

**DOUGLAS SHIRE COUNCIL**

**ORDINARY MEETING**

**TUESDAY, 29 JUNE 2021**

**10:00AM**

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## 5.1. RECONFIGURATION OF A LOT (1 INTO 2 RESIDENTIAL LOTS) AT 349 MOWBRAY RIVER ROAD, MOWBRAY

<b>REPORT AUTHOR</b>	Jenny Elphinstone, Senior Planning Officer
<b>MANAGER</b>	Paul Hoye, Manager Environment and Planning
<b>DEPARTMENT</b>	Environment and Planning
<b>APPLICATION NO</b>	ROL 2021_4075/1
<b>PROPOSAL</b>	Reconfiguring a Lot (One lot into two lots)
<b>APPLICANT</b>	ML and KM Samson C/- Planning Plus, Attention Mr Evan Yelavich PO Box 399 Redlynch Qld 4870
<b>LOCATION</b>	349 Mowbray River Road Mowbray
<b>PROPERTY</b>	Lot 23 on SP227933 <b>PARCEL</b> 154053
<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>	29 March 2021
<b>STATUTORY ASSESSMENT DEADLINE</b>	30 June 2021
<b>REFERRAL AGENCIES</b>	N/A

### LOCALITY



Figure 1.

## RECOMMENDATION

That Council refuse the development application for over land described as Lot 23 on SP227933, to be reconfigured one lot into two lots.

The reasons for this decision are:

**A. Sections 60 and 63 of the *Planning Act 2016*:**

1. The Douglas Shire Council, as the assessment manager, was not directed to refuse the application by a referral agency (refer to s.63 (2)(f)(i) *Planning Act 2016*).
2. Reasons for refusing the application (s.63 (2)(f)(ii) *Planning Act 2016*) and Non-Compliance with Assessment Benchmarks:
  - i. 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;
  - ii. The development is inconsistent with the 2018 Douglas Shire Planning Scheme in 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;
  - iii. 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 and the Planning Scheme;
  - iv. 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 Planning Scheme.

**B. Findings on material questions of fact:**

1. The application was properly lodged to the Douglas Shire Council on the 29 March 2021 under section 51 of the *Planning Act 2016* and included a planning report.

**C. 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**

The application seeks to subdivide the land, which is in the Rural Zone, into two lots. Neither of the new lots is consistent with the minimum requirements sought by the Rural Zone and if approved will result in a further loss of rural land and fragmentation of rural land. All reasons to support the application, put forward by the applicant, are rejected.

There is no documented support or substantiation of need for additional residential land beyond what has been zoned in the 2018 Douglas Shire Planning Scheme. The proposed subdivision is contrary to every level of the planning framework, the high level strategic as well as the local planning instrument. There is no public benefit for the community in supporting the further fragmentation of rural land and the creation of residential lots in the rural zone. The report recommends that the application be refused.

## **TOWN PLANNING CONSIDERATIONS**

### **Background**

The lot was created under the Development Permit 8/13/1338, approved by Cairns Regional Council, being a boundary realignment of four lots into four lots. The reconfiguration enabled the removal of lots that did not have road frontage and were limited to access only to Spring Creek, creating new lots where all new lots would have sufficient frontage to existing, constructed road. The application affected wetlands and the approval also created public use land for coastal management protecting the wetlands that feed into the nearby river tributary and ocean systems. The survey plan was registered 2010. Lot 23 has an area of 3.6 hectares.

The property was sold to the current owner in 2014 and a shed was constructed on the land following a building approval issued that same year. A new dwelling was constructed on the land following the issue of a building approval in 2017. The land is fenced with a rural type of fencing.

In the 1980's through to the late 1990's the Council's Planning Scheme and associated By-Laws permitted the creation of small lots throughout the Shire to provide land for the next generation of farming families. These were known as family lot subdivisions. The creation of such lots could not bind the new lots to remain tied or associated with the balance or other family lots.

