

**PLANNING REPORT**

**SUBJECT:** NORTHERN BUILDING APPROVALS - RECONFIGURING A LOT - SUBDIVISION (1 INTO 2 LOTS) - LOT 3 RP733075 - 215 MALONE ROAD, MAREEBA - RAL/17/0001

**MEETING:** Ordinary

**MEETING DATE:** 16 August 2017

**REPORT OFFICER'S TITLE:** Planning Officer

**DEPARTMENT:** Corporate and Community Services

**APPLICATION DETAILS**

APPLICATION		PREMISES	
<b>APPLICANT</b>	Northern Building Approvals	<b>ADDRESS</b>	215 Malone Road, Mareeba
<b>DATE LODGED</b>	12 July 2017	<b>RPD</b>	Lot 3 on RP733075
<b>TYPE OF APPROVAL</b>	Development Permit		
<b>PROPOSED DEVELOPMENT</b>	Reconfiguring a Lot - Subdivision (1 into 2 Lots)		

<b>FILE NO</b>	RAL/17/0001	<b>AREA</b>	3.893 hectares
<b>LODGED BY</b>	Northern Building Approvals	<b>OWNER</b>	N & N Morris
<b>PLANNING SCHEME</b>	Mareeba Shire Council Planning Scheme - July 2016		
<b>ZONE</b>	Rural Zone		
<b>LEVEL OF ASSESSMENT</b>	Code Assessment		
<b>SUBMISSIONS</b>	N/A - Code Assessment Only		

**ATTACHMENTS:** 1. Proposal Plan/s

**EXECUTIVE SUMMARY**

*Council is in receipt of a code assessable development application described in the above application details. Being code assessable, the application is not required to be publicly notified.*

*The application proposes the subdivision of the site into two rural residential sized lots with areas of 2 hectares and 1.893 hectares.*

*The application and supporting material has been assessed against the Mareeba Shire Council Planning Scheme - July 2016 and is considered to conflict with Performance Outcomes PO1,*

PO2, PO3 and PO6 of the Agricultural Land Overlay Code and Performance Outcome PO1 and Acceptable Outcome AO1 of the Reconfiguring a Lot Code.

Both proposed allotments are significantly smaller than the minimum desired lot size of 60 hectares for land within the Rural zone. A key intent of the Planning Scheme is to protect the Shire's agricultural sector by discouraging the creation of small rural lots. The proposed development, which will create yet another out-of-sequence small rural lot is in conflict with this intent.

It is therefore recommended that the application be refused.

## OFFICER'S RECOMMENDATION

1. That in relation to the following development application:

APPLICATION		PREMISES	
APPLICANT	Northern Building Approvals	ADDRESS	215 Malone Road, Mareeba
DATE LODGED	12 July 2017	RPD	Lot 3 on RP733075
TYPE OF APPROVAL	Development Permit		
PROPOSED DEVELOPMENT	Reconfiguring a Lot - Subdivision (1 into 2 Lots)		

and in accordance with the Planning Act 2016, the applicant be notified that the application for a development permit for the development specified in (A) is:

Refused by Council for reasons set out in (B).

(A) REFUSED DEVELOPMENT: Development Permit for Reconfiguring a Lot - Subdivision (1 into 2 Lots)

(B) ASSESSMENT MANAGER'S REASONS FOR REFUSAL:

1. The proposed development is in conflict with Performance Outcomes PO1, PO2, PO3 and PO6 of the Agricultural Land Overlay Code:

### **PO1**

*The fragmentation or loss of productive capacity of land within the 'Class A' area or 'Class B' area identified on the **Agricultural land overlay maps (OM-001a-n)** is avoided unless:*

- (a) *an overriding need exists for the development in terms of public benefit;*
- (b) *no suitable alternative site exists; and*
- (c) *loss or fragmentation is minimised to the extent possible.*

### **PO2**

*Sensitive land uses in the 'Class A' area, 'Class B' area or the 'Broadhectare rural' area identified on the **Agricultural land overlay maps (OM-001a-n)** are designed and located to:*

- (a) *avoid land use conflict;*
- (b) *manage impacts from agricultural activities, including chemical spray drift, odour, noise, dust, smoke and ash;*

- (c) *avoid reducing primary production potential; and*
- (d) *not adversely affect public health, safety and amenity.*

**PO3**

*Development in the 'Class A' area or 'Class B' area identified on the **Agricultural land overlay maps (OM-001a-n)**:*

