



TWEED
SHIRE COUNCIL

Mayor: Cr G Bagnall

Councillors: P Youngblutt (Deputy Mayor)
C Byrne
B Longland
K Milne
W Polglase

Minutes

Planning Committee Meeting Thursday 2 July 2015

held at Murwillumbah Cultural and Civic Centre
commencing at 5.00pm

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 5.01pm.

IN ATTENDANCE

Cr G Bagnall (Mayor), Cr P Youngblutt (Deputy Mayor), Cr C Byrne, Cr B Longland, Cr K Milne, and Cr W Polglase.

Also present were Mr Troy Green (General Manager), Ms Liz Collyer (Director Corporate Services), Mr Danny Rose (Acting Director Engineering), Mr Vince Connell (Director Planning and Regulation), Ms Tracey Stinson (Director Community and Natural Resources), 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 Mayor.

APOLOGIES

Nil.

DISCLOSURE OF INTEREST

Cr G Bagnall declared a Pecuniary conflict of interest in Item 5.

The nature of this interest is that he has a restaurant in the Murwillumbah CBD but it is remote from the proposed development.

Cr G Bagnall will vacate the Chambers during discussion and voting.

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] **Unauthorised Earthworks and Pollution Events at Lots 113, 124, 127-129, 136 and 138 DP 755724 Tyalgum Road, Tyalgum**

P 73

Cr P Youngblutt
Cr W Polglase

PROPOSED that Council, in respect of the unauthorised earthworks and pollution events affecting parts of the property described as Lots 113, 124, 127-129, 136 and 138 DP 755724 Tyalgum Road, Tyalgum, and adjoining properties, including Hopping Dicks Creek, endorses the following:

1. In terms of the unauthorised earthworks - construction of road and house pad discontinues the proposal to take Class 5 proceedings in the NSW Land and Environment Court against the site owner; and
2. In terms of water pollution - remediation of tributary adjacent to the Crown Road Reserve, deems the Clean-Up Notice satisfied as per the advice from NSW Soil Conservation Services and NSW Office of Water.

AMENDMENT 1

P 74

Cr K Milne
Cr G Bagnall

PROPOSED that this item be deferred to the Tweed River Committee for their advice.

Amendment 1 was **Lost**

FOR VOTE - Cr K Milne, Cr G Bagnall

AGAINST VOTE - Cr B Longland, Cr C Byrne, Cr W Polglase, Cr P Youngblutt

AMENDMENT 2

P 75

Cr B Longland
Cr C Byrne

RECOMMENDED that Council, in respect of the unauthorised earthworks and pollution events affecting parts of the property described as Lots 113, 124, 127-129, 136 and 138 DP 755724 Tyalgum Road, Tyalgum, and adjoining properties, including Hopping Dicks Creek, endorses the following:

1. In terms of the unauthorised earthworks - construction of road and house pad discontinues the proposal to take Class 5 proceedings in the NSW Land and Environment Court against the site owner; and
2. In terms of water pollution - remediation of tributary adjacent to the Crown Road Reserve, deems the Clean-Up Notice satisfied as per the advice from NSW Soil Conservation Services and NSW Office of Water.
3. That this issue be referred to the Tweed River Committee for advice on the ongoing management and monitoring of the waterway.

Amendment 2 was **Carried**

FOR VOTE - Cr B Longland, Cr G Bagnall, Cr C Byrne, Cr W Polglase, Cr P Youngblutt
AGAINST VOTE - Cr K Milne

AMENDMENT 3

P 76

Cr K Milne
Cr G Bagnall

PROPOSED that Council, in respect of the unauthorised earthworks and pollution events affecting parts of the property described as Lots 113, 124, 127-129, 136 and 138 DP 755724 Tyalgum Road, Tyalgum, and adjoining properties, including Hopping Dicks Creek, endorses the following:

1. In terms of the unauthorised earthworks - construction of road and house pad discontinues the proposal to take Class 5 proceedings in the NSW Land and Environment Court against the site owner; and
2. In terms of water pollution - remediation of tributary adjacent to the Crown Road Reserve, Council requires the owner of Lots 113, 124, 127-129, 136 and 138 DP755724 Tyalgum Road, Tyalgum to develop, implement and fund a 5 year management and monitoring plan to achieve improved outcomes for riparian ecosystem condition and water quality in the creek. The management and monitoring plan should be prepared and implemented by suitably qualified and experienced persons, and shall be in accordance with Councils Draft habitat Restoration Plan Preparation Guidelines and to the satisfaction of the General Manager.
3. That this issue be referred to the Tweed River Committee for advice on the ongoing management and monitoring of the waterway.

