

Planning Committee Meeting

Thursday, 7 September 2023 at 3:30 PM

Harvard Room,
Tweed Heads Administration Building, Brett Street,
Tweed Heads

Meeting is being held remotely via Livestream

UNCONFIRMED MINUTES

1. IN ATTENDANCE

The meeting commenced at 3.33pm.

Cr Chris Cherry (Mayor - attending virtually), Cr Meredith Dennis (Deputy Mayor), Cr Reece Byrnes, Cr Rhiannon Brinsmead, Cr Nola Firth (attending virtually), Cr James Owen and Cr Warren Polglase.

Also present were Michael Chorlton Manager Financial Services (for the General Manager), Stephanie Papadopoulos Manager Corporate Governance (and for the Director Corporate Services), Tim Mackney (Acting Director Engineering), Denise Galle (Director Planning and Regulation), Naomi Searle (Director Sustainable Communities and Environment - attending virtually), Shane Davidson (Executive Officer) and Janet Twohill and Dawn Valle (Business Paper Administrator).

2. ABORIGINAL STATEMENT

The Mayor acknowledged the Bundjalung Aboriginal Nation with the following statement:

"We wish to acknowledge the Ngandowal and Minyungbal speaking people of the Bundjalung country in particular the Goodjinburra, Tul-gi-gin and Moorung - Moobah clans as being the traditional owners and custodians of the land and waters within the Tweed Shire boundaries. We also acknowledge and respect the Tweed Aboriginal community's right to speak for its Country and to care for its traditional Country in accordance with its lore, customs and traditions."

3. PRAYER

The meeting opened with a Prayer read by Pastor Michael Boyd

Gracious God,

We approach a Spring and Summer full of uncertainty. We witnessed the northern hemisphere summer and have seen the warnings for dangerous weather to come. We are grateful for Council's efforts to repair the damage caused by recent disasters, and for their work to mitigate risks in the future.

And yet the future remains so unknown to us. We pray for everyone in our community who are still recovering from trauma and are dreading another summer. Please grant wisdom, safety, and grace to all people, both paid and volunteer, who protect our Shire. Guide all who have the responsibility to plan for the future to keep us safe.

May all Councillors and Staff find a deep satisfaction in their work on our behalf, and may we all experience true community as we live and work together.

May your grace, mercy, and peace be each one's experience throughout this meeting.

We pray this in the name of Jesus, Amen.

4. APOLOGIES

Approval to obtain by Audio-Visual means

Cr Chris Cherry and Cr Nola Firth seek approval attend the meeting by audio-visual means due to attendance at a conference for Council.

Cr Reece Byrnes
Cr Meredith Dennis (Deputy Mayor)

RECOMMENDED that leave be granted to attend the meeting by audio-visual means in exceptional circumstances.

The Motion was **Carried**

VOTE FOR - *Cr Chris Cherry (Mayor), Cr Meredith Dennis (Deputy Mayor), Cr Reece Byrnes, Cr Rhiannon Brinsmead, Cr James Owen, Cr Warren Polglase*

VOTE AGAINST - *None*

ABSENT. DID NOT VOTE - *Cr Nola Firth*

5. DISCLOSURE OF INTERESTS

Nil.

6. ITEMS BY EXCEPTION

Nil.

7. REPORTS THROUGH THE GENERAL MANAGER

8. REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

8.1. Development Application DA22/0421 for a childcare centre at Lot 11 DP 1244396 No. 647 Terranora Road, Terranora

**Cr Nola Firth
Cr Chris Cherry (Mayor)**

PROPOSED that:

1. Development Application DA22/0421 for a childcare centre at Lot 11 DP 1244396 No. 647 Terranora Road, Terranora be approved subject to the conditions attached to the report for this item and as amended below:
 11. The tree on the nature strip of Terranora Road - *Glochidion ferdinandi* (cheese tree) adjacent to the northwest corner of the property is to be retained and protected during construction in accordance with AS4970-2009 Protection of Trees on Development Sites. Specifically, the *Glochidion ferdinandi* (cheese tree) root zone is to be physically marked out on-site before works commence to ensure it is not disturbed or damaged during construction.
 108. All deliveries to the premises are to only occur **prior to 7.00am or 10.00am** to 2.00pm Monday to Friday in accordance with the approved Car Park Management Plan prepared by CTP Consult Pty Ltd and dated 4 July 2023, unless otherwise approved by Council's General Manager or delegate.
2. ATTACHMENT 5 is CONFIDENTIAL in accordance with Section 10A(2) of the *Local Government Act 1993*, because it contains:
 - (e) information that would, if disclosed, prejudice the maintenance of law

