

5.3. 59R CREES ROAD CRAIGLIE RECONFIGURATION OF LOT

REPORT AUTHOR(S)	Jenny Elphinstone, Senior Planning Officer
GENERAL MANAGER	Nick Wellwood, General Manager Operations
DEPARTMENT	Development Assessment and Coordination
PROPOSAL	Reconfiguring a Lot
APPLICANT	Byron and Vicki Kurth C/ RPS Australia East Pty Ltd PO BOX 1649 CAIRNS QLD 4870
LOCATION OF SITE	59R Crees Road, Craiglie
PROPERTY	Lot 144 on SP113652

LOCALITY PLAN



Figure 1 - Locality Plan

LOCALITY	Rural Areas and Rural Settlements
PLANNING AREA	Rural
PLANNING SCHEME	Douglas Shire Planning Scheme 2006

REFERRAL AGENCIES	None Applicable
NUMBER OF SUBMITTERS	Not Applicable
STATUTORY ASSESSMENT DEADLINE	28 June 2017
APPLICATION DATE	10 March 2017

RECOMMENDATION

That Council refuse the development application for reconfiguration of a lot, one lot into three lots, over land described as Lot 144 on SP113652, located at 59R Crees Road, Craiglie, on the following grounds:

- 1. The proposed development does not comply with the 2006 Douglas Shire Planning Scheme (as amended) codes: Rural Areas and Rural Settlements Locality Code; the Rural Planning Area Code; and the Reconfiguration of a Lot Code for a Rural Planning Area. 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 and Class B Agricultural Land Classification. The development is incapable of being conditioned to achieve compliance with the required codes;**
- 2. The development is inconsistent with the proposed 2017 Douglas Shire Planning Scheme in regards to: the Rural Zone Code; the Landscape Values Overlay Code; the Environment Performance 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 2016, and the State Planning Policy 2017;**
- 4. There is no identified need for the smaller lots in the rural area in order to achieve the outcomes of: the State Planning Policy 2016, the State Planning Policy 2017, the Far North Queensland Regional Plan 2009-2031, the current Planning Scheme or the proposed Planning Scheme; and**
- 5. There are insufficient grounds to justify approval despite the conflicts with the State Planning Policy 2016, the State Planning Policy 2017, the Far North Queensland Regional Plan 2009-2031, the current Planning Scheme and the proposed Planning Scheme.**

EXECUTIVE SUMMARY

The land straddles Crees Road by a vinculum and has an area of 30.124 hectares. At least half of the land is currently under sugar cane production. The land is encumbered by easements for the sugar cane tramway and the tramway loading areas. An existing House is located on the foothill of the land.

Council is currently in the process of forming and constructing a section of Crees Road adjacent to the land in order to develop a new water reservoir for the Port Douglas and Craiglie township area.

The applicant contends the rural viability and productivity of the land for farming practice is limited due to the formation and construction of Crees Road. The application has been lodged to reconfigure the land into three lots. The House will be retained on the largest of the three new lots.

The development conflicts with the State Planning Policy April 2016, the Far North Queensland Regional Plan 2009-2031, the current planning scheme codes and the proposed planning scheme codes. The development will fragment rural land and reduce the agricultural viability and productivity of the rural land.

The development is unable to be conditioned to fully comply with planning instruments. There are insufficient grounds, being matters of public interest and not personal circumstances of the applicant, by which the development can be supported despite the conflicts with the State Planning Policy (2016 and 2017), the Far North Queensland Regional Plan, the current Planning Scheme and the proposed Planning Scheme.

The report recommends the application be refused.

TOWN PLANNING CONSIDERATIONS

Background

The land is in two parts and has a vinculum across the gazetted Crees Road. The land has an area of 30.124 hectares and has frontage to Crees Creek along the eastern boundary. The road has been gazetted since the lot was originally created in 1892. To date the area of road that has frontage to the land has not been formed. A temporary road closure of the road, adjacent to the land, was in place from 1957 to when it was removed in November 2012. During this time of temporary road closure land owners utilised the road for cattle grazing and sugar cane production. The land is currently under sugarcane production and until the recently Crees Road, adjacent to the land, was also under sugarcane production. The area of the gazetted road is now clear of sugar cane as illustrated in the photograph in Attachment 2.