Amendment 3 was **Lost**

FOR VOTE - Cr K Milne, Cr G Bagnall
AGAINST VOTE - Cr B Longland, Cr C Byrne, Cr W Polglase, Cr P Youngblutt

Amendment 2 on becoming the Motion was **Carried** (Minute No. P 75 refers)

FOR VOTE - Cr B Longland, Cr C Byrne, Cr W Polglase, Cr P Youngblutt

AGAINST VOTE - Cr K Milne, Cr G Bagnall

2 [PR-PC] PP10/0007 Mooball Planning Proposal

P 77

Cr G Bagnall

Cr K Milne

PROPOSED that:

1. The summary of public submissions received in response to the public exhibition of the Mooball Planning Proposal, PP10/0007, during 30 July to 29 August 2014, is received as a true and accurate record.
2. A public hearing under Section 57(5) of the *Environmental Planning and Assessment Act 1979* not be held in relation to the issues raised by way of submission as studies addressing certain issues, the subject of Council's Resolution of 21 November 2013.
3. The Planning Proposal be amended to incorporate the recommendations detailed within Table 3 of this report (Recommended Post Exhibition Planning Proposal Amendments).
4. No further action in respect of the Planning Proposal be undertaken until the additional studies required of the Proponent pursuant to Council's Resolutions of 21 November 2013 have been prepared to Council's satisfaction, submitted, and the findings made publicly available and reported to a Meeting of the Council.
5. Council proceeds to finalise the Planning Proposal in accordance with the Resolutions above, and refer the amended Planning Proposal to the Minister for Planning and Environment in accordance with Section 58(2) of the *Environmental Planning and Assessment Act 1979* for their review and re-determination if appropriate.
6. Council proceeds to assist the Proponent finalise their Voluntary Planning Agreement and proceed to publicly exhibit the draft Agreement for 28 days in accordance with Section 93(G) of the *Environmental Planning and Assessment Act 1979*.
7. The commitment's given to Council at the Councillor Workshop of 11 June 2015 by the Proponents in regard to providing detailed guidelines on housing typology, materials, landscape cover and architectural stylistic or character features that are representative of the local area, are to be incorporated within their Voluntary Planning Agreement.

AMENDMENT 1

P 78

Cr P Youngblutt

Cr C Byrne

PROPOSED that:

1. The summary of public submissions received in response to the public exhibition of the Mooball Planning Proposal, PP10/0007, during 30 July to 29 August 2014, is received as a true and accurate record.
2. A public hearing under Section 57(5) of the *Environmental Planning and Assessment Act 1979* not be held in relation to the issues raised by way of submission as the issues are not of such significance to warrant a public hearing.
3. The Planning Proposal be amended to incorporate the recommendations detailed within Table 3 of this report (Recommended Post Exhibition Planning Proposal Amendments), except Item 1 and removal of Item 3 of that table. The minimum lot size is to remain at 450m², as publicly exhibited.
4. The additional studies and information referred to in Item 3 and Item 6 of the Council Resolution to the Meeting of 21 November 2013 relating to further detailed site investigations and provisions relating to Lot B are not required as part of this Planning Proposal, and all commitments of the Proponent made in relation to Lot B are to be contained within a legally enforceable planning agreement as detailed in Item 5 of Table 3 to this Report.
5. Council proceeds to finalise the Planning Proposal in accordance with the Resolutions above, and refer the amended Planning Proposal to the Minister for Planning and Environment in accordance with Section 58(2) of the *Environmental Planning and Assessment Act 1979* for their review and re-determination if appropriate.
6. Council proceeds to assist the Proponent finalise their Voluntary Planning Agreement and proceed to publicly exhibit the draft Agreement for 28 days in accordance with Section 93(G) of the *Environmental Planning and Assessment Act 1979*.
7. The commitments given to Council at the Councillors Workshop of 11 June 2015 by the Proponent's in regard to providing detailed guidelines on housing typology, materials, landscape cover and architectural stylistic or character features that are representative of the local area, are to be incorporated within their Voluntary Planning Agreement.

FOR VOTE - Cr C Byrne, Cr W Polglase, Cr P Youngblutt

AGAINST VOTE - Cr B Longland, Cr K Milne, Cr G Bagnall

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

AMENDMENT 2

P 79

**Cr B Longland
Cr G Bagnall**

RECOMMENDED that this item be deferred to 6 August 2015 Planning Committee meeting to enable a workshop to be held with Council staff so that Councillors can be better informed on the critical issues of flood impact and the rationale behind the recommended lot sizes.

