

7.10. DEVELOPMENT APPLICATION FOR RECONFIGURING A LOT AT 291 MOWBRAY RIVER ROAD (1 LOT INTO 2 LOTS)

REPORT AUTHOR	Acting Team Leader Planning
MANAGER	Manager Environment and Planning
DEPARTMENT	Environment and Planning
APPLICATION NO	ROL 2023_5852/1
PROPOSAL	Reconfiguring a Lot (One lot into two lots)
APPLICANT	G J Hunt PO Box 170 PORT DOUGLAS QLD 4877
LOCATION	291 Mowbray River Road MOWBRAY
PROPERTY	LOT: 34 SP: 331786
PLANNING SCHEME	2018 Douglas Shire Council Planning Scheme Version 1.0
ZONING	Rural Zone
LEVEL OF ASSESSMENT	Code
PROPERLY MADE DATE	17 October 2025
STATUTORY ASSESSMENT DEADLINE	5 December 2025
REFERRAL AGENCIES	None applicable

LOCALITY

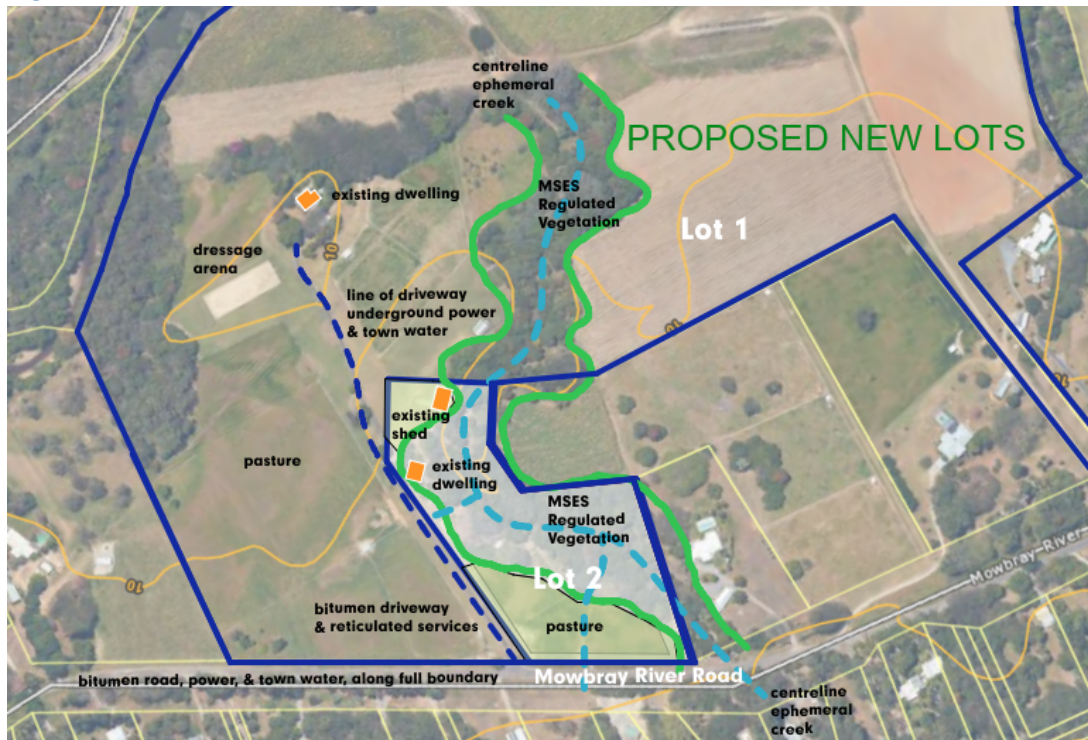


Figure 1 – Locality Plan

RECOMMENDATION

That Council refuses the development application for Reconfiguring a Lot (One lot into two lots) over land described as Lot 34 on SP331786, on the following grounds:

- 1. The development creates a lot which is 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 (GQAL) 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 17 October 2025 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 two lots) at 291 Mowbray River Road, Mowbray, formally described as Lot 34 on SP331786.

The intent is to create a new lifestyle sized allotment 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 approximately 40 hectares of contiguous land set aside for this.

The balance of the farmland is 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. The section of land subject to this subdivision application,

creating a new 3.1 hectare title is in the south-eastern corner of the paddocks fronting Mowbray River Road.

