied:

1. Provide a Certificate from a practising Structural Engineer which states that the shed, as constructed, is structurally stable for its intended use,
2. Provide a Statutory Declaration from the property owner which confirms that:
  - i. a barrier, installed to prevent transfer of moisture from the ground into the dwelling, has been installed beneath the floor slab,
  - ii. a barrier has been provided in wet areas such as bathrooms and laundry which will prevent water penetrating into concealed spaces.
3. Install smoke detectors in the dwelling in accordance with part 3.7.2 of the National Construction Code and Australian Standard AS3786.

The smoke detectors must be energised by the energy supply system which

is available to the dwelling and shall be interconnected.

Provide certification from the licensed Electrician who installed the smoke detectors which confirms compliance with AS 3786.

4. Provide an overflow relief gully to the septic drainage line which satisfies Australian Standard AS 3500.
5. Provide a “works as completed” plan of the internal and external sanitary drainage for the dwelling and a ‘Compliance Certificate’ which has been signed by the licensed Plumber who carried out the sanitary plumbing & drainage installation for the dwelling.
6. Provide certification from the Glazier who manufactured the windows, glass doors and shower screen which states that these building elements have been designed & constructed in accordance with Australian Standard AS 2047-1999 & AS 1288-2006

[POCNS01]

## USE

20. The use to be conducted so as not to cause disruption to the amenity of the locality, particularly by way of the emission of noise, dust and odours or the like.

[USE0125]

21. The rural workers dwelling is to be occupied only by a person engaged in agricultural pursuits on the property in accordance with this consent.

[USE0425]

22. All wastes shall be collected, stored and disposed of in accordance with any approved Waste Management Plan or to the satisfaction of the General Manager or delegate.

[USE0875]

23. Subdivision of the development, including strata subdivision, is not permitted.

[USE1255]

24. In the event that untreated or untested water is supplied for rural worker or tourist type accommodation a warning sign shall be displayed at all fixtures. Such signs shall state the source of raw water and method of treatment, if any.

[USE1475]

- C. That a Penalty Infringement Notice (\$6,000) be issued to the applicant being Tamara Haulage Pty Ltd for undertaking development without consent.
- D. ATTACHMENTS 1 and 2 are CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because it contains:-
  - (d) commercial information of a confidential nature that would, if disclosed:
    - (i) prejudice the commercial position of the person who supplied it, or
    - (ii) confer a commercial advantage on a competitor of the council, or
    - (iii) reveal a trade secret.

The Motion was **Carried**

***FOR VOTE - Unanimous***

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There being no further business the Planning Committee Meeting terminated at 6.13pm.

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