

23 May 2025

Planning Officer: Carl Ewin
Direct Telephone: 07 4086 4656
Our Reference: MCU/23/0025
Your Reference: 72321

9-11 Thongon Street Kuranda Pty Ltd
C/- Planz Town Planning Pty Ltd
PO Box 181
EDGE HILL QLD 4870

Dear Applicants,

Decision Notice Refusal

Planning Act 2016

I refer to your application and advise that on 21 May 2025, Council decided to refuse the application. Details of the decision are as follows:

APPLICATION DETAILS

Application No:	MCU/23/0025
Street Address:	9-11 Thongon Street, Kuranda
Real Property Description:	Lot 310 & 311 on NR7409
Planning Scheme:	Mareeba Shire Council Planning Scheme 2016

DECISION DETAILS

Type of Decision:	Refused
Type of Application:	Application for Material Change of Use – Multiple Dwelling (56 Residential Units)
Date of Decision:	21 May 2025

REASONS FOR REFUSAL**ASSESSMENT MANAGER'S REASONS FOR REFUSAL:**

1. The development conflicts with Overall outcomes (f) and (h) of the Medium density residential zone code:

The purpose of the code will be achieved through the following overall outcomes:

- (f) *Development maintains a high level of residential amenity avoiding uses that introduce impacts associated with noise, hours of operation, traffic, advertising devices, visual amenity, privacy, lighting, odour and emissions;*
- (h) *Development responds to land constraints and mitigates any adverse impacts on adjacent land uses and the environment.*

2. The development conflicts with Performance Outcome PO1 and AO1 of the Medium density residential zone code:

PO1 – Height

Building height takes into consideration and respects the following:

- (a) *the height of existing buildings on adjoining premises;*
- (b) *the development potential, with respect to height, on adjoining premises.*
- (c) *the height of buildings in the vicinity of the site;*
- (d) *access to sunlight and daylight for the site and adjoining sites;*
- (e) *privacy and overlooking; and*
- (f) *site area and street frontage length.*

AO1

Development has a maximum building height of:

- (a) *8.5 metres; and*
- (b) *2 storeys above ground level.*

3. The development conflicts with Performance Outcome PO3 and Acceptable Outcomes AO3.1 and AO3.2 of the Medium density residential zone code:

PO3 – Siting

Development is sited in a manner that considers and respects:

- (a) *the siting and use of adjoining premises;*
- (b) *access to sunlight and daylight for the site and adjoining sites;*
- (c) *privacy and overlooking;*
- (d) *opportunities for casual surveillance of adjoining public spaces;*
- (e) *air circulation and access to natural breezes;*
- (f) *appearance of building bulk; and*
- (g) *relationship with road corridors.*

A03.1

Buildings and structures include a minimum setback of:

- (a) 6 metres from the primary road frontage; and*
- (b) 3 metres from any secondary road frontage.*

A03.2

Buildings and structures include a minimum setback of 2 metres from side and rear boundaries.

4. The development conflicts with Performance Outcome PO5 and Acceptable Outcome A05 of the Medium density residential zone code:

PO5 – Gross floor area

Buildings and structures occupy the site in a manner that:

- (a) makes efficient use of land;*
- (b) is consistent with the bulk and scale of surrounding buildings; and*
- (c) appropriately balances built and natural features.*

A05

Gross floor area does not exceed 600m².

5. The development conflicts with Performance Outcome PO7 of the Medium density residential zone code:

PO7

Development complements and integrates with the established built character of the Medium density residential zone, having regard to:

- (a) roof form and pitch;*
- (b) eaves and awnings;*
- (c) building materials, colours and textures; and*
- (d) window and door size and location.*

6. The development conflicts with Performance outcome PO9 of the Medium density residential zone code:

PO9 – Amenity

Development must not detract from the amenity of the local area, having regard to:

- (a) noise;*
- (b) hours of operation;*
- (c) traffic;*
- (d) advertising devices;*
- (e) visual amenity;*
- (f) privacy;*
- (g) lighting;*
- (h) odour; and*
- (i) emissions.*

7. The development conflicts with Overall outcomes (a), (b), (c) and (f) of the Kuranda local plan code:

The purpose of the code will be achieved through the following overall outcomes:

