

TWEED SHIRE COUNCIL MEETING TASK SHEET

User Instructions

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Action Item - **PLANNING COMMITTEE MEETING** Thursday, 4 July 2019

Action is required for Item 5 as per the Planning Committee Recommendation outlined below.

ATTENTION:

PLEASE NOTE THE ADOPTION OF THE COMMITTEE RECOMMENDATIONS BY COUNCIL AT ITS MEETING HELD Thursday, 4 July 2019 (Minute No 272 Refers)

TITLE: [PR-PC] Planning Proposal PP19/0003 Amendment to Permit the Staged Development of a New Long-term Tweed Pound and Rehoming Centre

Cr K Milne
Cr P Allsop

RECOMMENDED that in relation to the Planning Proposal PP19/0003 Amendment to Permit the Staged Development of a New Long-term Tweed Pound and Rehoming Centre:

1. The preparation of a draft planning proposal seeking an amendment to the Tweed Local Environmental Plan 2014, amending the Local Environmental Plan requirements to only require a Part 5 approval relating to a Council pound as the primary use and rehoming centre ancillary to that, is endorsed;
2. Once finalised, the draft planning proposal is to be referred to the NSW Department of Planning and Environment for Gateway Determination, in accordance with s3.34 of the Environmental Planning and Assessment Act 1979;
3. On receipt of the Minister's Gateway Determination Notice to continue, any Gateway conditions or other identified study or work is to be duly completed and included within the material for public exhibition;
4. Public exhibition is to occur for a period of not less than 28 days; and
5. Submissions received during public exhibition are to be reported to Council at the earliest time and detailing the issues raised and a recommended planning response.

The Motion was **Carried**

FOR VOTE - Unanimous
ABSENT. DID NOT VOTE - Cr R Byrnes

TITLE: [PR-PC] Planning Proposal PP19/0003 Amendment to Permit the Staged Development of a New Long-term Tweed Pound and Rehoming Centre

SUBMITTED BY: Strategic Planning and Urban Design

mhm



Leaving a Legacy

Looking out for future generations

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Leaving a Legacy
- 1.4 Managing Community Growth
- 1.4.1 Strategic Land-Use Planning - To plan for sustainable development which balances economic environmental and social considerations. Promote good design in the built environment.

ROLE: **Provider**

SUMMARY OF REPORT:

This report provides Council with the opportunity to reconsider the Tweed Local Environmental 2014 (LEP) amendment resolved on 4 April 2019 relating to the relocation and establishment of a new Council pound and rehoming centre.

The first of two prior reports considered by Council culminated with the making of an LEP amendment on 18 January 2019 for No.719 Eviron Road, Eviron and, owing to uncertainty about its suitability, a neighbouring property at No.751 Eviron Road was then identified and was the subject of the second report on 4 April 2019. Both of these reports identified potential constraints to the development of the land, which generates complexities surrounding design and construction costs and their eventual operating and economic suitability.

Whilst one amendment has been completed, the resolution of the April report has some way to go, with the planning proposal currently being prepared for a NSW planning Gateway determination. An opportunity exists to reconsider the planning amendment approach previously endorsed and whether there is a more flexible and certain approach better suited to public infrastructure and service delivery.

This report recommends adopting the Part 5 environmental planning assessment pathway under the *Environmental Planning and Assessment Act 1979* (NSW) by allowing the development without consent. Whilst it is fundamentally a system of self-assessment it has more exacting and stringent provisions than its Part 4 development application counterpart and requires the determining authority to take into account “to the fullest extent possible all matters affecting or likely to affect the environment”. In conjunction with this, it is recommended that the amendment allow this development on any land, so that in the event neither sites are deemed to be suitable a further delay and cost is not incurred by repeating the process for a third or more times.

RECOMMENDATION:

That in relation to the Planning Proposal PP19/0003 Amendment to Permit the Staged Development of a New Long-term Tweed Pound and Rehoming Centre:

- 1. The preparation of a draft planning proposal seeking an amendment to the Tweed Local Environmental Plan 2014 on the terms discussed within this report, relating to a Council pound and rehoming centre, is endorsed;**
- 2. Once finalised, the draft planning proposal is to be referred to the NSW Department of Planning and Environment for Gateway Determination, in accordance with s3.34 of the Environmental Planning and Assessment Act 1979;**
- 3. On receipt of the Minister's Gateway Determination Notice to continue, any Gateway conditions or other identified study or work is to be duly completed and included within the material for public exhibition;**
- 4. Public exhibition is to occur for a period of not less than 28 days; and**
- 5. Submissions received during public exhibition are to be reported to Council at the earliest time and detailing the issues raised and a recommended planning response.**

REPORT:

Council has previously considered two separate reports each seeking and being approved for amendments to the Tweed Local Environmental 2014 to permit a Council pound on lands owned by Council.

