DOUGLAS SHIRE COUNCIL

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9 December 2025

Enquiries: Daniel Lamond
Our Ref: ROL 2025_5852 (1338544)

G J Hunt
PO Box 170
PORT DOUGLAS QLD 4877

Dear Sir

Development Application for Reconfiguring a Lot (One lot into two lots)
At 291 Mowbray River Road, Mowbray
On Land Described as LOT: 34 SP: 331786

Please find attached the Decision Notice for the above-mentioned development application.

Please quote Council's application number: ROL 2023_5852/1 in all subsequent correspondence relating to this development application.

Should you require any clarification regarding this, please contact Daniel Lamond on telephone 07 4099 9444.

Yours faithfully

Leonard Vogel
Manager Environment & Planning

- Decision Notice
  - Reasons for Decision
  - Non-compliance with assessment benchmarks
- Advice For Making Representations and Appeals

Decision Notice
Refusal

Given under s 63 of the Planning Act 2016

Applicant Details

Name:	G J Hunt
Postal Address:	PO Box 170 PORT DOUGLAS QLD 4877
Email:	gary@huntdesign.com.au

Property Details

Street Address:	291 Mowbray River Road, Mowbray
Real Property Description:	LOT: 34 SP: 331786
Local Government Area:	Douglas Shire Council

Details of Proposed Development

Refusal: Development Permit- Reconfiguring a Lot (One lot into two lots)

Decision

Date of Decision:	9 December 2025
Decision Details:	Refused

Reasons for Refusal

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;

Rights to make Representations & Rights of Appeal

The rights of applicants to make representations and rights to appeal to a Tribunal or the Planning and Environment Court against decisions about a development application are set out in Chapter 6, Part 1 of the *Planning Act 2016.*

A copy of the relevant appeal provisions is attached

Reasons for Decision

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.

Non-Compliance with Assessment Benchmarks

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.

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.

(a) 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.

The zone code also references sections of the Strategic framework that unpin its construct. In particular, 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.'

It is clear that the strategic framework seeks to stop further fragmentation or 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 which 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.

Extracts from the Planning Act 2016 - Making Representations During Applicant's Appeal Period

Division 2 Changing development approvals

Subdivision 1 Changes during appeal period

74 What this subdivision is about

(1) This subdivision is about changing a development approval before the applicant's appeal period for the approval ends.

(2) This subdivision also applies to an approval of a change application, other than a change application for a minor change to a development approval.

(3) For subsection (2), sections 75 and 76 apply—

(a) as if a reference in section 75 to a development approval were a reference to an approval of a change application; and

(b) as if a reference in the sections to the assessment manager were a reference to the responsible entity; and

(c) as if a reference in section 76 to a development application were a reference to a change application; and

(d) as if the reference in section 76(3)(b) to section 63(2) and (3) were a reference to section 83(4); and

(e) with any other necessary changes.

75 Making change representations

(1) The applicant may make representations (***change representations***) to the assessment manager, during the applicant's appeal period for the development approval, about changing—

(a) a matter in the development approval, other than—

(i) a matter stated because of a referral agency's response; or

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(ii) a development condition imposed under a direction made by the Minister under chapter 3, part 6, division 2; or

(b) if the development approval is a deemed approval—the standard conditions taken to be included in the deemed approval under section 64(8)(c).

(2) If the applicant needs more time to make the change representations, the applicant may, during the applicant's appeal period for the approval, suspend the appeal period by a notice given to the assessment manager.

(3) Only 1 notice may be given.

(4) If a notice is given, the appeal period is suspended—

(a) if the change representations are not made within a period of 20 business days after the notice is given to the assessment manager—until the end of that period; or

(b) if the change representations are made within 20 business days after the notice is given to the assessment manager, until—

(i) the applicant withdraws the notice, by giving another notice to the assessment manager; or

(ii) the applicant receives notice that the assessment manager does not agree with the change representations; or

(iii) the end of 20 business days after the change representations are made, or a longer period agreed in writing between the applicant and the assessment manager.

(5) However, if the assessment manager gives the applicant a negotiated decision notice, the appeal period starts again on the day after the negotiated decision notice is given.

76 Deciding change representations

(1) The assessment manager must assess the change representations against and having regard to the matters that

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must be considered when assessing a development application, to the extent those matters are relevant.

(2) The assessment manager must, within 5 business days after deciding the change representations, give a decision notice to—

(a) the applicant; and

(b) if the assessment manager agrees with any of the change representations—

(i) each principal submitter; and

(ii) each referral agency; and

(iii) if the assessment manager is not a local government and the development is in a local government area—the relevant local government; and

(iv) if the assessment manager is a chosen assessment manager—the prescribed assessment manager; and

(v) another person prescribed by regulation.

(3) A decision notice (a ***negotiated decision notice***) that states the assessment manager agrees with a change representation must—

(a) state the nature of the change agreed to; and

(b) comply with section 63(2) and (3).

(4) A negotiated decision notice replaces the decision notice for the development application.

(5) Only 1 negotiated decision notice may be given.

(6) If a negotiated decision notice is given to an applicant, a local government may give a replacement infrastructure charges notice to the applicant.

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Extracts from the Planning Act 2016 – Appeal Rights

Chapter 6 Dispute resolution

Part 1 Appeal rights

229 Appeals to tribunal or P&E Court

(1) Schedule 1 states—

(a) matters that may be appealed to—

(i) either a tribunal or the P&E Court; or

(ii) only a tribunal; or

(iii) only the P&E Court; and

(b) the person—

(i) who may appeal a matter (the ***appellant***); and

(ii) who is a respondent in an appeal of the matter; and

(iii) who is a co-respondent in an appeal of the matter; and

(iv) who may elect to be a co-respondent in an appeal of the matter.