These lots have fragmented productive rural land and reduced the viability of rural areas. Having regard to the impact on rural land, in 1999 the State Government amended all Planning Schemes, throughout Queensland, removing the ability to create any further family lot subdivisions.

Consideration of the further loss of rural land, impacts on hillslopes, impact on infrastructure and other good planning considerations the Far North Queensland Regional Plan limits the development of Rural Living areas. Some land on the south side of Mowbray River Road and Spring Creek Road is within the Rural Living area and under the 2018 planning scheme this land is zoned Rural Residential. Lot 23 is not within a Rural Living area. Refer to Attachment 1 Regional Plan mapping.

### **Proposal**

Application has been made to subdivide the land into two lots, with proposed Lot 1 to have an area of 2.26 hectares and proposed Lot 2 to have an area of 1.34 hectares. The existing dwelling and outbuildings will be contained on the proposed Lot 1.

The intention of the application is to create an additional lot for residential purposes and the applicant forwarded the following reasons by which the application should be supported.

*“While the proposal does not meet the minimum lot size for the Rural Zone, and Council generally does not support new areas of Rural Residential development, we note the following:*

- . The subject site is already of a size which does not lend itself to rural production and is therefore an inefficient use of land at its current size. The proposed subdivision will double the efficiency of the land.*
- . The site is located directly opposite an area of Rural Residential-zoned land and is therefore consistent with the existing pattern of development and is able to make efficient use of existing infrastructure, such as reticulated water supply.*
- . The site is located close to Port Douglas which is generally in short supply of residential land.”*

The applicant asserts that the development is, *“unlikely to have any significant impacts on the infrastructure, environment or community of the surrounding area that cannot be adequately controlled through the use of reasonable and relevant conditions.”*

The proposal plan is included in Attachment 2.

## **State Planning Requirements**

### **State Planning Policy**

The State Planning Policy (‘SPP’) was introduced on 3 July 2017 as part of the State’s planning system. The SPP defines the Queensland Government’s 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 2018 Douglas Shire Planning Scheme version 1.0 reflects the applicable State interests to the extent relevant to the proposed development and further assessment against the SPP is unnecessary.

The development is contrary to the Council’s Planning Scheme and in turn is also contrary to the SPP. Specifically the Planning Scheme has considered the requirements for housing growth for the life of the Scheme and land remains in the scheme area designated for residential use that is still to be developed. Economic considerations do not include individual financial considerations of a person. The Policy states, *“Queensland’s agricultural resources are of state and national importance and should be protected from incompatible uses and irreversible impacts that would compromise existing or potential productivity ... these resources are finite and are not easily restored once removed, disturbed or degraded ... Supporting agricultural production involves: ... reducing the potential for conflict between agricultural land and other incompatible uses; and minimising encroachment on agricultural resources to ensure viable tracts of agricultural land are maintained.”*

The proposed development is contrary to this high-level planning instrument.

### **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 is contained within the Regional Landscape and Rural Production Area of the FNQ Regional Plan. Nearby land, that is zoned Rural Residential is included in the Rural Living Area in the Regional Plan.

The proposed development seeks to create a residential lot and is contrary to the FNQ Regional Plan. The development is contrary to this regional planning instrument.

## DOUGLAS SHIRE PLANNING SCHEME ASSESSMENT

The following benchmarks are applicable to the proposed development:

Table 1.

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	Part of the land, close to the Road, is mapped as Potential Impact Buffer. No concern is raised in respect to this code.
Coastal environment overlay	The land is mapped by the Planning Scheme Overlay as within the Coastal Management District (CMD). Since the development of the Scheme, the state has remapped the CMD and the land is no longer within this District.
Flood and storm tide hazard overlay	The majority of the land is mapped as within the floodplain. The applicant has advised that a specific flood study can be undertaken to determine immunity requirements for a future dwelling. The lack of nominating a specific building envelope that is free of constraints is not helpful. Concern is raised that the development of a dwelling exacerbates the loss and fragmentation of rural land.
Landscape values overlay	Land adjacent to the Creek is mapped as of High landscape value and the remaining area is mapped as Medium landscape value. The development of an additional lot will place a slightly higher impact on this creek area. There is no protective covenant proposed for the creek area.
Natural areas overlay	The applicant purports that the development will not impact on the adjacent waterway area. However, there is no protective covenant proposed for this area to retain this area in its natural state.

