

5.2. RECONFIGURING OF A LOT 21 SPRING CREEK ROAD MOWBRAY

REPORT AUTHOR	Jenny Elphinstone, Senior Planning Officer
MANAGER	Paul Hoyer, Manager Environment and Planning
DEPARTMENT	Planning
PROPOSAL	Reconfiguring a Lot (1 Lot into 2 Lots)
APPLICANT	Steven John Pisot PO Box 149 Port Douglas Qld 4877
LOCATION OF SITE	21 Spring Creek Road, Mowbray
PROPERTY	Lot 11 on SP212654

LOCALITY PLAN

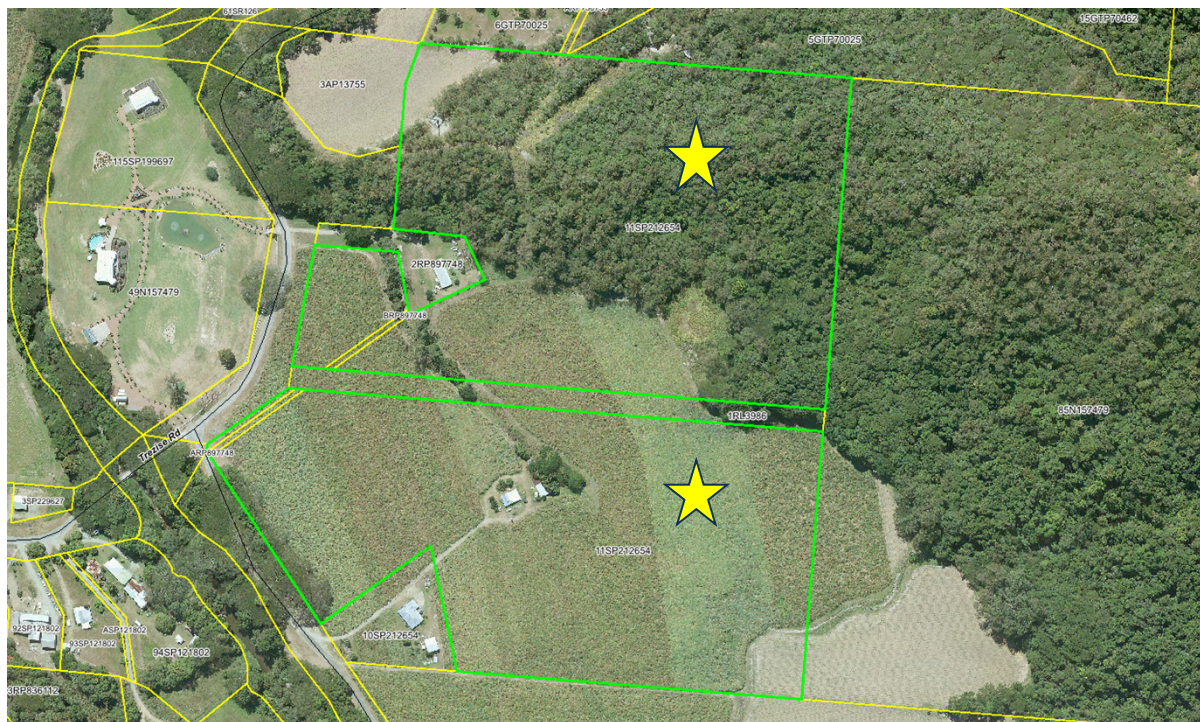


Figure 1 - Locality Plan

ZONE	Rural
LOCAL PLAN	None applicable
PLANNING SCHEME	2018 Douglas Shire Planning Scheme
REFERRAL AGENCIES	None Applicable
NUMBER OF SUBMITTERS	Not Applicable
STATUTORY ASSESSMENT DEADLINE	18 April 2019
APPLICATION DATE	11 January 2019

RECOMMENDATION

That Council refuse the development application for reconfiguration of a lot, one lot into two lots, over land described as Lot 11 on SP212654, located at 21 Spring Creek Road, Mowbray, 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 in regards 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 and the Planning Scheme;**
- 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 Planning Scheme.**

EXECUTIVE SUMMARY

The land is located on the eastern side of Tresize Road and also has frontage to Spring Creek Road to the south. The land title consists of two parts separated by an unconstructed, unopened gazetted road. Part of the land is under sugar cane production and part is

undeveloped timber hillslopes. The area currently under sugar cane production is the whole of the southern part of the lot, part of the northern part of the lot and road licence lots including the separating gazetted road.

Application has been made to divide the land into two lots, consistent with the two parts nominated on the land title. The applicant has indicated the road licence area for the gazetted road between the two parts will be surrendered and can revert back to its intended road use. No application has been made to open and construct the gazetted road.