- (a) Development provides high standards of amenity and compliments the surrounding natural and built environment;*
- (b) Development is integrated sensitively into the built and natural environment;*
- (c) Development maintains the streetscape amenity and pedestrian scale of Upper Coondoo, Thongon and Therwine St;*
- (f) Development protects Kuranda village from visually obtrusive development;*

8. The development conflicts with Performance Outcome PO7 of the Kuranda local plan code:

PO7 – Village heart precinct

Development in the Village frame precinct and Village heart precinct is undertaken in a manner that respects the place's local character having regard to:

- (a) building height, scale, bulk, mass and proportion;*
- (b) building materials, patterns, textures, colours, and decorative elements;*
- (c) floor to ceiling height;*
- (d) roof form and pitch;*
- (e) facade articulation, detailing, stairways, and window and door proportions;*
- (f) verandahs, awnings and eaves;*
- (g) access ways, driveway crossovers, fence style and alignment;*
- (h) ancillary buildings; and*
- (i) other local character elements of the streetscape.*

Note—Refer to Planning Scheme Policy 1 – Character Area Design Guidelines for additional guidance in relation to the development outcomes sought.

9. The development conflicts with Performance Outcome PO2 of the Accommodation activities code:

PO2

Accommodation activities are provided with on-site refuse storage areas that are:

- (a) sufficient to meet the anticipated demand for refuse storage; and*
- (b) appropriately located on the site having regard to potential odour and noise impacts on uses on the site and adjoining sites.*

10. The development conflicts with Performance Outcome PO3 of the Accommodation activities code:

PO3

Accommodation activities are designed to avoid overlooking or loss of privacy for adjoining uses.

Note—These provisions apply to any adjoining use, both on an adjoining site and on the same site.

11. The development conflicts with Performance Outcome PO4 and Acceptable Outcomes AO4.1 and AO4.2 of the Accommodation activities code:

PO4

Accommodation activities are provided with sufficient private and communal open space areas which:

- (a) accommodate a range of landscape treatments, including soft and hard landscaping;*
- (b) provide a range of opportunities for passive and active recreation;*
- (c) provide a positive outlook and high quality of amenity to residents;*

AO4.1

*Development, except for Caretaker's accommodation, Dwelling house, Dual occupancy or Home based business, includes communal open space which meets or exceeds the minimum area, dimension and design parameters specified in **Table 9.3.1.3C**.*

12. The development conflicts with Performance Outcome PO9 and Acceptable Outcomes AO9.1 of the Accommodation activities code:

PO9

Buildings are designed to:

- (a) reduce the appearance of building bulk;*
- (b) provide visual interest through articulation and variation;*
- (c) be compatible with the embedded, historical character for the locality; and*
- (d) be compatible with the scale of surrounding buildings*

AO9.1

External walls do not exceed 10 metres in continuous length unless including a minimum of three of the following building design features and architectural elements:

- (a) a change in roof profile; or*
- (b) a change in parapet coping; or*
- (c) a change in awning design; or*
- (d) a horizontal or vertical change in the wall plane; or*
- (e) a change in the exterior finishes and exterior colours of the development.*

13. The development conflicts with Overall outcome (b), (c) and (d) of the Parking and access code:

The purpose of the code will be achieved through the following overall outcomes:

- (b) Parking spaces and associated manoeuvring areas are safe, functional and provide equitable access;*
- (d) Suitable access for all types of vehicles likely to utilise a parking area is provided in a way that does not compromise the safety and efficiency of the surrounding road network;*
- (e) Premises are adequately serviced to meet the reasonable requirements of the development; and*

14. The development conflicts with Performance Outcome PO2 and Acceptable Outcome AO2.1 of the Parking and access code:

PO2 – Vehicle crossovers

Vehicle crossovers are provided to:

- (a) ensure safe and efficient access between the road and premises;*
- (b) minimise interference with the function and operation of roads; and*
- (c) minimise pedestrian to vehicle conflict.*

AO2.1

Vehicular access to/from Council roads is designed and constructed in accordance with the Standard drawings in Planning Scheme Policy 4 - FNQROC Regional Development Manual.

