

5.10. DEVELOPMENT APPLICATION FOR RECONFIGURING 2 LOTS INTO 3 LOTS AT 188 FERRERO ROAD, CRAIGLIE

REPORT AUTHOR	Daniel Lamond, Planning Officer
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DEPARTMENT	Environment and Planning
APPLICATION NO	ROL 2023_5299/1
PROPOSAL	Reconfiguring a Lot (Two lots into three lots and access easement)
APPLICANT	F A Langton C/- RPS AAP Consulting Pty Ltd PO Box 1949 CAIRNS QLD 4870
LOCATION	188 Ferrero Road CRAIGLIE
PROPERTY	LOT: 5 SP: 161461, LOT: 11 TYP: N PLN: 157371
PLANNING SCHEME	2018 Douglas Shire Planning Scheme Version 1.0
ZONING	Rural Zone
LEVEL OF ASSESSMENT	Code
PROPERLY MADE DATE	13 March 2023
STATUTORY ASSESSMENT DEADLINE	31 May 2023
REFERRAL AGENCIES	Douglas Shire Council

LOCALITY

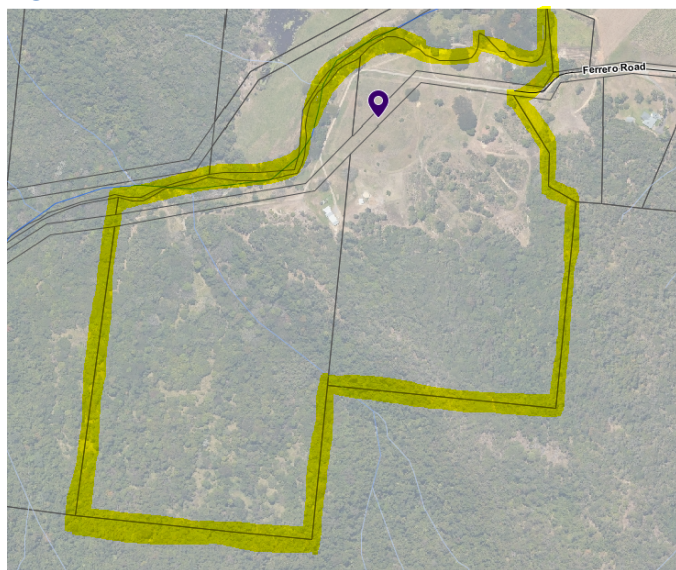


Figure 1 – Locality Plan

RECOMMENDATION

That Council refuses the development application for Reconfiguring a Lot (Two lots into three lots and access easement) over land described as Lot 5 on SP161461 and Lot 11 on N157371, on the following grounds:

1. The development creates lots which are not of an appropriate size and configuration to retain and sustain the utility and productive capacity of the land for rural purposes. The proposed development will fragment rural land, in particular good quality agricultural land that is identified as Class A Agricultural Land Classification. 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;
4. There are insufficient grounds to justify approval despite the conflicts with the State Planning Policy 2017, the Far North Queensland Regional Plan 2009-2031 and 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 the 29 March 2021 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 Council 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*.

EXECUTIVE SUMMARY

Council is in receipt of a development application for reconfiguring a lot (Two lots into three lots and access easement). The land is located at 188 Ferrero Road, Craiglie formally described as Lot 5 on SP161461 (Lot 5) and Lot 11 on N157371 (Lot 11) and is within the Rural Zone.

The 2018 Douglas Shire Planning Scheme only allows subdivision of Rural Zoned land of this nature where the residual parcels all achieve a minimum lot size of 40 hectares. The proposal is to create a third 1.49 hectare allotment from the two existing allotments which are 22 and 25 hectares in size respectively.

This non-compliance creates a new allotment which would only be suitable as a lifestyle lot. 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.

The applicant has made two prelodgement enquiries and was given the same response from Council officers advising that the application is not supportable. The application is recommended for refusal.

