

CALL FOR SUBMISSIONS

Nightcap on Minjungbal Proposed Development (Tweed Shire Council DA21/0010)

To learn more about the proposal and to send a submission:

1. Go to this page at Tweed Shire Council's website:
<https://datracker.tweed.nsw.gov.au/Pages/XC.Track/SearchApplication.aspx?id=877619&a=DA21/0010>
2. Click on Have Your Say to lodge an objection online.
3. OR to send your objection as an attachment to an email, write to council@tweed.nsw.gov.au, using the subject heading "Submission RE DA21/0010, Nightcap on Minjungbal Development."

DEADLINE FOR SUBMISSIONS: End of the day on Wed, 24 March 2021.

Community members have put together the points below. Council and the Northern Regional Planning Panel will be making the determination collaboratively, and they're most interested in unique objections, so *please put the points that matter most to you in your own words*. If more than 10 objections are received, the Northern Regional Planning Panel will hold public hearings, which will give the community an opportunity to voice their concerns in person.

The Basics

1. The proponents are NCV Enterprises Pty Ltd. (NCV = Nightcap Village).
2. The proponents were earlier involved in a similar venture known as Bhula Bhula. This DA refers to the current property as "Nightcap and Bhula Bhula" on page 6 of the main document, the *Statement of Environmental Effects* (SOEE).
3. The **1,584-hectare property** includes 2923, 2956, 2984 and 3222 Kyogle Road, stretching between Kunghur and Mount Burrell.
4. The DA presents a "concept plan" that involves amalgamating existing properties, creating new parcels out of the amalgamated whole, and turning the new parcels into Rural Land Sharing Communities (RLSCs)—entities formerly known as Multiple Occupancies.
5. The plan is for **392 dwellings across 10 RLSCs**. All dwellings will be responsible for supplying their own water, power, sewage treatment, and telecommunications services. The increase in population is expected to be **750 - 1500 people—larger than Uki**.
6. The 392 dwellings are to be served by approximately **25km internal roads**, yet to be built.

A Summary of Key Issues (Further Details of Each Below)

1. Density of Development

The DA proposes a redrawing of existing property boundaries to create new 11 land parcels, and then applying NSW State Environmental Planning Policy (SEPP) density limits to 10 newly-created RLSCs, with the 11th parcel reserved for the creation of a village. However, the resulting density will far exceed what would be allowed if the existing property were to be considered as a single RLSC. The proposed boundary-redefinition tactic thus appears to be inappropriate maneuvering around the intentions of the SEPP. A new off-grid community of 392 dwellings, for up to 1,500 people, is a wholly unreasonable use for this property, and adding an as-yet unspecified village into the mix would just result in still more negative impacts.

2. Threat to Wildlife; Concerns about Deforestation

If approved, this proposal will have significant negative impacts on the environment, with severe impacts on the wildlife in the area, especially koalas. In fact, the environmental impact alone can be considered reason enough to reject this proposal. Issues include the proposed relocation of a critical wildlife corridor to an unsuitable location, the proposed building of 25km of 6m-wide roads within the site (with attendant tree removal), and the clearing of ≈400 acres of trees to meet the required fire-safety clearances around dwellings. A major wildlife corridor that runs through the site connects Mebbin National Park with Nightcap National Park, and 21 threatened fauna species—including koalas—have been recorded on the site, as the DA acknowledges (Appendix E2, page 38). It has also been identified that there is a need for further assessments of 48 threatened/endangered species of flora & fauna due to favoured habitat being present within the development.

3. Roads

Road access to the site and internal roads are key issues. Only three access points from Kyogle Road are planned, and each will require substantial upgrading of current infrastructure (resurfacing, new bridges) to function adequately. Internal roads are largely non-existent, with many described as “Crown Land paper roads” that have yet to be purchased. Specific plans for developing and upgrading roads will be available only in future, so it is at this point impossible to assess the plans, except to assume that the needs are substantial.