14. The development conflicts with Performance Outcome PO4 and Acceptable Outcome AO4.1 of the Parking and access code:

PO4 – Parking area location and design

Car parking areas are located and designed to:

- (a) ensure safety and efficiency in operation; and*
- (b) be consistent with the character of the surrounding locality.*

AO4.1

Car parking spaces, access and circulation areas have dimensions in accordance with AS/NZS 2890.1 Off-street car parking.

15. The development conflicts with Performance Outcome PO5 and Acceptable Outcome AO5.1 of the Parking and access code:

PO5 – Site access and manoeuvring

Access to, and manoeuvring within, the site is designed and located to:

- (a) ensure the safety and efficiency of the external road network;*
- (b) ensure the safety of pedestrians;*
- (c) provide a functional and convenient layout; and*
- (d) accommodate all vehicles intended to use the site.*

A05.1

Access and manoeuvrability is in accordance with :

- (a) AS28901 – Car Parking Facilities (Off Street Parking); and*
- (b) AS2890.2 – Parking Facilities (Off-street Parking) Commercial Vehicle Facilities.*

Note—Proposal plans should include turning circles designed in accordance with AP34/95 (Austroads 1995) Design Vehicles and Turning Path Templates.

16. *The development conflicts with Performance Outcome PO7 and Acceptable Outcomes AO7.1, AO7.2 and AO7.3 of the Parking and access code:*

PO7 – Servicing

Development provides access, maneuvering and servicing areas on site that:

- (a) accommodate a service vehicle commensurate with the likely demand generated by the use;*
- (b) do not impact on the safety or efficiency of internal car parking or maneuvering areas;*
- (c) do not adversely impact on the safety or efficiency of the road network;*
- (d) provide for all servicing functions associated with the use; and*
- (e) are located and designed to minimise their impacts on adjoining sensitive land uses and streetscape quality.*

A07.1

All unloading, loading, service and waste disposal areas are located:

- (a) on the site;*
- (b) to the side or rear of the building, behind the main building line;*
- (c) not adjacent to a site boundary where the adjoining property is used for a sensitive use.*

A07.2

Unloading, loading, service and waste disposal areas allow service vehicles to enter and exit the site in a forward gear.

A07.3

*Development provides a servicing area, site access and maneuvering areas to accommodate the applicable minimum servicing vehicle specified in **Table 9.4.3.3B**.*

18. *There are not sufficient town planning grounds, or an overriding need in terms of benefit to the community to justify approval of the application despite these identified conflicts.*

REFERRAL AGENCIES

The referral agencies that were applicable to this application:

- Schedule 10, Part 9, Division 4, Table 1 – Aspect of development stated in schedule 20 (Purpose 1(c) – a multiple dwelling containing 50 Dwellings or more)

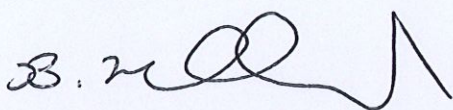
RIGHTS OF APPEAL

You are entitled to appeal against this decision. A copy of the relevant appeal provisions from the *Planning Act 2016* is attached.

OTHER DETAILS

If you wish to obtain more information about Council's decision, electronic copies are available on line at www.msc.qld.gov.au, or at Council Offices.

Yours faithfully



BRIAN MILLARD
COORDINATOR PLANNING & BUILDING

Enc. Appeal Rights

C.c. State Assessment and Referral Agency
CairnsSARA cairnssara@dsdilgp.qld.gov.au and anthony.westbury@dsdilgp.qld.gov.au

Appeal Rights

PLANNING ACT 2016 & THE PLANNING REGULATION 2017

Chapter 6 Dispute resolution

Part 1 Appeal rights

229 Appeals to tribunal or P&E Court

(1) Schedule 1 of the Planning Act 2016 states –

- (a) Matters that may be appealed to –
 - (i) either a tribunal or the P&E Court; or
 - (ii) only a tribunal; or
 - (iii) only the P&E Court; and
- (b) The person-
 - (i) who may appeal a matter (**the appellant**); and
 - (ii) who is a respondent in an appeal of the matter; and
 - (iii) who is a co-respondent in an appeal of the matter; and
 - (iv) who may elect to be a co-respondent in an appeal of the matter.

(Refer to Schedule 1 of the Planning Act 2016)

(2) An appellant may start an appeal within the appeal period.