The temporary road closure was removed to enable the formation and construction of road to enable access to Council's new water reservoir that will service the urban area of Port Douglas and Craiglie. Council is currently developing the reservoir on adjacent land to the south. Previous investigations by Council identified the use of the gazetted Crees Road as the most appropriate access route to the new reservoir. The newly constructed road will not be highly trafficked as it will only give access to the land and the two properties adjacent to

the southern boundary, one of which is Council's reservoir. By letter dated 6 May 2015 (D#454319) Council advised the applicants, as land owners, that the gazetted road was to be formed and constructed and the need to remove the sugar cane from the road in a timely manner.

The land is traversed by a sugar cane tramway and part of the land adjacent to the tramway is utilised by sugar cane bin haulers to transfer loads to the cane trucks. The tenure rights for the sugar cane tramway and the associated loading area are protected by title easements in favour of the Mossman Mill and sugar cane haulage operators.

The land has been developed with a house located on the western, upper part of the site with access over neighbouring land via an easement adjacent to the northern boundary. Another easement on the land gives access rights for services for the neighbouring land to the north. A shed has also been constructed on the lower part of the lot between the gazetted Crees Road and Crees Creek. Land to the west of the House is forested. The majority of the balance of the lot is currently used for cane production with the sugar cane furrows developed in an east-west direction across the gazetted road. A stormwater drain traverses part of the sugar cane paddock, west of the gazetted Crees Road, in a south to north direction.

Previous applications to reconfigure the land into smaller lots have been lodged and have not been supported by the Minister. An application was lodged in 1990 to rezone the land and neighbouring land from Rural (Agricultural) to Residential-Rural. The rezoning initially sought to enable the creation of 81 lots. This application was initially refused by the former Douglas Shire Council on the basis that it was, *"not regarded as being consistent with Council's Strategic Plan. Part of the Subject land comprises quality agricultural soils which will be alienated from agricultural production if the application is approved."* Through an appeal the application was amended to apply only to Lot 144 and a Court Consent Order issued. However, in April 1993 the rezoning was rejected by Her Excellency, the Governor in Council, on the following reasons.

1. *The proposal conflicts with State Planning Policy 1/92.*
2. *The proposed rezoning is in conflict with the Douglas Shire Council Strategic Plan for Rural residential development and the protection of agricultural land.*
3. *The Department of Primary industries classify a significant portion of the subject land as good quality agricultural land and does not support the rezoning.*
4. *The proposal would provide the potential for significant scarring of a prominent ridgeline adjoining the major tourism corridor of the Cook Highway.*

A separate rezoning application was lodged in 1996 for rural-residential use over part of the hill slope area of the land of the land with the balance sugar cane paddock of 20.5 hectares to remain as one lot. This application was refused by the former Douglas Shire Council for the following reasons.

1. *The proposal is contrary to the relevant provisions of the previous Planning Scheme.*

2. *The proposal is totally contrary to the relevant provisions of the current planning Scheme; in particular the forward planning intent as outlined in the Strategic Plan; the intent of the Residential Rural zone, and the minimum subdivision requirements for that part of Lot 144, being the balance area, proposed to be retained in the rural (Agricultural) zone.*
3. *The proposal is, in part, in conflict with State Planning Policy 1/92."*

State Planning Policy 1/92 *Development and the Conservation of Agricultural Land* had effect from 1 December 1992 to when the Policy was repealed on 18 December 2012. The current and proposed planning schemes have a minimum lot size of 40 hectares and this size appropriately integrates the relevant state interest as identified in the State Planning Policy (2016 and 2017).

