

DATE OF DETERMINATION	30 August 2022
DATE OF DECISION	24 August 2022
DATE OF MEETING	23 August 2022
PANEL MEMBERS	Penny Holloway (Chair), Stephen Gow, Susan Budd, Ned Wales and John Byrne
APOLOGIES	Pat Miller
DECLARATIONS OF INTEREST	Paul Mitchell declared a conflict of interest as a colleague of his at his current place of employment, Gyde, provided assistance to Council early in its assessment of this application. Paul Mitchell has had no involvement in the assessment or consideration of this development application.

Public meeting held by videoconference on 23 August 2022, opened at 4pm and closed at 6:15pm.

MATTER DETERMINED

PPSNTH-131 – Tweed Shire – DA21/0812 at 931 and 1023 Cudgera Creek Road, Cudgera Creek – Agricultural Food Hub (as described in Schedule 1)

PANEL CONSIDERATION AND DECISION

The panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

Development application

The panel determined to refuse the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

REASONS FOR THE DECISION

The panel determined to refuse the application for the reasons outlined in the council assessment report, with some small amendments (highlighted in red), being:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act the application has not demonstrated compliance with the Tweed Local Environment Plan 2014. Specifically the following clauses:
 - i. Clause 1.2 Aims of the plan – The proposal is not considered to meet the aims of the plan in that:
 - a) The application fails to demonstrate that it meets the principles of ecologically sustainable development in accordance with clause 1.2(2)(d);
 - b) The application fails to demonstrate that it conserves the biological diversity, scenic quality and ecological integrity of the Tweed in accordance with clause 1.2(2)(g);
 - c) The application fails to demonstrate that it has considered the protection of koalas and koala habitat in accordance with 1.2(2)(j).
 - ii. Clause 2.3 Zone objectives and land use table – the application has not demonstrated that the intended future use of the site is properly characterised as an agricultural produce industry.

Consequently the application has not demonstrated that the future proposed use of the site is a permissible use in accordance with the land use tables for the RU1 and RU2 zones.

- iii. Clause 7.2 Earthworks – The application has not provided sufficient information to determine the impacts of any fill on the drainage patterns of the land.
 - iv. Clause 7.10 Essential services – The application has not demonstrated that water and sewerage management services are able to be provided for the development or that the vehicular access is suitable.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act the application has not demonstrated compliance with clause 3.6 of the SEPP (Biodiversity and Conservation) 2021. The application has not provided an assessment to determine if the site supports potential koala habitat.
 3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act the proposal has not demonstrated compliance with clause 2.122 of SEPP (Transport and Infrastructure) 2021. The application has not provided sufficient information to determine that the development is suitable for the site with regard to accessibility of the site appropriate for the development.
 4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act the application has not demonstrated compliance with the Tweed Development Control Plan 2008. Specifically the following sections:
 - i. Section A2 – Site Access and Parking Code. The application has not demonstrated that suitable access is provided for the proposal with regard to traffic volumes, maximum vehicle sizes and internal site configuration.
 - ii. Section A3 – Development of Flood Liable Land. The application contains insufficient information to determine the potential impact of the proposal on the flood behaviour of the land.
 - iii. Section A19 – Biodiversity and Habitat Management. The application has not provided adequate information to determine the impact of the proposal on fauna, flora or environmentally sensitive areas.
 5. Pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act the application contains insufficient information to determine the likely impacts of the proposal on the natural and built environment. The development represents an intensive use of the site that is not consistent with the existing rural uses. Insufficient information is provided regarding the impacts of the future built form on the physical and social environment. Additionally, insufficient information has been provided on the future uses of the site to determine if the cumulative impacts of the development is reasonable given the rural location.
 6. Pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act the proposal is not considered to be suitable for the site. The size and scale of the development is not considered to be consistent with the character of the rural area.
 7. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act the proposal is not considered to be in the public interest for the following reasons:
 - i. The information provided by the applicant has not demonstrated that proposed uses of the site are permissible within the RU1 and RU2 zones;
 - ii. The concept application does not include details of future uses of the site and as such, it is not possible to properly assess all the potential impacts from these uses or if these impacts are considered reasonable with respect to the rural location;
 - iii. The size and scale of the proposed development is not considered to be consistent with the rural character of the area;
 - iv. The application has not included sufficient information to assess the impact of the development on Council's water and wastewater infrastructure.
 - v. There is significant community opposition to the proposal and that opposition is consistent with the reasons listed above.

