

<b>DATE OF DETERMINATION</b>	18 August 2021
<b>PANEL MEMBERS</b>	Paul Mitchell (Chair), Penny Holloway, Stephen Gow and Dr Ned Wales
<b>APOLOGIES</b>	None
<b>DECLARATIONS OF INTEREST</b>	<p>Dr Stephen Phillips declared a conflict of interest as he has provided professional advice in relation to the site in 2006.</p> <p>Paul Mitchell declared a non-significant, non-pecuniary interest as he had worked with one of the applicant's representatives, David Robertson, at ERM more than ten years ago. The Panel agreed that this did not preclude his involvement with the Panel.</p>

Public meeting held by teleconference on 18 August 2021, opened at 3pm and closed at 6:45pm.

#### **MATTER DETERMINED**

PPSNTH-77 – Tweed– DA21/0010 at Kyogle Road, Kunghur – multiple rural land sharing communities (as described in Schedule 1)

#### **PANEL CONSIDERATION**

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

The Panel noted Council's position that the proposal is not consistent with Schedule 5 of the Primary Production and Rural Development SEPP with respect to:

- development is not development on a single lot for 3 or more dwellings contrary to clause 4(1)(a) of Schedule 5 and is therefore prohibited (Section 4.15 (1)(a)(i) of the Environmental Planning & Assessment Act 1979);
- development on each lot relies on development on other lots contrary to clause 4(1)(a) of Schedule 5 and is therefore prohibited (Section 4.15 (1)(a)(i) of the Environmental Planning & Assessment Act 1979);
- the aims in clause 2(a) and 2(c) of Schedule 5 of the Primary Production and Rural Development SEPP, as the development:
  - (a) proposes to undertake subdivision to create lots for interconnected rural land sharing and is therefore prohibited under clause 4(1)(g) of Schedule 5;
  - (b) creates unacceptable undue harm to the environment and is therefore prohibited under clause 4(1)(g) of Schedule 5 (Section 4.15 (1)(a)(i) of the Environmental Planning & Assessment Act 1979);

- the development is in breach of the cap on population density in clause 7 of Schedule 5 to the SEPP (Section 4.15 (1)(a)(i) of the Environmental Planning & Assessment Act 1979);
- the development is on land that is a wildlife corridor contrary to clause 4(1)(d) of Schedule 5 to the SEPP and is therefore prohibited (Section 4.15 (1)(a)(i) of the Environmental Planning & Assessment Act 1979);
- an Aboriginal Cultural Heritage Assessment of the surrounding land has not been undertaken and therefore consent cannot be granted because the consent authority is unable to take into account the heritage characteristics of the land and surrounding land as required by clause 5(c) of Schedule 5 to the SEPP (Section 4.15 (1)(a)(i) of the Environmental Planning & Assessment Act 1979);
- The proposal has the potential to cause significant environmental impacts to the natural environment, due to significant amount of native vegetation removal and impact on native fauna (Section 4.15 (1)(b) of the Environmental Planning & Assessment Act 1979);
- The site is considered not to be suitable for the proposal due to the existing constraints (Section 4.15 (1)(c) of the Environmental Planning & Assessment Act 1979);  
Insufficient information has been submitted with the Development Application to enable a properly informed assessment of the impacts of the proposal (Section 4.15(i)(b)).
- The proposal is not considered to be in the public interest due to the high impact on the environment and cultural heritage, the isolated location and the absence of a coherent management strategy for capital and recurrent funding of proposed infrastructure and environmental management (Section 4.15 (1) (e) of the Environmental Planning & Assessment Act 1979);

The Panel adjourned during the meeting to consider its resolution.

### **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 is not satisfied that the proposed use is permissible because it does not satisfy the provisions of Schedule 5 of the State Environmental Planning Policy (Primary Production and Rural Development) 2019 and therefore refuses the application.

### **CONDITIONS**

Not applicable.


