

8.5 NEGOTIATED DECISION NOTICE - P KLARFELD - RECONFIGURING A LOT - SUBDIVISION (1 INTO 2 LOTS) - LOT 498 ON SP189698 - 280 CLOHESY RIVER ROAD, KOAH - RAL/21/0003

Date Prepared: 26 May 2021

Author: Planning Officer

Attachments:

1. Decision Notice dated 27 April 2021
2. Applicants Request for Negotiated Decision Notice (Change Representations) dated 16 May 2021

APPLICATION DETAILS

| APPLICATION | | PREMISES | |
|-----------------------------|---|----------|------------------------------|
| APPLICANT | P Klarfeld | ADDRESS | 280 Clohesy River Road, Koah |
| DATE REQUEST FOR NDN LODGED | 16 May 2021 | RPD | Lot 498 on SP189698 |
| TYPE OF APPROVAL | Development Permit | | |
| PROPOSED DEVELOPMENT | Reconfiguring a Lot - Subdivision (1 into 2 Lots) | | |
| FILE NO | RAL/21/0003 | AREA | 121.0002 ha |
| LODGED BY | Neil Beck | OWNER | P Klarfeld |
| PLANNING SCHEME | Mareeba Shire Council Planning Scheme 2016 | | |
| ZONE | Rural Zone | | |
| LEVEL OF ASSESSMENT | Impact Assessment | | |
| SUBMISSIONS | 3 Submissions | | |

EXECUTIVE SUMMARY

Council, at its Ordinary Meeting on 21 April 2021 approved a development application described in the above application details, subject to conditions. The application was impact assessable and three (3) properly made submissions were received in response to public notification of the application.

Neil Beck Town Planner on behalf of the applicant has subsequently made written representations about "Condition 3.11 - Amended Lot Layout". The condition requires that the lot layout be amended to ensure that each lot created has a minimum lot size of 60 hectares. 60 hectares is the minimum desired (not mandatory) lot size under the Mareeba Shire Council Planning Scheme 2016 (As amended by TLPI No.1 of 2019).

As outlined in the body of this report, the original lot layout, which proposed the creation of an allotment with an area of just 52.9 hectares (Lot 1) was supported by the assessing officer for various relevant planning reasons in addition to the common sense nature of the proposed lot configuration which utilised the existing road severances through the site as new property boundaries. Submitters to the original application cited environmental concerns in relation to firebreak clearing along new lot boundaries as a result of the proposed development. In this instance, enforcing a 60 hectare minimum lot size instead of allowing the original proposed 52.9 hectares allotment will actually increase the likelihood of further vegetation clearing occurring on the land along new lot

boundaries. This is due to the fact that 7.1 hectares of land from the opposite side of Clohesy River Road will now need to be included as part of proposed Lot 1 instead of utilising the Clohesy River Road severance as a natural property boundary, which would also double as an existing and effective fire break. The amount of additional clearing that could occur is in the vicinity of 12,000m² (approx. 3 acres), based on current exemptions under the Vegetation Management Act 1999.

It is therefore recommended that the request for a Negotiated Decision Notice be approved and Condition 3.11 - Amended Lot Layout be deleted.

OFFICER'S RECOMMENDATION

It is recommended that:

1. "In relation to the written representations made by the applicant regarding conditions of the following development approval:

| APPLICATION | | PREMISES | |
|-----------------------------|---|----------|------------------------------|
| APPLICANT | P Klarfeld | ADDRESS | 280 Clohesy River Road, Koah |
| DATE REQUEST FOR NDN LODGED | 16 May 2021 | RPD | Lot 498 on SP189698 |
| TYPE OF APPROVAL | Development Permit | | |
| PROPOSED DEVELOPMENT | Reconfiguring a Lot - Subdivision (1 into 2 Lots) | | |

and in accordance with the Planning Act 2016, the following

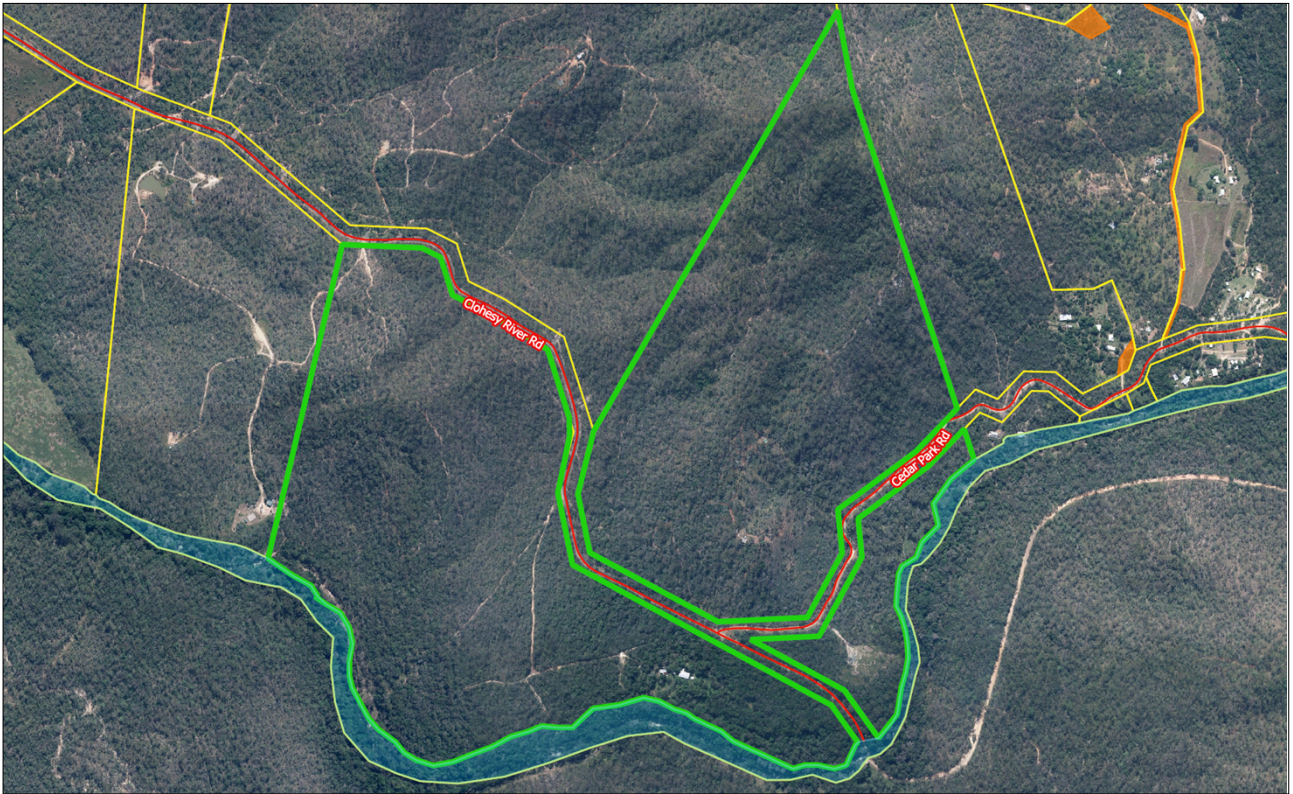
- (a) *Condition 3.11 - Amended Lot Layout* should be deleted.
2. A Negotiated Decision Notice be issued to the applicant and submitters advising of Council's decision"

