

### 6.3. DEVELOPMENT APPLICATION FOR RECONFIGURING A LOT (1 INTO 4) AT 291 MOWBRAY RIVER ROAD

<b>REPORT AUTHOR MANAGER</b>	Daniel Lamond - Planning Officer Paul Hoyer, Manager Environment and Planning
<b>DEPARTMENT</b>	Environment and Planning
<b>APPLICATION NO</b>	ROL 2023_5515/1
<b>PROPOSAL</b>	Reconfiguring a Lot (One lot into four lots)
<b>APPLICANT</b>	G J Hunt PO Box 170 PORT DOUGLAS QLD 4877
<b>LOCATION</b>	291 Mowbray River Road MOWBRAY
<b>PROPERTY</b>	LOT: 34 SP: 331786
<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>	5 September 2023
<b>STATUTORY ASSESSMENT DEADLINE</b>	24 January 2024
<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 four lots) over land described as Lot 34 on SP331786, 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;

Findings on material questions of fact:

1. The application was properly lodged to the Douglas Shire Council on 5 September 2023 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*.

## EXECUTIVE SUMMARY

Council is in receipt of a development application for Reconfiguring a Lot (one lot into four lots) at 291 Mowbray River Road, Mowbray, formally described as Lot 34 on SP331786.

The intent is to create three new lifestyle sized allotments and retain the agricultural use on the balance of the parent parcel. The site comprises 53.53 hectares and is currently predominantly used for cane cropping, with around 40 hectares of contiguous land set aside for this.

The balance of the farm land is generally made up of open pastures, and is situated in the southwestern section of the site fronting Mowbray River Road. This land is used for animal husbandry, animal keeping and horticulture. This section of land is proposed for subdivision into three new titles.

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 53.53 hectare Rural zoned allotment into four new allotments. Figure 1 above demonstrates the proposed reconfiguration which is inclusive of:-

The creation of three (3) smaller rural lifestyle lots over part of the grazing portion of the land at the Mowbray River Road frontage being 1.7 hectares, 1.7 hectares and 2.6 hectares each in sized; and

The creation of one (1) large balance lot being 47.53 hectares in size, which is to include all of the cane farming land as well as the northern portion of the grazing land making up the balance lot. Further details of the proposed lots are provided in table 1.

**Table 1 – Proposed reconfiguration details**

Proposed Lots	Area	Site features	Access and frontage
Lot 1	47.53 ha	The primary dwelling and 40 hectares of existing cane farm will be retained on proposed Lot 1. More than half of the existing designated grazing land, including the dressage arena, is also included in proposed Lot 1. Reticulated water service is available.	Access from Mowbray River Road via access handle between Lot 3 and Lot 4
Lot 2	1.7 ha	Lot 2 observes a slightly undulating but relatively flat topography with no improvements and is expected to be developed for a dwelling house land use initially. Reticulated water service is available.	Direct access to Mowbray River Road
Lot 3	1.7 ha	Lot 2 observes a slightly undulating but relatively flat topography with no improvements and is expected to be developed for a dwelling house land use initially. Reticulated water service is available.	Direct access to Mowbray River Road
Lot 4	2.6 ha	Will comprise the existing studio which is expected to convert back to a three bedroom dwelling house use, open pasture and a natural waterway. Reticulated water service is available.	Direct access to Mowbray River Road

## Background

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. In the context of the subject area being Mowbray, the existing rural residential area has already been partly established over quality agricultural land. Facilitating further fragmentation of the site to align with existing smaller Rural zoned lots on either side is an example of exacerbating the encroachment by taking a further 6 hectares from the parent parcel.



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 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 2**

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 areas of the proposed subdivision are cleared pastures primarily and are partly within the impact buffer area. No particular concern is raised in respect to this code given the application is for boundary reconfiguration and two of the proposed allotments are developed with lawfully established houses all separated from hazardous vegetation by Mowbray River Road.
Flood and storm tide hazard overlay	The areas of the land toward the Mowbray River, and particularly, the majority of the existing lot is mapped as within the floodplain. There was no evidence of flooding from rainfall sheet flow or the Mowbray River during the flood event associated with tropical cyclone Jasper affecting the viability of the new allotments proposed.
Landscape values overlay	The cleared sections of the land are within the medium landscape value area.
Natural areas overlay	Portions of the land are affected by the Natural Areas Overlay but do not affect the viability of the proposed subdivision.
<b>Development Code</b>	
Reconfiguring a Lot Code	The proposal does not provide lot sizes that are consistent 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. The proposed new allotments fall significantly short at 1.7, 1.7 and 2.6 hectares in size. 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 land has been historically fragmented by way of the creation of smaller lifestyle allotments to the East and West of the area proposed for subdivision. The Rural zone code does not accommodate further fragmentation of Rural land regardless of the existing title size or boundary arrangement. There is a level of merit for the proposal given by the fact that the proposed three new small Rural lots are consistent in size and shape with the neighbouring small rural lots and the fact that reticulated water is available which eliminates the conflict between land application area for effluent disposal systems and domestic water bores.

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

The proposal for subdivision is relatively compliant with this Overall Outcome. There is a level of merit for the proposal with regard to providing a consistent pattern of development for the frontage of Mowbray River Road making no adverse impact to the amenity and landscape of the area given by the fact that the proposed three new small Rural lots are consistent in size and shape with the neighbouring small rural lots.

*(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 new small lots represents risk of intrusion of residential development (a dwelling house on each lot) into the Rural area. This represents a potential adverse impact of reverse amenity as it diminishes the ability of the land and the residual large farm title to be utilised to its full potential for agricultural pursuits, namely industrialised agricultural uses which may involve spraying, noise and use of heavy equipment. Although this is a low risk, it must be noted.

*(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.

The Applicant proposes that the application is consistent with the three purpose statements of the Rural zone code and proposes that in particular, the proposal does not fragment the land as it still allows for rural uses to occur on the small Rural Lots. 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 the new small lots is not considered to adequately provide area for genuine rural uses. The proposal represents a loss of six (6) hectares from the parent land parcel of GQAL and there is a significant risk and expectation that the land will be used as lifestyle properties rather than rural pursuits. Only three (3) of the eight (8) lots consistent in size with the proposed lots in the area are being used for rural uses being animal husbandry. Further, the applicant has included statements from a number of local real estate agents which confirm that there is insatiable demand for lifestyle properties such as the proposed. It is evident that the small rural lots will not provide for rural uses if created and released.

- (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;*

It has not been demonstrated that the small lots would be of sufficient size to cater for ancillary non-rural uses and it is expected that there would be an incompatibility issue here with the lack of land available to cater for multiple uses whilst maintaining the landscape character and amenity for adjoining dwelling house land uses.

- (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 other than the fact that is expected that given the bulk of the land proposed for subdivision and subsequent house development, there would be negligible impacts to natural resources such as riparian corridors, waterways and ecosystems. 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.

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 three small rural lots and lose six hectares from the primary farming lot 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). The proposal does not comply with the Reconfiguring a Lot Code as the proposed lots are not of sufficient area to provide for the intended use at an appropriate scale.

### 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 allotments have a minimum size of 40 hectares.

### 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 [6.3.1 - 1 page]

**PROPOSED NEW LOTS**

Figure IV: Proposed new 4 Lots from Lot 34