



TWEED
SHIRE COUNCIL

Mayor: Cr B Longland

Councillors: P Youngblutt (Deputy Mayor)
D Holdom
K Milne
W Polglase
K Skinner
J van Lieshout

Agenda

Extraordinary Council Meeting Monday 19 December 2011

held at Murwillumbah Cultural and Civic Centre
commencing at 4.30pm

COUNCIL'S CHARTER

Tweed Shire Council's charter comprises a set of principles that are to guide Council in the carrying out of its functions, in accordance with Section 8 of the Local Government Act, 1993.

Tweed Shire Council has the following charter:

- to provide directly or on behalf of other levels of government, after due consultation, adequate, equitable and appropriate services and facilities for the community and to ensure that those services and facilities are managed efficiently and effectively;
- to exercise community leadership;
- to exercise its functions in a manner that is consistent with and actively promotes the principles of multiculturalism;
- to promote and to provide and plan for the needs of children;
- to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development;
- to have regard to the long term and cumulative effects of its decisions;
- to bear in mind that it is the custodian and trustee of public assets and to effectively account for and manage the assets for which it is responsible;
- to facilitate the involvement of councillors, members of the public, users of facilities and services and council staff in the development, improvement and co-ordination of local government;
- to raise funds for local purposes by the fair imposition of rates, charges and fees, by income earned from investments and, when appropriate, by borrowings and grants;
- to keep the local community and the State government (and through it, the wider community) informed about its activities;
- to ensure that, in the exercise of its regulatory functions, it acts consistently and without bias, particularly where an activity of the council is affected;
- to be a responsible employer.

Items for Consideration of Council:

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ORDINARY ITEMS FOR CONSIDERATION

REPORTS THROUGH THE GENERAL MANAGER

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

MATTERS FOR CONSIDERATION UNDER SECTION 79(C)(1) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

The following are the matters Council is required to take into consideration under Section 79(C)(1) of the Environmental Planning and Assessment Act 1979 in assessing a development application.

MATTERS FOR CONSIDERATION

1. In determining a development application, a consent authority shall take into consideration such of the following matters as are of relevance to the development the subject of that development application:
 - (a) the provisions of
 - (i) any environmental planning instrument; and
 - (ii) any draft environmental planning instrument that is or has been placed on exhibition and details of which have been notified to the consent authority, and
 - (iii) any development control plan, and
 - (iv) any matters prescribed by the regulations,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 of 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.

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1 [PR-CM] DA11/0257 - Kingscliff Police Headquarters - Councillor Requested Urgent Report – Zoning, Permissibility and any Possible Constraints that may be Impediments to the Use of Alternative Nominated Sites for this Facility

ORIGIN:

Development Assessment

FILE NO: DA11/0257 Pt1

SUMMARY OF REPORT:

At its meeting of Tuesday, 13 December 2011, Council resolved through a Mayoral Minute the following in respect of the Northern Joint Regional Planning Panel's (JRPP) decision to approve DA11/0257 for a new police headquarters :

“Given Council’s repeated opposition to siting this facility at this location and the distinct possibility of a legal challenge in the Land and Environment Court to the JRPP decision, I move the following recommendation:

1. *Council staff provide an urgent report on zoning, permissibility and any possible constraints that may be impediments to the use of the following alternative sites for this facility.*
 - a) *The site at Cudgen Road /Tweed Coast Road intersection that was previously identified by the Police in their rezoning application to Council;*
 - b) *The site at the Cudgen Road/Tweed Coast Road intersection opposite the site mentioned in (a) above;*
 - c) *The RTA land at the Chinderah roundabout;*
 - d) *A site at the intersection of the Pacific Motorway and Cudgera Creek Road, Pottsville;*
 - e) *A site on the south western corner of the interchange at Clothiers Creek Road owned by the RTA.*
2. *Following receipt of this report, Council gives consideration to seeking urgent representation to meet with the Minister for Police.”*

Accordingly this report has been produced for the five nominated sites mentioned above and contains maps and text having regard to the following data:

- SEPP (Infrastructure) 2007;
- Tweed LEP 2000;
- Draft Tweed LEP 2012;
- Aerial Imagery from 2009;

- Tweed LEP 2000 Zoning Maps;
- Draft Tweed LEP 2012 Zoning Maps;
- Acid Sulphate Soil Mapping;
- Flood Mapping;
- Bushfire Mapping;
- Agricultural Land Mapping;
- Town Water & Sewer Mapping; and
- Ecological Mapping.