The applicant claims that the gazetted road is a utility and the subdivision is supported by the Planning Scheme as the road is a utility installation. The claim is not concurred with. The Planning Scheme definition of a utility installation is for a premises, not for a road. The development will fragment rural land and reduce the agricultural viability and productivity of the rural land. In doing so, the development conflicts with the *State Planning Policy 2017*, the *Far North Queensland Regional Plan 2009-2031* and the *2018 Douglas Shire Planning Scheme*.

The applicant contends that the development is similar to that approved by a Court Order at Crees Road. This contention is not concurred with. The current application has been made under the *2018 Douglas Shire Planning Scheme*, not the *2006 Douglas Shire Planning Scheme (as amended)*. The circumstances are also different.

The development is unable to be conditioned to fully comply with planning instruments. There are insufficient planning grounds to overcome the conflicts with the *State Planning Policy 2017*, the *Far North Queensland Regional Plan* and the *2018 Douglas Shire Planning Scheme*. The report recommends the application be refused.

TOWN PLANNING CONSIDERATIONS

Background

The neighbouring lots, Lot 2 on RP897748 and Lot 10 on SP212654, were originally part of the farm which then comprised of Lot 1 on RP742305.

The first “family lot” subdivisions was excised from the farm in 1994 (Subdivision Application 281 approved on the 15 June 1994) under the 1981 Planning Scheme that sought a minimum lots size of 32 hectares. While the Scheme permitted the excise of small lots for a dwelling-house for a parent, son or daughter of the owner, the balance area was to meet at least the minimum 32 hectares. The application had initially sought two “family lots” but only one was supported given the Council’s concern for the minimal size of the balance lot.

The second “family lot” was created in 1999 (Subdivision Application 023/99 approved on the 26 August 1999) under the 1996 Shire Planning Scheme. The 1996 Planning Scheme provisions limited family lot subdivisions to a maximum of two (having occurred since 1981) and the ability to create such lots ceased on 20 November 1999. The cessation had been required by the State Government which was concerned with the fragmentation of rural land and the loss of good quality agricultural land.

Neither the 1981 Planning Scheme nor the 1996 Planning Scheme required a minimum GQAL area of land and the balance lot could comprise land that had little agricultural integrity (such as hillslopes land).

Under the boundary realignment of Development Permit ROL 027/07, issued by the former Douglas Shire Council on 12 February 2008, the area of Lot 10 was slightly expanded at the expense of the balance Lot 11. Each family lot has been developed with a dwelling.

Lot 11, the land over which the application has been made, is situated on the eastern side of Spring Creek Road, is in two parts and has a vinculum across the gazetted unopened and unconstructed road. Part of the land is cleared and reflects the valley floor and part is forested hillslopes. The hillslope forms the southern edge of the Mowbray Valley. The land has an area of 23.53 hectares of which approximately 14 hectares is cleared and used for sugarcane production. A substantial area of the valley floor component is mapped as floodplain on the 2018 Planning Scheme Flood Overlay Map.

The gazetted road, between the two parts of Lot 11 provides legal frontage for land to the east (Lot 85N157479) and is also owned by the Applicant. A road license, occupied by the Applicant, sits over the gazetted road between the two parts of Lot 11, is known as Lot 1 on Road License 3986 and has an area of approximately 0.1 hectare. The Applicant also occupies a road licence over Lot 3 on AP13755, being 1.04 hectares between Spring Creek Road and the north-western corner of the Lot 11.

A telecommunications tower has been constructed on the northern part of the lot, near to Lot 3 on AP13755. The tower was approved under the Development Permit MCUC 990/2015 determined by Council at the Ordinary Meeting held on the 29 September 2015 and constructed under a Building Approval issued in December the same year.

The applicant has advised that Lot 11 is also improved by a small worker's barracks / caretaker's residence. Sheds are also positioned in the approximate centre of the southern part of the land. Vehicle access to the house can be achieved from Spring Creek Road from two separate points: one through the northern part of the land and the gazetted (unopened) road; and the other over the neighbouring Lot 10 on SP212654. The access over Lot 10 on SP212654 is not formalised by an access easement. The applicant also owns the neighbouring Lot 10 on SP212654.

Proposal

The applicant seeks to halve the land either side of the gazetted road into two separate lots. The layout plan is included in Attachment 1.

The proposed northern lot of approximately 12.78 hectares is predominantly uncleared with a small area of cane (3.2 hectares) and the telecommunications tower. The applicant advised that the limited cleared area on this lot allows for "boutique style farming practises." The applicant contends that the proposed separation of the northern lot for more sensitive farming practises protects the high environmentally quality of the lot and the amenity for residents.

