

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

**Date Prepared:** 16 March 2021

**Author:** Planning Officer

**Attachments:** 1. Proposal Plan  
2. Submissions

**APPLICATION DETAILS**

APPLICATION		PREMISES	
<b>APPLICANT</b>	P Klarfeld	<b>ADDRESS</b>	280 Clohesy River Road, Koah
<b>DATE LODGED</b>	19 February 2021	<b>RPD</b>	Lot 498 on SP189698
<b>TYPE OF APPROVAL</b>	Development Permit		
<b>PROPOSED DEVELOPMENT</b>	Reconfiguring a Lot - Subdivision (1 into 2 Lots)		
<b>FILE NO</b>	RAL/21/0003	<b>AREA</b>	121.0002 ha
<b>LODGED BY</b>	Neil Beck	<b>OWNER</b>	P Klarfeld
<b>PLANNING SCHEME</b>	Mareeba Shire Council Planning Scheme 2016		
<b>ZONE</b>	Rural Zone		
<b>LEVEL OF ASSESSMENT</b>	Impact Assessment		
<b>SUBMISSIONS</b>	3 Submissions		

**EXECUTIVE SUMMARY**

Council is in receipt of an impact assessable development application described in the above application details. Three (3) submissions were received during the application's mandatory public notification period, all of which objected to the proposed development.

The application proposes the subdivision of a 121 hectare allotment into two (2) allotments. Proposed Lots 1 and 2 will have areas of 52.9 and 68.1 hectares respectively. In its current extent the property is split into 3 separate land parcels by both Clohesy River Road and Cedar Park Road. Proposed Lot 1 (52.9 hectares) comprises the northern severance of the existing property. Proposed Lot 2 (68.1 hectares) comprises the southern and eastern severances and if approved, will remain split by Clohesy River Road.

The application and supporting material has been assessed against the Mareeba Shire Council Planning Scheme 2016 and is in conflict with a number of higher order provisions which seek to stop the subdivision of Rural zoned land where creating lots less than 60 hectares in size. These particular provisions are included within the Planning Scheme as a result of Temporary Local Planning Instrument No. 01 of 2019 (Subdivision in Rural zone).

Despite the identified conflicts, Council officers consider there to be sufficient town planning grounds to approve the application, as outlined below in the Officer Recommendation section of this report.

Draft conditions were provided to the Applicant care of their consultant and have been agreed to. It is recommended that the application be approved, subject to conditions.

## OFFICER'S RECOMMENDATION

(A) That in relation to the following development application:

APPLICATION		PREMISES	
APPLICANT	P Klarfeld	ADDRESS	280 Clohesy River Road, Koah
DATE LODGED	19 February 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 applicant be notified that the application for a development permit for the development specified in (A) is:

Approved by Council in accordance with the approved plans/documents listed in (B), subject to assessment manager conditions in (C), assessment manager's advice in (D) relevant period in (F), further permits in (G), and further approvals from Council listed in (H);

And

The assessment manager **does** consider that the assessment manager's decision conflicts with a relevant instrument/s.

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"> <li>- Minimise further fragmentation of agricultural land and</li> </ul>
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.	

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

(C) APPROVED PLANS:

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

(D) 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 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 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.

## 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.
- 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.

(E) 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.

(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](http://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](http://www.datsip.qld.gov.au)

(F) RELEVANT PERIOD

When approval lapses if development not started (s.85)

- Reconfiguring a Lot – four (4) years (starting the day the approval takes effect);