This information has been provided for Council's information and determination.

RECOMMENDATION:

That Council determines this matter.

REPORT:

A police station is a land use that can be considered under either State Environmental Planning Policy (Infrastructure) 2007 or the Tweed LEP 2000 depending on the circumstances of the site.

State Environmental Planning Policy (Infrastructure) 2007 and Tweed LEP 2000 have different definitions to call upon to determine permissibility of police stations. These are detailed below to assist in the determination of permissibility.

SEPP (Infrastructure) 2007

SEPP (Infrastructure) 2007 specifies that certain land uses in certain zones are either exempt development, development permitted without consent, or development permitted with consent.

In addition the SEPP states at Clause 8 that SEPP (Infrastructure) 2007 prevails over any other environmental planning instrument.

But if SEPP (Infrastructure) 2007 is silent on permissibility in a particular zone a local environmental planning instrument (such as the Tweed LEP 2000) can be relied upon to enable permissibility.

Division 6 of the SEPP – Emergency services facilities and bushfire hazard reduction defines emergency services facility as:

"A building or place (including a helipad) used in connection with the provision of emergency services by an emergency services organisation (which includes the NSW Police Force)"

Division 14 of the SEPP - Public administration buildings and buildings of the Crown specifically defines public administration buildings as:

"a building used as offices or for administrative or other like purposes by the Crown, a statutory body, a Council or an organisation established for public purposes, and includes a courthouse or a police station."

Due to the specific mention of 'police station' in the definition of 'public administration building', the later definition is considered more suitable for the purposes of the SEPP.

Tweed LEP 2000

The Tweed LEP 2000 would best define a police station as either a public building which is defined as:

"a building used as offices or for administrative or other like purposes by the Crown, a statutory body, a Council or an organisation established for public purposes."

or a emergency service facility which is defined as:

"facilities for air sea rescue, surf life saving, bushfire control, ambulances or the like."

Due to the mention of 'ambulances or the like' the definition of 'emergency service facility', is considered more suitable for the purposes of the LEP.

The tables and aerial photos below provide guidance in determining the best definition and best environmental planning instrument to use in regards to the following five sites.

Site (a) The site at Cudgen Road/Tweed Coast Road intersection that was previously identified by the Police in their rezoning application to Council - Lot 13 DP 868628



Land Size	39.35ha
Ownership	Private – Kingscliff Land Company Pty Ltd
Tweed LEP 2000 Zoning	Split Zoning. Primarily 1(b1) Agricultural Protection near both road frontages with small sections of 1(a) Rural Land and 7(a) Environmental Protection in the south eastern corner of the site.
Draft LEP 2012 Zoning	Split Zoning. Primarily RU1 Primary Production near both road frontages with small sections of RU2 Rural Landscape and E2 Environmental Protection in the south and south eastern corner of the site. Public administration buildings not permitted in these zones under the Draft LEP 2012.
Agricultural Farmland	The northern section of the site is mapped as State Significant Farmland.
Flood Affected	An existing watercourse traverses the central part of the site. This area is affected by both the 100 year ARI flood and the Probable Maximum Flood (PMF). That part of the site adjacent to Cudgen Road is elevated above all modelled flood events. Parts of this site would therefore be suitable for "critical infrastructure" under the provisions of Development Control

	Plan Section A3 - Development of Flood Liable Land.
Acid Sulfate Soils Affected	<p>The majority of the site is mapped as having Class 5 Acid Sulfate Soils which means that one must have regard for works within 500m of adjacent Class 1, 2, 3 or 4 which are likely to lower the water table below 1m AHD in Class 1,2, 3 or 4 land.</p> <p>The central section of the site has a strip of Class 3 Acid Sulfate Soils which means that works beyond 1m below the natural ground surface or works by which the watertable is likely to be lowered beyond 2 metres below natural surface need to have regard to ASS.</p>
Bushfire Affected	The central eastern boundaries are mapped as bushfire prone land.
Ecological Status	The eastern portion of the site is mapped as a Regional Fauna Corridor with a small section of mapping "Key Habitat". In addition there are small sections of land mapped within the eastern part of the site as containing Secondary Koala Habitat.
Connected to Water & Sewer	Water and Sewer services are located in the vicinity and future connection would be possible at the applicant's expense.
Permissible	<p>The SEPP does not make provision for a public building in primary zone over this site.</p> <p>However, under the Tweed LEP 2000 an emergency service facility is only permitted with consent in accordance with Clause 8(2).</p>