4. Sewage and Wastewater Treatment

The proposed development has a projected population of 750-1000 people (p 36 SOEE), and the plans in Appendix I call for all sewage and wastewater to be handled by the individual households. We note that Uki has its own wastewater treatment plant, operated by TSC, that services ≈800 people. These developers should not propose leaving individual households to design, install, and maintain their own sewage treatment systems, an arrangement that could pollute the entire downstream valley..

5. Potable Water

The proponents have made no provision for supplying water to the dwelling sites, stating that each dwelling will be able to harvest rainwater and can rely on trucking in water as needed during dry periods. The Statement of Environmental Effects mentions on page 29 “the opportunity for bores and springs also identified as available to the site.”

6. Ownership Structure and Land Use

The DA does not make clear the ownership structure of the proposed development, raising numerous questions. The not-yet-accomplished amalgamation and subdivision into parcels for the intended RLSCs also raise significant questions. It would be premature for Council to approve a concept plan with the number of significant unknowns evident in this DA about who would own what. Questions also exist about land use intentions—that is, the extent to which it would be residential only or would include commercial enterprises.

Further Details

1. Further Details of Development Density:

The proposed development relates to a 1,584-hectare property currently comprising 21 lots, and the developers cite *SEPP (Primary Production and Rural Development) 2019* as the policy governing their proposal. On page 31 of that document, Schedule 5, Clause 7, item

1B states that the maximum number of dwellings on a RLSC of more than 210 hectares is 80. This maximum is far below the 392 dwellings proposed in the DA. Also, Schedule 5, Clause 8 of this SEPP prohibits subdivision of a property that is being proposed for use as an RLSC.

To get around these restrictions, the developers propose to first amalgamate the 21 existing lots and then subdivide the amalgamated property into parcels that will become RLSCs (page 48, Table 12, “Concept Subdivision Particulars”). Once the new subdivisions are created and designated as RLSCs, they will not be further subdivided and thus will adhere to Schedule 5, Clause 8 of the SEPP (which does not allow for subdivision of a RLSC).

This amalgamation-followed-by-subdivision can be considered an inappropriate maneuvering around the governing SEPP’s restrictions on density, given that the proponents are presenting the proposal as a development of the entire 1,584-hectare property.

2. Further Details About Wildlife and Deforestation

- The proponents want to “move” the wildlife corridor that covers much of the site to the lower southwest edge of the property, an area surrounded by roads, paddocks, and sparse vegetation. This would be an unsafe area for vulnerable wildlife. They would be extremely unlikely to venture into it by choice. The proposed “new” corridor is about 1/3 of the size of the naturally occurring corridor.

- According to Appendix E2, 23 of 37 species have been documented as sighted within a 10km radius of the proposed DA21/0010.

- Koalas are frequently seen in the area, and mating calls are often heard at night. Also, there is evidence of 225 Koala feed trees, including Tallowood (*E. microcorys*), Scribbly gum (*E. racemosa*), Red Mahogany (*E. reinifera*), Grey Gum (*E. propinqua*), Blue Gum (*E. tereticornis*), Flood gum (*E. grandis*), Grey ironbark (*E. siderophioia*) Sydney Blue gum (*E. saligna*) and Forest oak (*Allocasurina torolsa*). This is significant evidence of species that support the Koala population throughout this area. (This information was sourced from Friends of the Koalas, Atlas of Living Australia, which incorporates Bionet Atlas of NSW Wildlife, a document which is also utilised by the assessors who prepared the information in this DA.)

- The DA does not acknowledge the local platypus population in the Tweed River or impact on the Byrrill Creek population. Platypus populations are declining at a rapid rate due to human activity around their habitats.

- An area of particular concern is the identified main entrance at 3222 Kyogle Road. The proposal specifies at least 100 homes would use this spot to enter and exit the property, meaning ≈ 100 vehicles per day. This would be a very busy road, and this very road would cut right through the relocated wildlife corridor! The proposed relocation would simply increase the risk to the wildlife, including threatened species such as Koala, especially at night.

- The proponents admit in the DA that 48 threatened fauna species have previously been recorded within the locality (Appendix E2, p 38), and it has been identified that there is a need for further assessments of these 48 threatened/endangered species of flora and fauna, due to their ideal habitat in the area.