(G) OTHER NECESSARY DEVELOPMENT PERMITS AND/OR COMPLIANCE PERMITS

- Nil

(H) OTHER APPROVALS REQUIRED FROM COUNCIL

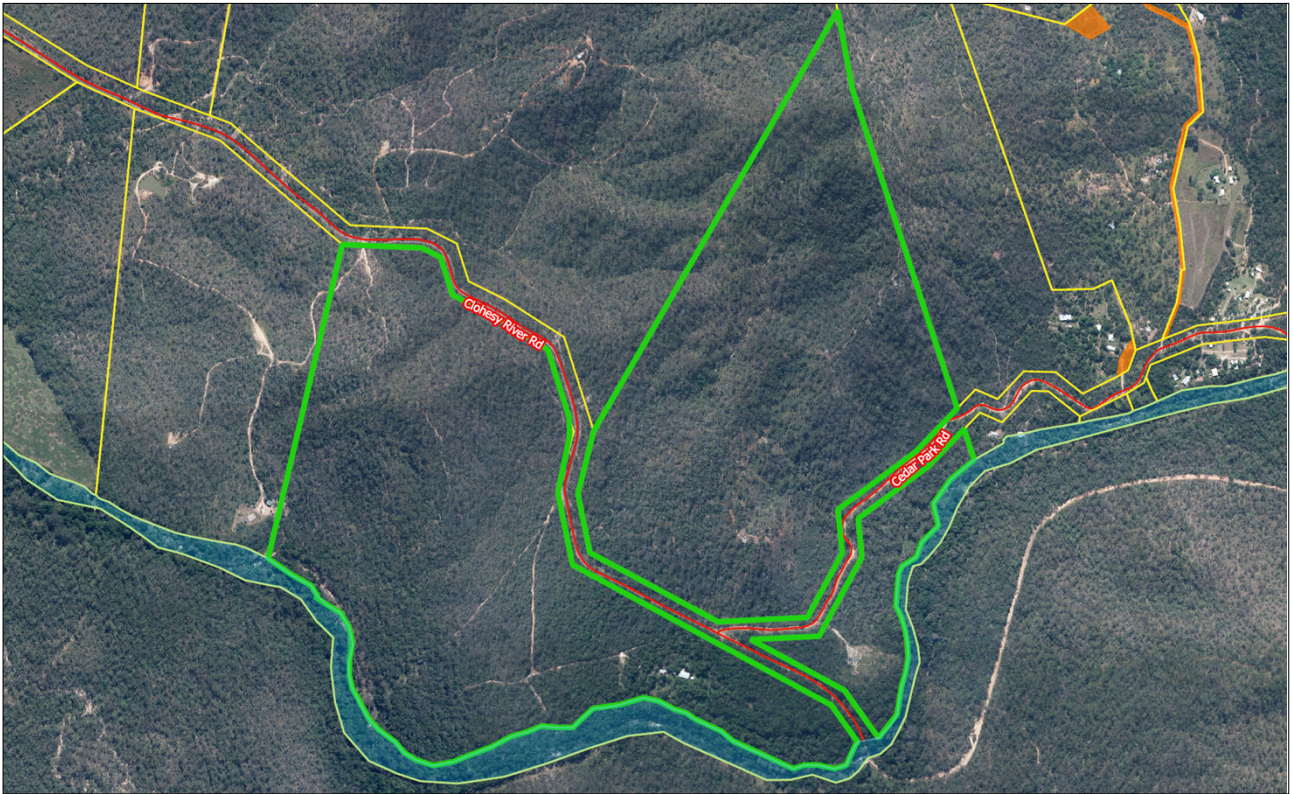
- Access approval arising from condition number 4.1 (Please contact Planning Section to obtain application form and applicable fee)

**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.

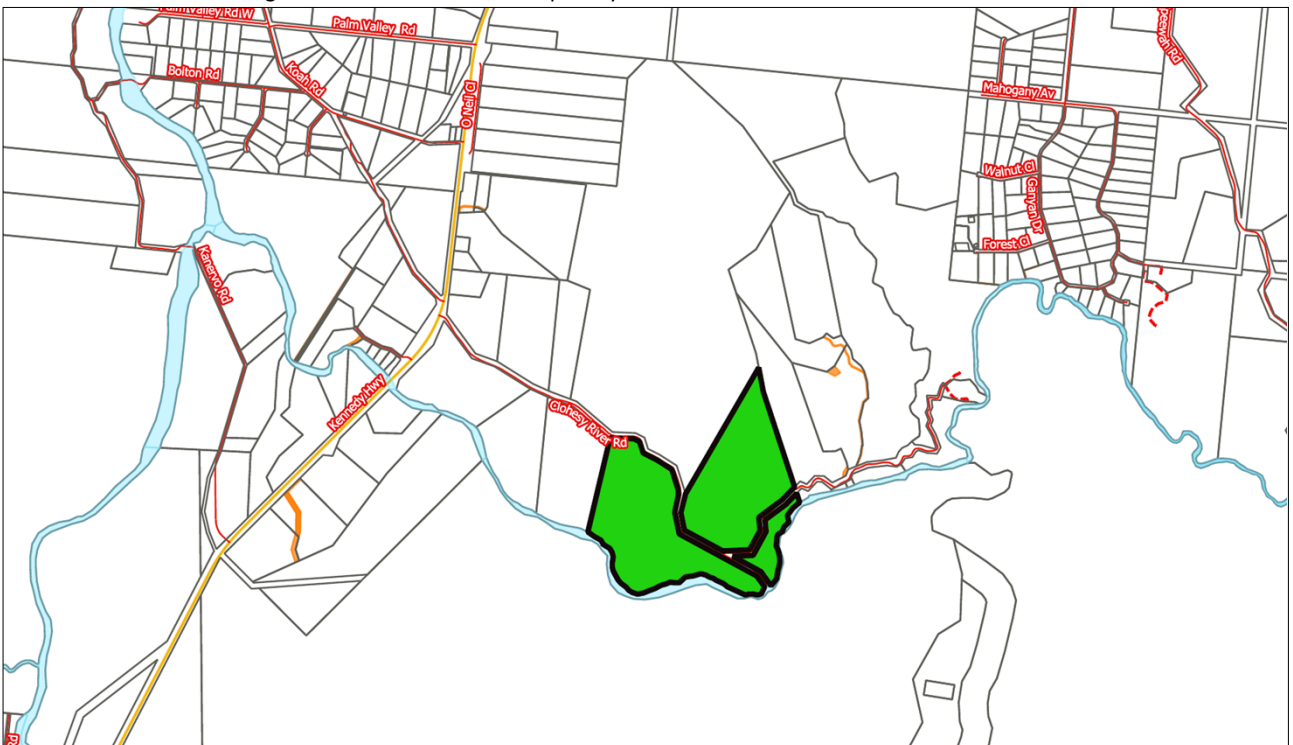
The site remains vegetated with an undulating topography and is improved by shed situated on the northern parcel, a dwelling and sheds situated on the southern parcel and a shed situated on the eastern parcel. The Clohesy Rivers runs along the southern and eastern boundaries of the site.