- (a) *ensures that agricultural land is not permanently alienated;*
- (b) *ensures that agricultural land is preserved for agricultural purposes; and*
- (c) *does not constrain the viability or use of agricultural land.*

**PO6**

*Any Reconfiguring a lot in the 'Class A' area, 'Class B' area or the 'Broadhectare rural' area identified on the **Agricultural land overlay maps (OM-001a-n)**, including boundary realignments, only occurs where it:*

- (a) *improves agricultural efficiency;*
- (b) *facilitates agricultural activity; or*
- (d) *facilitates conservation outcomes; or*
- (d) *resolves boundary issues where a structure is built over the boundary line of two lots.*

2. The proposed development is in conflict with Performance Outcome PO1 and Acceptable Outcome AO1 of the Reconfiguring a Lot Code:

**PO1**

*Lots include an area and frontage that:*

- (a) *is consistent with the design of lots in the surrounding area;*
- (b) *allows the desired amenity of the zone to be achieved;*
- (c) *is able to accommodate all buildings, structures and works associated with the intended land use;*
- (d) *allow the site to be provided with sufficient access;*
- (e) *considers the proximity of the land to:*
  - (i) *centres;*
  - (ii) *public transport services; and*
  - (iii) *open space; and*
- (f) *allows for the protection of environmental features; and*
- (g) *accommodates site constraints.*

**AO1.1**

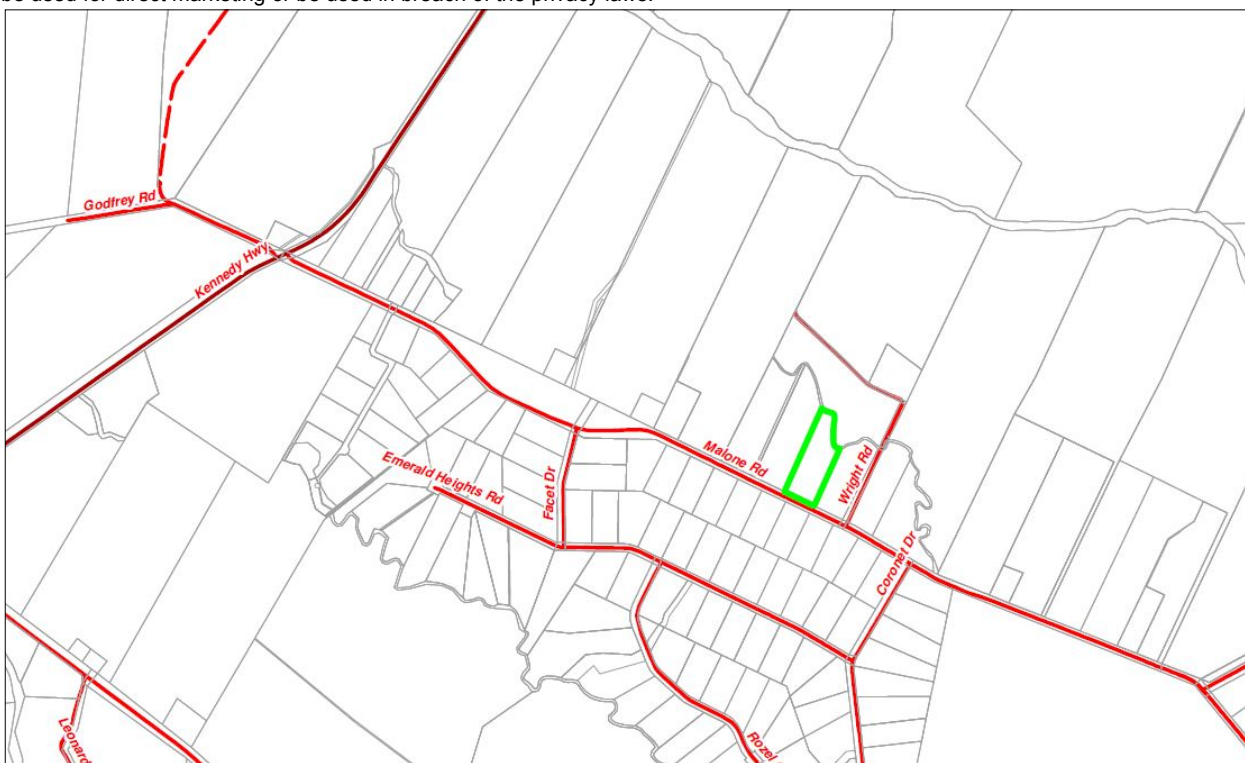
*Lots provide a minimum area and frontage in accordance with **Table 9.4.4.3B**.*

3. That there are not sufficient grounds to justify approval, despite the identified conflicts.



**Map Disclaimer:**

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## THE SITE

The subject site is situated at 215 Malone Road, Mareeba, and is described as Lot 3 on RP733075. The site is generally regular in shape with a total area of 3.893 hectares and is zoned Rural under the Mareeba Shire Council Planning Scheme - July 2016. The site contains 124.4 metres of frontage to Malone Road which is constructed to bitumen sealed standard.

