

### 3. OFFICERS REPORTS

#### 3.1. DEVELOPMENT APPLICATION FOR RECONFIGURING A LOT (1 LOT INTO 2) BONNIE DOON ROAD

|                                      |                                                            |
|--------------------------------------|------------------------------------------------------------|
| <b>REPORT AUTHOR</b>                 | Planning Officer                                           |
| <b>MANAGER</b>                       | Leonard Vogel, Manager Environment and Planning            |
| <b>DEPARTMENT</b>                    | Environment and Planning                                   |
| <b>APPLICATION NO</b>                | ROL 2023_5763                                              |
| <b>PROPOSAL</b>                      | Reconfiguring a Lot (One lot into two lots)                |
| <b>APPLICANT</b>                     | Glen Patrick Fasano<br>PO Box 170<br>PORT DOUGLAS QLD 4877 |
| <b>LOCATION</b>                      | Bonnie Doon                                                |
| <b>PROPERTY</b>                      | LOT: 3 SP: 718188                                          |
| <b>PLANNING SCHEME</b>               | 2018 Douglas Shire Council Planning Scheme Version 1.0     |
| <b>ZONING</b>                        | Rural Zone                                                 |
| <b>LEVEL OF ASSESSMENT</b>           | Code                                                       |
| <b>PROPERLY MADE DATE</b>            | 8 May 2025                                                 |
| <b>STATUTORY ASSESSMENT DEADLINE</b> | 30 July 2025                                               |
| <b>REFERRAL AGENCIES</b>             | None applicable                                            |

## LOCALITY



Figure 1 – Locality Plan

## RECOMMENDATION

**That Council refuses the development application for Reconfiguring a Lot (One lot into two lots) over land described as Lot 3 on SP718188, on the following grounds:**

- 1. The proposed development if approved will fragment Class A Agricultural land. The development is incapable of being conditioned to achieve compliance with the required codes;**
- 2. The development is inconsistent with the 2018 Douglas Shire Planning Scheme version 1.0 with regard to the Rural Zone Code and the Reconfiguring A Lot Code. The development is incapable of being conditioned to achieve compliance with the required codes;**
- 3. The fragmentation of agricultural land and the size and configuration of the proposed lots is development that is inconsistent with the Far North Queensland Regional Plan 2009-2031, the State Planning Policy 2017 and the Planning Scheme. There is no identified need for the smaller lots in the rural area in order to achieve the outcomes of: the State Planning Policy 2017, the Far North Queensland Regional Plan 2009-2031 or the 2018 Douglas Shire Planning Scheme version 1.0;**

**Findings on material questions of fact:**

- 1. The application was properly lodged to the Douglas Shire Council on 8 May 2025 under s 51 of the *Planning Act 2016* and included a planning report.**

**Evidence or other material on which findings were based:**

1. **Council undertook an investigation of assessment of the development, against the State Development Requirements and the 2018 Douglas Shire Planning Scheme in making its assessment manager decision; and**
  2. **Council undertook an assessment in accordance with the provisions of section 60 of the *Planning Act 2016*.**
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## **EXECUTIVE SUMMARY**

Council is in receipt of a development application for Reconfiguring a Lot (one lot into two lots) at Bonnie Doon Road, Bonnie Doon, formally described as Lot 3 on SP718188.

The intent is to create two independent lots which can be disposed of separately. The proposed boundaries separating the two lots would be the existing road reserve containing Bonnie Doon Road. The proposal is to subdivide the 68.001 hectare allotment into two allotments and use the existing Bonnie doon Road which bisects the lot as the boundary.

Reconfiguring a Lot within the Rural zone is code assessable under the 2018 Douglas Shire Planning Scheme v1.0.

The 2018 Douglas Shire Planning Scheme allows subdivision of Rural zoned land of this nature where the residual parcels all achieve a minimum lot size of 40 hectares. The Far North Queensland Regional Plan 2009-2031 and the State Planning Policy (SPP) assessment benchmarks and policy positions are both integrated into the 2018 Douglas Shire Planning Scheme. Essentially the proposal is at odds with all three instruments regulating the pattern of development over rural land in Queensland and the Shire.

## **TOWN PLANNING CONSIDERATIONS**

### **Proposal**

Proposed is the subdivision of the existing 68.001 hectare Rural zoned allotment into two new allotments. Figure 1 above shows the existing property boundaries with Bonnie Doon Road separating two parts of the lot. The subdivision proposal is to use the existing boundary alignment but separate the lot into two titles with the road reserve in between.

The lots are proposed to be 40.1 hectares and 27.8 hectares in size. One proposed lot complies with the planning benchmark being a minimum size of 40 hectares, however the 27.8 hectare allotment is 12.2 hectares short.