THE SITE

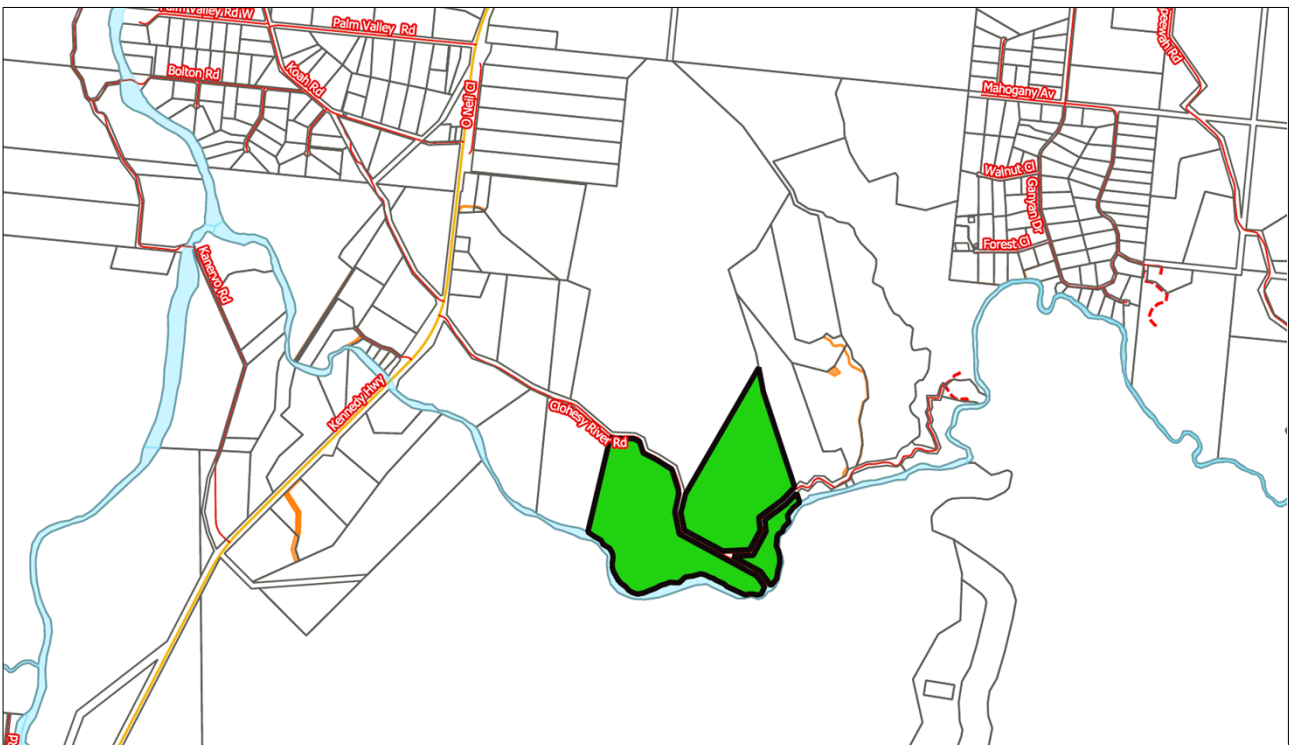
The subject site is situated at 280 Clohesy River Road, Koah, and is more particularly described as Lot 498 on SP189698. The site has a total area of 121.0002 hectares and is zoned *Rural* under the Mareeba Shire Council Planning Scheme 2016. The subject site is split into 3 land parcels by Clohesy River Road and Cedar Park Road (see below maps). Clohesy River Road is constructed to a bitumen sealed standard up to the road's intersection with Cedar Park Road, after which the road is constructed to a formed gravel standard only, as is Cedar Park Road for its entire length.

The site remains vegetated with an undulating topography and is improved by shed situated on the northern parcel, a dwelling and sheds situated on the southern parcel and a shed situated on the eastern parcel. The Clohesy Rivers runs along the southern and eastern boundaries of the site.

Surrounding lots on the same side of the Clohesy River are zoned Rural and comprise large rural lifestyle lots while the land on the opposite side of the Clohesy River forms part of a National Park and is zoned Conservation.

**Map Disclaimer:**

Based on or contains data provided by the State of Queensland (Department of Environment and Resource Management) (2009). In consideration of the State permitting use of this data you acknowledge and agree that the State gives no warranty in relation to the data (including accuracy, reliability, completeness, currency or suitability) and accepts no liability (including without limitation, liability in negligence) for any loss, damage or costs (including consequential damage) relating to any use of the data. Data must not be used for direct marketing or be used in breach of the privacy laws.