Douglas Shire Planning Locality	Comment
Potential landslide hazard overlay	Parts of the creek area are mapped as landslide hazard. While no construction is proposed by the application, neither is there any set building envelope for future anticipated development.
Transport network overlay	No concern is raised in respect to this code, provided sufficient sight lines can be achieved for the additional point of access. No new point of access has been nominated.
<b>Other Development Codes</b>	
Access, parking and servicing code	No specific point of access is nominated for the new lot. Any new access point will need to consider sight lines along the Mowbray River Road.
Environmental performance code	The development is intended to provide for residential development where the development of a Dwelling house is self-assessable development. The development will result in an additional sensitive land use being established which will receive potentially incompatible impacts on amenity from the existing and potential rural activities.
Filling and excavation code	No filling or excavation has been proposed.
Infrastructure works code	The development could connect to the existing water infrastructure.
Landscaping code	No concern is raised in respect to this code.
Reconfiguring a lot code	The development fails to meet the performance criteria that comply with the lot reconfiguration outcome of the applicable zone. Refer to the comment below.
Vegetation management code	No vegetation removal is proposed.

## Compliance Issues

### Rural Zone Code & Reconfiguration of a Lot code

The purpose of the Rural Zone is not to provide housing. There is no rural efficiency gained by the reconfiguration and the development will result in an inefficiency of the land. There is no supporting agronomic reports or substantiation that the agricultural or rural productivity will be doubled in value.

The land is subject to the zone in which it lies, not the zoning of land on the opposite side of the road. Land on the southern side of this part of the Mowbray River Road is constrained by vegetation, hillslopes and the existing pattern of lot configuration. Lot 23 is not so constrained.

The development is contrary to the purpose of the Lot Reconfiguration Code, specifically that the lots have sufficient areas to be suitable for their intended land use. The intended land use for a rural area is for productive rural purposes, not residential housing.

### **Limit of Code Consideration**

Under Section 43 of the *Planning Act 2016* code assessment benchmarks does not include matters within the Strategic Framework. Either 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. Section 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.

### **Internal Referrals**

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

### **ADOPTED INFRASTRUCTURE CHARGES**

Only where approved would the development 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.