A dwelling and three outbuildings are sited at the rear of the property while a mature fruit tree orchard, including overhead bird and bat netting is established over the bulk of the front of the property. Levison Creek which is supplemented from Tinaroo Dam runs behind the property.

Lots surrounding the property are zoned Rural and are used for rural lifestyle purposes and small scale agriculture.

## BACKGROUND AND CONTEXT

Nil

## PREVIOUS APPLICATIONS & APPROVALS

Nil

## DESCRIPTION OF PROPOSED DEVELOPMENT

The development application seeks a Development Permit for Reconfiguring a Lot - Subdivision (1 into 2 Lots) in accordance with the plans shown in **Attachment 1**.

The details of the proposed lots are as follows:

- Proposed Lot 8 - total area of 2 hectares, 8 metres of frontage to Malone Road (rear access lot); and
- Proposed Lot 9 - total area of 1.893 hectares, 116.4 metres of frontage to Malone Road.

A 3 metre wide water supply easement is proposed along the eastern boundary of Lot 8 giving Lot 9 access to Levison Creek. It is proposed to transfer some of the sites existing water allocation to Lot 9.

Lot 8 will contain the sites existing improvements (not including the bird and bat netting which will be removed as part of the development) leaving Lot 9 vacant. Lot 9 is of a size that could accommodate future on-site wastewater disposal and can be connected to the electricity and telecommunications infrastructure.

Access to each proposed lot will be gained via Malone Road with Lot 8 utilising the sites existing access. Both accesses will be upgraded to FNQROC standards.

## REGIONAL PLAN DESIGNATION

The subject site is included within the Regional Landscape and Rural Production Area land use category in the Far North Queensland Regional Plan 2009-2031. The Regional Plan Map 3 - 'Areas of Ecological Significance' does not identify the site as containing any areas of ecological significance.



## PLANNING SCHEME DESIGNATIONS

Strategic Framework:	<b>Land Use Categories</b> <ul style="list-style-type: none"> <li>• <i>Rural Agricultural Area</i></li> <li>• <i>Rural other</i></li> </ul> <b>Natural Environment Elements</b> <i>Biodiversity Areas (Wildlife Habitat)</i>
Zone:	Rural Zone
Overlays:	Agricultural land overlay Airport environs overlay Bushfire hazard overlay Environmental significance overlay Transport infrastructure overlay

## RELEVANT PLANNING INSTRUMENTS

Assessment of the proposed development against the relevant planning instruments is summarised as follows:-

### (a) Far North Queensland Regional Plan 2009-2031

Separate assessment against the Regional Plan is not required because the Mareeba Shire Council Planning Scheme appropriately advances the Far North Queensland Regional Plan 2009-2031, as it applies to the planning scheme area.

### (b) State Planning Policy

Separate assessment against the State Planning Policy (SPP) is not required because the Mareeba Shire Council Planning Scheme appropriately integrates all relevant aspects of the SPP.

### (c) Mareeba Shire Council Planning Scheme - July 2016

## Relevant Development Codes

The following Development Codes are considered to be applicable to the assessment of the application:

- 6.2.9 Rural zone code
- 8.2.1 Agricultural land overlay code
- 8.2.2 Airport environs overlay code
- 8.2.3 Bushfire hazard overlay code
- 8.2.4 Environmental significance overlay code
- 8.2.11 Transport infrastructure overlay code
- 9.4.2 Landscaping code
- 9.4.3 Parking and access code
- 9.4.4 Reconfiguring a lot code
- 9.4.5 Works, services and infrastructure code

The application included a planning report and assessment against the planning scheme. An officer assessment has found that the application satisfies the relevant acceptable solutions (or

probable solutions/performance criteria where no acceptable solution applies) of the relevant codes set out below, provided reasonable and relevant conditions are attached to any approval.