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BACKGROUND AND CONTEXT

Council, at its Ordinary Meeting on 21 April 2021, approved an application made by Neil Beck Town Planner on behalf of P Klarfeld for reconfiguring a lot - subdivision (1 into 2 Lots) on land described as Lot 498 on SP189698, situated at Clohesy River Road, Koah. The application was approved subject to Conditions and the Decision Notice was issued on 27 April 2021.

The original application conflicted with various provisions contained within the Planning Scheme due to one of the two allotment proposed having an area of just 52.9 hectares in size, with the minimum desired lot size being 60 hectares. Council's assessing officer recommended that the application be approved based on various relevant town planning grounds.

At the Ordinary Meeting on 21 April 2021, Council resolved to approve the development application subject to the imposition of Condition 3.11 - Amended Lot Layout, which requires the subdivision lot layout to be amended on the final survey plan so that each allotment achieves a minimum area of 60 hectares.

Neil Beck Town Planner, on behalf of P Klarfeld (the landowner), has now written to Council with respect to Condition 3.11 requesting that it be removed.

APPLICANT'S REPRESENTATIONS

Condition 3.11 Amended Lot Layout

3.11 Amended Lot Layout

The proposed lot layout must be amended to ensure that proposed Lots 1 and 2 each achieve a minimum lot size of 60 hectares.

Representation by Applicant

Change representations request Council to reconsider the requirement that each allotment must have a minimum lot size of 60 hectares having regard to the following facts and circumstances surrounding this particular proposal:-

- The proposal plan as submitted to Council has given due regard to the existing lot boundaries and has taken into account the existing road reserves. The proposal plan is a logical and sensible approach to the subdivision of a rural allotment with a total area of over 120 hectares. The extent of non-compliance with the minimum lot size in the Rural zone is inconsequential in these circumstances, especially where such land is marginal rural land and not used for productive agricultural pursuits.*
- The requirement that each allotment has a minimum lot size of 60 hectares makes no material difference to the subdivision of rural land in this instance and makes no difference to the achievement of the strategic outcomes for the Rural zone sort by the TLPI or the balance of the Planning Scheme which is already satisfied by the proposed development.*

The following extract is from the Planning Report lodged with the development application which addresses this very issue:-

1.2.1 Settlement Pattern and Built Environment

1.2.1.1 Strategic outcomes

This provision of the TLPI replaces Strategic Framework, Strategic outcome 3.3.1(5) of the planning scheme for the nominated development.

- (1) Primary industries in Rural areas are not compromised or fragmented by incompatible and/or unsustainable development, including but not limited to subdivision that results in a detrimental impact on rural productivity or fragments large land holdings. The valued, relaxed rural character and scenic qualities of the rural area are preserved and enhanced. The rural area is largely maintained to its current extent, while accommodating development directly associated with or reliant on natural resources including rural activities and tourism. Rural areas protect the shire's agricultural area and ensure food security. Other rural areas predominantly remain agricultural grazing properties.*
- (2) New subdivisions which propose lots less than the minimum lot size of 60ha are not supported within the Rural zone.*

Comment

Lot 498 has a total area of 121 hectares which is sufficient land area in order to achieve two compliant rural lots of 60 hectares each. However due to the existing configuration of the land and the alignment of Clohesy River Road & Cedar Park Road, the reconfiguration of Lot 498 in the manner proposed represents a logical and orderly subdivision of the land. No new boundaries are being proposed as a consequence of the subdivision. Existing boundaries will remain.

The land is not being used for productive rural pursuits nor will the proposed reconfiguration impact or further fragment productive rural land.

To adjust the existing boundaries for the sake of complying with item 2 of the Strategic outcome identified above and maintaining a minimum lot size of 60 hectares would be impractical and nonsensical in this circumstance.

The reconfiguration of the land as proposed maintains the strategic outcome as detailed in item 1 above.

- It is also noted that Condition 3.11 does not provide any direction or requirements as to how the minimum lot size of 60 hectares is to be achieved. To further demonstrate the futility of this condition, Proposed Lot 1 as detailed in the plan below complies with the condition.*



Proposed Lot 1 – Compliance with Condition 3.11

- *The requirement to ensure each lot has a minimum lot size of 60 hectares in this instance results in a more fragmented rural pattern of development. While a complaint Lot 1 as detailed above maybe in the same ownership, the configuration of the land does not achieve in any way the outcomes sort for the Rural zone as expressed by the TLPI of the Planning Scheme. It actually does the opposite by increasing fragmentation of rural land. That part of Lot 1 located on the south side of Clohesy River Road would not be appropriately maintained and managed by the owner of Lot 1 and would most likely be neglected i.e. promote weeds / illegal dumping and other undesirable outcomes when land is not appropriately managed. It is evident from the above plan that this is merely ‘ticking a box for the sake of ticking a box’.*
- *It is also important to note that the subdivision of land received a total of three submissions, two of which were from the same household. The proposed subdivision was therefore not controversial with an overwhelmingly part of the community having no issue with the subdivision as proposed.*
- *The creation of one rural lot with a lot size of 52.9 hectares in these circumstances, does not, in any way compel Council to approve other subdivisions in the Rural zone which do not meet the minimum lot size.*

For the reasons identified in this submission, the response to the submissions received during the public notification and in the initial Planning Report, the subdivision of Lot 498 as detailed on Drawing No. PR148985-1 dated 28 January 2021 and prepared RPS Australia East Pty Ltd has planning merit and ought to be approved as submitted.

It is also noted that the Decision Notice has the address as 280 Clohesy River Road Kuranda instead of Koah.

This concludes the Change Representations in relation to the subdivision approval granted by Council on 21 April 2021. I look forward to continued support by the Planning Department to have this matter resolved.

Response

The original lot layout, which proposed the creation of a 52.9 hectare allotment (Lot 1) and a 68.1 hectare allotment (Lot 2) conflicted with various aspects of the Mareeba Shire Council Planning Scheme 2016, mainly due to the recently imposed *Temporary Local Planning Instrument No. 1 of 2019 (Subdivision in Rural zone)*.