Site (b) The site at the Cudgen Road/Tweed Coast Road intersection opposite the site mentioned in (a) above - Lot 6 DP 727425



Land Size	5.7ha
Ownership	Private – Mr & Mrs Agius
Tweed LEP 2000 Zoning	1(b1) Agricultural Protection
Draft LEP 2012 Zoning	RU1 Primary Production Public administration buildings not permitted in this zone under the Draft LEP 2012.
Agricultural Farmland	The entire site is mapped as State Significant Farmland
Flood Affected	The site is above 100 year ARI flood level. The northern portion of the site is affected by the Probable Maximum Flood (PMF), however that part of the site adjacent to Cudgen Road is elevated above all modelled flood events. Parts of this site would therefore be suitable for "critical infrastructure" under the provisions of Development Control Plan Section A3 - Development of Flood Liable Land.
Acid Sulfate Soils Affected	The whole site is mapped as having Class 5 Acid Sulfate Soils which means that one must have regard for works within 500m of adjacent Class 1, 2, 3 or 4 which are likely to lower the water table below 1m AHD in Class 1,2, 3 or 4 land.
Bushfire Affected	The northern boundary is mapped as bushfire prone land.
Ecological Status	The whole site is mapped as a Regional Fauna Corridor
Connected to Water & Sewer	Water and Sewer services are located in the vicinity and future connection would be possible at the applicant's expense.

Permissible	<p>The SEPP does not make provision for a public building in the RU1 zone over this site.</p> <p>However, under the Tweed LEP 2000 an emergency service facility is only permitted with consent in accordance with Clause 8(2).</p>
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Site (c) The RTA land at the Chinderah roundabout - Lot 11 DP 830659



Land Size	3.996ha
Ownership	Roads and Traffic Authority NSW
Tweed LEP 2000 Zoning	4(a) Industrial
Draft LEP 2012 Zoning	IN1 General Industrial Public administration buildings are permissible with consent in this zone under the Draft LEP 2012.
Agricultural Farmland	Not affected
Flood Affected	The site is affected by the 100 year ARI flood, with a peak level of RL 3.2m AHD. Existing ground levels (excluding any recent work by the landholder associated with the Highway Upgrade) are approximately RL 2.0m AHD. Probable Maximum Flood (PMF) level for the site is RL 8.1m AHD. It is considered that this site does not meet the criteria for "critical infrastructure" under DCP-A3, which states that: <i>"All new critical infrastructure and facilities to be located above PMF level, unless exceptional circumstances can be justified, such as servicing existing flood prone communities where no practical alternative exists."</i>
Acid Sulfate Soils Affected	Class 3 Acid Sulfate Soils which means that works beyond 1m below the natural ground surface or works by which the watertable is likely to be lowered beyond 2 metres below

	natural surface need to have regard to ASS.
Bushfire Affected	The eastern portion of the site is mapped as bushfire prone land.
Ecological Status	Sections of this site are mapped as containing Primary Koala Habitat.
Connected to Water & Sewer	Water and Sewer services are located in the vicinity of Tweed Coast Road and future connection would be possible at the applicant's expense.
Permissible	<p>The SEPP does not make provision for a public building in the IN1 General Industrial zone over this site.</p> <p>However, under the Tweed LEP 2000 an emergency service facility is allowed only with consent.</p>

Site (d) A site at the intersection of the Pacific Motorway and Cudgera Creek Road, Pottsville



Land Size	Various possible sites
Ownership	Private – various owners
Tweed LEP 2000 Zoning	Various - 1(a) Rural and 1(b1) Agricultural Protection
Draft LEP 2012 Zoning	Various - RU1 Primary Production, RU2 Rural Landscape, and part E2 Environmental Conservation Public administration buildings are not permitted in these zones under the Draft LEP 2012.
Agricultural Farmland	Part of this area is mapped as Regionally Significant Farmland
Flood Affected	All sites in the immediate vicinity of Cudgera Creek Road at the highway interchange are affected by the 100 year ARI flood. Elevated land exists on the north western side of the highway (accessed via Reserve Creek Road), which is above Probable Maximum Flood Level.
Acid Sulfate Soils Affected	The majority of the area is mapped as having Class 5 Acid Sulfate Soils which means that one must have regard for works within 500m of adjacent Class 1, 2, 3 or 4 which are likely to lower the water table below 1m AHD in Class 1, 2, 3 or 4 land. The eastern section of the site has a large portion of Class 3 Acid Sulfate Soils which means that works beyond 1m below the natural ground surface or works by which the watertable is likely to be lowered beyond 2 metres below natural surface need to have regard to ASS.