- Within the wildlife corridor, there are at least 21 threatened fauna species recorded in this area – to name a few - koalas, Marbled frogmouth, Giant Barred frog, glossy cockatoo, little lorikeets, sooty owl, red legged pademelon, various bats- little bent wing bat, eastern cave bat this just to name a few, and 7 flora species- Scrub turpentine, Rainforest Cassia.

- It should be noted that the NSW government’s recent enquiry into the plight of koalas found that the #1 cause of the growing threat of koala extinction is the clearing of their habitat. This DA presents a good example of the very habitat clearing that is putting our most vulnerable wildlife at ever greater risk.

- Any increase of domesticated animals such as dogs and cats into this significant wildlife corridor will have a significant negative impact on the wildlife, so it should be noted that the proposed community would allow all residents to keep dogs on their properties.

- Removal and clearing of large forested area will increase the likelihood of cane toads encroaching deeper in to the existing fragile ecosystems.

- The findings of the proponents' Fauna Survey must be questioned, especially given their conclusion that the majority of the identified wildlife on the site are located in a small area in the upper northwest of the property—away from the proposed development. Across the vast majority of the existing wildlife corridor, where the proposed dwellings would be located, little to no wildlife presence was noted. The accuracy of these findings should be questioned and assessed independently.

- Also to be noted: In a marketing flyer for Nightcap on Minjungbal (with “NightCap Village” at the top of the first page), under “Income Producing Assets” is this statement: *“There are currently approximately 600 acres of Blackbutt Forest on the property, at varying stages of growth; some at 10 years, some at 15 years, and the balance at 20 years. The full maturation period is 25 years so there are some areas that will provide great income for the community in the near future. However, there are already areas of forestry that can be utilised to build homes and other structures right now, and in fact already have.”* This suggests that the intention is to engage in additional substantial logging on the site, which is a significant concern.

3. Further Details about Roads

- *Road 1* (Appendix A3-1) is a dirt road opposite Mebbin Drive. It is considered the main access to the site from Kyogle Road. In 2006, a DA determination for a related property (DA06/1054) required a substantial new bridge at this location with an estimated cost of \$2-4 million. DA21/0010 makes no mention of that bridge, or any other bridge at this juncture, yet the need for it remains because the current bridge is wholly inadequate for the expected increase in traffic. This also appears to be the main access road for what would become a village at some point (SOEE pp 18, 33-34, 44, 48 (Table 12), 75, 88). Since a village is not part of this DA, the number of residences and commercial properties envisioned for it is unknown at this point, but cars from hundreds more dwellings, and business traffic, could be expected to use this access road to and from a village on that spot. (Locals recall that an earlier DA for a village in that location proposed at least 400 new dwellings.)

- *Road 2* (Appendix A3-1) is accessed via Kyogle Road and Mandalay Road. Residents on Mandalay Road were told their road would never be used as a main access to the proposed development. However, DA21/0010 indicates that 20% of the dwellings will be using that access. Mandalay Road already gets heavy use (≈200 vehicles per day), including ordinary cars, 4WDs, campervans, caravans, trailers carrying bikes, canoes and other outdoor equipment accessing Misty Mountain; plus heavy trucks, including concrete trucks and tradie vehicles travelling to and from Lot 34/DP 755714. All this traffic is going through Misty Mountain which is at the end of Mandalay Road (a 3.6 metre-wide road), causing distress to the other three private land-owners because of proximity to road, noise, constant dust, speeding by the tradies and some campers. The existing bridge is narrower than the road, but although it is in good condition at this stage, the roadway is deteriorating badly and will need considerable work to handle any increased traffic. Currently, many of the vehicles drive too fast for the road conditions, endanger domestic animals and wildlife as well as the people who walk along the road. (A family dog was killed last year, and wildlife is regularly threatened by speeding vehicles.)

- *Road 3* (Appendix A3-1) is a dirt road that allows access to the property via a small wooden bridge and a dirt road, both of which will require substantial upgrading to handle increased traffic.
- *Flooding*: The bridge at Mandalay Road has been flooded out four times in recent months, and the other two entrances to the site regularly get flooded, cutting off access to the proposed development. If the infrastructure is not substantially improved, people who build on the site will regularly be flooded in or flooded out. At such times, Kyogle Road could easily become a parking lot.