### **Background**

The allotment is relatively level land and has been used for cultivation of sugar cane historically. It is mapped as Class A Good Quality Agricultural Land as part of the State Assessment and Referral Agency DA mapping data set. The land is improved by a farm machinery storage shed and has frontage to Santarossa Road, McCracken Road and Bonnie Doon Road. The land is a part lot, meaning it is a single title separated by road reserve. This road reserve contains Bonnie Doon Road.

The former Douglas Shire Council's 1996 Planning Scheme permitted smaller lots in rural areas in certain instances such as consolidation of cane holdings, family lot subdivision and for utility purposes. In the late 1990's the Minister for Local Government amended all

planning schemes removing the ability for family lot subdivisions in rural areas across Queensland. The 2018 Douglas Shire Planning Scheme maintains the State's position requiring a minimum of 40 hectare lots per new lot in the Rural zone and that agricultural land should not be fragmented.

### State Planning Requirements

State Planning Policy 2017 seeks that Agricultural Land Classification (ALC) Class A and Class B land is protected for sustainable agricultural use by:

- (a) *avoiding fragmentation of ALC Class A or Class B land into lot sizes inconsistent with the current or potential use of the land for agriculture*
- (b) *avoiding development that will have an irreversible impact on, or adjacent to, ALC Class A or Class B land*
- (c) *maintaining or enhancing land conditions and the biophysical resources underpinning ALC.*

The State Planning Policy—state interest guideline on Agriculture provides information on how the *SPP state interest—agriculture* is to be integrated into any Planning Scheme. The position of the guideline was drafted into the 2018 Douglas Shire Planning Scheme version 1.0 and is reflected in the high order code components of the Rural zone code and the Reconfiguration of a lot development code. Policy 2 relates to the protection of Agricultural Land Class A and Class B and clarifies its importance. The following sections of the guideline are particularly relevant:

*2.2 Local governments must ensure the mapped areas of ALC Class A and Class B land accurately reflect the role and importance of agriculture in the local area. Where desired a local government may apply a locally appropriate methodology to verify the location of soils important for agriculture in their local area. This could result in either greater or lesser area of land identified in an 'agricultural land' overlay or similar.*

*2.3 Manage development to protect ALC Class A or Class B land for agricultural use by... Ensuring the level of assessment for a dwelling on a new lot on or adjacent to ALC Class A or Class B land is sufficient to assess the impact of the dwelling on current and potential use of the land for agriculture, including assessment of the potential cumulative impact of dwellings and urban encroachment on the long-term viability of agricultural land uses...*

With reference to 2.2, the Planning Scheme addresses 'rural areas' in a broad sense, 'rural land' (as in the zoning) and 'agricultural land' (as in the activity over the land).

Subsequently, point 2.3 reinforces the potential for what might be considered low impact development (a dwelling house) to cumulatively encroach on agricultural land uses and affect the viability of this land over time. While it is acknowledged that the two residual parcels could be used for agricultural purposes including cropping, the issue is that the proposal is still to create further fragmentation of GQAL.

The Far North Queensland Regional Plan 2009-2031 also seeks to protect the region's rural production areas by avoiding further fragmentation to maintain viable farm lot sizes and to

protect agricultural lands from encroachment by incompatible land uses. The development is contrary to the Regional Plan.

### DOUGLAS SHIRE PLANNING SCHEME ASSESSMENT

The following benchmarks are applicable to the proposed development:

| Douglas Shire Planning Locality     | Comment                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|-------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Planning Zone</b>                |                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Rural Zone                          | The development fails to comply with the acceptable outcomes and the performance outcome that seeks a minimum lot size of 40 hectares unless specific circumstances exist or are proposed. The development is not one of those circumstances. The development is contrary to the code purpose. Refer to the comments below.                                                                                                                                  |
| <b>Local Plan Code</b>              | None applicable.                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Overlay Codes</b>                |                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Acid sulphate soils overlay         | No excavation or filling is proposed.                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Bushfire hazard overlay             | The allotment is a cane cropping parcel clear of vegetation. The Bushfire hazard overlay code is not relevant.                                                                                                                                                                                                                                                                                                                                               |
| Flood and storm tide hazard overlay | The allotment is affected by the flood and storm tide hazard overlay area, and in particular, the proposed smaller lot is affected by storm tide hazard areas within the medium and high risk category. However, there is enough land available outside the medium and high hazard areas for future development on both proposed titles to fill a pad for example. The potential impact of flood is negligible in this case and is not a reason for refusal. |
| Landscape values overlay            | The land is primarily within the medium landscape value area. This has no bearing on the subdivision proposal.                                                                                                                                                                                                                                                                                                                                               |
| <b>Development Code</b>             |                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Reconfiguring a Lot Code            | The proposal does not provide a sufficient residual lot size for one of the lots and does not comply with the code. See comments below.                                                                                                                                                                                                                                                                                                                      |

## Compliance Issues

### Rural Zone Code

The minimum lot size for new allotments within the Rural Zone is prescribed within Performance Outcome PO7 to be 40 hectares in area. While one of the proposed allotments complies, the smaller lot is only capable of being 27.8 hectares in size, falling 12.2 hectares short. The planning scheme is constructed to actively protect agricultural land from fragmentation and alienation by prescribing the minimum lot size as a performance outcome rather than an acceptable outcome. The purpose of the Rural zone code is achieved through compliance with the overall outcomes nominated within the code. Below is an assessment of the overall outcomes within the Rural zone code.