Despite the identified conflicts, Councils assessing officer identified sufficient planning grounds to justify approval of the application as outlined in the below table:

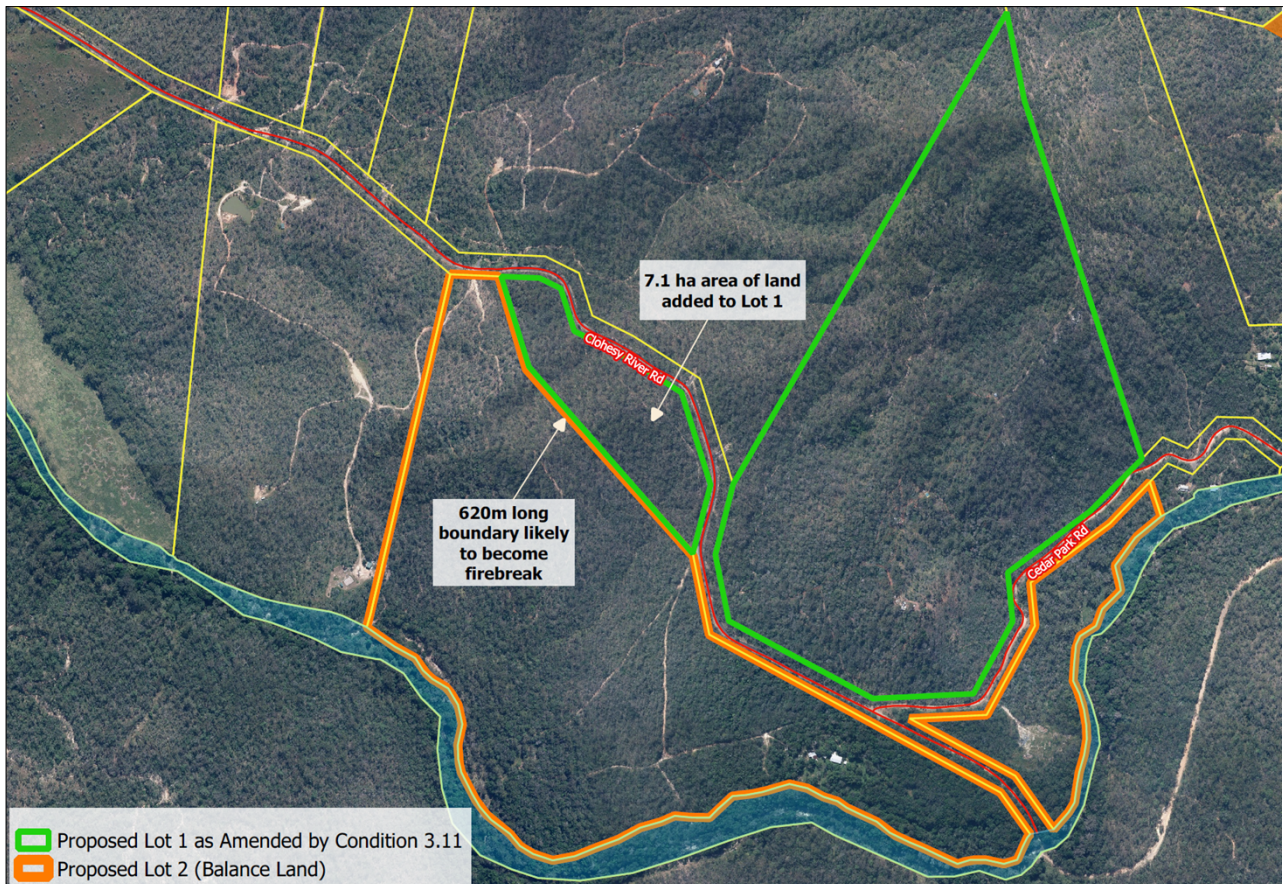
| Details of the conflict with the relevant instrument | Reason for the decision, including a statement about the sufficient grounds to justify the decision despite the conflict |
|---|--|
| The application conflicts with 3.3.1 Strategic outcome (6) of the Planning Schemes Strategic Framework (As amended by TLPI No. 01 of 2019) - proposed Lot 1 will have an area less than 60 ha. | <p>The proposed subdivision will create two allotments, these being proposed Lots 1 and 2 with areas of 52.9 hectares and 68.1 hectares respectively. Clohesy River Road and Cedar Park Road traverse the subject site splitting it into 3 land parcels which somewhat dictated the proposed lot layout. Having a predevelopment area of 121 hectares, 2 x 60 hectare compliant allotments was technically achievable in this instance, however the applicants desire was to maintain the attachment between the southern parcel of land and the eastern parcel of land, having a total combined area of 68.1 hectares (proposed lot 2), leaving proposed Lot 1 (the northern parcel) with the remaining balance area of just 52.9 hectares.</p> <p>With an area of just 52.9 hectares, the proposed development does not comply with the Planning Scheme provisions outlined in the left hand column. The majority of these provisions exist within the Planning Scheme as a result of Temporary Local Planning Instrument No. 01 of 2019 (Subdivision in Rural zone) enacted in December 2019.</p> <p>The overarching purpose of the TLPI as reflected in the Ministers Statement of Reasons (for imposing the TLPI) is to disallow subdivision in the Rural zone where creating lots less than 60 ha in order to:</p> <ul style="list-style-type: none"> - Minimise further fragmentation of agricultural land and maintain larger lot sizes to ensure the economic viability of rural land holdings; and - to protect important agricultural and rural land from incompatible development and encroachment by urban and rural residential development. <p>Council officers consider there to be reasonable town planning grounds to approve the application despite the identified conflicts as follows:</p> |
| The application conflicts with 3.3.11.1 Specific Outcomes (2) & (3) of the Planning Schemes Strategic Framework (As amended by TLPI No. 01 of 2019) - proposed Lot 1 will have an area less than 60 ha. | |
| The application conflicts with 4.6.1 Strategic Outcome (6) of the Planning Schemes Strategic Framework (As amended by TLPI No. 01 of 2019) - proposed Lot 1 will have an area less than 60 ha. | |
| The application conflicts with 6.2.9.2 Purpose (3)(a) of the Rural zone code - proposed Lot 1 will have an area less than 60 ha. | |
| The application conflicts with Performance outcome PO1.1 of the Reconfiguring a lot code - proposed Lot 1 will have an area less than 60 ha. | |

