



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 7 September 2017

held at
Harvard Room, Tweed Heads Administration Building, Brett Street, Tweed Heads
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 5.48pm.

IN ATTENDANCE

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

Also present were Mr Michael Chorlton (Acting Director Corporate Services), Mr David Oxenham (Director Engineering), Mr Vince Connell (Director Planning and Regulation for the General Manager), Ms Tracey Stinson (Director Community and Natural Resources), Mr Russ Merry (Acting Public Officer) 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 Reverend Chris Lindsay:

"Please remain seated for the prayer."

If you'd like to indicate your agreement, consider bowing your head during the prayer. Otherwise take a moment for quiet reflection on what will best enable good Council decisions to be made today.

Almighty God,

We pray you will guide the Councillors and Council staff of the Tweed Shire Council as they meet together today; help them think calmly and carefully, decide wisely and may their decisions allow great benefit to flow to all people in our Tweed community and our natural environment.

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

APOLOGIES

Attendee Cr **P Allsop** has informed the General Manager that his absence is caused by work commitments.

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Cr C Cherry
Cr R Byrnes

RESOLVED that the apology of Cr **P Allsop** be accepted and the necessary leave of absence be granted.

The Motion was **Carried**

FOR VOTE - Unanimous
ABSENT. DID NOT VOTE - Cr P Allsop

DISCLOSURE OF INTEREST

Nil.

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

P 93

Cr C Cherry
Cr K Milne

RESOLVED that Item 3 [PR-PC] Development Application DA17/0102 for a 17 Lot Community Title Subdivision (16 Residential Lots and 1 Community Lot) at Lot 156 DP 628026 No. 40 Creek Street, Hastings Point from Ordinary Agenda be considered in Confidential session due to its Confidential Nature in accordance with the Local Government Act 1993 Clause 10(A)(2):

(e) information that would, if disclosed, prejudice the maintenance of law

The Motion was **Carried**

FOR VOTE - Unanimous
ABSENT. DID NOT VOTE - Cr P Allsop

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 DA16/0178 for the Use of Illegal Additions to Two Existing Dwellings and Shed at Lot 2 DP 348945 No. 54 Phillip Street, Chinderah**

P 94

**Cr K Milne
Cr R Cooper**

RECOMMENDED that this item be deferred to provide the proponent 30 days to submit any further required amended plans and technical information.

The Motion was **Carried**

***FOR VOTE - Unanimous
Absent did not vote: Cr P Allsop***

- 2 [PR-PC] Development Application DA17/0084 for a Seniors Living (33 Aged Care Residential Rooms and 36 Independent Living Units) at Lots 1, 3 & 4 NPP 271020 Nos. 124-128 Leisure Drive, Banora Point**

P 95

**Cr C Cherry
Cr K Milne**

RECOMMENDED that Development Application DA17/0084 for a Seniors Living (33 Aged Care Residential Rooms and 36 Independent Living Units) at Lots 1, 3 & 4 NPP 271020 Nos. 124-128 Leisure Drive, Banora Point be refused for the following reasons:

1. The amended development application seeks approval to change the internal loop driveway circuit from a two way loop driveway to a single way loop driveway to accommodate additional car parking within the driveway. The proposed development fails to satisfy Section 79C(1)(b) of the Environmental Planning & Assessment Act 1979 as this solution for car parking impacts on the **amenity and safety** of the existing residents by removing half of the width of the only flat exercise circuit that the internal road currently provides. Without the provision of the additional parking being proposed the development represents a reduction of **amenity** for the existing residents in the Retirement village.
2. The amended development application is not considered to be suitable as required by Section 79C(1)(b) of the Environmental Planning & Assessment Act 1979 as the bulk and overshadowing impacts are significant, and the bulk and scale of the development are not in keeping with the **character of** the surrounding development within the Retirement village.