Relevant Codes	Comments
Rural zone code	The application complies with applicable acceptable/probable solutions/performance criteria.
Agricultural land overlay code	<p>The application complies with applicable acceptable/probable solutions/performance criteria apart from the following:</p> <ul style="list-style-type: none"> <li>▪ PO1</li> <li>▪ PO2</li> <li>▪ PO3</li> <li>▪ PO6</li> </ul> <p>Refer to planning discussion section of this report.</p>
Airport environs overlay code	The application complies with applicable acceptable/probable solutions/performance criteria.
Environmental significance overlay code	The application complies with applicable acceptable/probable solutions/performance criteria.
Transport infrastructure overlay code	The application complies with applicable acceptable/probable solutions/performance criteria.
Landscaping code	The application complies with applicable acceptable/probable solutions/performance criteria.
Parking and access code	The application complies with applicable acceptable/probable solutions/performance criteria.
Reconfiguring a lot code	<p>The application complies with applicable acceptable/probable solutions/performance criteria apart from the following:</p> <ul style="list-style-type: none"> <li>▪ PO1 and AO1</li> </ul> <p>Refer to planning discussion section of this report.</p>
Works, services and infrastructure code	The application complies with applicable acceptable/probable solutions/performance criteria.

### (e) Planning Scheme Policies/Infrastructure Charges Plan

The following planning scheme policies are relevant to the application:

Planning Scheme Policy 4 - FNQROC Regional Development Manual

All development works will be conditioned to be designed and constructed in accordance with the FNQROC Development Manual.



**(f) Additional Trunk Infrastructure Condition - Road Infrastructure**

The subject land is located outside the identified Priority Infrastructure Area (PIA).

The development, creating an additional allotment, is predicted to place additional demand on Council's trunk transport infrastructure (roads).

the developer must pay a one off payment of \$4,500.00 (per additional lot) as a contribution toward trunk infrastructure with the amount of the contribution increased on 1 July each year in accordance with the increase for the PPI index for the period starting on the day the development approval takes effect, adjusted by reference to the 3-yearly PPI index average to the date of payment.

The trunk infrastructure for which the payment is required is:

- The trunk transport infrastructure servicing the land (\$4,500.00)

The developer may elect to provide part of the trunk infrastructure instead of making the payment.

If the developer elects to provide part of the trunk infrastructure the developer must:

- Discuss with Council's delegated officer the part of the works to be undertaken;
- Obtain the necessary approvals for the part of the works;
- Indemnify the Council in relation to any actions, suits or demands relating to or arising from the works;
- Take out joint insurance in the name of the Council and the developer in the sum of \$20,000,000 in relation to the undertaking of the works;
- Comply with the reasonable direction of Council officers in relation to the completion of the works;
- Complete the works to the standards required by the Council; and
- Complete the works prior to endorsement of the plan of subdivision

## REFERRALS

### Concurrence

This application did not trigger referral to a Concurrence Agency.

### Advice

This application did not trigger referral to an Advice Agency.

### Internal Consultation

Technical Services

## PLANNING DISCUSSION

Noncompliance with the Performance Outcomes and Acceptable Outcomes of the Agricultural Land Overlay Code and the Reconfiguring a Lot Code are summarised as follows:

### Conflicts with the Agricultural Land Overlay Code

#### **PO1**

*The fragmentation or loss of productive capacity of land within the 'Class A' area or 'Class B' area identified on the Agricultural land overlay maps (OM-001a-n) is avoided unless:*

- (a) *an overriding need exists for the development in terms of public benefit;*
- (b) *no suitable alternative site exists; and*
- (c) *loss or fragmentation is minimised to the extent possible.*

#### Comment

The majority of the subject land is mapped as Class A area.

Proposed Lot 8 will contain the established dwelling house and sheds.

Proposed Lot 9 will be vacant at the time of its creation, and a future dwelling house would be accepted development. Any future dwelling house on proposed Lot 9 would be within the Class A area and would lead to a loss of agricultural land.

Furthermore, the fact that the subject land is already smaller than the desired minimum resultant lot size of 60 hectares does not justify further fragmentation into even smaller less viable rural allotments.

There is not an overriding need for this proposed reconfiguration, and there are numerous alternative sites to meet Mareeba's future urban growth demand.