*(a) Areas for use for primary production are conserved and fragmentation is avoided.*

The proposal is not compliant with Overall Outcome (a) as the proposal further fragments rural land for use for primary production. The applicant contends that the land can still be used for rural pursuits and other smaller scale farming that do not require 40 hectares, but the assessment criteria requires that the land is not fragmented, and this is a clear example of fragmentation. The applicant proposes that the land is already fragmented as the road bisects it. The lot is still one holding by one set of owners and can be used for more appropriate productivity if scale is retained.

*(b) Development embraces sustainable land management practices and contributes to the amenity and landscape of the area.*

This overall outcome has limited applicability to the assessment of the proposal if any. Largely this is relevant to applications for material change of use.

*(c) Adverse impacts of land use, both on-site and on adjoining areas, are avoided and any unavoidable impacts are minimised through location, design, operation and management.*

This overall outcome has limited applicability to the assessment of the proposal if any. Largely this is relevant to applications for material change of use not reconfiguring a lot.

*(d) Areas of remnant and riparian vegetation are retained or rehabilitated.*

The proposal is compliant but this has limited relevance to the reconfiguration proposal.

The purpose of the Rural zone code is to:

*(a) provide for rural uses including cropping, intensive horticulture, intensive animal industries, animal husbandry, animal keeping and other primary production activities;*

The creation of a new lot does not provide for any new rural uses, they can already establish and will be more viable on the larger parcel. There is no reason that the land needs to be fragmented to provide for any other opportunity.

*(b) provide opportunities for non-rural uses, such as ancillary tourism activities that are compatible with agriculture, the environmental features, and landscape character*



*of the rural area where the uses do not compromise the long-term use of the land for rural purposes;*

Ancillary and non-rural uses require more land rather than less land to be compatible with Rural activities in general. Reduction in land size is a constraint, not an opportunity for development.

*(c) protect or manage significant natural resources and processes to maintain the capacity for primary production*

This purpose statement is largely relevant to material change of use applications and provides limited relevance to the proposal.

### **Reconfiguring a Lot Code**

PO1 of the code requires that lot reconfiguration complies with the outcomes of the applicable zone code. As discussed above the proposal does not comply with the 40 hectare minimum lot size.

Overall Outcome (b) from the code is the only relevant overall outcome to the proposal.

*(b) lots have sufficient areas, dimensions and shapes to be suitable for their intended use taking into account environmental features and site constraints;*

The proposed subdivision to create two lots out of one 68 hectare allotment results in one compliant lot of 40 hectares, which is where the benchmark is set, and one non-compliant lot at 27 hectares. The shape of the boundaries does not change as the proposal is to utilise the road reserve bisecting the lot as the separating boundary. The shape of the small lot is of no consequence, it is the fact that the land mass is lost from the parent parcel and is not of a size that supports the highest and best use of the land, being any range of rural activities.

### **Conclusion**

The relevant benchmarks of the Planning Scheme being the Rural zone code and the Reconfiguration of a lot development code have their foundations in the core SPP policy principles which seek to protect agricultural land from fragmentation and alienation. While the established settlement pattern in the immediate locality is consistent with that of what is being proposed, this does not give rise to sufficient grounds for approval as it is evident in the construct of the Planning Scheme that protection of agricultural land prevails. Therefore the development application is recommended for refusal.

### **Internal Referrals**

Nil. Referrals not necessary due to the minor nature of the proposal.

### **ADOPTED INFRASTRUCTURE CHARGES**

The development application did not trigger Infrastructure Charges as the recommendation is for refusal.

### **COUNCIL'S ROLE**

Council can play a number of different roles in certain circumstances and it is important to be clear about which role is appropriate for a specific purpose or circumstance. The

implementation of actions will be a collective effort and Council's involvement will vary from information only through to full responsibility for delivery.

The following area outlines where Council has a clear responsibility to act:

**Regulator:** Council has a number of statutory obligations detailed in numerous regulations and legislative Acts. Council also makes local laws to ensure that the Shire is well governed. In fulfilling its role as regulator, Council will utilise an outcomes based approach that balances the needs of the community with social and natural justice.

Under the *Planning Act 2016* and the *Planning Regulation 2017*, Council is the assessment manager for the application.

## **ATTACHMENTS**

1. Attachment 1- Proposal Plan [3.1.1 - 1 page]



# Proposed Subdivision Lot 3 RP718188 into Two Lots

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Attachment 3, 1, 1

Google Earth

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