The first of these reports culminated with the making of an amendment on 18 January 2019 for No.719 Eviron Road, Eviron and, owing to uncertainty about its suitability, a neighbouring property at No.751 Eviron Road was then identified and was the subject of the second report on 4 April 2019. Both of these reports identified potential constraints to the development of the land, which generates complexities surrounding design and construction costs.

Whilst one amendment has been completed the resolution of the April report has some way to go, with the planning proposal currently being prepared for a NSW planning Gateway determination. An opportunity exists to reconsider the planning amendment approach previously endorsed and whether there is a more flexible and certain approach better suited to public infrastructure and service delivery.

The infrastructure and service delivery constraints faced by most councils, surrounding the need to meet essential service delivery standards and expectations of their communities, relates largely to constrained budget capacity, high expectation surrounding environmental management, complicated and protracted procurement and land acquisition practices and both time consuming and costly planning amendment processes.

Improving certainty within these often tight operating parameters can be achieved by adopting a planning pathway that is better tailored to public infrastructure works. This occurs automatically for a limited class of specific public infrastructure development under the NSW Government's Infrastructure SEPP however, it falls short of capturing the wider range and some less frequently occurring or bespoke infrastructure, ordinarily carried on by local councils.

Part 5 of the *Environmental Planning and Assessment Act 1979* (NSW) for development permitted without consent is the alternative planning pathway. Whilst it is fundamentally a system of self-assessment it has more exacting and stringent provisions than its Part 4 development application counterpart and requires the determining authority to take into account "to the fullest extent possible all matters affecting or likely to affect the environment".

In addition to allowing development of a council pound and rehoming centre under the Part 5 assessment pathway the amendment can also permit this land use on any land. This would provide Council with greater certainty of being able to find an alternative site should the current two sites fail the tests of suitability or feasibility, as well as allowing greater flexibility in the construction design phase as it would remove the often expensive and lengthy development approval timeframes associated with amending a development consent.

Allowing public infrastructure works to be carried out under Part 5 is a common practice for many public infrastructure authorities, be that schools, water reticulation and supply systems, reservoirs, replacement of buildings within an existing correctional centre, maintenance depots, visitor information centres or amenities on land being a public reserve, the Tugun Bypass, the Tweed's Rail Trail and many others identified within individual LEPs and the Infrastructure SEPP, and it provides a very robust and tested environmental assessment regime.

In light of the above it is recommended that Council adopt the Part 5 planning pathway in concert with permitting a Council pound and rehoming centre on any land. This is a mutually

exclusive land use that relates to the Council only, it is not a land use that will be open to other entities or persons to pursue.

Precisely how the amendment will be enabled in the Tweed LEP is the role of Parliamentary Counsel however, it is envisaged that it will be a separate new clause or an amendment to the current council infrastructure clause to expand the range of permissible development without consent to include a council pound and rehoming centre on any land. If for some reason the Parliamentary Counsel believes this cannot be achieved then the default position will fall to the current resolution surrounding the nomination of an identified site and or allowing the development with consent.

OPTIONS:

1. Proceed with the recommendation provided in this report which is to endorse the proposed amendment to the Tweed Local Environmental Plan 2014 for a Gateway Determination; or
2. Do not proceed with the recommended Tweed Local Environmental Plan 2014 amendment, as proposed. This would mean proceeding with the current Council resolution for a site specific amendment and the making of a development application.

Staff recommend Option 1.

CONCLUSION:

There are two important elements discussed within this report and that bear on a consideration of the proposed course of action; firstly, the tenuous nature of the sites under investigation for a Council pound and rehoming centre and the risk factors in delivering it. Secondly, whether there is support for allowing the development under the Part 5 assessment pathway and on any land.

Based on what has been said about these aspects it is concluded that the better practice for Council to adopt in the prevailing circumstances is to pursue an amendment that allows the intended Council pound and rehoming centre on any land without consent, activating the Part 5 assessment pathway. This will enable greater certainty about delivering this community asset and in doing so will reassure the Tweed community about the importance and priority of animal welfare.

COUNCIL IMPLICATIONS:

a. Policy:

Corporate Policy Not Applicable

b. Budget/Long Term Financial Plan:

Would not have any impact over and above the previously resolved position.

c. Legal:

Not Applicable.

d. Communication/Engagement:

Consult - We will listen to you, consider your ideas and concerns and keep you informed.

Inform - We will keep you informed.

The draft planning proposal would be placed on public exhibition for a minimum of 28 days, Submissions received during public exhibition would be reported to Council with recommended planning responses to concerns raised.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1.

Council Report of 4 April 2019 on Planning Proposal
PP19/0003 a Site-Specific Amendment to Lot 30 DP 820048
No. 751 Eviron Road, Eviron (ECM 5919716)