#### **PO2**

*Sensitive land uses in the 'Class A' area, 'Class B' area or the 'Broadhectare rural' area identified on the Agricultural land overlay maps (OM-001a-n) are designed and located to:*

- (a) *avoid land use conflict;*
- (b) *manage impacts from agricultural activities, including chemical spray drift, odour, noise, dust, smoke and ash;*
- (c) *avoid reducing primary production potential; and*
- (d) *not adversely affect public health, safety and amenity.*

### Comment

While the current application is for reconfiguring a lot only, it is expected that a dwelling house would be established on proposed Lot 9 as a consequence of the reconfiguration.

The subject land is adjoined to the north-west by an established orchard with the 8 metre wide access handle of proposed Lot 8 being the only separation between this orchard and proposed Lot 9.

Siting an additional rural living allotment, with resultant additional dwelling house, adjacent to Class A area is likely to increase the potential for land use conflict.

Having an additional sensitive land use (dwelling house) in this area will make it harder to manage impacts from lawful farming activities and can only negatively impact on future farming opportunities.

### **PO3**

*Development in the 'Class A' area or 'Class B' area identified on the Agricultural land overlay maps (OM-001a-n):*

- (a) *ensures that agricultural land is not permanently alienated;*
- (b) *ensures that agricultural land is preserved for agricultural purposes; and*
- (c) *does not constrain the viability or use of agricultural land.*

### Comment

The majority of the subject land is mapped as Class A area.

The excision of proposed Lot 8 will result in an additional rural living allotment. A dwelling house will be built on this allotment and this land will be alienated from agricultural production/rural use.

Furthermore, the fact that the subject land is already smaller than the desired minimum resultant lot size of 60 hectares does not justify further fragmentation into even smaller less viable rural allotments.

The subject land is adjoined to the north-west by an established orchard with the 8 metre wide access handle of proposed Lot 8 being the only separation between this orchard and proposed Lot 9.

Siting an additional rural living allotment, with resultant additional dwelling house, adjacent to Class A area is likely to increase the potential for land use conflict.

The proposed development is in conflict with P03.

### **PO6**

*Any Reconfiguring a lot in the 'Class A' area, 'Class B' area or the 'Broadhectare rural' area identified on the **Agricultural land overlay maps (OM-001a-n)**, including boundary realignments, only occurs where it:*

- (a) *improves agricultural efficiency;*
- (b) *facilitates agricultural activity; or*
- (d) *facilitates conservation outcomes; or*
- (d) *resolves boundary issues where a structure is built over the boundary line of two lots.*

**AO6**

*No acceptable outcome is provided.*

Comment

The proposed development is in conflict with PO6.

The reconfiguration does not improve agricultural efficiency; does not facilitate agricultural activity; does not facilitate a conservation outcome; and does not resolve a boundary issue.

**Conflicts with the Reconfiguring a Lot Code****PO1**

*Lots include an area and frontage that:*

- (a) is consistent with the design of lots in the surrounding area;*
- (b) allows the desired amenity of the zone to be achieved;*
- (c) is able to accommodate all buildings, structures and works associated with the intended land use;*
- (d) allow the site to be provided with sufficient access;*
- (e) considers the proximity of the land to:*
  - (i) centres;*
  - (ii) public transport services; and*
  - (iii) open space; and*
- (f) allows for the protection of environmental features; and*
- (g) accommodates site constraints.*

**AO1.1**

*Lots provide a minimum area and frontage in accordance with **Table 9.4.4.3B**.*

Comment

Existing Lot 3 on RP733075 has an area of 3.893 hectares which is already well below the 60 hectares minimum area nominated in Table 9.4.4.3B.

Proposed Lots 8 and 9 would have areas of 2 hectares and 1.893 hectares respectively.

The areas of proposed Lots 8 and 9 are not consistent with the intent of maintaining larger allotment areas within the Rural zone. The fact that the subject land is already smaller than the desired minimum resultant lot size of 60 hectares does not justify further fragmentation into even smaller less viable rural allotments.

It is acknowledged that multiple small rural allotments already exist in the immediate locality, however the majority of the small allotments were created prior to the 2004 planning scheme.

The proposed reconfiguration conflicts with PO1.

The intent of the planning scheme for the rural zone is to discourage the creation of additional small rural lots. The proposed development, which essentially proposes the creation of an additional small rural lifestyle allotment, is in conflict with this intent. Furthermore, there are not sufficient grounds to justify approval despite the identified conflicts. It is recommended the application be refused.

**Date Prepared:** 7 August 2017

APPROVED PLANS (ECM Doc Set ID 3268100)