AMENDMENT 1

**Cr James Owen
Cr Rhiannon Brinsmead**

RECOMMENDED that Development Application DA22/0421 for a childcare centre at Lot 11 DP 1244396 No. 647 Terranora Road, Terranora be deferred for the proponent to undertake consultation with the Terranora Public School to determine if the public school and applicant can agree on a traffic management plan that would address any potential concerns of Terranora Public School. The proponent is to undertake this consultation within 14 days of this resolution and produce a report to Council for reporting back to the next available Planning Committee meeting.

The Amendment 1 was **Carried**

VOTE FOR - *Cr Chris Cherry (Mayor), Cr Meredith Dennis (Deputy Mayor), Cr Rhiannon Brinsmead, Cr Nola Firth, Cr James Owen*

VOTE AGAINST - *Cr Reece Byrnes, Cr Warren Polglase*

ABSENT. DID NOT VOTE - *Nil.*

Amendment 1 was **Carried**

Amendment 1 on becoming the Motion was **Carried**.

VOTE FOR - *Cr Chris Cherry (Mayor), Cr Meredith Dennis (Deputy Mayor), Cr Rhiannon Brinsmead, Cr Nola Firth, Cr James Owen*

VOTE AGAINST - *Cr Reece Byrnes, Cr Warren Polglase*

ABSENT. DID NOT VOTE - *Nil.*

8.2. Development Application DA23/0302 for a caravan park (112 long term sites), reception, managers residence and pool at Lot 2 DP 815370 No. 1126 Pottsville Road, Pottsville
ALTERNATE MOTION

Cr Chris Cherry (Mayor)
Cr Meredith Dennis (Deputy Mayor)

RECOMMENDED that:

- A. Development Application DA23/0302 for a caravan park (112 long term sites), reception, manager's residence and pool at Lot 2 DP 815370 No. 1126 Pottsville Road, Pottsville be refused for the following reasons:
1. The consent authority cannot be satisfied that the Development is not likely to significantly affect threatened species pursuant to section 7.2 of the Biodiversity Conservation Act 2016 and that no Biodiversity Development Assessment Report was required to accompany the DA.
 2. The consent authority cannot be satisfied that the Development is consistent with the approved koala plan of management that applies to the Site, as required by section 4.8(2) of State Environmental Planning Policy (Biodiversity and Conservation) 2021.
 3. Due to the inadequacy of the application and the material submitted, the consent authority cannot be satisfied that the Development is not designated development pursuant to Section 2.7(2) of the State Environmental Planning Policy (Resilience and Hazards) 2021.
 4. The proposal does not provide adequate evidence that it will not significantly impact on the following attributes listed under clause 2.8(1) of State Environmental Planning Policy (Resilience and Hazards) 2021 in particular:
 - a. the biophysical, hydrological or ecological integrity of the adjacent coastal wetland, or
 - b. the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland.
 5. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the application fails to adequately respond to Clause 25 of Tweed Local Environmental Plan 2000 Development in Zone 7 (a) Environmental Protection (Wetlands and Littoral Rainforests) and on adjacent land, including the provision of a Plan of Management.
 6. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the development is not consistent with the Aims of the Tweed Local Environmental Plan 2014 to promote the responsible sustainable management and conservation of Tweed's natural and environmentally sensitive areas and waterways, visual amenity and scenic routes, built environment, and cultural heritage.
 7. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the development is not consistent with the Aims of the Tweed Local Environmental Plan 2014 to conserve or enhance the biological diversity, scenic quality and geological and ecological integrity of Tweed.
 8. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the development is not consistent with the Aims of the Tweed Local Environmental Plan 2014 to conserve or enhance areas of defined high ecological value.
 9. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the development is not consistent with the Aims of the Tweed Local Environmental Plan 2014 to provide special protection and suitable habitat for the recovery of the Tweed coastal Koala.
 10. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the consent authority is not satisfied that adequate consideration of Heritage

