

5. AGENDA ITEMS

5.1. PRELODGE MENT PLANNING SCHEME VARIATION AND ROL (1 INTO 8 LOTS) 22 MOUNTAIN VIEW DRIVE SHANNONVALE

REPORT AUTHOR	Jenny Elphinstone, Senior Planning Officer
MANAGER	Paul Hoyer, Manager Environment and Planning
DEPARTMENT	Environment and Planning
PROPOSAL	Variation to the Planning Scheme to apply the provisions of the Rural Residential Zone to the land and Reconfigure the lot (1 lot into 8 lots).
APPLICANTS	Bryan and Anne Eldridge, C/- Patrick Clifton, GMA Certification Group, P.O. Box 2760, Nerang Qld 4211
LOCATION	22 Mountain View Drive, Shannonvale
PROPERTY	Lot 4 on SP134229
PLANNING SCHEME	2018 Douglas Shire Council Planning Scheme Version 1.0
ZONING	Rural Zone
LEVEL OF ASSESSMENT	Impact
REQUEST FOR PRELODGE MENT	Prelodgement received 15 June 2021, Response issued 7 July 2021, Request for Council reporting 24 August 2021.
STATUTORY ASSESSMENT DEADLINE	N/A
REFERRAL AGENCIES	Not required.
LOCALITY PLAN	

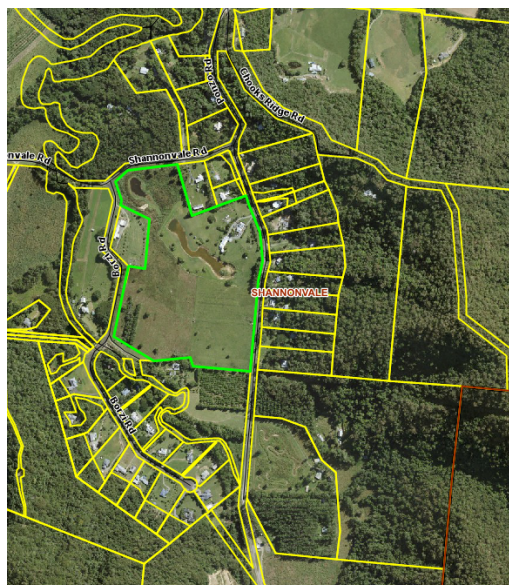


Figure 1 – Locality Plan

RECOMMENDATION

1. That with respect to the prelodgement enquiry lodged in relation to the redevelopment of 22 Mountain View Drive Shannonvale, being Lot 4 on SP134229, the proponent be advised that:
 - a. Council in principle is not supportive of development that is outside the framework and desired pattern of development of the 2018 Douglas Shire Planning Scheme;
 - b. Council is not supportive of development that fragments and results in a loss of rural land;
 - c. Council considers the development to be inconsistent with the State Planning Policy and the Regional Plan;
 - d. Council is not of the opinion that there is a demonstrated need for the development that is of such benefit to the community to support a decision that is inconsistent with the Planning Scheme, Regional Plan and State Planning Policy.
 2. That the above information is offered in the context of providing open and frank without prejudice comment from Council in relation to the proposed uses. The determination of any future application is a matter for Council following detailed assessment of the application, including consideration of any properly made submissions (where applicable).
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EXECUTIVE SUMMARY

Request for prelodgement advice is sought by the landowners to vary the Planning Scheme and enable the *Rural Residential Zone* (under the 2018 Planning Scheme) to apply to the land. The proposal also seeks consideration of a proposed reconfiguration to subdivide the one lot into eight lots.

The proposed variation to the Planning Scheme is not consistent with the pattern of development as identified in the Strategic Framework of the Council's current Planning Scheme, nor is it consistent with the use of land under the State Planning Policies, including the Far North Queensland Regional Plan.