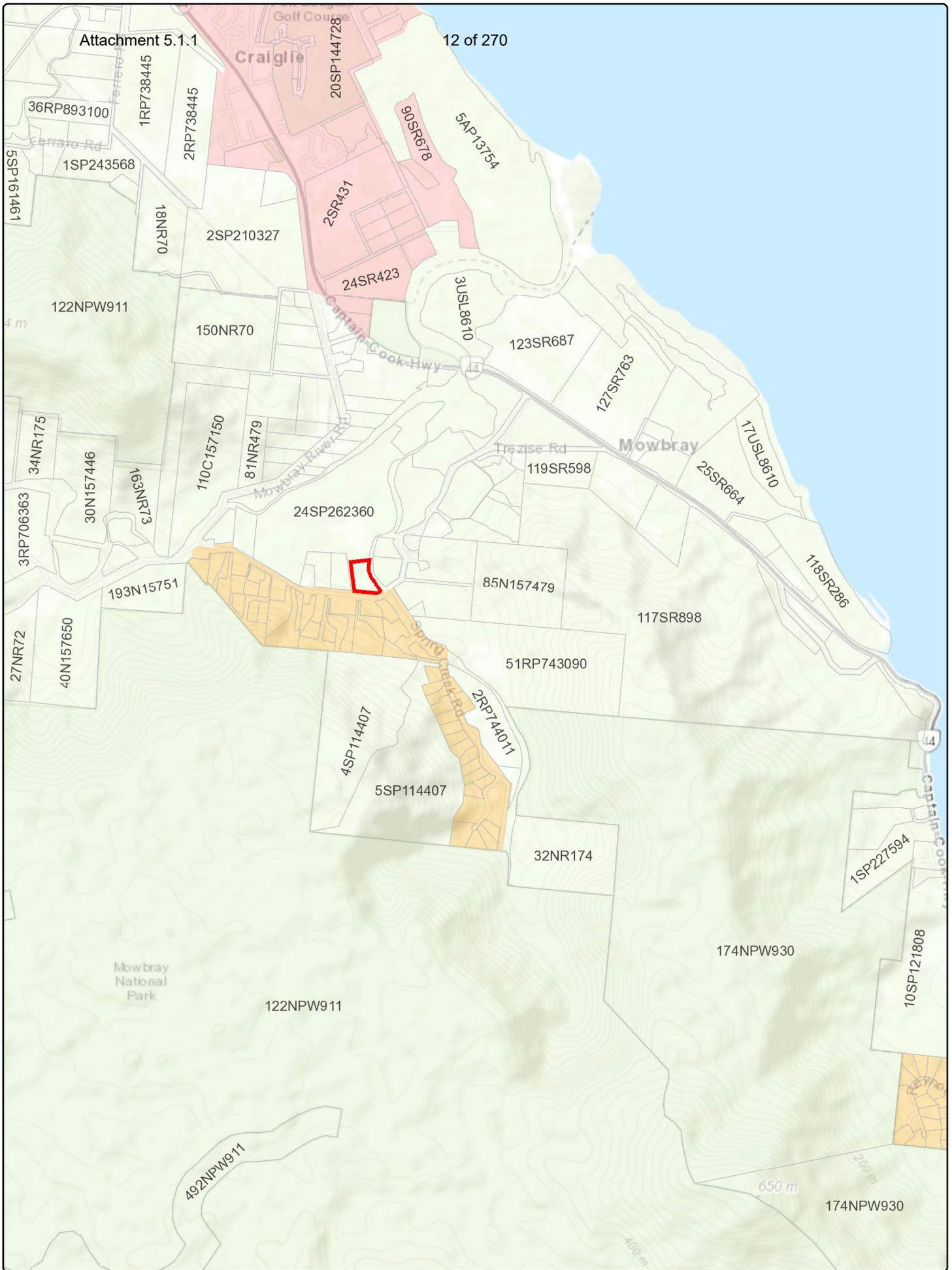
The following area outlines where Council has a clear responsibility to act:

**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**

1. Regional plan mapping [5.1.1 - 2 pages]
2. Proposal Plan [5.1.2 - 1 page]



### DA Mapping System – Print Screen

Date: 29/04/2021

0 580 1,160 1,740 2,320

Metres



Queensland Government

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Ordinary Council Meeting - 29 June 2021

Disclaimer:  
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# Legend

## Drawn Polygon Layer

Override 1

## Cadastre (50k)

Cadastre (50k)

## Regional land use categories (SEQ, WBB, MIW, FNQ)

Urban Footprint

Rural Living Area

Regional Landscape and Rural Production Area

## DA Mapping System – Print Screen

Date: 29/04/2021

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# Proposed Reconfiguration of a Lot (1 Lot into 2 Lots)

349 Mowbray River Road, Mowbray, described as Lot 23 on SP227933 / Plan No. 21-07.01 / Date: 24/03/21

16°33'52"S 145°28'23"E

16°33'52"S 145°28'38"E



16°34'7"S 145°28'23"E

16°34'7"S 145°28'38"E

A product of



Legend located on next page



Scale: 1:1664

Printed at: A3  
Print date: 24/3/2021

Datum: Geocentric Datum of Australia 1994  
Projection: Web Mercator EPSG 102100

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