The second lot, of 10.75 hectares is completely cleared and contains the worker's barracks / caretaker's residence. This part of the farm is utilised for agricultural purposes and cane farming and the applicant advised that the proposal "consolidates agricultural use on the fully cleared lot."

The applicant considers the gazetted road as a "utility" and considers the development being consistent with the Planning Scheme Rural Zone Code as the reconfiguration is limited to one additional lot to accommodate a utility. Despite the vinculum, the applicant considers the two parts of the parent parcel as two separate lots.

The applicant contends that as the road license area to the neighbouring Lot 85 will be forgone, the "road" will revert to its primary use. The applicant also contends that the Council's agreement to the Consent Order for the Kurth appeal for Lot 144 on SP113652 at Crees Road, Council has conceded that a road is a utility and that position remains valid despite the Kurth application being lodged and assessed under the former Planning Scheme.

The applicant advises that the character of this section of the Mowbray Valley has changed in recent years with most properties fronting Mowbray River and Tresize Roads being used predominantly for Rural Residential purposes such as the lots opposite Lot 11 containing substantial Queenslander style homes.

In response to a request for further information additional advice was provided. The applicant contends there is little economic viability to continue cane production on the land due to the low return price of sugar, the relative high cost of acquiring the road area from the State and the need for sugar cane production to move to broad acre farming techniques that have limited applicability to the small area of cleared land on the northern part of the land.

The applicant contends that increased cane production could be achieved by "foregoing cane growing on the small lot and road, and applying the extra resources to the balance area utilising broad acre farming techniques."

The applicant also notes that the proximity of the northern lot to "Rural Residential" uses on the Tresize Road also causes a disruption to farm practises such as chemical spraying, field preparation and harvesting. The applicant is of the view that the proposed northern lot, which is impacted by road access to Lot 85, could be used by some other rural activity.

The neighbouring Lot 85 is also owned by the applicant. Council officers had suggested an alternative application where the cane production areas either side of the road, together with the cane production area of the neighbouring lot 85 was consolidated into one lot and the hillside areas together with the cleared area (adjacent to Lot 3 on AP13755) was consolidated into a second lot by a boundary realignment.

The applicant has not provided advice of any consideration of this alternative.

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 1990's the State 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 40 hectare lots per new lot in the Rural Zone and that agricultural land should not be fragmented.

State Planning Policy 2017 seeks to 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 floodplain land on the lots is mapped as Agricultural Land Class A. 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

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 of the land is mapped as Very High Potential Bushfire Intensity Part of the land is mapped as

Douglas Shire Planning Scheme		Code Applicability	Compliance
			<p>High Potential Bushfire Intensity</p> <ul style="list-style-type: none"> Part of the land is mapped Potential Impact Buffer; and Part of the land is not mapped. <p>Refer to comment.</p>
	Coastal Environment Overlay Code	✓	<ul style="list-style-type: none"> Land is not within the Coastal Management District. Land is not mapped for coastal erosion.-
	Flood And Storm Tide Hazard Overlay Code	✓	<ul style="list-style-type: none"> Part of the land is mapped in the floodplain. Part of the land is not mapped as floodplain. <p>Refer to comment.</p>
	Hillslopes Overlay Code	✓	<ul style="list-style-type: none"> Part of the land is mapped as Hillslopes. Part of the land is not mapped s hillslopes. <p>Refer to comment.</p>
	Landscape Values Overlay Code	✓	<ul style="list-style-type: none"> Part of the land is mapped as High Landscape Value, reflecting the hillslopes area. Part of the land is mapped as Medium landscape Value. A small part of the land is not mapped (adjacent to Spring Creek Road). <p>Refer to comment.</p>
	Natural Areas Overlay Code	✓	<ul style="list-style-type: none"> MSES regulated Vegetation (Intersecting a watercourse) – mapped close to the north-eastern boundary. Part MSES Wildlife Habitat. Part MSES Regulated Vegetation. Part of the land is not mapped. <p>Refer to comment..</p>
	Places Of Significance Overlay Code	x	-