There has been no demonstration that the land is constrained to such an extent that it cannot be used for rural purposes. The change of use rights will result in a significant fragmentation of remanent rural land. Applying the *Rural Residential Zone* use rights to the land will result in further development, beyond the scope of the current proposal, and can lead to amenity and reverse amenity issues to neighbouring and nearby land.

The Planning Scheme, coming into effect in 2018 is a relatively recent planning instrument and sets forth the desired pattern of development for a least 10 years. This planned future growth has had regard to State, Regional and local needs. Consideration of changes to use rights, on such a large scale, should be considered of the whole of the Shire, not as piecemeal development of individual lots.

TOWN PLANNING CONSIDERATIONS

Background

Planning History

Under the original 1981 Planning Scheme the privately owned lots in Shannonvale were zoned *Rural (Agriculture)*.

Application was made in 1983 by the then owner of this area, Benito Scomazzon, to rezone (RZ16) part of the area to *Residential-Rural Zone* (under the 1981 Planning Scheme) to enable the subdivision into *Residential-Rural* allotments. The rezoning was approved by the Council and had effect over land on the edges of the valley floor, essentially over the land that was constrained by hills. This rezoning continued through in the 1996 Planning Scheme as *Residential–Rural* zoned land.

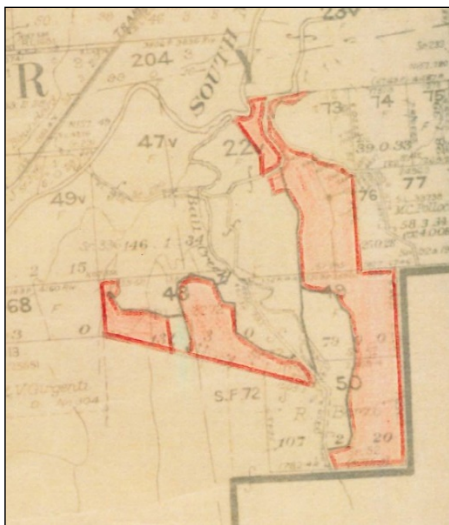


Figure 1 - Residential Rural Rezoning Approved 1983 (RZ 17).



Figure 2 –1996 Planning Scheme Map. Residential–Rural zone on the hillslopes and Rural (Agricultural) zone in the valley floor.

Over time, separate family lot subdivisions have fragmented rural land in this valley. In 2005 the former Douglas Shire Council approved a combined application for a material change of use to subdivide land at the southern end of Borzi Road for 21 Residential A allotments, parkland and a balance lot and new road (Thompson Low Drive) over the *Residential-Rural* land on the southwestern valley slopes. This determination gave a higher value and consideration to protecting the higher slopes, identified as areas of High biological and scenic amenity, over productive rural land.

The subdivision approval incorporated conservation covenants and limited the area of the lots where construction and development could occur. At the time the proposed lots were so constrained, and of such size, that further reconfiguration was not envisaged.

The 2006 Planning Scheme reflected this approval by the following map that included the rural lifestyle lots in the *Rural Settlement Planning Area* of the *Rural Areas and Rural Settlement Locality*. The 2006 Planning Scheme had few overlay constraints. Consequently, constraints were usually reflected in the Planning Area.