CONDITIONS




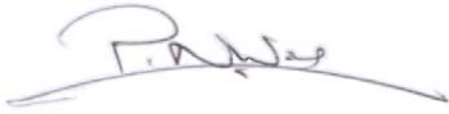

Not applicable.

CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the panel considered written submissions made during public exhibition and heard from all those wishing to address the panel. The panel notes that issues of concern included:

- Biodiversity
- Flooding
- Stormwater
- Traffic
- Strategic merit
- Rural Character/amenity
- Permissibility
- Economic
- Essential services
- Lack of community consultation
- Noise

The panel considers that concerns raised by the community have been adequately addressed in the assessment report and that no new issues requiring assessment were raised during the public meeting.

PANEL MEMBERS	
 Penny Holloway (Chair)	 Stephen Gow
 Susan Budd	 Ned Wales
 John Byrne	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSNTH-131 – Tweed Shire – DA21/0812
2	PROPOSED DEVELOPMENT	<p>The application is a concept application for a proposed Agricultural Food Hub. The facility is intended to provide food preparation space within individual sheds for the Northern Rivers food production industry. The proposed development is expected to provide commercial kitchen facilities to support local producers in addition to other ancillary uses such as a transport terminal (for loading and unloading of goods for the site), cold storage, cafe and function space. These proposed uses will be an ancillary component for the Agricultural Food Hub and will be provided to service the needs of future employees and tenants.</p> <p>The application seeks concept approval for use of the site as an agricultural produce industry. The concept plans show building envelopes for 19 sheds with a total floor space of 53,930m². The concept plans show associated access, internal roads, 450 parking spaces, bio-retention basin and landscaping. Two acoustic walls with a minimum height of 3m are also proposed.</p> <p>No consent is sought for physical works with this concept application.</p>
3	STREET ADDRESS	<p>931 Cudgera Creek Road, CUDGERA CREEK 2484 being Lot 403 in DP1001046 (part thereof)</p> <p>1023 Cudgera Creek Road CUDGERA CREEK 2484, being Lot 401 in DP1001046</p>
4	APPLICANT/OWNER	<p>Simon Forsyth and Lauren Manias</p> <p>Mr Ian G Everingham & Ms Ann M Neill</p>
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> • Environmental planning instruments: <ul style="list-style-type: none"> ○ State Environmental Planning Policy (Resilience and Hazards) 2021 ○ State Environmental Planning Policy (Planning Systems) 2021 ○ State Environmental Planning Policy (Transport and Infrastructure) 2021 ○ State Environmental Planning Policy (Biodiversity and Conservation) 2021 ○ Tweed Local Environmental Plan 2014 • Draft environmental planning instruments: Nil • Development control plans: <ul style="list-style-type: none"> ○ Tweed Development Control Plan 2008 • Planning agreements: Nil • Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Nil • Coastal zone management plan: Nil • The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality • The suitability of the site for the development • Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations • The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> • Council assessment report: 15 August 2022 • Written submissions during public exhibition: 403 • Verbal submissions at the public meeting:

		<ul style="list-style-type: none"> ○ Chris Cherry, Rhonda James, Stephen Carney on behalf of Cudgera Creek and Pottsville Protection Alliance, Nola Firth, Colleen Toovey, Julie Stevens, Kate Haigh, Frank Iseppi, Lindy Smith, Bronwyn Flanagan and Anthony Pike ○ On behalf of the applicant – Simon Forsyth and Bart Elias
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Site inspections: <ul style="list-style-type: none"> ○ <u>Susan Budd</u>: 20 August 2022 • Council and Applicant Briefing: 19 January 2022 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Stephen Gow (Acting Chair), Penny Holloway, Susan Budd, Ned Wales ○ <u>Council assessment staff</u>: Judith Evans, Lindsay McGavin, Valerie Conway (TSC) Tina Christy and Rachael Petherbridge (Gyde Consulting – Assessment Consultants for Council) ○ <u>Applicant representatives</u>: Simon Forsyth, Kathryn Jones, Anthony Elias, Bart Elias ○ <u>Department staff</u>: Stuart Withington, Sharon Edwards and Cameron Brooks <p><u>Note</u>: Applicant briefing was requested to provide the Panel with clarification and to respond to issues</p> • Final briefing to discuss council's recommendation: [date] <ul style="list-style-type: none"> ○ <u>Panel members</u>: Penny Holloway (Acting Chair), Stephen Gow, Susan Budd, Ned Wales and John Byrne ○ <u>Council assessment staff</u>: Judith Evans and Lindsay McGavin ○ <u>Department staff</u>: Carolyn Hunt and Lisa Foley
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	Conditions not provided