Bushfire Affected	Parts of this area are mapped as bushfire prone land.
Ecological Status	Parts of this area are mapped as containing Secondary (B) Koala Habitat.
Connected to Water & Sewer	The immediate area does not have town water or sewer.
Permissible	<p>The SEPP does not make provision for a public building in the RU1 or RU2 or E2 zone over this site.</p> <p>Under the Tweed LEP 2000 in the 1(a) zone an emergency service facility is only permitted with consent.</p> <p>Under the Tweed LEP 2000 in the 1(b1) zone an emergency service facility is only permitted with consent in accordance with Clause 8(2).</p>

Site (e) A site on the south western corner of the interchange at Clothiers Creek Road owned by the RTA – Lots 5 & 6 DP 1080196



Land Size	Lot 5 = 1.92ha Lot 6 = 1.6ha
Ownership	Roads and Traffic Authority NSW
Tweed LEP 2000 Zoning	Split Zoning - 1(a) Rural and 1(b1) Agricultural Protection
Draft LEP 2012 Zoning	Split Zoning - RU1 Primary Production and RU2 Rural Landscape Public administration buildings are not permitted in these zones under the Draft LEP 2012.
Agricultural Farmland	Part of this area is mapped as Regionally Significant Farmland
Flood Affected	The majority land is below the 100 year ARI flood level of RL 3.3m AHD. Limited land area adjacent to Clothiers Creek Road is above Probable Maximum Flood Level.
Acid Sulfate Soils Affected	The site has two Acid Sulfate Soil categories. On the northern boundary the site is mapped as Class 5 Acid Sulfate Soils which means that one must have regard for works within 500m of adjacent Class 1, 2, 3 or 4 which are likely to lower the water table below 1m AHD in Class 1,2, 3 or 4 land. On the southern boundaries of the properties the site is mapped as Class 2 Acid Sulfate Soils which means that works below ground surface or works by which the water table is likely to be lowered need to have regard to ASS.

Bushfire Affected	The western portion of these sites is mapped as bushfire prone.
Ecological Status	Parts of this area are mapped as containing Secondary (B) Koala Habitat.
Connected to Water & Sewer	The immediate area does not have town water or sewer.
Permissible	<p>The SEPP does not make provision for a public building in the RU1 or RU2 zone over this site.</p> <p>Under the Tweed LEP 2000 in the 1(a) zone an emergency service facility is only permitted with consent.</p> <p>Under the Tweed LEP 2000 in the 1(b1) zone an emergency service facility is only permitted with consent in accordance with Clause 8(2).</p>

GENERAL COMMENTS REGARDING TRAFFIC:

Individual traffic assessment of each site with regard to potential traffic impacts have not been considered, as these are site specific and complex, and must take into consideration issues including:

- * Traffic capacity of adjacent local and distributor roads;
- * Traffic capacity of adjacent intersections;
- * Environmental capacity of the road environment (to consider issues such as noise, impacts to pedestrian movements, general amenity - this may be significantly less than the acceptable traffic capacity);
- * Proximity to the Pacific Highway and its interchanges (requiring consultation with Roads and Maritime Services);
- * Site access;
- * Carparking;
- * Access to public transport and footpath and cycleway facilities.

OPTIONS:

1. Receives and notes this report.
2. Seeks urgent representation to meet with the Minister for Police to discuss alternative sites.

CONCLUSION:

This information has been provided for Council's information and determination.

LEGAL/RESOURCE/FINANCIAL IMPLICATIONS:

Nil.

POLICY IMPLICATIONS:

Nil.

UNDER SEPARATE COVER/FURTHER INFORMATION:

To view any "non confidential" attachments listed below, access the meetings link on Council's website www.tweed.nsw.gov.au (from 8.00pm Wednesday the week before the meeting) or visit Council's offices at Tweed Heads or Murwillumbah (from 8.00am Thursday the week before the meeting) or Council's libraries (from 10.00am Thursday the week of the meeting).

1. Community Posters (provided by Cr K Skinner as indicated at the Council meeting held 13 December 2011) ECM 43516596.
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