3. The amended development application does not satisfy the **landscaping** provisions under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 when considered over Lot 3 in isolation.
4. The amended development application is not considered to be suitable as required by Section 79C(1)(b) of the Environmental Planning & Assessment Act 1979 as the development represents a reduced **amenity** in terms of the overall provision of landscaped areas to that currently approved.
5. The amended development application is not considered to be suitable as required by Section 79C(1)(b) of the Environmental Planning & Assessment Act 1979 as the development would result in poor **amenity** for future residents in terms of solar access whereby 9 of the 36 independent living units receive no direct sunlight and a further number of units only receive solar access through skylights (which usually provide diffuse light rather than receive direct sunlight).
6. The amended development application seeks approval for a new building predominantly on Lot 3 with minor alterations to Lot 4. The proposed development fails to adequately supply all required provisions of parking and landscaped within Lot 3 and is not considered to be suitable as required by Section 79C(1)(b) of the Environmental Planning & Assessment Act 1979 as the development would result in a reduced levels of **amenity** for existing residents outside of Lot 3. Lot 3 and Lot 4 are under different ownership and could be sold off separately and therefore Lot 3 should be developed independently of Lot 4.
7. The proposed development is not considered to be in the **public interest** as required by Section 79C(1)(e) of the Environmental Planning & Assessment Act 1979 as the development will not maintain the current amenity levels advised to clients when they invested in the facility.
8. The development is considered to be inconsistent with SEPP 65 Design Quality of Residential Flat Development aim (d) as it does not maximise amenity, safety and security for the benefits of its occupants and the wider community.
9. The development is considered to be inconsistent with SEPP (Housing for Seniors or People with a Disability) 2004 - Clause 33 Neighbouring amenity and Streetscape
10. The development is considered to be inconsistent with SEPP (Housing for Seniors or People with a Disability) 2004 - Clause 34 Visual and Acoustic Privacy
11. The development is considered to be inconsistent with SEPP (Housing for Seniors or People with a Disability) 2004 - Clause 35 Solar Access and Design for Climate
12. The development is considered to be inconsistent with SEPP (Housing for Seniors or People with a Disability) 2004 - Clause 38 Accessibility.

The Motion was **Carried**

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

AGAINST VOTE - Cr J Owen, Cr W Polglase

ABSENT. DID NOT VOTE - Cr P Allsop

- 3 [PR-PC] Development Application DA17/0102 for a 17 Lot Community Title Subdivision (16 Residential Lots and 1 Community Lot) at Lot 156 DP 628026 No. 40 Creek Street, Hastings Point**

This item was dealt with in Confidential Session (Minute No. PC30 refers)

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

P 96

Cr K Milne

Cr C Cherry

RECOMMENDED that Development Application DA16/0795 for a two lot subdivision at Lot 7 DP 1178620 No. 2041 Kyogle Road, Terragon be deferred for a site inspection and that a report be brought back after the site inspection considering the additional information that has been provided.

The Motion was **Carried**

FOR VOTE - Unanimous

ABSENT. DID NOT VOTE - Cr P Allsop

- 5 [PR-PC] Development Application DA04/0162.03 for an Amendment to Development Consent DA04/0162 for Expansion and Amalgamation of Existing Quarries at Lot 28 DP 1079480 Pollards Road, Dulguigan**

P 97

Cr J Owen

Cr W Polglase

RECOMMENDED that Development Application DA04/0162.03 for an amendment to Development Consent DA04/0162 for expansion and amalgamation of existing quarries at Lot 28 DP 1079480 Pollards Road, Dulguigan:

1. Be deferred and propose that a workshop is held to address issues and concerns raised by the Tumbulgum Community Association with Council staff, Hy-Tec Industries, available Councillors and the Tumbulgum Community Association to be in attendance.
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2. Request that the Tumbulgum Community Association provide their full list of issues and concerns to Council staff and Hy-Tec Industries to allow due consideration to be given to them prior to the meeting.