(2) An appellant may start an appeal within the appeal period.

(3) The ***appeal period*** is—

(a) for an appeal by a building advisory agency—10 business days after a decision notice for the decision is given to the agency; or

(b) for an appeal against a deemed refusal—at any time after the deemed refusal happens; or

(c) for an appeal against a decision of the Minister, under chapter 7, part 4, to register premises or to renew the registration of premises—20 business days after a notice is published under section 269(3)(a) or (4); or

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(d) for an appeal against an infrastructure charges notice—20 business days after the infrastructure charges notice is given to the person; or

(e) for an appeal about a deemed approval of a development application for which a decision notice has not been given—30 business days after the applicant gives the deemed approval notice to the assessment manager; or

(f) for an appeal relating to the *Plumbing and Drainage Act 2018*—

(i) for an appeal against an enforcement notice given because of a belief mentioned in the *Plumbing and Drainage Act 2018*, section 143(2)(a)(i), (b) or (c)—5 business days after the day the notice is given; or

(ii) for an appeal against a decision of a local government or an inspector to give an action notice under the *Plumbing and Drainage Act 2018*—5 business days after the notice is given; or

(iii) for an appeal against a failure to make a decision about an application or other matter under the *Plumbing and Drainage Act 2018*—at anytime after the period within which the application or matter was required to be decided ends; or

(iv) otherwise—20 business days after the day the notice is given; or

(g) for any other appeal—20 business days after a notice of the decision for the matter, including an enforcement notice, is given to the person.

Note—

See the P&E Court Act for the court's power to extend the appeal period.

(4) Each respondent and co-respondent for an appeal may be heard in the appeal.

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(5) If an appeal is only about a referral agency's response, the assessment manager may apply to the tribunal or P&E Court to withdraw from the appeal.

(6) To remove any doubt, it is declared that an appeal against an infrastructure charges notice must not be about—

(a) the adopted charge itself; or

(b) for a decision about an offset or refund—

(i) the establishment cost of trunk infrastructure identified in a LGIP; or

(ii) the cost of infrastructure decided using the method included in the local government's charges resolution.

230 Notice of appeal

(1) An appellant starts an appeal by lodging, with the registrar of the tribunal or P&E Court, a notice of appeal that—

(a) is in the approved form; and

(b) succinctly states the grounds of the appeal.

(2) The notice of appeal must be accompanied by the required fee.

(3) The appellant or, for an appeal to a tribunal, the registrar, must, within the service period, give a copy of the notice of appeal to—

(a) the respondent for the appeal; and

(b) each co-respondent for the appeal; and

(c) for an appeal about a development application under schedule 1, section 1, table 1, item 1—each principal submitter for the application whose submission has not been withdrawn; and

(d) for an appeal about a change application under schedule 1, section 1, table 1, item 2—each principal submitter for the application whose submission has not been withdrawn; and

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(e) each person who may elect to be a co-respondent for the appeal other than an eligible submitter for a development application or change application the subject of the appeal; and

(f) for an appeal to the P&E Court—the chief executive; and

(g) for an appeal to a tribunal under another Act—any other person who the registrar considers appropriate.

(4) The ***service period*** is—

(a) if a submitter or advice agency started the appeal in the P&E Court—2 business days after the appeal is started; or

(b) otherwise—10 business days after the appeal is started.

(5) A notice of appeal given to a person who may elect to be a co-respondent must state the effect of subsection (6).

(6) A person elects to be a co-respondent to an appeal by filing a notice of election in the approved form—

(a) if a copy of the notice of appeal is given to the person—within 10 business days after the copy is given to the person; or

(b) otherwise—within 15 business days after the notice of appeal is lodged with the registrar of the tribunal or the P&E Court.

(7) Despite any other Act or rules of court to the contrary, a copy of a notice of appeal may be given to the chief executive by emailing the copy to the chief executive at the email address stated on the department's website for this purpose.

231 Non-appealable decisions and matters

(1) Subject to this chapter, section 316(2), schedule 1 and the P&E Court Act, unless the Supreme Court decides a decision or other matter under this Act is affected by jurisdictional error, the decision or matter is non-appealable.

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(2) The *Judicial Review Act 1991*, part 5 applies to the decision or matter to the extent it is affected by jurisdictional error.

(3) A person who, but for subsection (1) could have made an application under the *Judicial Review Act 1991* in relation to the decision or matter, may apply under part 4 of that Act for a statement of reasons in relation to the decision or matter.

(4) In this section—

decision includes—

(a) conduct engaged in for the purpose of making a decision; and

(b) other conduct that relates to the making of a decision; and

(c) the making of a decision or the failure to make a decision; and

(d) a purported decision; and

(e) a deemed refusal.

non-appealable, for a decision or matter, means the decision or matter—

(a) is final and conclusive; and

(b) may not be challenged, appealed against, reviewed, quashed, set aside or called into question in any other way under the *Judicial Review Act 1991* or otherwise, whether by the Supreme Court, another court, any tribunal or another entity; and

(c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, any tribunal or another entity on any ground.

232 Rules of the P&E Court

(1) A person who is appealing to the P&E Court must comply with the rules of the court that apply to the appeal.

(2) However, the P&E Court may hear and decide an appeal even if the person has not complied with rules of the P&E Court.

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