Proposal

The layout plan is included in Attachment 1. This plan also details the easements over the land and easements to which the land has benefit. The applicant seeks to divide the land into three new lots:

- Proposed Lot 1 - Proposed to have an area of 19.049ha, to have a frontage of 444.65 metres to Crees Road, to include the existing House, to include the hill slope, forested areas and part of the sugar cane paddock, to include the open stormwater drain that traverses the sugar cane paddock and to include part of the sugar cane tramway and associated loading areas;
- Proposed Lot 2 - Proposed to have an area of 5.358 ha, to have a frontage of 115.60 metres to Crees Road, to contain the existing shed, to include the majority of creek frontage and associated vegetation, to include part of the cane paddock; and to include the balance of the sugar cane tramway easement and loading areas; and
- Proposed Lot 3 - Proposed to have an area of 5.615ha, to have a frontage of 352.26 metres to Crees Road, to contain part of the sugar cane paddock, to include a limited extent of creek frontage and associated vegetation to Crees Creek.

The applicant advised that the layout plan, *"responds to the existing and proposed infrastructure being the existing tramline and sugar cane bin storage and loading and the proposed extension of Crees Road to Council's proposed new water supply reservoir that form physical barriers to farming the land. The proposed upgrade of Crees Road will prohibit the viable use of the land for the growing of sugar cane and the reconfiguration proposal will provide 3 rural lots with lot areas consistent with lot areas that exists within he immediate locality and that can be utilised for rural activities that do not require extensive areas of land for rural production."*

The applicant claims that lots in the area comprise lot sizes from 2 to 30 hectares with those in the immediate locality being of the range of 6-10 hectares. The applicant advises that a variety of land uses occur in the area including the Eco Shamba Tree Farm, vacant forested

lots, land used for sugar cane production over multiple small adjoining lots, cattle grazing, land used for 'lifestyle' residential purpose, equestrian activities and vanilla production. The applicant has supported the position of the land being unviable for future sugar cane production by a submission from Mr Drew Watson who currently leases the land for cane production.

State Planning Requirements

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 1990s the State Minister for Local Government amended all planning schemes removing the ability for family lot subdivisions in rural areas across Queensland. The 2006 Douglas Shire Planning Scheme maintained the State's position requiring a minimum 40 hectare lots per new lot in the Rural Planning Area.

State Planning Policy 2016 has been considered by Council in the development of the proposed planning scheme and an assessment against this scheme is reported below. Specifically the Policy seeks to avoid fragmentation of Agricultural Land Classification (AGL) Class A or Class B. The majority of the land is mapped as AGL Class A or B. The development is contrary to the SPP.

The Far North Queensland Regional Plan 2009-2031 seeks 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 (Current Planning Scheme)

Table 1.

Rural Areas and Rural Settlements Planning Locality		Code Applicability	Compliance
Locality	Rural Areas and Rural Settlements	✓	Does not comply, refer to comment
Planning Area	Rural	✓	Does not comply, refer to comment
Defined Use	N/A - Reconfiguring a Lot	x	-
Overlay Codes	Acid Sulfate Soils Code	✓	Part of land is affected by overlay Complies
	Cultural Heritage and Valuable Sites Code	x	-
	Natural Hazards Code	✓	Part of the land is Low Risk Bushfire Risk Hazard and part of Medium Risk Bushfire Risk Hazard Satisfactory
General Codes	Design and Siting of Advertising Devices Code	x	-
	Filling and Excavation Code	x	-
	Landscaping Code	x	-
	Natural Areas and Scenic Amenity Code	✓	Satisfactory – no building proposed at this stage

Rural Areas and Rural Settlements Planning Locality		Code Applicability	Compliance
	Reconfiguring a Lot Code	✓	Does not comply, refer to comment
	Vehicle Parking and Access Code	x	-
	Sustainable Development Code	x	-
	Vegetation Management Code	x	-

Compliance Issues – Current Planning Scheme

At least half of the land is considered good quality agricultural land (GQAL) and has been farmed for a considerable period. The applicant asserts that the development of Crees Road will make sugar cane production on the land unviable. The current lease farmer advised that the formation and construction of Crees Road would require some realignment of the cultivation rows that could be achieved in two years. The land owners were advised at least two years ago of the need to clear the sugar cane from the road. There has already been time for this realignment to have occurred and be in place. The rural use of the land is not limited to sugar cane production.