| | |
|--|--|
| | <ul style="list-style-type: none"> • The site has a pre-development area of 121.0002 hectares. 2 x 60 hectare allotments could have been achieved if the northern and eastern parcels were proposed to remain attached, however it was the desire of the applicant to keep the southern and eastern parcels together as a single allotment. In either case, one of proposed allotment would remain as a single title split into two parcels by a gazetted road. Council officers must assess the application and proposed lot layout as submitted with the application. • In consideration of the pre-development area of the site (121.0002 hectares), it could only ever be subdivided to create a maximum of 2 compliant 60 hectare allotments. If the current proposal is approved, no further subdivision of either proposed Lots 1 or 2 is likely to be supported by Council officers. Proposed Lot 1 is only 7.1 hectares shy of the desired 60 hectare lot size. • The subject land and all immediate surrounding properties are considered to be large rural lifestyle allotments and remain heavily vegetated with an undulating topography. For this reason, the land in the area is not suitable for cropping and is unable to support any viable livestock grazing activity. The development will not result in the further fragmentation of agricultural land to less than viable lot sizes or compromise any existing agricultural activity. • The proposed subdivision, albeit non-compliant, will not result in an <u>unanticipated</u> increase in dwelling density within the locality. The subdivision will create an opportunity for only 1 additional dwelling to be constructed on the subject land. This would be the case even if both lots met the required 60 hectare minimum lot size. Urban or rural residential development will not be introduced in the Rural zone. • Approval of the proposed application despite the conflicts would represent common sense town planning. <p>The proposed development is not considered to be in conflict with the overarching intent of TLPI No. 01 of 2019 and should be approved.</p> |
|--|--|

As shown in the below map, in order to comply with Condition 3.11, the applicant will add 7.1 hectares of land from the western severance of Clohesy River Road and add it to proposed Lot 1 to increase its area to 60 hectares.

Submitters to the original application cited environmental concerns in relation to firebreak clearing along new lot boundaries as a result of the proposed development. In this instance, enforcing a 60 hectare minimum lot size instead of allowing the original proposed 52.9 hectares allotment will actually increase the likelihood of further vegetation clearing occurring on the land along the newly amended lot boundaries. This is due to the fact that 7.1 hectares of land from the opposite side of Clohesy River Road will now need to be included as part of proposed Lot 1 instead of utilising the Clohesy River Road severance as a natural property boundary, which would also double as an

existing and effective fire break. The amount of additional clearing that could occur is in the vicinity of 12,000m² (approx. 3 acres), based on current exemptions under the Vegetation Management Act 1999 (refer to below map).



Council officers remain of the opinion that the original lot layout proposed represents common sense town planning, is sufficiently justified despite the identified conflicts (as outlined in the above table) and will result in a better environmental outcome for the land as less clearing for firebreaks is likely under the original lot layout.

For this reason, it is recommended that *Condition 3.11 - Amended Lot Layout* be deleted.

65 Rankin Street
PO Box 154 MAREEBA QLD 4880

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F: 07 4092 3323

W: www.msc.qld.gov.au
E: info@msc.qld.gov.au

27 April 2021

Planning Officer: Carl Ewin
Direct Phone: 4086 4656
Our Reference: RAL/21/0003

Peter Klarfeld
C/- Neil Beck
32 Yarun Close
WONGA BEACH QLD 4873

Dear Applicant/s

Decision Notice

Planning Act 2016

I refer to your application and advise that on 21 April 2021, Council decided to approve the application in full subject to conditions.

Details of the decision are as follows:

APPLICATION DETAILS

Application No: RAL/21/0003
Street Address: 280 Clohesy River Road, Kuranda
Real Property Description: Lot 498 on SP189698
Planning Scheme: Mareeba Shire Council Planning Scheme 2016

DECISION DETAILS

Type of Decision: Approval
Type of Approval: Development Permit for Reconfiguring a Lot - Subdivision (1 into 2 Lots)
Date of Decision: 21 April 2021

CURRENCY PERIOD OF APPROVAL

The currency period for this development approval is four (4) years starting the day that this development approval takes effect. (Refer to Section 85 "Lapsing of approval at end of currency period" of the *Planning Act 2016*.)

Public Office: 65 Rankin Street, Mareeba QLD 4880. Postal address: PO Box 154, Mareeba QLD 4880

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Page 2**INFRASTRUCTURE**

Where conditions relate to the provision of infrastructure, these are non-trunk infrastructure conditions unless specifically nominated as a “**necessary infrastructure condition**” for the provision of trunk infrastructure as defined under Chapter 4 of the *Planning Act 2016*.

ASSESSMENT MANAGER CONDITIONS

(A) ASSESSMENT MANAGER’S CONDITIONS (COUNCIL)

(a) Development assessable against the Planning Scheme

1. Development must be carried out substantially in accordance with the approved plans and the facts and circumstances of the use as submitted with the application, subject to any alterations:
 - found necessary by Council’s delegated officer at the time of examination of the engineering plans or during construction of the development because of particular engineering requirements; and
 - to ensure compliance with the following conditions of approval.
2. Timing of Effect
 - 2.1 The conditions of the development permit must be complied with to the satisfaction of Council’s delegated officer prior to the endorsement of the plan of survey, except where specified otherwise in these conditions of approval.
3. General
 - 3.1 The development approval would not have been issued if not for the conditions requiring the construction of infrastructure or the payment of infrastructure charges/contributions contained within the conditions of approval.
 - 3.2 The applicant/developer is responsible for the cost of necessary alterations to existing public utility mains, services or installations required by works in relation to the proposed development or any works required by condition(s) of this approval.
 - 3.3 All payments required to be made to the Council (including contributions, charges and bonds) pursuant to any condition of this approval must be made prior the endorsement of the plan of survey and at the rate applicable at the time of payment.
 - 3.4 The developer must relocate (in accordance with FNQROC standards) any services such as water, sewer, drainage, telecommunications and electricity that are not wholly located within the lots that are being created/serviced

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where required by the relevant authority, unless approved by Council's delegated officer.