TOWN PLANNING CONSIDERATIONS

Proposal

The development application seeks Approval to reconfigure Lot 5 on SP161461 and Lot 11 on N157371 into 3 rural allotments by way of excising a small part of Lot 5 and Lot 11 and amalgamating these parts into a third new allotment that is located north of the existing constructed road access and is bounded by Crees Creek to the North. An access easement benefitting Lot 5 on NR298 which adjoins the Western boundary of Lot 11 is proposed to contain the existing constructed driveway access as it is located within the boundaries of the two existing allotments.

Background

The application claims that the allotments have historically been used for grazing as far as agricultural uses are concerned, with the undulating slopes rendering the land inappropriate for cane cropping. The sites also have historic borrow pits in some sections where material for filling works associated with the Sheraton Mirage development was taken. The land is currently utilised for cattle grazing and a filled pad exists 20m from the road frontage in the form of a small house pad or shed pad on the proposed new allotment being proposed Lot 103 (Refer to Attachment 1- Proposal Plan).

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 land on the lots that is proposed to be excised into its own new 1.49 hectare title is mapped as Agricultural Land Class A and is also mapped as Strategic Cropping Land. Therefore, the proposed fragmentation of land is contrary to the SPP.

The Far North Queensland Regional Plan 2009-2031 also seeks to protect the region's rural production areas by avoiding further fragmentation to maintain economically viable farm lot sizes and to protect agricultural lands from encroachment by rural residential development. The development is contrary to the Regional Plan.

DOUGLAS SHIRE PLANNING SCHEME ASSESSMENT

The following benchmarks are applicable to the proposed development:

Table 1.

Douglas Shire Planning Locality	Comment
Planning Zone	
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.
Local Plan Code	None applicable.
Overlay Codes	
Acid sulphate soils overlay	No excavation or filling is proposed.
Bushfire hazard overlay	The cleared areas on the land are largely covered within the potential impact buffer area. No particular concern is raised in respect to this code given the application is for boundary reconfiguration.
Flood and storm tide hazard overlay	The areas of the land toward Crees Creek, and particularly, the majority of proposed lot 103 is mapped as within the floodplain constraining the ability for development within this area. The depth and levels of inundation here is unknown.
Landscape values overlay	The cleared sections of the land are within the medium landscape value area.
Natural areas overlay	The applicant claims that the development will benefit the adjacent waterway being Crees Creek as it will result in the ability to change the land use from grazing to something like short term accommodation and get the cattle away from the creek.
Development Code	
Reconfiguring a Lot Code	The proposal does not provide a sufficient residual lot size 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 PO7 to be 40 hectares. The proposed new allotment is 1.49 hectares in size. This component of the application is non-compliant with the performance outcome. The purpose 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 land is bound together by a vinculum across the dirt road section of Ferrero Road and the unconstructed section of Ferrero Road further West. The land is somewhat fragmented but the proposal exacerbates this further. The Rural zone code does not accommodate further fragmentation of Rural land regardless of the existing title size or boundary arrangement.

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

The proposal for subdivision is non-compliant with Overall Outcome (b) as the only area suitable for future development of buildings on proposed lot 103 is an elevated pad outside the flood plain assessment overlay area toward the road frontage of Ferrero Road. There exists no vegetation buffer at the road frontage so new house development on this parcel has the potential to decrease the amenity and landscape value of the area by virtue of its siting out in the open with no screening. Currently Lot 5 has an approval for a dwelling and secondary dwelling which are both sited away from the Ferrero Road frontage nestled into the slopes and vegetated areas on the land on the Southern side of the road.

(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.

Overall Outcome (c) largely relates to applications for Material Change of Use. However, it is notable that the fragmentation and creation of a new lot being Lot 103 represents an opportunity for intrusion of residential development (a dwelling house) into the Rural area. This represents an adverse impact of land use as it diminishes the ability of the land and the residual titles to be utilised to their full potential for agricultural pursuits namely industrialised agricultural uses which may involve spraying, noise and use of heavy equipment. The applicant proposes that the new title will be suitable for a dwelling house or a form of short term accommodation which represents a level of incompatibility.