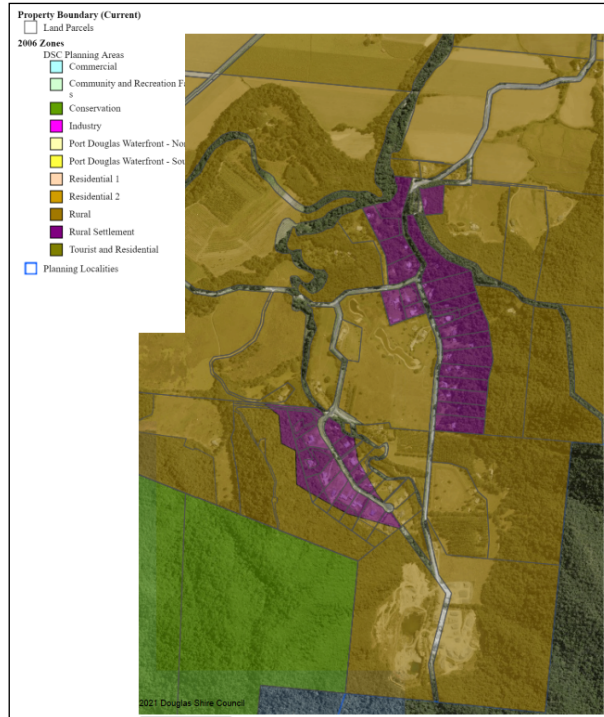


Figure 3 –2006 Planning Scheme Map

Both the Far North Queensland Regional Plan 2009-2031 issued in 2009, and the preceding Draft 2009-2025 issued in April 2008 identified three types of land use categories: *Urban Footprint*; *Rural Living Area*; and *Regional Landscape and Rural Production Area*. The Regional Plan constrains the majority of development to an identified urban footprint. Only a very limited part of the Shire was included in the *Rural Living Area*, those being South Arm Drive at Wonga Beach, part of the Mowbray Valley and west of the Highway at Oak Beach. None of the lots at Shannonvale are included in the *Rural Living Area*.



Figure 4 – Far North Queensland Regional Plan 2009-2031 Map

The current 2018 Planning Scheme considered the extent of overlay constraints and desired outcomes. Where no further reconfiguration is desired the lots were included in either an Environmental Management Zone or a Conservation Zone. The surrounding hills are constrained by the Hillslopes, Bushfire, Landscape Values, Landslide and Natural Areas. Due to these constraints and the desire of no further subdivision, the Rural Settlement lots were moved to be included in the Environmental Management Zone. The majority of the valley floor, which is constrained by a flood overlay, was included in the Rural Zone. The current zoning is detailed on Figure 5 below.



Figure 5 – 2018 Planning Scheme Zoning

Land Uses in the Shannonvale Valley

A variety of land uses in the local area include a significant rock and gravel quarry at the southern end of Mountain View Drive, rural production for fruit and some cattle livestock, with sugar cane production to the north. The Quarry was established prior to the introduction of Planning Schemes into the Shire. A permit to carry on Extractive Industry was issued by the former Council in 2005 which limited operational works to occur between the hours of 7:00 am to 6:00 pm, excluding Sundays and public holidays.

Lot 4 on SP134229 (Subject Site)

No. 22 Mountain View Drive is a single allotment with an area of 16.23 hectares located at Mountain View Drive, Shannonvale, and with frontage to Mountain View Drive, Ponzo Road and Thomson Low Drive. The site is currently improved by a single detached dwelling, two large outbuildings and two dams. The Dwelling and outbuildings are in the eastern portion of the site and adjacent the Mountain View Drive frontage. The dams are located along a natural drainage line that traverses the centre of the site from the south east to the north west.

Previous Consideration

Written prelodgement advice has issued providing the following advice.

“When considering planning proposals, Council requires that developments are consistent with the zoning requirements relevant to that site and that planning decisions are made in accordance with the Planning Scheme. The Planning Scheme intent for the Rural Zone is to limit further fragmentation of the Shire’s rural production land which is already severely fragmented.

The extent of rural zoned land within the Shire is very limited. There would also be a concern for adverse amenity impacts on smaller lots. The proposal which seeks to subdivide the abovementioned Rural zoned parcel of land is inconsistent with the Planning Scheme.

Your application notes the development would be for the purposes of rural residential use. A variation to the Planning Scheme would require a section 61 variation request application that would need to consider the State Planning Policies and the Regional Plan. The Regional Plan currently limits rural residential development to Rural living areas and this land is not mapped as such.