For many years the land has been traversed by the cane tramway and this is not a reasonable planning consideration to support reconfiguration to smaller lots. Fragmentation of the land would result in multiple owners being restricted by the sugar cane tramway and associated activities.

Smaller lots will fragment the rural land and this is contrary to the *Rural Areas and Rural Settlements Locality Code*, the *Rural Planning Area Code* and the *Reconfiguration of a Lot Code*. Fragmentation compromises primary industry productivity on the land and on other land in the area. The applicant's reasons for reconfiguration, despite the conflict with the Codes, are not reasonable planning grounds as required by the *Sustainable Planning Act 2009*. Smaller lots diminish the ability for land to be utilised for agricultural uses and primary production purposes. Any approval must be justified by nominated planning grounds. No such planning grounds exist.

The applicant seeks to utilise proposed infrastructure for the intended lots, including the forming and construction of Crees Road, the safe road crossing over the sugar cane tramway and the tapping into the future water supply. As the application has been lodged prior to the completion of Crees Road construction, any approval would need to be conditioned to provide the infrastructure where not already provided by others. The proposed Council water supply is a significantly sized pressure water main, along Crees and Ferrero Roads back to the Highway. Connectivity would require a 100mm pipe, mostly likely from the Highway at the owner's cost.

Proposed Douglas Shire Planning Scheme Assessment

The proposed Planning Scheme was developed under the Sustainable Planning Act 2009 with a twenty year horizon and an intended periodical review. Section 5.4 states that code assessable development is to be assessed in this instance against the codes as identified in Column 3 of the relevant Zone table. The Scheme states [Section 5.4(1)(c)(iii)] where development complies with: (A) the purpose and overall outcomes of the code; and (b) the

performance and the associated acceptable outcomes, the development complies with the code. The Applicable codes are as follows.

Table 2.

Proposed Douglas Shire Planning Scheme		Code Applicability	Compliance
Zone	Rural Zone Code	✓	Does not comply, refer to comment
Local Plan	None Applicable	x	-
Precinct / Sub Precinct	None Applicable	x	-
State Codes	Community Residence Code	x	-
	Forestry For Wood Production Code	x	-
	Reconfiguring A Lot (Subdividing One Lot Into Two Lots) And Associated Operational Work Code	x	-
Overlay Codes	Acid Sulfate Soils Code	✓	<ul style="list-style-type: none"> Part ASS 5-20m AHD. Complies
	Bushfire Hazard Code	✓	<ul style="list-style-type: none"> Part Very High Potential Bushfire Intensity. Part Potential Impact Buffer. Complies
	Coastal Environment Overlay Code	✓	-
	Flood And Storm Tide Hazard Overlay Code	✓	<ul style="list-style-type: none"> Part 100Year ARI (Mossman, Port Douglas and Daintree Flood Studies). Can comply as sufficient area available on new lots for future dwellings beyond 100 Year ARI.
	Hillslopes Overlay Code	✓	<ul style="list-style-type: none"> Part Area affected by Hillslopes. Complies – no further lots in the Hillslope area
	Landscape Values Overlay Code	✓	<ul style="list-style-type: none"> Part High Landscape Value. Part Medium landscape Value. Does not comply, refer to comment.
	Natural Areas Overlay Code	✓	<ul style="list-style-type: none"> MSES regulated Vegetation (Intersecting a watercourse). Part MSES Wildlife Habitat. Part MSES Regulated Vegetation.