- 3.5 Where utilities (such as sewers on non-standard alignments) traverse lots to service another lot, easements must be created in favour of Council for access and maintenance purposes. The developer is to pay all costs (including Council's legal expenses) to prepare and register the easement documents.
- 3.6 Where approved existing buildings and structures are to be retained, setbacks to any new property boundaries are to be in accordance with Planning Scheme requirements for the relevant structure and/or Queensland Development Code. Where existing building/s are in proximity to new property boundaries, a plan demonstrating compliance with the required setback must be submitted prior to endorsement of the plan of survey.
- 3.7 All works must be designed, constructed and carried out in accordance with FNQROC Development Manual requirements and to the satisfaction of Council's delegated officer.
- 3.8 Bushfire Management
- 3.8.1 Any new dwelling erected on Lot 1 must:
- (i) Achieve a setback from hazardous vegetation of 1.5 times the predominant mature canopy tree height or 10 metres, whichever is greater.
 - (ii) Include on-site water storage of not less than 5,000 litres, fitted with standard rural fire brigade fitting where necessary, to be provided at the same time the dwelling is constructed.
- 3.8.2 A Bushfire Hazard Management Plan for Lot 1 must be prepared to the satisfaction of Council's delegated officer. The Management Plan must address, at minimum, Performance Outcomes PO3, PO4 and PO8 of the Bushfire Hazard Overlay Code. Any future use of Lot 1 must comply with the requirements of the Management Plan at all times.
- 3.9 Building Envelope Plan & Ecological Assessment
- 3.9.1 A building envelope plan must be provided to Council identifying a building envelope generally in accordance with the building envelope shown in "*Image - Potential location of future residence*" included in the development application.
- Any future dwelling and outbuildings must be located within the identified building envelope area.
- 3.9.2 An Ecological Assessment must be carried out over the building envelope area demonstrating compliance with Performance Outcome

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PO5 of the Environmental Significance Overlay Code, to the satisfaction of Council's delegated officer.

3.10 Charges

All outstanding rates, charges and expenses pertaining to the land are to be paid in full.

3.11 Amended Lot Layout

The proposed lot layout must be amended to ensure that proposed Lots 1 and 2 each achieve a minimum lot size of 60 hectares.

4. Infrastructure Services and Standards

4.1 Access

An access crossover must be upgraded/constructed to **each** lot (from the edge of the road to the property boundary) in accordance with FNQROC Development Manual Standards (as amended), to the satisfaction of Council's delegated officer.

4.2 Stormwater Drainage

The applicant must ensure a non-worsening effect on surrounding land as a consequence of the development and must take all reasonable and practicable measures to ensure discharge occurs in compliance with the Queensland Urban Drainage Manual (QUDM) and the FNQROC Development Manual.

4.3 On-Site Wastewater Management

At the time of construction of a new dwelling on any lot, any associated on-site effluent disposal system must be constructed in compliance with the latest version On-Site Domestic Wastewater Management Standard (ASNZ1547) to the satisfaction of the Council's delegated officer.

5. Additional Payment Condition/s

5.1 The additional payment condition has been imposed as the development will create additional demand on trunk infrastructure which will create additional trunk infrastructure costs for council.

5.2 The developer must pay a one-off payment of \$4,820.00 (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.

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- 5.3 The trunk infrastructure for which the payment is required is:
- The trunk transport network servicing the land (\$4,820.00 per additional lot)
- 5.4 The developer may elect to provide part of the trunk infrastructure instead of making the payment.
- 5.5 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.

REFERRAL AGENCIES

Not Applicable.

APPROVED PLANS

The following plans are Approved plans for the development:

| Plan/Document Number | Plan/Document Title | Prepared by | Dated |
|----------------------|---|----------------------------|------------|
| PR148985-1 | Proposal Plan - Plan of Lots 1 & 2 Cancelling Lot 498 on SP189698 | RPS Australia East Pty Ltd | 28/01/2021 |

ADVISORY NOTES

The following notes are included for guidance and information purposes only and do not form part of the assessment manager conditions:

(A) ASSESSMENT MANAGER'S ADVICE**(a) Endorsement Fees**

Council charges a fee for the endorsement of a Survey Plan, Community Management Statements, easement documents, and covenants. The fee is set out in Council's Fees & Charges Schedule applicable for each respective financial year.

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(b) Compliance with applicable codes/policies

The development must be carried out to ensure compliance with the provisions of Council's Local Laws, Planning Scheme Policies, Planning Scheme and Planning Scheme Codes to the extent they have not been varied by a condition of this approval.

(c) Notation on Rates Record

A notation will be placed on Council's Rate record with respect to each lot regarding the following conditions:

- an approved building envelope area (Lot 1 only)
- conditions regarding bushfire management
- an approved bushfire management plan

(d) Environmental Protection and Biodiversity Conservation Act 1999

The applicant is advised that referral may be required under the *Environmental Protection and Biodiversity Conservation Act 1999* if the proposed activities are likely to have a significant impact on a matter of national environmental significance. Further information on these matters can be obtained from www.environment.gov.au

(e) Cultural Heritage

In carrying out the activity the applicant must take all reasonable and practicable measures to ensure that no harm is done to Aboriginal cultural heritage (the "cultural heritage duty of care"). The applicant will comply with the cultural heritage duty of care if the applicant acts in accordance with gazetted cultural heritage duty of care guidelines. An assessment of the proposed activity against the duty of care guidelines will determine whether or to what extent Aboriginal cultural heritage may be harmed by the activity. Further information on cultural heritage, together with a copy of the duty of care guidelines and cultural heritage search forms, may be obtained from www.datsip.qld.gov.au

PROPERTY NOTES

Not Applicable.