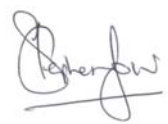

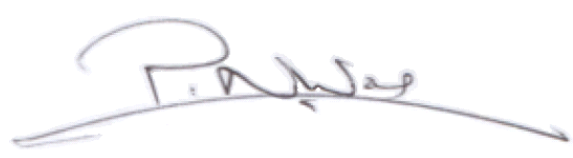
### **CONSIDERATION OF COMMUNITY VIEWS**

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:

- Lack of detail and necessary information
- Incorrect CIV

- Traffic concerns
- Environmental concerns
- Social impact
- Bushfire risk
- Loss of 106ha of native vegetation
- Impact on fauna
- Impact on Aboriginal Cultural Heritage

The Panel considered 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	
 Paul Mitchell OAM (Chair)	 Stephen Gow
 Penny Holloway	 Ned Wales

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSNTH-77 – Tweed– DA21/0010
2	PROPOSED DEVELOPMENT	Concept Staged Development Application for a Rural Land Sharing Community and associated works over 21 lots which are to be subdivided into 11 lots to allow for 392 dwelling plots over 10 lots to create 10 interconnected Rural Land Sharing Communities (the remaining lot will contain all of the RU5 Village zoned land).
3	STREET ADDRESS	Lot 4 DP 737440 & Lot 2 DP 1235488, No. 2924 Kyogle Road; Lot 34 DP 755714, No. 2956 Kyogle Road; Lot 121 DP 134446, Lot 1 DP 390311, Lot 5 DP 282299, Lot 2 DP 582300, Lots 1-2 DP 611556, Lots 3, 8, 19, 22, 31-33, 35 DP755714; Lot 1 DP 1183098; Lot 11 DP 1194471 No. 2984 Kyogle Road, Kunghur; Lot 20 DP 755714 & Lot 2 DP 1148316, No. 3222 Kyogle Road, Mount Burrell and unnamed Crown Road reserves
4	APPLICANT/OWNER	Kempcove Pty Ltd, NCV Enterprises Pty Ltd, Peter Van Lieshout, Dolph Cooke, Darko Kovac, Zimmer Land Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> <li>Environmental planning instruments: <ul style="list-style-type: none"> <li>State Environmental Planning Policy No. 55 - Remediation of Land</li> <li>State Environmental Planning Policy (Infrastructure) 2007</li> <li>State Environmental Planning Policy (State and Regional Development) 2011</li> <li>State Environmental Planning Policy (Primary Production and Rural Development) 2019</li> <li>State Environmental Planning Policy (Koala Habitat Protection) 2020</li> <li>Tweed Local Environmental Plan 2014</li> </ul> </li> <li>Draft environmental planning instruments: <ul style="list-style-type: none"> <li>PP-2021-2597: to prohibit new rural land sharing communities in the Tweed Local Government Area</li> </ul> </li> <li>Development control plans: <ul style="list-style-type: none"> <li>Tweed Development Control Plan 2008</li> </ul> </li> <li>Planning agreements: Nil</li> <li>Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Nil</li> <li>Coastal zone management plan: Nil</li> <li>The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</li> <li>The suitability of the site for the development</li> <li>Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations</li> <li>The public interest, including the principles of ecologically sustainable development</li> </ul>
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> <li>Council assessment report: 15 July 2021</li> <li>Written submissions during public exhibition: 225</li> <li>Verbal submissions at the public meeting:</li> </ul>

		<ul style="list-style-type: none"> <li>○ Council assessment officer – Lindsay McGavin and Michael Banks</li> <li>○ On behalf of the applicant – Andrew Gough, Daniel Mulherin, Mark Courtney, David Robertson, Wayne Hadaway</li> <li>○ Denise Nessel on behalf of the Northern Rivers Guardians, Inc; Helen Riley; Lyn Milsom; and Nola Firth speaking on behalf of Caldera Environmental Centre</li> </ul>
8	<b>MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL</b>	<ul style="list-style-type: none"> <li>• Briefing: 19 May 2021 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Paul Mitchell (Chair), Stephen Gow and Ned Wales</li> <li>○ <u>Council assessment staff</u>: Lindsay McGavin and Seth Philbrook</li> <li>○ <u>Department Staff</u>: Amanda Moylan, Carolyn Hunt and Lisa Foley</li> </ul> </li> <li>• Final briefing to discuss council's recommendation: 18 August 2021 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Paul Mitchell (Chair), Penny Holloway, Stephen Gow and Ned Wales</li> <li>○ <u>Council assessment staff</u>: Michael Banks and Lindsay McGavin</li> <li>○ <u>Department staff</u>: Amanda Moylan, Carolyn Hunt, Jane Gibbs and Lisa Foley</li> </ul> </li> </ul>
9	<b>COUNCIL RECOMMENDATION</b>	Refusal
10	<b>DRAFT CONDITIONS</b>	Not provided