Proposed Douglas Shire Planning Scheme	Code Applicability	Compliance
		Complies. Outcomes can be achieved and avoid identified areas where the future lots are further developed.
Places Of Significance Overlay Code	x	-
Potential Landslide Hazard Overlay Code	✓	<ul style="list-style-type: none"> Part Potential Landslip Hazard Complies – no further lots in the Landslip Hazard Area
Transport Network Overlay Code: (Pedestrian and Cycle) Overlay	x	-
Transport Network Overlay Code: (Road Hierarchy) Overlay	✓	<ul style="list-style-type: none"> Unformed road Complies
Transport Network Overlay Code: (Transport Noise Corridor) Overlay	x	-
None Applicable – No Material Change Of Use Proposed	x	-
Other Development Codes		
Access, Parking And Servicing Code	✓	Can comply with conditions regarding vehicle access crossovers for two lots off Crees Road.
Advertising Devices Code	x	-
Environment Performance Code	✓	Does not comply, refer to comment.
Filling And Excavation Code	✓	No filling or excavation proposed at this stage, can comply with conditions regarding minimum fill for House use to be achieved.
Infrastructure Works Code	✓	Refer to comment
Landscaping Code	✓	Can comply with conditions. Given the rural zone no street trees would be required only grass verges for a rural road area.
Reconfiguring A Lot Code	✓	Does not comply, refer to comment.
Ship-Sourced Pollutants Reception Facilities In Marina Code	x	-
Vegetation Management Code	✓	Can comply through conditions, no vegetation removal proposed for the reconfiguration.

Compliance Issues – Proposed Planning Scheme

Lot Size and Rural Zone

The development is contrary to the Zone purpose, will constrain future use by the nature of the lot size and compromise the long-term use for rural purposes. The development is contrary to the local government purpose for the zone, will fragment the land and reduce the ability and viability for farming practices. The extent of land under cane on the lot is not itself significant. Fragmentation of rural land results in lower productivity and compromises the viability of the Mossman Mill.

The exhibited planning scheme did include the ability to reconfigure lots where there was a vinculum across a road gazetted before May 2008. On consideration of submissions Council removed this acceptable outcome and reverted to maintaining larger lots in the rural zone. The minimum area of 40ha for land in the Rural Zone is reiterated in the proposed planning scheme as a clear outcome. There are only very limited instances where the minimum area can be reduced. The application is not one of those instances.

The development is contrary to achieving the overall outcomes of the Rural Zone code that seek to conserve areas for use for primary production and avoid fragmentation. The reconfiguration is likely to result in reverse amenity issues in the future. The expected use of Crees Road, after formation and construction is not to be at a level that would severely impact on the ability to farm land either side of this road.

Landscape Values Overlay Code

The fragmentation of land will reduce the viability and sustainability for farming and primary production and in turn reduce the scenic amenity of the rural landscape. The development is inconsistent with the Code.

Environment Performance Code

Concern is raised with reverse amenity issues in respect to Performance Outcome 6, associated Acceptable Outcomes and the Code Purpose. Given the smaller lot sizes are considered to result in reduced ability for viable farming and it is likely the new lots would be used for residential lifestyle lots. Located in an active farming area the proposed new lots would be imposed upon from surrounding, ongoing rural activities.

Infrastructure Works Code

The existing house accesses a bore on the upper slope of proposed Lot 1. No further road access or water supply is necessary or required for this lot.

As per the assessment under the current scheme, infrastructure works (including access and utilities) would be required where the development precedes prior to the completion of Crees Road. There is sufficient land available on the proposed lots for onsite wastewater treatment facilities.

Reconfiguring A Lot Code

The proposed lots do not have sufficient area to be suitable for the intended rural use, they are more akin to a lifestyle lot yet no material change of use is proposed. This is not an area where smaller lots are supported under the proposed planning scheme.