FURTHER DEVELOPMENT PERMITS REQUIRED

- Access approval arising from condition number 4.1 (Please contact Planning Section to obtain application form and applicable fee)

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SUBMISSIONS

There were three (3) properly made submissions about the application. In accordance with the *Planning Act 2016*, the name, residential or business address, and electronic address of the principal submitter for each properly made submission is provided below:

| Name of Principal submitter | Address |
|-----------------------------|-----------------------------------|
| 1. Nadine O'Brien | 345 Fantin Road, Koah QLD 4881 |
| 2. Raymond Ganley | 77 Monaro Close, Kuranda QLD 4881 |
| 3. Sarah Isaacs | 345 Fantin Road, Koah QLD 4881 |

RIGHTS OF APPEAL

You are entitled to appeal against this decision. A copy of the relevant appeal provisions from the *Planning Act 2016* is attached.

During the appeal period, you as the applicant may suspend your appeal period and make written representations to council about the conditions contained within the development approval. If council agrees or agrees in part with the representations, a "negotiated decision notice" will be issued. Only one "negotiated decision notice" may be given. Taking this step will defer your appeal period, which will commence again from the start the day after you receive a "negotiated decision notice".

OTHER DETAILS

If you wish to obtain more information about Council's decision, electronic copies are available on line at www.msc.qld.gov.au, or at Council Offices.

Yours faithfully

BRIAN MILLARD
SENIOR PLANNER

Enc: Approved Plans/Documents
Appeal Rights

Mareeba Shire Council

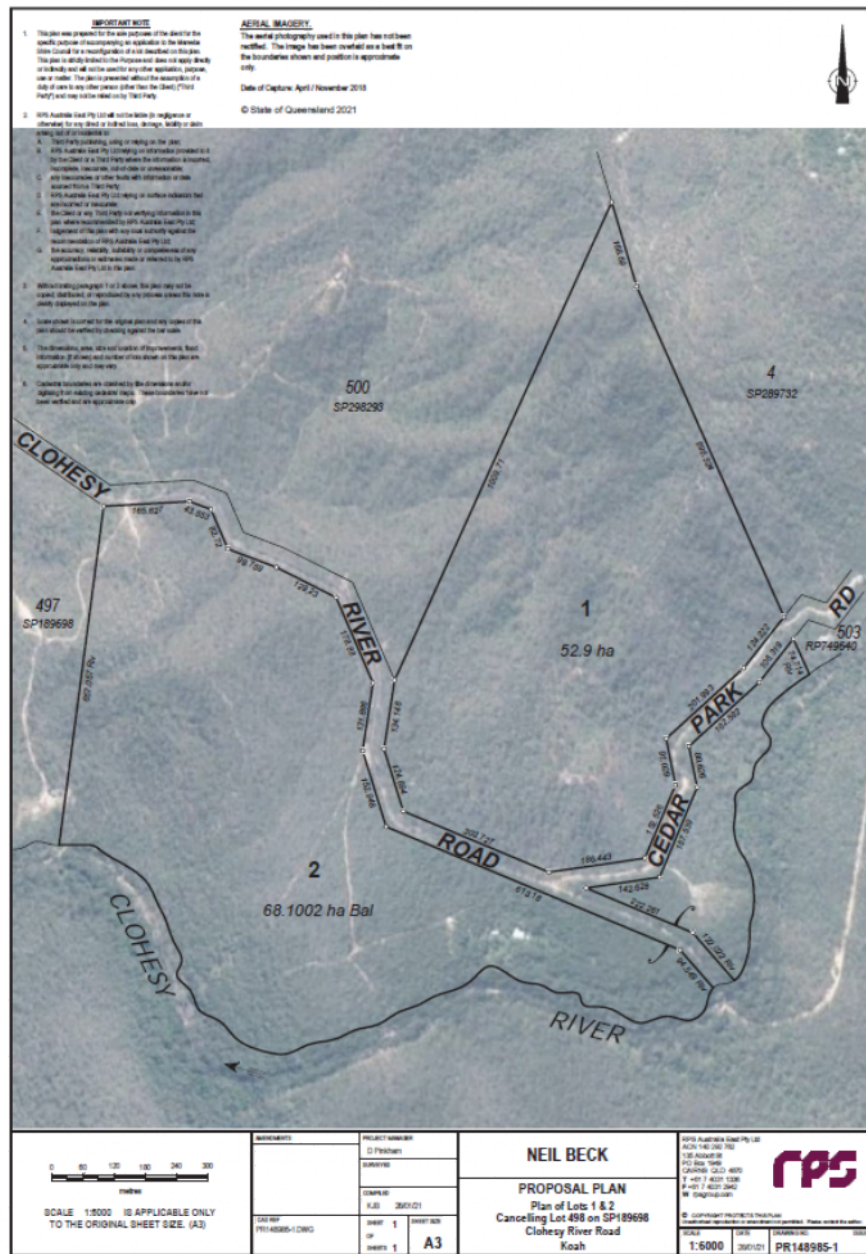
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Approved Plans/Documents



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Appeal Rights

PLANNING ACT 2016 & THE PLANNING REGULATION 2017

Chapter 6 Dispute resolution

Part 1 Appeal rights

229 Appeals to tribunal or P&E Court

- (1) Schedule 1 of the Planning Act 2016 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.

(Refer to Schedule 1 of the Planning Act 2016)

- (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
 - (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 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.
- (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.

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- (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, table 1, item 1 – each principal submitter for the development application; and
 - (d) for an appeal about a change application under schedule 1, table 1, item 2 – each principal submitter for the change application; and
 - (e) each person who may elect to become a co-respondent for the appeal, other than an eligible submitter who is not a principal submitter in an appeal under paragraph (c) or (d); 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 has 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 by filing a notice of election, in the approved form, within 10 business days after the notice of appeal is given to the person.

231 Other appeals

- (1) Subject to this chapter, 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.
- (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 –

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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 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, a tribunal or another entity; and
- (c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a 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 the rules of the P&E Court.