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

Overall Outcome (d) is largely irrelevant to the assessment as new boundaries do not intersect areas of remnant or riparian vegetation. However, the applicant proposes that the subdivision and creation of new titles will allow a form of short term accommodation or intensive horticulture to occur instead of retaining the cattle on the land which they claim is an overall benefit for the riparian corridor and ecosystem of Crees Creek.

The existing land title of Lot 5 being the primary parent title which the proposed 1.49 hectare title is to be created from currently has a dwelling house and secondary dwelling approved over it. Subsequent to the construction of this dwelling land use, a type of short term accommodation subordinate to the dwelling use on the land can be supported by Council,

but not as a short term accommodation land use by its self. Therefore it is a mute point that the proposal will benefit the riparian ecosystem by replacing cattle with accommodation. There is nothing stopping the current owner from embracing sustainable best practices for grazing around creeks.

The applicant proposes that the application is consistent with the three purpose statements of the Rural zone code. The purpose of the Rural zone code is to provide for:

- (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 small lot 1.49 hectares in size does not provide for rural uses and diminishes the ability for rural uses to occur. There is simply not enough land to undertake stand alone primary production and an no appropriate alternative primary production use has been provided which demonstrates that this small area of land can cater a future use of this nature.

- (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;*

The development application states that the land is not suitable for cropping sugar cane and claims that the proximity to Port Douglas, together with the northern boundary of the new title bordering the riparian corridor provides it to be ideally suited to some form of short stay accommodation or intensive horticultural activities.

The short term accommodation land use is not supported by the Planning scheme to establish in the Rural Zone on its own. There is merit in establishing a home based business with a subordinate BNB style accommodation component if a house was established on Rural land but this is the extent of what would be supported here, and it is able to be achieved without the subdivision occurring for the small lot. Noting that the only suitable location on the proposed lot to site a new building is the raised pad which limits the argument for such a use anyway. The rest of the land near the riparian corridor is flood prone and is within the floodplain assessment overlay.

The ability for intensive horticulture to occur on the new lot has not been demonstrated. In particular, the floodplain assessment overlay encompasses most of the cleared land available on the proposed small lot. Leaving the lot the way it is, in a larger format provides for significantly more opportunity to establish an intensive horticulture land use or any other rural use.

It is clear that the two example land uses the applicant has nominated are not compatible with agriculture on such a small and flood constrained site.

- (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 application and provides limited guidance for assessment. However if agricultural land is to be recognised as a natural resource, then the application to fragment it further is in

direct conflict with purpose statement (c) as its capacity for primary production is significantly diminished by further fragmentation through subdivision.

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 as the proposed residual lot is 1.49 hectares.

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 the new 1.49 hectare allotment is in conflict with Overall Outcome (b) as the intended use(s) for the Rural Zone is for Rural Activities and Rural Purposes (cropping, animal husbandry, horticulture and the like) are further constrained by the diminished property size rendering the land relatively useless for these uses. The proposal does not comply with the Reconfiguring a Lot Code.

Limit of Code Consideration

Under s 43 of the *Planning Act 2016*, code assessment benchmark assessment does not include matters within the Strategic Framework. Neither a matter of a person's opinion nor a person's circumstances, financial or otherwise are assessment benchmarks. The assessment is bound to the codes of the assessing instrument. s 63 requires specific reasons be given where a development is approved, or approved subject to conditions, "*why the application was approved despite the development not complying with any of the benchmarks.*"

An application may be refused only if it does not comply with the assessment benchmarks and compliance cannot be achieved by imposing conditions. In this case, conditions cannot be imposed to require that the new allotment is a minimum of 40 hectares in size for obvious reasons.

Internal Referrals

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

ADOPTED INFRASTRUCTURE CHARGES

The development 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- Proposed Subdivision Plan [**5.10.1** - 1 page]