THIRD PARTY ADVICE

Given the current use of the land for sugar cane production advice was sought from the Mackay Sugar that operates Mossman Mill and Canegrowers. Mackay Sugar provided a response advice that is included in Attachment 3. Mackay Sugar seek the ability for ongoing access for through rail traffic, access for train loading and access for maintenance activities. These requirements are ongoing entitlements via the easements.

ADOPTED INFRASTRUCTURE CHARGES

Adopted charges only apply where the application is approved. No adopted infrastructure Charges apply where an application is refused.

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.

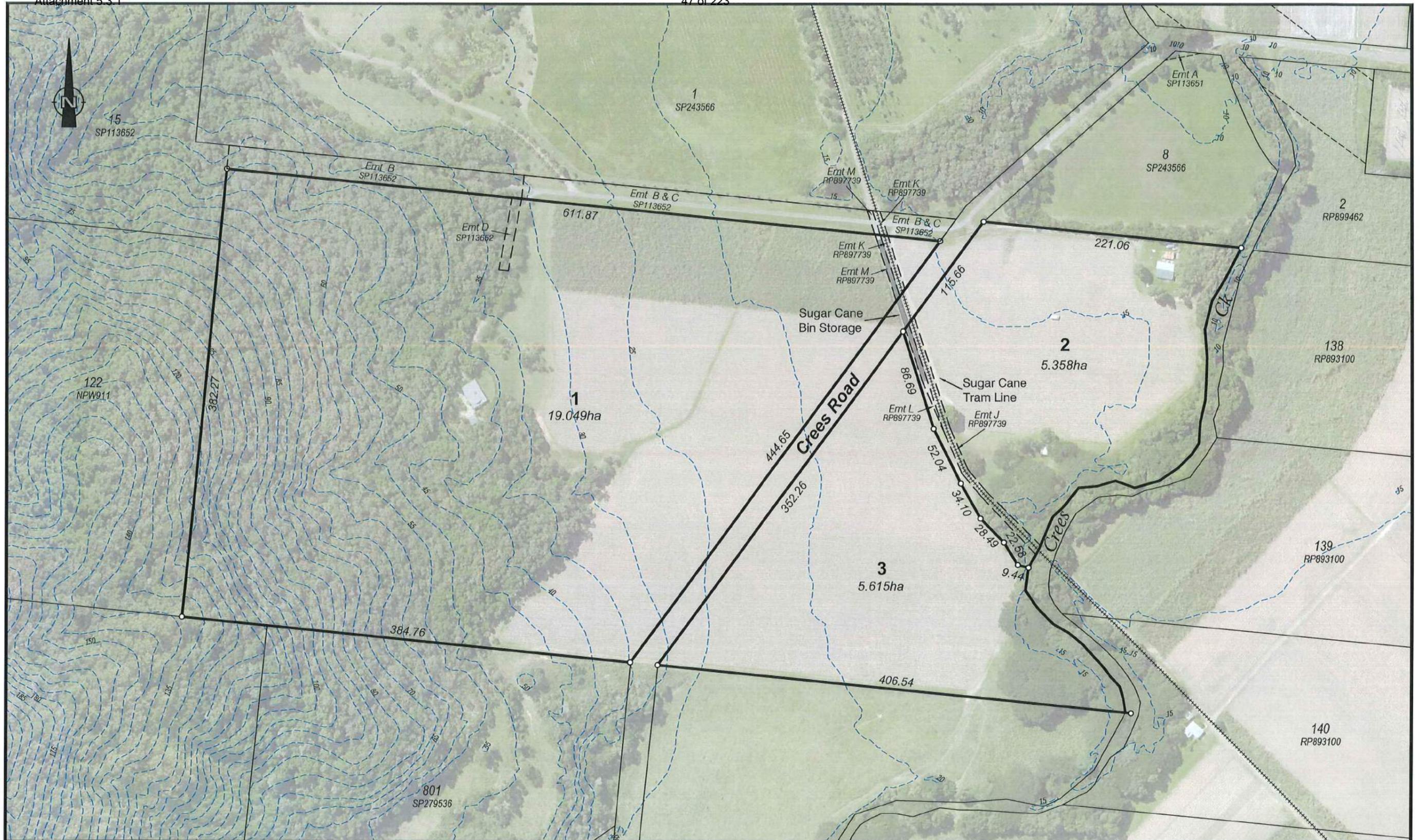
The following area outlines where Council has a clear responsibility to act:

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

Under the *Sustainable Planning Act 2009* and the *Sustainable Planning Regulation 2009*, Council is the assessment manager for the application.