4. Further Details about Sewage and Wastewater

Appendix I does not offer specific plans for on-site sewage treatment, only three “preliminary options”. The proponents make the questionable assumption that all details can easily be worked out later.

- Option 1: Aerated Wastewater Treatment Systems (AWTS): Close to 400 AWTS would have to be installed, paid for by individual householders. TSC would have to provide ongoing close monitoring of the systems to ensure compliance with NSW regulations (https://www.waternsw.com.au/_data/assets/pdf_file/0015/114810/Section-4-Aerated-Wastewater-Treatment-Systems.pdf).

- Option 2: Each dwelling would have a composting toilet + a greywater system. TSC would have to approve the installation of these systems and would have to monitor them regularly for compliance.

- Option 3: A sewage treatment plant for a cluster of houses. Key issues (page 6 of Appendix I) are that a “management body” would have to maintain each plant, and a reliable power supply would have to be provided, e.g., a generator. Specific suggestions for establishing these requirements are not provided.

5. Further Details about Water Supply

Rural residents in the area commonly rely on harvesting rainwater for their households. However, given the scale of this development and the current lack of roads on the site, the prospect of numerous water trucks entering and leaving the site during periods of drought is a significant concern. In addition, the DA notes the “opportunity for bores and springs also identified as available on the site” (SOEE p 29).

6. Further Details about Ownership Structure and Land Use

DA21/0010 presents a plan for a series of Rural Land Sharing Communities (RLSCs), but the intended structure of ownership of these RLSCs is not made clear in this DA. Individual title deeds to land parcels will not be offered, as noted in Section 4.2.3, but the DA does not provide details of the actual plans for the expected group ownership. The discussion of Neighbourhood Management (Section 4.2.4) and Appendix N provide draft details for RLSCs that have already been established. Details of just how the RLSCs will be established to begin with are not given.

The DA indicates only that all 21 existing parcels of land will be acquired by NCV Enterprises and then divided into 11 parcels, 10 of which will become RLSCs. So will each RLSC be owned by a separate company that will purchase a parcel from NCV Enterprises and manage it independently of the other RLSCs? Or will NCV Enterprises retain part ownership of all the RLSCs and sell shares directly to interested individuals? Or will there be some other ownership arrangement? These important questions do not appear to be answered anywhere in the DA.

Section 4.2.3 states “Lot titles will incorporate 88B instruments to ensure lots are collectively managed and development remains linked to the concept”, but 88B instruments

are essentially easements granted to *non-owners* for limited uses of the land. The DA does not explain who will be the parties to these 88B instruments or what specifics the instruments will contain, saying only that these details “will be delineated through the subsequent subdivision stage” (page 48), raising further questions.

An approval of this DA could be taken to mean approval of whatever the developers decide at a later time to include in the plans for ownership of the land, the 88B instruments, etc., which may or may not be to the advantage of the people who seek to live on the property. The DA indicates that the proponent is still working out the details of “contracts, shareholder agreements and the like, which specifically address ownership rights, responsibilities, funding and dispute resolution” (p 60). This all raises questions about the legal ramifications, to Council and to the NRPP, of approving a DA with such nebulous arrangements.

In addition, in a marketing flyer for Nightcap on Minjungbal (with “NightCap Village” at the top of the first page) are statements indicating the intention of using the property for a variety of tourist attractions, including Zip Lines (pictured and described as an “income producing venture for the community”), a health retreat and conference centre (also described as an income producing asset), AirBNB accommodations, a shopping centre, and a cannabis-growing project. These commercial ventures would add to the numbers of people and vehicles travelling to and from the property. Contradicting their marketing material, the proponents state in the DA that tourist/visitor facilities and accommodations are not included in the concept plan although “such operations would be permissible with consent on the site” (p 71 *SOEE*). Note: The contradictions between the DA and the marketing material are not addressed in the DA.