The Motion was **Carried**

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

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

P 98

Cr C Cherry
Cr R Cooper

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, in terms of further consideration of DA12/0170 Halcyon House and Paper Daisy Restaurant - Lot 100 DP 1208306 No. 19-25 Cypress Crescent, Cabarita Beach, endorse the following:

The General Manager advises the proponents in writing the following:

1. Council's position is that enabling the motel restaurant to operate for unconstrained general public use would not be substantially the same development as approved and a fresh development application would be required and it is their choice if they wish to remedy the operating terms of the motel;
2. Council does not support intensification of the motel use (accommodation, restaurant and ancillary components) that results in increased demand for on street carparking and/or has the potential to adversely affect the amenity of the neighbourhood such as from noise and traffic; and
3. Council requires the motel (accommodation, restaurant and ancillary components) to operate in accordance with the development consent as it stands, and any unauthorised use is to cease immediately.
4. Council requires the owners to give an update regarding staff numbers for the whole establishment including the proposed day spa.

The Motion was **Carried**

***FOR VOTE - Unanimous
ABSENT. DID NOT VOTE - Cr P Allsop***

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

P 99

**Cr C Cherry
Cr K Milne**

RECOMMENDED that Council notes there are no variations for the month of July 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 P Allsop***

LATE ITEM

P 100

**Cr R Cooper
Cr C Cherry**

RESOLVED that Item a7 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 P Allsop***

a7 [PR-PC] Draft Kingscliff Locality Plan and Development Control Plan; Clarification on the Purpose and Format or Structure of the Resolved Public Meetings

P 101

**Cr R Cooper
Cr R Byrnes**

RECOMMENDED that:

1. The Draft Kingscliff Locality Plan reflect the three storey building character of Kingscliff.
2. Mixed use shop-top housing zones - 12.2 metres with the exception of the identified Marine Parade precinct which will remain at 11.0 metres.
3. Medium density residential only zones - 11.0 metres. A podium no higher than 1.2 metres can be allowed in addition.
4. The consultation Option 1 be adopted with the following change.
 - a. No stakeholders to make presentations. Council staff to provide information on but not limited to the proposed new development footprints, building heights, filling and flooding issues, open space and environmental aspects and road accesses.
 - b. All questions to be limited to three minutes per person/organisation.
 - c. Time frame for meeting be adjusted accordingly.
5. That a report be brought back to Council with all implications of the proposed height changes, prior to public exhibition.

The Motion was **Carried**

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

SUSPENSION OF STANDING ORDERS

P 102

**Cr K Milne
Cr C Cherry**

RESOLVED that Standing Orders be suspended at 7.04pm to deal with Item a1 of the Ordinary Council Agenda.

The Motion was **Carried**

***FOR VOTE - Unanimous
ABSENT. DID NOT VOTE - Cr P Allsop***

RESUMPTION OF STANDING ORDERS

P 103

**Cr K Milne
Cr C Cherry**

RESOLVED that Standing Orders be resumed at 7.54pm.

The Motion was **Carried**

***FOR VOTE - Unanimous
ABSENT. DID NOT VOTE – Cr P Allsop***

CONFIDENTIAL COMMITTEE

P 104

**Cr C Cherry
Cr J Owen**

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.

The Motion was **Carried**

***FOR VOTE - Unanimous
ABSENT. DID NOT VOTE - Cr P Allsop***

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

ITEM MOVED FROM ORDINARY TO CONFIDENTIAL

- 3 [PR-PC] Development Application DA17/0102 for a 17 Lot Community Title Subdivision (16 Residential Lots and 1 Community Lot) at Lot 156 DP 628026 No. 40 Creek Street, Hastings Point**

REASON FOR CONFIDENTIALITY:

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:

(e) information that would, if disclosed, prejudice the maintenance of law

PC 30

That in respect of Development Application DA17/0102 for a 17 lot community title subdivision (16 residential lots and 1 community lot) at Lot 156 DP 628026 No. 40 Creek Street, Hastings Point Council supports further negotiating with the applicant in an attempt to resolve the identifiable issues, including but not limited to engineering and ecological, in accordance with the tabled document provided at the meeting.

The Motion was **Carried**

FOR VOTE - Unanimous

ABSENT. DID NOT VOTE - Cr P Allsop

P 105

Cr K Milne
Cr C Cherry

RECOMMENDED that the recommendations of the Confidential Committee be adopted.

The Motion was **Carried**

FOR VOTE - Unanimous
ABSENT. DID NOT VOTE – Cr P Allsop

There being no further business the Planning Committee Meeting terminated at 8.09pm.