ATTACHMENTS

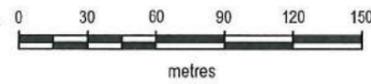
1. Kurth ROL Attachment 1 **[5.3.1]**
2. Kurth ROL Attachment 2 **[5.3.2]**
3. Kurth ROL Attachment 3 **[5.3.3]**



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- This plan was prepared for the sole purposes of the client for the specific purpose of accompanying an application to the Douglas Shire Council for a reconfiguration of a lot described on this plan. This plan is strictly limited to the Purpose and does not apply directly or indirectly and will not be used for any other application, purpose, use or matter. The plan is presented without the assumption of a duty of care to any other person (other than the Client) ("Third Party") and may not be relied on by Third Party.
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 - the Client or any Third Party not verifying information in this plan where recommended by RPS Australia East Pty Ltd;
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 - the accuracy, reliability, suitability or completeness of any approximations or estimates made or referred to by RPS Australia East Pty Ltd in this plan.

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- The dimensions, area, size and location of improvements, flood information (if shown) and number of lots shown on this plan are approximate only and may vary.
- Cadastral boundaries are obtained by title dimensions. These boundaries have not been verified and are approximate only.
- The contours shown on this plan are by LIDAR scan and are suitable only for the purposes of this application. The accuracy of the contours has not been verified and no reliance should be placed upon such contours for any purpose other than for the purpose of this application for a reconfiguration of a lot.