Douglas Shire Planning Scheme				Code Applicability	Compliance
	Potential Landslide Hazard Overlay Code			✓	<ul style="list-style-type: none"> Part of the land is mapped as Potential Landslip Hazard. Part of the land is not mapped as Potential landslip hazard. Refer to comment.
	Transport Network Overlay Code: (Pedestrian and Cycle) Overlay			✓	<ul style="list-style-type: none"> The adjacent Tresize Road is a Iconic Recreation Route. Complies.
					<ul style="list-style-type: none">
	Transport Network Overlay Code: (Road Hierarchy) Overlay			✓	<ul style="list-style-type: none"> Tresize Road (to the west) is a Major Rural Road Spring Creek Road, to the south is an Access Road. The gazetted , unformed road, between the two parts of the lot is not mapped on the mapped hierarchy. 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.
	Advertising Devices Code			x	-
	Environment Performance Code			x	-
	Filling And Excavation Code			✓	No filling or excavation proposed at this stage.
	Infrastructure Works Code			✓	Can connect to water supply and electricity.
	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

Road – Not a Utility

It is not agreed that the gazetted road is a utility. There is no intention of the applicant to open and construct a FNQROC Development Manual standard rural road in the gazetted road area. There is no obligation on Council to open and construct a “road” in the gazetted road area. The application needs to be considered on its merits and in respect to the Planning Scheme under which it is lodged.

Economic Considerations

The individual circumstances of the applicant are not planning considerations. Over time the size of the farm has been compromised by the subdivision for family lots. There is no compulsion for the applicant to farm road license areas. This is simply an opportunity the applicant has taken up for an economic return. The viability of farming the road license areas is again a personal economic consideration, not a planning consideration.

Rural Zone & Reconfiguration of a Lot Code

Over ninety per cent of the Shire is environmentally constrained by forested hillslopes wetland foreshore. The area of agricultural land is limited to the flood plain between the hillslopes and the foreshore wetland areas and this area is further constrained by protected waterways and urban development. There is a need to conserve this land for rural activity and use.

The previous attritions of rural land were substantially due to family lot subdivisions. The creation of family lots and small lots in the Rural Zone was an outcome that was facilitated by previous Planning Schemes.

These subdivisions fragmented rural farming land and had inappropriately placed a greater weight on social and personal financial considerations over the productivity and primary purpose of the rural land. The family lot subdivisions were ceased in the late 1990s under a sunset clause in the 1996 Planning Scheme.

Further loss of rural land also stemmed from the conversion of Rural to Rural Residential Zones. The land is the Rural Zone and not the Rural Residential Zone. The land is separated from the nearby Rural Residential Zone by Spring Creek, a natural watercourse. The Regional Plan clearly does not support the development of additional Rural Residential land.

Despite these changes rural land has continued to be impacted by: the fragmentation of rural land that reduces the ability for broad acre farming; reverse amenity of small rural lots siting adjacent to continued broad acres farming practises; losses of agricultural land Classed A and or Class B to non-agricultural outcomes; and the consequential impacts on the Mossman Mill.

To address these concerns the 2018 Planning Scheme is considerably different to the 2006 Planning Scheme. Significantly, the considerations of lot size and dimensions have been moved from the Reconfiguration of a Lot Code to the individual Zone Code so that the outcomes are more aligned with the Zone in which the lots are created.

The Rural Zone purpose under the 2018 Douglas Shire Planning Scheme is to provide for rural uses including cropping, intensive horticulture, intensive animal industries, animal husbandry, animal keeping and other primary production activities.

The 2018 Planning Scheme raised the consideration of minimum lot size in the Rural Zone from an Acceptable Solution to a Performance Outcome, reflecting the need for substantially sized lots to meet the purpose and expected land use in the Rural Zone.

The purpose of the rural Zone is not to support residential development on large acreage lots. The activities conducted on rural land, such as noise from tractors and harvesters etc., are anticipated and expected outcomes. Where nearby and adjacent lots are used for large acreage residential development, despite being zoned Rural, there is a reverse amenity issue. The proposed reconfiguration is likely to result in reverse amenity issues in the future.

The current Planning Scheme provides a very limited ability for lots to be created that are less than the minimum 40 hectares. This is not one of those opportunities. As has occurred with the previous family lots subdivisions, the proposed subdivision would be a further attrition of farming land.

The overall outcomes of the Rural Zone Code seek the areas used for primary production are conserved and fragmentation is avoided. The proposed reconfiguration of the land fragments the primary production land, in particular as the flood plain area is currently farmed as one.

The lots have insufficient area for their intended use. The Codes' Purposes and Outcomes are not achieved and cannot be achieved through conditions.

Bushfire, Flood Overlay, Hillslopes Overlay, Landslip Overlay, Natural Areas Overlay & Vegetation Management Code

The land is constrained by the physical form that is reflected in the various Planning Scheme overlays. These considerations would only have bearing where an additional lot was supported to identify the most appropriate location for a building envelope.

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.

ATTACHMENT

1. Attachment 1 **[5.2.1]**

Pisot - Proposed Reconfiguration of Lot 11 SP212654