- Conservation relating to known and predictive places of Aboriginal significance have occurred in accordance with the Tweed Local Environmental Plan.
11. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the development proposal has not demonstrated it meets land use the definition of a 'caravan park' and therefore is a permissible land use in the RU2 Rural Landscape Zone.
 12. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, a significant portion of the development extends into the 7(a) Environmental Protection (Wetlands and Littoral Rainforests) Zone under the Tweed LEP 2000, where caravan parks are a prohibited land use.
 13. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the development proposal is not consistent with the objectives of Zone 7(a) Environmental Protection (Wetlands and Littoral Rainforests) under the Tweed LEP 2000,
 - a. Primary objectives
 - to identify, protect and conserve significant wetlands and littoral rainforests.
 - to prohibit development which could destroy or damage a wetland or littoral rainforest ecosystem.
 - b. Secondary objectives
 - to protect the scenic values of wetlands and littoral rainforests.
 - to allow other development that is compatible with the primary function of the zone.
 14. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the development proposal is not consistent with RU2 Rural Landscape Zone objectives of Tweed Local Environmental Plan 2014, specifically:
 - to maintain the rural landscape character of the land.
 - to provide for a range of tourist and visitor accommodation-based land uses, including agri-tourism, eco-tourism and any other like tourism that is linked to an environmental, agricultural or rural industry use of the land.
 15. Pursuant to Section 4.15(1)(a)(i) and Section 4.15 (1)(c) of the Environmental Planning and Assessment Act 1979 and Clause 7.10 of Tweed Local Environmental Plan 2014, the development has not demonstrated that services essential for the development can be adequately achieved including:
 - the disposal and management of sewage.
 - stormwater drainage or on-site conservation
 - suitable vehicular access.
 16. Pursuant to Clause 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the Flood Impact Assessment (FIA) prepared by Engeny dated 1 June 2023, submitted by the applicant is deficient as it is required to consider all flood mechanisms such as creek flooding, storm surge, local events and the interaction with the wetland.
 - Only a single flood event has been analysed (1% AEP). The FIA is required to analyse a broader range of flood events to conclude the filled site will not cause flood impacts external to the site.
 - The 24hr or 36hr events are likely to be the critical flood events, the applicant has not confirmed the developed model has also used the 24hr and 36hr events.
 - The creek has been removed from the truncated model. This may be invalid unless an alternative boundary condition has been included. The wetland is inextricably linked with the creek. The applicant did not advise why the creek has been removed from the model or confirm the alternative boundary conditions.
 - The development filling has been considered in isolation (not part of a cumulative filling development scenario as required by the Tweed Coastal Creeks Floodplain Risk Management Study 2015).
 17. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the development proposal has not demonstrated due compliance with or consideration of Tweed Development Control Plan 2008 Section A19 – Biodiversity and Habitat Management.
 18. Pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act

1979, the Development application has not demonstrated that the Development has been designed to minimise and mitigate impacts on the environmental values of the Site. The Application has also not demonstrated that there will not be a significant or unacceptable impact on ecological values of the Site.

19. Pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the applicant has not suitably demonstrated the site is suitable for the development in relation to potential land contamination as required by State Environmental Planning Policy (Resilience and Hazards) 2021 through provision of a preliminary site investigation prepared in accordance with NSW EPA guidelines by a suitably qualified contaminated land consultant.
20. Pursuant to Section 4.15 (1)(e) of the Environmental Planning and Assessment Act 1979, on the basis of the information submitted, the development proposal, is not considered to be in the public interest.

- B. That Council, in relation to the Class 1 Appeal of Development Application DA23/0302 for a caravan park (112 long term sites), reception, manager's residence and pool at Lot 2 DP 815370 No. 1126 Pottsville Road, Pottsville determines to defend the Class 1 Appeal, engage any necessary experts and provide delegation under Section 377(1) of the *Local Government Act 1993* to Council's Officers to undertake negotiations as necessary, including at section 34 conciliation conferences, and to resolve any issues in the proceedings or enter into section 34 agreements to resolve the proceedings as necessary based on evidence.
- C. ATTACHMENT 6 is CONFIDENTIAL in accordance with Section 10A(2) of the Local Government Act 1993, because it contains:(e) information that would, if disclosed, prejudice the maintenance of law

The Motion was **Carried**

VOTE FOR - Cr Chris Cherry (Mayor), Cr Meredith Dennis (Deputy Mayor), Cr Reece Byrnes, Cr Rhiannon Brinsmead, Cr Nola Firth, Cr James Owen, Cr Warren Polglase

VOTE AGAINST - None

ABSENT. DID NOT VOTE - Nil.

