



**TWEED**  
SHIRE COUNCIL

**Mayor:** Cr K Milne

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

# Addendum Agenda

**Planning Committee Meeting  
Thursday 5 September 2019**

held at  
**Council Chambers, Murwillumbah Civic & Cultural Centre, Tumbulgum Road, Murwillumbah**  
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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## Items for Consideration of the Planning Committee:

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## ADDENDUM ITEMS

### ADDENDUM REPORT FROM DIRECTOR PLANNING AND REGULATION

- 9            **ADDENDUM [PR-PC] Development Application DA18/0486 for a Concept Development Application for 10 Group Homes (Permanent) and Development of Stage 1 for Two Group Homes (Permanent) containing 14 Units at Lot 6 DP 524303 No. 26 George Street, Murwillumbah**

**SUBMITTED BY:**    **Development Assessment and Compliance**

mhm



Making decisions with you  
*We're in this together*

#### LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 2                    Making decisions with you
- 2.1                Built Environment
- 2.1.2             Development Assessment - To assess development applications lodged with Council to achieve quality land use outcomes and to assist people to understand the development process.

**ROLE:**            **Provider**

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#### SUMMARY OF REPORT:

This is a supplementary report to Item 2 on the agenda. Since the publishing of the agenda, Council has received subsequent legal advice from Marsdens Law Group on the permissibility of multiple Group Homes on R2 and RU2 zoned land as proposed in the application.

The application seeks concept approval for 10 Group Homes on the subject site which is partially zoned R2 (low Density Residential) and partially zoned RU2 (Rural Landscape) with development approval also sought for Stage 1 which consists of two Group Homes on R2 zoned land.

As set out in the Council report, the application has been recommended for refusal on the basis of the proposal does not satisfactorily meet the definition of a Group Home as set out in the Tweed Local Environmental Plan (TLEP) 2014 and State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP(ARH)). However an alternative option set out at the conclusion of the Council report (Option 2) indicates that Council may consider providing the applicant with further opportunity to amend the application to satisfy the definition of a Permanent Group Home and to address all other outstanding issues with the application. However, legal advice has since been received which indicates that this alternative is not a valid option.

Notwithstanding the permissibility of Group Homes in Zone RU2 as set out under TLEP 2014 and SEPP (ARH) 2009, concern was raised in the reporting of this matter as to the permissibility of multiple Group Homes in Zone RU (Rural Landscape) given the prohibition on multi-dwelling housing in this zone.

Marsden Law Group were requested to provide legal advice in relation to whether multiple Group Homes are permissible with consent on a lot in Zone RU2 (Rural Landscape) and in Zone R2 (Low Density Residential).

The legal advice was received on 28 August 2019 and indicates that in the legal opinion of Marsden Law Group **the development as proposed would be prohibited as it comprises** of more than one dwelling house on the land in Zone RU2 and would be characterised as 'multi dwelling housing' which is a species of residential accommodation that is taken to be prohibited under the Land Use Table in TLEP 2014 relating to Zone RU2.

In their view, up to two group homes only may be permitted on one lot of land within Zone RU2 under the provisions of the TLEP 2014 if the development takes the form of an attached dual occupancy. See Confidential Attachment 1.

On this basis, Option 2 as set out in the Council report which allows the Council to provide the applicant with further opportunity to progress the application is not a valid option. Council has no alternative but to refuse the application as the development is prohibited under the TLEP 2014.

Further, the reasons for refusal set out in Option 1 of the Council report can be supplemented to include the following:

- # The proposal for the development of 10 Group Homes which includes seven detached Group Home buildings containing up to 7 - 8 self-contained dwellings is prohibited in Zone RU2, where the development would be characterised as 'multi dwelling housing' which is a species of 'residential accommodation' that is prohibited in Zone RU2.

The recommendation has been updated to reflect this latest advice.

#### **RECOMMENDATION:**

**That Development Application DA18/0486 for a concept development application for 10 group homes (permanent) and development of Stage 1 for two group homes (permanent) containing 14 units at Lot 6 DP 524303 No. 26 George Street, Murwillumbah be refused for the following reasons:**

1. **The proposal for the development of 10 Group Homes which includes seven detached Group Home buildings containing up to 7 - 8 self-contained dwellings is prohibited in Zone RU2, where the development would be characterised as 'multi dwelling housing' which is a species of 'residential accommodation' that is prohibited in Zone RU2.**
2. **The proposal for the development of 10 Group Homes is not considered to satisfy the definition of a Permanent Group Home as set out in the Tweed Local Environmental Plan 2014, which classifies the land use as:**

***'a dwelling:***

- (a) that is occupied by persons as a single household with or without paid supervision or care and whether or not those persons are related or payment for board and lodging is required, and***

***(b) that is used to provide permanent household accommodation for people with a disability or people who are socially disadvantaged,***

***but does not include development to which State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 applies.'***

**It is considered that a building containing up to 7 - 8 self-contained units does not constitute a 'dwelling' as that term is defined in the Tweed Local Environmental Plan 2014 and further that the applicant has not demonstrated to the satisfaction of Council that each building will to be 'occupied by persons as a single household'.**

**3. ATTACHMENT 1 is CONFIDENTIAL in accordance with Section 10A(2) 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.**

**REPORT:**

This report has been updated as a result of legal advice received after the publishing of the business paper. The recommendation has been updated to reflect the legal advice.

**OPTIONS:**

In light of the legal advice received, it is considered that there is only one option for Council which is to refuse the application as recommended.

**CONCLUSION:**

Refer to original report and as updated by this report.

**COUNCIL IMPLICATIONS:**

**a. Policy:**

Corporate Policy Not Applicable

**b. Budget/Long Term Financial Plan:**

Not Applicable.

**c. Legal:**

Not Applicable.

**d. Communication/Engagement:**

Not Applicable.

**UNDER SEPARATE COVER/FURTHER INFORMATION:**

*(Confidential)* Attachment 1. Legal advice dated 28 August 2019 (ECM 6038884)

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