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. The proposal does not comply 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 two new lots being 50.43 hectares and 3.1 hectares in size respectively. Figure 1 above demonstrates the proposed reconfiguration.

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 3.1 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:

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		A house and shed exists lawfully within some of the buffer area. The proposal has no effect on bushfire hazard.
Flood and storm tide hazard overlay		The areas of the land suitable for housing have had a house and shed constructed which is within the boundary of the proposed new lot. No concern is raised in respect of the flood overlay code.
Landscape values overlay		No concern is raised. The proposal is unaffected by the overlay.
Natural areas overlay		Portions of the land are affected by the Natural Areas Overlay, primarily the riparian corridor of Seasonal Creek which makes up the majority of the land area of the proposed small lot. This is essentially protected vegetation however, the proposed boundary across the creek would allow for additional clearing by default. A house and shed exists on the proposed new title, therefore no risk to this ecosystem area within the riparian corridor is created by construction of buildings. However, clearing risk is the right that would be established for boundary fence installation and maintenance in the vegetated riparian corridor. While this is a genuine risk to the ecosystem, it is not a reason for refusal in its own right.

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 Performance Outcome PO7 to be 40 hectares in area. The proposed new allotment falls significantly short at 3.1 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 which is available 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. This overall outcome is the most important and most relevant benchmark statement for the assessment of the application. This overall outcome is clear in its intent to stop further fragmentation of land in the rural zone. The applicant interprets this benchmark to mean that areas of rural land being used for primary production within the title are to be conserved, but areas not appropriate for primary production on the land are not protected from subdivision as they are already fragmented within the lot. This view is not shared by the planning department. The benchmark relates to rural land and the components of rural land including riparian corridors under vegetation are just as important. The benchmark includes “and” with reference to avoiding fragmentation and does not open up opportunity to segregate different classes or land features on title. The proposal is in conflict with overall outcome (a).

(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. The built form is not expected to change as the new small title has an established house, shed and access.

(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 small lot in separate ownership to the adjacent GQAL paddocks 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. Albeit this is a low risk in the scheme of risks given by land use compatibility and the existing title arrangement either side of the GQAL but must be noted.

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

Overall Outcome (d) is potentially complied with, however, the proposed northern common boundary intersects the riparian corridor. Fencing boundaries in Queensland is an activity enabled by a host of vegetation clearing exemptions, which poses a level of risk to the riparian corridor as the farm owner or the small lot owner may wish to fence the extent of their boundary, requiring riparian corridor clearing. This risk is considered low as the exercise may be impractical but must be noted. The likelihood of this occurring is low therefore it is considered that this is not a reason for refusal in its own right, but represents a potential non-compliance which cannot be conditioned.

The zone code also references sections of the Strategic framework that underpin its construction. Theme 3- Natural Resource Management. 3.6.1 (1) states that the natural resources of the shire, such as agricultural land, and in particular, land suitable for sugar cane production, forestry, water, fisheries and extractive resources are protected or managed in a suitable manner. Element 3.6.3- Primary Production, Forestry and Fisheries nominates specific outcome (1) 'The viability of agricultural land is protected and maintained' and (3) 'Lot reconfiguration does not result in the further fragmentation of rural land.'

The strategic framework seeks to stop further fragmentation of rural land to conserve the finite resource that is good quality agricultural land for primary production. The strategic framework makes specific reference to the importance of sugar cane cultivation to the shires regional economy. This aspect is less relevant now as a crop with no locally operated mill or funded solution, however this does not detract from the importance of conservation of good quality agricultural land for use for other primary production activities reflected in the strategic framework. There are elements of the need for housing choice in the strategic framework, but this is anticipated in existing zoned areas only and relates to dwelling type primarily.

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 a new small rural 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 small lot is not of sufficient area to provide for the intended use at an appropriate scale.

Limit of Code Consideration

Under s43 of the *Planning Act 2016*, the assessment is bound to the codes of the assessing instrument.

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. The proposal represents fragmentation which cannot be overcome by imposition of conditions.

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 the assessment is limited to the codes, not other considerations based on planning merit such as water availability or settlement pattern. 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 [7.10.1 - 1 page]

PROPOSED NEW LOTS