- 8.3. **Class 1 Appeal - Development Application DA20/0386 for a 13 lot subdivision (11 residential lots, 1 drainage lot and 1 residual dedicated riparian lot) at Lot 156 DP 628026 No. 40 Creek Street, Hastings Point**

ALTERNATE MOTION

Cr Chris Cherry (Mayor)
Cr Meredith Dennis (Deputy Mayor)

RECOMMENDED that Council, in relation to the Class 1 Appeal for the refusal of Development Application DA20/0386 for a 13 lot subdivision (11 residential lots, 1 drainage lot and 1 residual dedicated riparian lot) at Lot 156 DP 628026 No. 40 Creek Street, Hastings Point:

- i. determines to defend the Class 1 Appeal;
- ii. engage any necessary experts; and
- iii. provide delegation under Section 377(1) of the *Local Government Act 1993* to both Council's General Manager and Mayor to give instructions to Council's legal representatives in relation to the Class 1 Appeal, to undertake negotiations as necessary, including at section 34 conciliation conferences, to resolve any issues in the proceedings or enter into section 34 agreements to resolve the proceedings.

The Motion was **Carried**

VOTE FOR - Cr Chris Cherry (Mayor), Cr Meredith Dennis (Deputy Mayor), Cr Reece Byrnes, Cr Rhiannon Brinsmead, Cr Nola Firth, Cr James Owen, Cr Warren Polglase

VOTE AGAINST - None

ABSENT. DID NOT VOTE - Nil.

9. ADDENDUM ITEMS

Nil.

10. LATE REPORTS

Cr Chris Cherry (Mayor)

Cr Meredith Dennis (Deputy Mayor)

RECOMMENDED that item 10.1.1 - LATE DA18/0478.02 for an amendment to Development Consent DA18/0478 for demolition of existing structures, tree removal, earthworks, construction of dwelling and two swimming pools at Lot 1 DP 1273277 No. 20 Lagoon Road, Fingal Head, being a Late item, be dealt with and it is ruled by the Chair to be of great urgency.

The Motion was **Carried**

VOTE FOR - Cr Chris Cherry (Mayor), Cr Meredith Dennis (Deputy Mayor), Cr Reece Byrnes, Cr Rhiannon Brinsmead, Cr Nola Firth, Cr James Owen, Cr Warren Polglase

VOTE AGAINST - None

ABSENT. DID NOT VOTE - Nil.

10.1. LATE REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

10.1.1. LATE DA18/0478.02 for an amendment to Development Consent DA18/0478 for demolition of existing structures, tree removal, earthworks, construction of dwelling and two swimming pools at Lot 1 DP 1273277 No. 20 Lagoon Road, Fingal Head

Cr Chris Cherry (Mayor)

Cr Meredith Dennis (Deputy Mayor)

RECOMMENDED that item 10.1.1 - LATE DA18/0478.02 for an amendment to Development Consent DA18/0478 for demolition of existing structures, tree removal, earthworks, construction of dwelling and two swimming pools at Lot 1 DP 1273277 No. 20 Lagoon Road, Fingal Head, being a Late item, be dealt with and it is ruled by the Chair to be of great urgency.

The Motion was **Carried**

VOTE FOR - Cr Chris Cherry (Mayor), Cr Meredith Dennis (Deputy Mayor), Cr Reece Byrnes, Cr Rhiannon Brinsmead, Cr Nola Firth, Cr James Owen, Cr Warren Polglase

VOTE AGAINST - None

ABSENT. DID NOT VOTE - Nil.

Cr Chris Cherry (Mayor)

Cr Nola Firth

RECOMMENDED that Council

- A. Refuse DA18/0478.02 for an amendment to Development Consent DA18/0478 for demolition of existing structures, tree removal, earthworks, construction of dwelling and two swimming

pools at Lot 1 DP 1273277 No. 20 Lagoon Road, Fingal Head for the following reasons:

1. Pursuant to Section 4.55(1A)(a) of the *Environmental Planning & Assessment Act 1979*, the application has not demonstrated that the proposed modification is of minimal environmental impact, and that the modification powers of S4.55(1A) which rely on the consent authority being satisfied that the proposed modification is of minimal environmental impact, can be engaged.
2. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning & Assessment Act 1979*, the modification application should be refused because insufficient information has been submitted to enable a proper assessment of the impacts that the development as proposed to be modified will have on the biophysical, hydrological or ecological integrity of the adjacent littoral rainforest.
 - a. Under *State Environmental Planning Policy (Resilience and Hazards) 2021*, the subject site is mapped as being the Proximity Area to both Coastal Wetlands and Littoral Rainforest.
 - b. Four of the trees proposed for removal occur within a candidate Littoral Rainforest EEC that forms a contiguous connection to the adjacent mapped Littoral Rainforest Area.
 - c. No details have been provided of any vegetation to be removed to provide the access formation, or the materials to be used for same.
3. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning & Assessment Act 1979*, the modification application should be refused because insufficient information has been submitted to enable a proper assessment of the impacts that the development as proposed to be modified will have on the Coastal Environment Area, and that the proposal has been designed to avoid an adverse impact, or where such an impact cannot be avoided, that it has been minimised.
 - a. No details have been provided of alternative strategies which seek to minimise impacts upon the ecological environment, coastal environmental values and natural coastal processes.
4. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning & Assessment Act 1979*, the proposed tree removal and access formation within the Littoral Rainforest Conservation Area, and the additional tree removal, is contrary to the provision of Tweed Development Control Plan 2008 Section A1 – Dwellings, Dual Occupancies, Secondary dwelling and Alterations and Additions to retain indigenous vegetation and mature trees,

C4. Existing landscape elements on sites such as natural rock outcrops, watercourses, dune vegetation, indigenous vegetation and mature trees should be retained and integrated with the design of the buildings.
5. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning & Assessment Act 1979*, the proposed tree removal and access formation within the Littoral Rainforest Conservation Area, which is the subject of a s88B covenant under the *Conveyancing Act 1919*, and the additional tree removal is contrary to the objective of Tweed Development Control Plan 2008 Section A16 – Preservation of trees or vegetation, '(t)o minimize, and avoid where possible, unnecessary clearing of native trees and vegetation'.
 - a. The proposal involves removal of six (6) trees that qualify as prescribed vegetation under DCP A16 Part 1.3.

- b. Four (4) of the six (6) trees form part of a candidate Littoral Rainforest EEC.
 - c. No details have been provided of any vegetation to be removed to provide the access formation, or the materials to be used for same.
6. Pursuant to Section 4.15(1)(b) of the *Environmental Planning & Assessment Act 1979*, the application has not demonstrated that the tree removal as proposed is essential to achieve the required Asset Protection Zones for bushfire protection, and that there is no alternative strategy which would meet the requirements for bushfire protection while minimising biodiversity impacts.
7. Pursuant to Section 4.15(1)(b) of the *Environmental Planning & Assessment Act 1979*, the application has not demonstrated that the proposed fire services access way and access gate identified on the Landscape Plans as being within the Littoral Rainforest Conservation Area, which is the subject of a s88B covenant under the *Conveyancing Act 1919*, is required for firefighting purposes.

The application has not demonstrated that where such firefighting measures are required that there is no alternative strategy which would minimise biodiversity impacts on the Littoral Rainforest.

Further, no details have been provided of any vegetation to be removed to provide the access formation.

8. Pursuant to Section 4.15(1)(b) of the *Environmental Planning & Assessment Act 1979*, the application has not be accompanied by an adequate Assessment of Significance that provides a quantified assessment of the cumulative impact of the development as proposed to be modified, and as such an informed decision regarding Section 7.3 (1)(b) and (c) of the *Biodiversity Conservation Act 2016* cannot be made.
9. Pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979* the applicant has not demonstrated to the satisfaction of the consent authority that the proposed tree removal and disturbance will not negatively impact the adjacent Littoral Rainforest on public land, and as such is not considered to be in the public interest; and
- B. In relation to the Class 1 Appeal for the deemed refusal of DA18/0478.02 for an amendment to Development Consent DA18/0478 for demolition of existing structures, tree removal, earthworks, construction of dwelling and two swimming pools at Lot 1 DP 1273277 No. 20 Lagoon Road, Fingal Head determines to defend the Class 1 Appeal and engage any necessary experts.

The Motion was **Carried**

VOTE FOR - Cr Chris Cherry (Mayor), Cr Meredith Dennis (Deputy Mayor), Cr Reece Byrnes, Cr Rhiannon Brinsmead, Cr Nola Firth, Cr James Owen, Cr Warren Polglase

VOTE AGAINST - None

ABSENT. DID NOT VOTE - Nil.

11. CLOSE OF MEETING

There being no further business the meeting closed at 4:11 PM.