The land is not considered to be so constrained as to justify lot reconfiguration or alternative use. The development would not be supported by Council officers.”

Proposal

The applicants have requested the prelodgement enquiry be forwarded to Council for consideration. Under the 2018 Planning Scheme the current Rural Zoning does not support further subdivision as the Zoning seeks that all new lots have a site area of at least 40 hectares. The applicants seek to further reconfigure the land to create lifestyle rural lots.

The proposal seeks an application for a combined application for:

- a. A Preliminary Approval to vary the effect of the Planning Scheme to apply the Rural Residential Zone provisions of the Douglas Shire Council Planning Scheme over the land rather than the Rural Zone provisions; and
- b. An application to a Development Permit to reconfigure the land from one lot into 8 lots.

The applicants have advised that, *“the exact form of subdivision is yet to be determined; however, one lot would contain the existing Dwelling House and Outbuildings and larger dam with the other lots being vacant lots. The average lot size would be in the order of 2 hectares with no lot less than 1 hectare.”* Figure 7 below shows the indicative layout provided to Council.



Figure 6 – Applicants' Indicative form of subdivision

The applicants identify the site as being surrounded by land that has been developed for “rural lifestyle allotments” with areas ranging in size from 4,048m² to 4.35 hectares. The applicants’ comment of “rural lifestyle allotments” refers to the lots that are currently in the Environmental Management Zone to the north-east, east and south-west.

In respect to the State Planning Policy, the applicants purport that as the Minister has identified that the State Planning Policy (April 2016) to be integrated into the Council's 2018 Planning Scheme, notwithstanding that the site is identified in the Agricultural Land Classification – Class A or B and within the Flood Hazard Area – Level 1 – Queensland Floodplain Assessment Overlay, and that no further assessment is required. To this extent the applicants consider the assessment should be limited to an assessment against the local planning instrument, that being Council's Planning Scheme.

In respect to the Far North Queensland Regional Plan 2009 – 2031, the applicants note that the Minister has identified that the planning scheme appropriately advances the Far North Queensland Regional Plan 2009-2031.

The applicants note the site is identified in the Regional Landscape and Rural Production Area and within this area the FNQ Regional Plan states that further fragmentation of agricultural is avoided to maintain economically viable farm lot sizes. The applicants consider the site is not an economically viable farm lot and is for all intent and practical purpose a rural lifestyle lot. On that basis, the applicants claim the subdivision would not result in the further fragmentation of an economically viable farm lot but the subdivision of an existing rural lifestyle lot.

Further, the applicants state the Regional Plan recognizes that some areas of rural residential land that are constrained, are located in the Regional Landscape and Rural Production Area.

The applicants submit that the subject site and the surrounding area is consistent with this statement, noting that while the Regional Plan intends that rural residential development occur in the identified rural living areas, it does not prohibit the further development of the rural residential land in the Regional Landscape and Rural Production Area.

On the basis of the above, the applicants consider the proposal is not inconsistent with the provisions of the FNQ Regional Plan and would not result in the further fragmentation of economically viable rural land

The applicants also nominate that the creation of a new rural residential area would not result in any impacts on matters of environmental significance.

In respect to the Council's Planning Scheme, the applicant's focus assessment against the Strategic Framework and have regard to the strategic outcomes associated with Theme 1 – Settlement Pattern and the strategic outcomes associated with Theme 2 – Environment and Landscape Values.

The applicants have provided the following comments below in respect to these matters, on which it is asserted that the development is consistent with the Strategic Framework.

"In respect of Settlement Pattern, the strategic outcomes seek to resist the establishment of new rural residential areas. The Strategic Framework map does not identify Rural Residential Areas and whilst the site is not identified in the Rural Residential Zone, the prevailing form of development in the area containing the site is rural residential/rural lifestyle in nature. On that basis, it is submitted that the proposal would not result in a new rural residential area but the consolidation of an existing rural residential area and the proposed development would not compromise the existing rural residential amenity or character and would ensure that sufficient area is available to maintain a generous separation between each house on each lot.