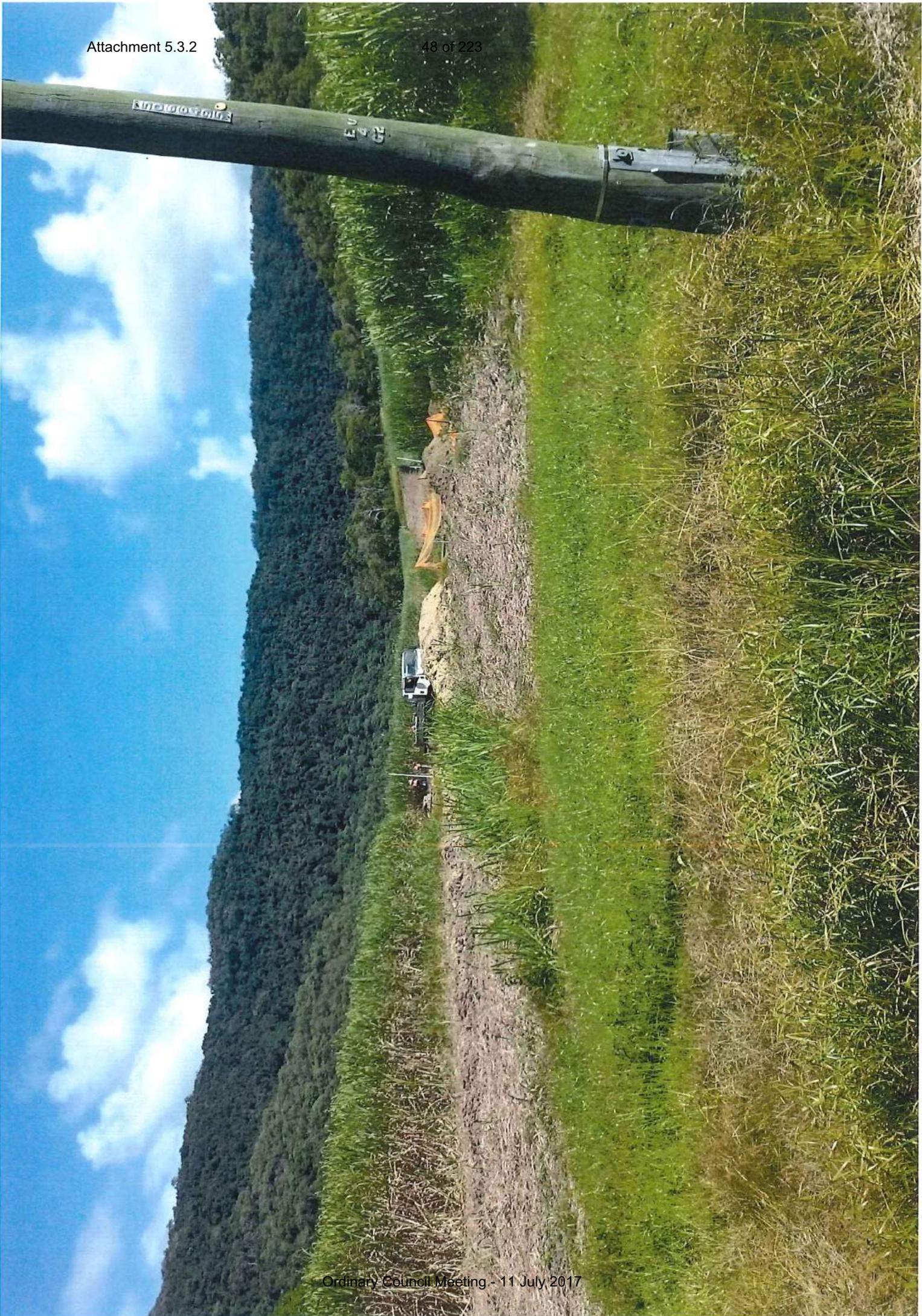


SCALE 1:3000 IS APPLICABLE ONLY TO THE ORIGINAL SHEET SIZE. (A3)

AMENDMENTS		PROJECT MANAGER	
A: RMS: Added easements		O. Caddick-King	
		SURVEYED	
		COMPILED	
		RMS	
CAD REF	PR108240-1a.DWG	SHEET 1 OF SHEETS 1	SHEET SIZE A3

Byron & Vicki Kurth
 Reconfiguration of a Lot
 Proposed Lots 1-3
 Cancelling Lot 144 on SP113652
 Crees Road
 Craiglie

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		SCALE 1:3000	DATE 3/05/2017







27 March 2017

Douglas Shire Council
64 – 66 Front Street
Mossman Qld 4873

Your Ref: ROL 1952/2017 (D#808320)SC

Dear Sir

Re: Advice of Application - Reconfiguring a Lot 59R Crees Rd, Craiglie

Mackay Sugar understands & sympathizes for the reason behind the application. The construction of the reservoir access across the existing block, rather than around it, has turned a productive block of land into an unviable proposition, and would appear to be against the spirit of the Regional Plan, that recommends avoiding the fragmentation of agricultural land.

It will probably lead to increased residential occupation in a farming area, and the ongoing noise, dust and visual amenity clashes that seem to inevitably follow.

However, our concern with the application is to ensure that the access for the cane railway and the loading facility is maintained. These are shown as Easements 703661609 and 703661620, and Administrative Advices 709660111 and 709660116 on the Title search.

We require continuing access for through rail traffic, access for train loading activities, and access for maintenance activities. We also take no responsibility for complaints that result because of a continuation of our existing activities, the activities of cane growers, and the activities of harvesting contractors.

Should you require further information please contact Don Fowler on 07 4030 4126 or d.fowler@mkysugar.com.au.

Yours faithfully

A handwritten signature in blue ink, appearing to be "DF", is placed below the text "Yours faithfully".

Don Fowler
Can Supply Transport Manager
Mossman Mill