Amendment 2 was **Carried**

**FOR VOTE - Cr B Longland, Cr C Byrne, Cr W Polglase, Cr P Youngblutt
AGAINST VOTE - Cr K Milne, Cr G Bagnall**

Amendment 2 on becoming the Motion was **Carried** (Minute No. P 79 refers)

**FOR VOTE - Cr B Longland, Cr C Byrne, Cr W Polglase, Cr P Youngblutt
AGAINST VOTE - Cr K Milne, Cr G Bagnall**

3 [PR-PC] PP11/0002 Pottsville Employment Land - Referral to Department of Planning and Environment to have Plan Made

P 80

**Cr G Bagnall
Cr K Milne**

RECOMMENDED that Council endorse that:

1. Planning Proposal for Pottsville Employment Land be amended and resubmitted to the NSW Department of Planning & Environment under Clause 58 of Environmental Planning and Assessment Act 1979 for a Gateway reconsideration;
2. Upon receiving the Gateway Determination from the NSW Department Planning & Environment the Planning Proposal be re-exhibited for a period of not less than 14 days in accordance with relevant statutory requirements and the Determination Notice; and
3. Following a public exhibition of the Planning Proposal a further report on the content of submissions received be reported to Council at the earliest time. Should there be no submissions received, no further report will be submitted to Council, and the Planning Proposal as exhibited will be submitted directly to the Department.

The Motion was **Carried**

FOR VOTE - Unanimous

4 [PR-PC] Planning Proposal PP13/0002 Palm Lake Resort, 2 Barneys Point Road, Banora Point - Land Rezoning

P 81

**Cr C Byrne
Cr P Youngblutt**

RECOMMENDED that:

1. Council endorses the making of the Local Environmental Plan Amendment No. 7 to facilitate the rezoning of part of Lot 11 DP 1206666, being part of the Palm Lake Resort at 2 Barneys Point Road, Banora Point, and the referral of Planning Proposal (PP13/0002) to the NSW Department of Planning and Environment to be made; and
2. Compliance with the Planning for Bushfire Protection 2006, as well as any adverse impact on the natural environment will be assessed at the Development Application stage.

AMENDMENT 1

P 82

**Cr K Milne
Cr G Bagnall**

PROPOSED that the response from the NSW Rural Fire Service indicates that this planning proposal in its current form is inconsistent with Direction 4.4 provided under Section 117. Whilst the NSW Rural Fire Service provided an avenue to continue with the planning proposal with a view to seeking appropriate and compliant land use at the DA stage, Council may decide not pursue the planning proposal as it does not guarantee delivery of strategically appropriate outcome for the site.

This option will not only prohibit potential development of additional villas; it will also preclude other, non-habitable uses related with a caravan park land use.

Amendment 1 was **Lost**

FOR VOTE - Cr K Milne, Cr G Bagnall

AGAINST VOTE - Cr B Longland, Cr C Byrne, Cr W Polglase, Cr P Youngblutt

The Motion was **Carried** (Minute No. P81 refers)

FOR VOTE - Cr B Longland, Cr C Byrne, Cr W Polglase, Cr P Youngblutt

AGAINST VOTE - Cr K Milne, Cr G Bagnall

**5 [PR-PC] PP15/0003 Murwillumbah Services Bowls and Sports Club
(Woolworths Supermarket)**

DECLARATION OF INTEREST

Cr G Bagnall declared a Pecuniary conflict of interest in this item.

The nature of this interest is that he has a restaurant in the Murwillumbah CBD but it is remote from the proposed development.

Cr G Bagnall vacated the Chambers and took no part in the discussion and voting.

Cr P Youngblutt assumed the chair.

P 83

**Cr W Polglase
Cr C Byrne**

RECOMMENDED that this item be received and noted and no action taken at this point in time.

The Motion was **Carried**

***FOR VOTE - Unanimous
ABSENT DID NOT VOTE: Cr G Bagnall***

Cr G Bagnall resumed the meeting.

6 [PR-PC] Local Heritage Assistance Fund Grants

P 84

**Cr W Polglase
Cr P Youngblutt**

RECOMMENDED that Council receives and notes the summary of the outcomes of the 2014-15 inaugural Local Heritage Assistance Fund Grants program.

The Motion was **Carried**

FOR VOTE - Unanimous

7 [PR-PC] Draft Rural Villages Strategy

P 85

**Cr W Polglase
Cr P Youngblutt**

RECOMMENDED that Council endorse that:

1. The Draft Rural Villages Strategy be placed on public exhibition for a period of 60 days and accepts public submissions over that period; and
2. Following public exhibition, a further report on the content of submissions received be reported back to Council at the earliest time.

The Motion was **Carried**

FOR VOTE - Unanimous

8 [PR-PC] Installation of Instrument Landing System - Preliminary Draft Major Development Plan - Gold Coast Airport

P 86

**Cr P Youngblutt
Cr C Byrne**

RECOMMENDED that Council prepares a submission to Gold Coast Airport Pty Ltd identifying the potential adverse ecological impacts associated with the installation of the localiser antenna component of the Instrument Landing System.

The Motion was **Carried**

FOR VOTE - Unanimous

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

P 87

Cr W Polglase

Cr K Milne

RECOMMENDED that Council notes there are no variations for the month of June 2015 to Development Standards under State Environmental Planning Policy No. 1 - Development Standards.

The Motion was **Carried**

FOR VOTE - Unanimous

There being no further business the Planning Committee Meeting terminated at 6.16pm.