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16 May 2021

Chief Executive Officer
Mareeba Shire Council
65 Rankin Street
MAREEBA QLD 4880

Attention – Carl Ewin - Planning Department

Dear Carl,

**Submission of Change Representations in accordance with Section 75 of the Planning Act 2016 –
Subdivision Approval over land at 280 Clohesy River Road Koah – (1 Lot into 2 Lots)**

In accordance with Section 75 of the Planning Act 2016, change representations are being made with respect to a condition of the Development Permit to reconfigure land at 280 Clohesy River Road to create an additional rural allotment.

The development application was determined at the Council Meeting held on 21 April 2021. The development application was approved subject to conditions. A copy of the Decision Notice is attached.

By way of background, the development application sort approval to reconfigure the land in order to create a separate title over that area of land located on the northern side of Clohesy River Road. This lot is identified as proposed Lot 1, is vacant, and will have a site area of 52.9 hectares. The balance parcel of land is identified as proposed Lot 2 and will contain the existing dwelling and the other area of land on the northern side of Clohesy River Road.

Prior to the application being determined by Council, draft conditions were forwarded to the Applicant for review. Draft conditions were reviewed and considered acceptable. It is understood the proposal as submitted to Council had the support of Council's Planning Department.

The application was presented to the Council Meeting on 21 April 2021 where it was approved subject to a new condition, being Condition 3.11 which states:-

3.11 Amended Lot Layout

The proposed lot layout must be amended to ensure that proposed Lots 1 and 2 each achieve a minimum lot size of 60 hectares.

It is understood that at the time of Council deciding the application, and amendment to the recommendation was moved by a Councillor and passed; however this is not reflected in the Council minutes.

Change representations request Council to reconsider the requirement that each allotment must have a minimum lot size of 60 hectares having regard to the following facts and circumstances surrounding this particular proposal:-

- The proposal plan as submitted to Council has given due regard to the existing lot boundaries and has taken into account the existing road reserves. The proposal plan is a logical and sensible approach to the subdivision of a rural allotment with a total area of over 120 hectares. The extent of non-compliance with the minimum lot size in the Rural zone is inconsequential in these circumstances, especially where such land is marginal rural land and not used for productive agricultural pursuits.
- The requirement that each allotment has a minimum lot size of 60 hectares makes no material difference to the subdivision of rural land in this instance and makes no difference to the achievement of the strategic outcomes for the Rural zone set by the TLPI or the balance of the Planning Scheme which is already satisfied by the proposed development.

The following extract is from the Planning Report lodged with the development application which addresses this very issue:-

1.2.1 Settlement Pattern and Built Environment

1.2.1.1 Strategic outcomes

This provision of the TLPI replaces Strategic Framework, Strategic outcome 3.3.1(5) of the planning scheme for the nominated development.

- (1) *Primary industries in Rural areas are not compromised or fragmented by incompatible and/or unsustainable development, including but not limited to subdivision that results in a detrimental impact on rural productivity or fragments large land holdings. The valued, relaxed rural character and scenic qualities of the rural area are preserved and enhanced. The rural area is largely maintained to its current extent, while accommodating development directly associated with or reliant on natural resources including rural activities and tourism. Rural areas*

protect the shire's agricultural area and ensure food security. Other rural areas predominantly remain agricultural grazing properties.

- (2) *New subdivisions which propose lots less than the minimum lot size of 60ha are not supported within the Rural zone.*

Comment

Lot 498 has a total area of 121 hectares which is sufficient land area in order to achieve two compliant rural lots of 60 hectares each. However due to the existing configuration of the land and the alignment of Clohesy River Road & Cedar Park Road, the reconfiguration of Lot 498 in the manner proposed represents a logical and orderly subdivision of the land. No new boundaries are being proposed as a consequence of the subdivision. Existing boundaries will remain.

The land is not being used for productive rural pursuits nor will the proposed reconfiguration impact or further fragment productive rural land.

To adjust the existing boundaries for the sake of complying with item 2 of the Strategic outcome identified above and maintaining a minimum lot size of 60 hectares would be impractical and nonsensical in this circumstance.

The reconfiguration of the land as proposed maintains the strategic outcome as detailed in item 1 above.

- It is also noted that Condition 3.11 does not provide any direction or requirements as to how the minimum lot size of 60 hectares is to be achieved. To further demonstrate the futility of this condition, Proposed Lot 1 as detailed in the plan below complies with the condition.



Proposed Lot 1 – Compliance with Condition 3.11

- The requirement to ensure each lot has a minimum lot size of 60 hectares in this instance results in a more fragmented rural pattern of development. While a complaint Lot 1 as detailed above maybe in the same ownership, the configuration of the land does not achieve in any way the outcomes sort for the Rural zone as expressed by the TLPI of the Planning Scheme. It actually does the opposite by increasing fragmentation of rural land. That part of Lot 1 located on the south side of Clohesy River Road would not be appropriately maintained and managed by the owner of Lot 1 and would most likely be neglected i.e promote weeds / illegal dumping and other undesirable outcomes when land is not appropriately managed. It is evident from the above plan that this is merely *'ticking a box for the sake of ticking a box'*.
- It is also important to note that the subdivision of land received a total of three submissions, two of which were from the same household. The proposed subdivision was therefore not

controversial with an overwhelmingly part of the community having no issue with the subdivision as proposed.

- The creation of one rural lot with a lot size of 52.9 hectares in these circumstances, does not, in any way compel Council to approve other subdivisions in the Rural zone which do not meet the minimum lot size.

For the reasons identified in this submission, the response to the submissions received during the public notification and in the initial Planning Report, the subdivision of Lot 498 as detailed on Drawing No. PR148985-1 dated 28 January 2021 and prepared RPS Australia East Pty Ltd has planning merit and ought to be approved as submitted.

It is also noted that the Decision Notice has the address as 280 Clohesy River Road Kuranda instead of Koah.

This concludes the Change Representations in relation to the subdivision approval granted by Council on 21 April 2021. I look forward to continued support by the Planning Department to have this matter resolved.

Yours Sincerely



Neil Beck
Town Planner

0477006782

Attachments

1. Decision Notice dated 27 April 2021