In respect of Environment and Landscape Values, the site is not identified as containing any matters of environmental significance and is cleared of vegetation. It is also not an elevated site where any future development would affect the scenic amenity of the shire.

PLANNING CONSIDERATIONS

Sections 43, 61 of the *Planning Act 2016* and Section 32 of the *Planning Regulation 2017*, outline matters Council, as the Assessment Manager, must have regard to when determining the variation request. These are outlined below.

Planning Act 2016

43 Categorising instruments

- (1) A categorising instrument is a regulation or local categorising instrument that does any or all of the following—*
 - (a) categorises development as prohibited, assessable or accepted development;*
 - (b) specifies the categories of assessment required for different types of assessable development;*
 - (c) sets out the matters (the assessment benchmarks) that an assessment manager must assess assessable development against.*
- (7) A variation approval may do something mentioned in subsection (1) only in relation to—*
 - (a) development that is the subject of the variation approval; or*
 - (b) development that is the natural and ordinary consequence of the development that is the subject of the variation approval.*

61 (2) *When assessing the variation request, the assessment manager must consider—*

- (a) the result of the assessment of that part of the development application that is not the variation request; and*
- (b) the consistency of the variations sought with the rest of the local planning instrument that is sought to be varied; and*
- (c) the effect the variations would have on submission rights for later development applications, particularly considering the amount and detail of information included in, attached to, or given with the application and available to submitters; and*
- (d) any other matter prescribed by regulation.*

(3) *The assessment manager must decide—*

- (a) to approve—*
 - (i) all or some of the variations sought; or*
 - (ii) different variations from those sought; or*
- (b) to refuse the variations sought.*

Note— The part of a variation approval that approves variations is a local categorising instrument. Section 43(7) states limits on the variation
32 Assessing variation requests—Act, s 61

Planning Regulation 2017

32 *Assessing variation requests—Act, s 61*

For section 61(2)(d) of the Act, an assessment manager must consider the following matters when assessing a variation request, to the extent the matter is relevant to the request—

- (a) the common material;*
- (b) the regional plan for a region;*
- (c) the State Planning Policy, to the extent the State Planning Policy is not identified in the planning scheme as being appropriately integrated in the planning scheme;*
- (d) any temporary State planning policy. approval as a categorising instrument.*

State Planning Policy

The State Planning Policy ('SPP') was introduced on 3 July 2017 as part of the State's planning system. The SPP The State Planning Policy is the primary state planning instrument providing a clear and definable policies about matters of state interest in land use planning and development, providing direction for the preparation of local planning instruments and assessment of development applications.

The SPP identifies 17 state interests in land use planning and development categorised into five themes relating to:

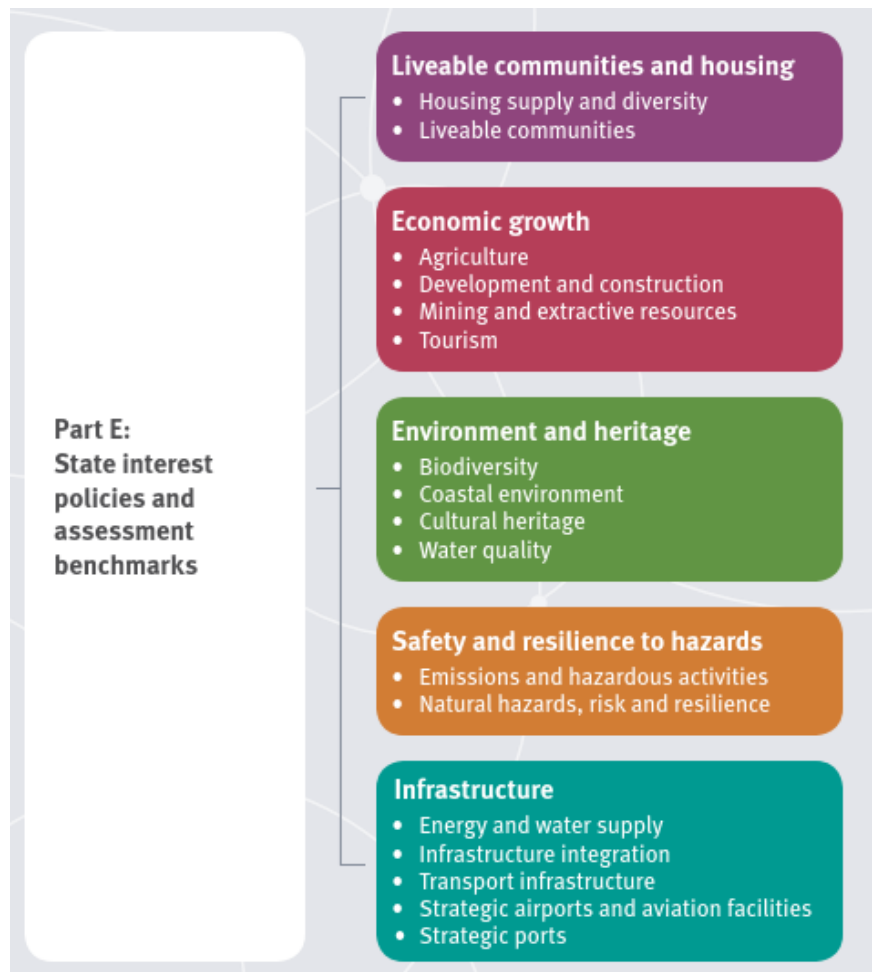


Figure 7 – State Interest Policies and Assessment Benchmarks

It is agreed that the SPP is integrated in the 2018 Planning Scheme providing a balanced outcome that addresses the themes. The Scheme does not anticipate the proposed development, as a future consideration. The whole of the land is of *Agricultural Class A/B*. The majority of the land is mapped as *Flood hazard area - Level 1 - Queensland floodplain assessment overlay*. Changes to a Planning Scheme need to retain a balance in respect to the state interests, in particular economic growth (Agriculture), Liveable communities and safety to hazards including flood.

The development is not considered to align with the State Interest Statement: for Agriculture being, “*The resources that agriculture depends on are protected to support the long-term viability and growth of the agricultural sector*”; for Natural hazards, risk and resilience, “*The risks associated with natural hazards, including the projected impacts of climate change, are avoided or mitigated to protect people and property and enhance the community’s resilience to natural hazards*,” and for Liveable communities, “*Liveable, well-designed and serviced communities are delivered to support wellbeing and enhance quality of life*.” The further fragmentation and loss of rural land will reduce the track of land available. There has been no assessment provided in respect to the suitability of the land respective of hazard risk.

Far North Queensland Regional Plan 2009-2031

The Far North Queensland Regional Plan 2009-2031 ('FNQ Regional Plan') provides the framework for the sustainable management of growth and development in Far North Queensland. The site, and the whole of the valley area, is contained within the *Regional Landscape and Rural Production Area*. The Regional Plan specifically states that *"further fragmentation of rural land in the regional landscape and rural production area is avoided to maintain economically viable farm lot sizes."*

The past pattern of settlement has reduced lots size in this valley. Land fragmentation has accumulative impacts that causes loss of agricultural land. Once subdivided and individually developed it is usually cost prohibitive to return to larger lot formats and larger, more efficient and economical farming practises.

Douglas Shire Planning Scheme

The consideration is against the whole of the Scheme, including the Strategic Framework. The Settlement Pattern clearly states, *"New rural residential development areas are not established."* The Framework also requires consideration of an *acceptable and tolerable level of risk based on a fit for purpose risk assessment*. Theme 5 - Economy clearly states, *"the availability and viability pf rural land for on-going agricultural use is not compromised by inappropriate or incompatible development."*

There are a significant number of lots within the Shire that are already capable of being developed for rural lifestyle lots and to date have not been so developed.