(3) The **appeal period** is –

- (a) for an appeal by a building advisory agency – 10 business days after a decision notice for the decision is given to the agency; or
- (b) for an appeal against a deemed refusal – at any time after the deemed refusal happens; or
- (c) for an appeal against a decision of the Minister, under chapter 7, part 4, to register premises or to renew the registration of premises – 20 business days after a notice is published under section 269(3)(a) or (4); or
- (d) for an appeal against an infrastructure charges notice – 20 business days after the infrastructure charges notice is given to the person; or
- (e) for an appeal about a deemed approval of a development application for which a decision notice has not been given – 30 business days after the applicant gives the deemed approval notice to the assessment manager; or
- (f) for any other appeal – 20 business days after a notice of the decision for the matter, including an enforcement notice, is given to the person.

Note –

See the P&E Court Act for the court's power to extend the appeal period.

- (4) Each respondent and co-respondent for an appeal may be heard in the appeal.
- (5) If an appeal is only about a referral agency's response, the assessment manager may apply to the tribunal or P&E Court to withdraw from the appeal.
- (6) To remove any doubt. It is declared that an appeal against an infrastructure charges notice must not be about-
 - (a) the adopted charge itself; or
 - (b) for a decision about an offset or refund-
 - (i) the establishment cost of trunk infrastructure identified in a LGIP; or
 - (ii) the cost of infrastructure decided using the method included in the local government's charges resolution.

230 Notice of appeal

- (1) An appellant starts an appeal by lodging, with the registrar of the tribunal or P&E Court, a notice of appeal that-
 - (a) is in the approved form; and
 - (b) succinctly states the grounds of the appeal.
- (2) The notice of appeal must be accompanied by the required fee.
- (3) The appellant or, for an appeal to a tribunal, the registrar must, within the service period, give a copy of the notice of appeal to –
 - (a) the respondent for the appeal ; and
 - (b) each co-respondent for the appeal; and
 - (c) for an appeal about a development application under schedule 1, table 1, item 1 – each principal submitter for the development application; and
 - (d) for an appeal about a change application under schedule 1, table 1, item 2 – each principal submitter for the change application; and
 - (e) each person who may elect to become a co-respondent for the appeal, other than an eligible submitter who is not a principal submitter in an appeal under paragraph (c) or (d); and
 - (f) for an appeal to the P&E Court – the chief executive; and
 - (g) for an appeal to a tribunal under another Act – any other person who the registrar considers appropriate.
- (4) The *service period* is –
 - (a) if a submitter or advice agency started the appeal in the P&E Court – 2 business days after the appeal has started; or
 - (b) otherwise – 10 business days after the appeal is started.
- (5) A notice of appeal given to a person who may elect to be a co-respondent must state the effect of subsection (6).
- (6) A person elects to be a co-respondent by filing a notice of election, in the approved form, within 10 business days after the notice of appeal is given to the person.

231 Other appeals

- (1) Subject to this chapter, schedule 1 and the P&E Court Act, unless the Supreme Court decides a decision or other matter under this Act is affected by jurisdictional error, the decision or matter is non-appealable.
- (2) The *Judicial Review Act 1991*, part 5 applies to the decision or matter to the extent it is affected by jurisdictional error.
- (3) A person who, but for subsection (1) could have made an application under the *Judicial Review Act 1991* in relation to the decision or matter, may apply under part 4 of that Act for a statement of reasons in relation to the decision or matter.
- (4) In this section –

decision includes-

 - (a) conduct engaged in for the purpose of making a decision; and
 - (b) other conduct that relates to the making of a decision; and
 - (c) the making of a decision or failure to make a decision; and
 - (d) a purported decision ; and
 - (e) a deemed refusal.

non-appealable, for a decision or matter, means the decision or matter-

 - (a) is final and conclusive; and
 - (b) may not be challenged, appealed against, reviewed, quashed, set aside or called into question in any other way under the *Judicial Review Act 1991* or otherwise, whether by the Supreme Court, another court, a tribunal or another entity; and
 - (c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground.

232 Rules of the P&E Court

- (1) A person who is appealing to the P&E Court must comply with the rules of the court that apply to the appeal.
- (2) However, the P&E Court may hear and decide an appeal even if the person has not complied with the rules of the P&E Court.