A demonstrated need for additional rural lifestyle lots and conversion of Rural zoned land in the Shire must be balanced against the outcome of fragmentation and loss of agricultural land. The consideration of need requires objective analysis.

The provision of further lots must be considered on a Shire wide basis and through conversation with the State Government having regard to the Regional Plan and the State Planning Policies. This alternative future direction is beyond the financial consideration of a single, individual landowner on a first approved approach. The State Government had previously gone to significant State-wide legislative change to rid rural areas of the old family lot subdivisions. Future fragmentation of relatively unconstrained agricultural land is not an easy application to support.

Local Plan Code - No applicable local plan

Overlay Constraints

The dominant overlay constraint affecting the land is that of a flood plain overlay. No flood study has been provided to clarify the impacts of flood on the land. No detail has been provided to clarify the impact of the final form of development, including any further uses and reconfigurations.

Access to this part of the valley is constrained. The northern egress route, over the ford crossing at the South Mossman River has only seasonal availability. Ponzo Road has a constrained alignment and has been subject to several landslips. The impact of additional residential users on this local road network should be considered.

Comparison of Zones

The development seeks not only to reconfigure the and into seven additional lots, but also to change the applicable zoning from *Rural* to *Rural Residential*.

The purpose of the *Rural Zone* is to provide for rural uses.

The *Rural Residential Zone* limits the range of rural uses where the following uses will no longer be supported: Air services, Agricultural supplies store, Bulk landscaping supplies, Cemetery, Crematorium, Garden Centre, Intensive animal husbandry, Intensive horticulture, Major electricity infrastructure, Motor sports, Outdoor sport and recreation, Outstation, Rural industry, Rural workers accommodation, Service industry, Tourist attraction, Tourist park, Transport depot and Winery.

While some of the above uses would be inappropriate to the land, due to anticipated impacts (e.g., motor sports), the change of anticipated use rights must be considered beyond the loss of land available for cropping and animal husbandry. The application of *Rural Residential Zone* use rights also raises the level of assessment for Rural Activities.

Furthermore, the reconfiguration of a lot code would enable the further subdivision of lots into sizes, dependant on constraints, of a minimum of 4000m². This eventual outcome will produce lots much smaller than those already in the valley area.

Planning commentary

Any creation of land with a *Rural Residential Zone* and reconfiguration must have regard to resulting loss and fragmentation of rural land and the actual need for land within this Zone. In considering such a change due regard needs to be given to the State and Regional objectives as well as consequential changes to the Planning Scheme's Strategic Framework. Where a need is demonstrated to exist, then the rezoned land is to be provided in the best location within the Shire, having regard to the high level planning instruments.

The proposed development will result in a further loss of rural land and fragmentation of rural land. Once reconfigured such land is irretrievably fragmented and as the past pattern of development has demonstrated, most is usually irretrievably lost for rural purposes. The need for the development has not been demonstrated.

The land is not so constrained to exclude all forms of rural land uses. The land is constrained by natural hazard of flood and the egress out of the valley area is also constrained. Severe rain events have resulted in slip of Ponzo Road and the frequent inundation of the ford crossing at the South Mossman River is a further hazard.

Public Notification

Under the Planning Act the application would be subject to public notification for a period of 30 business days. This is a longer period than for an impact assessable application which is a standard 15 business days. At the time of determination Council must consider all properly made submissions. A properly made submission entitles the submitter to third party appeal rights.

LGIP & ADOPTED INFRASTRUCTURE CHARGES

The development is outside both water and sewer reticulation service areas. Where approved a development would trigger Infrastructure Charges.

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: Meeting the responsibilities associated with regulating activities through legislation or local law.

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

ATTACHMENTS

Nil