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/PREVIOUS APPLICATIONS & APPROVALS**

Nil

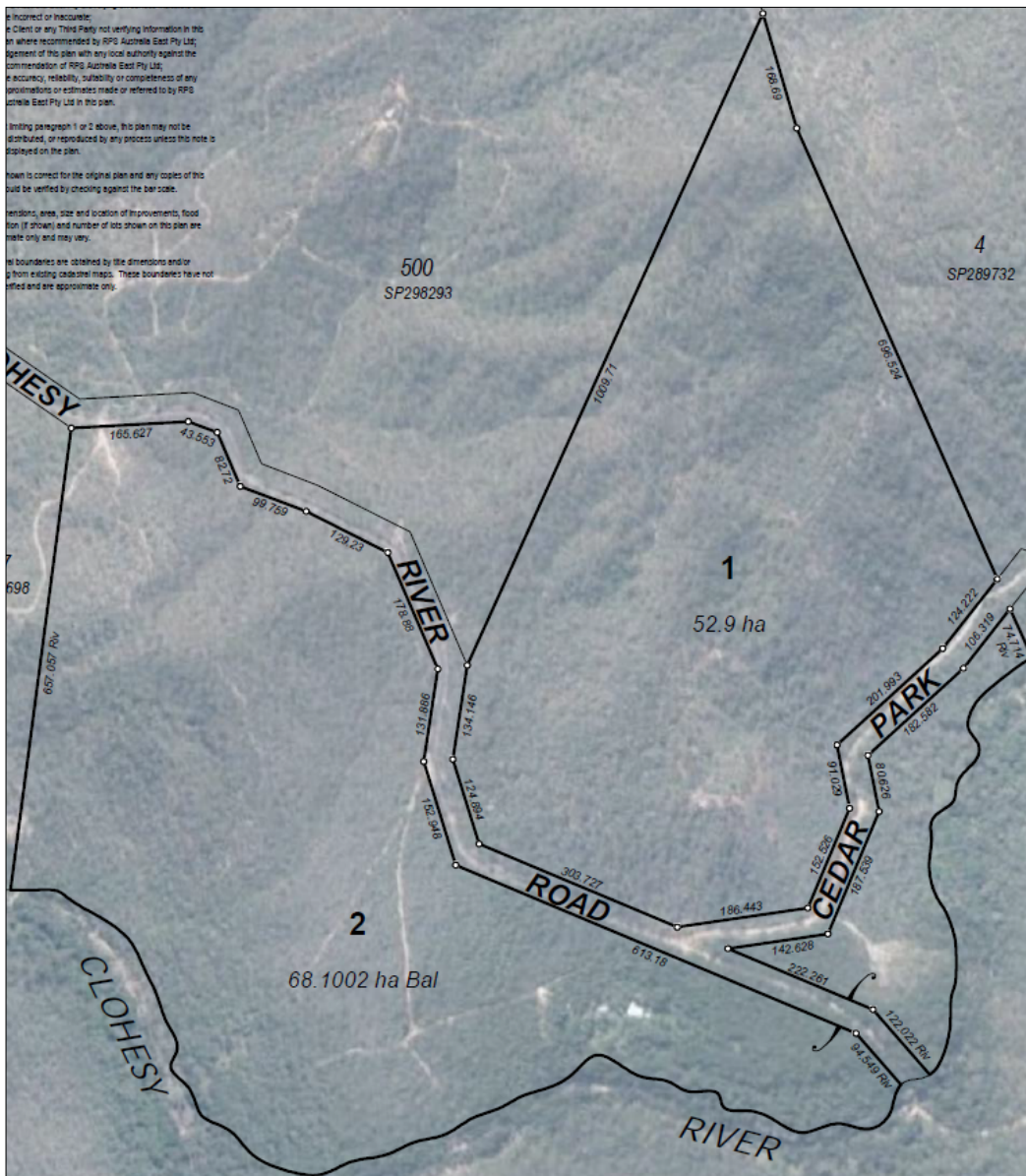
**DESCRIPTION OF PROPOSED DEVELOPMENT**

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

Proposed Lot 1 will comprise the northern severance (land parcel) which is separated from the rest of the property by Clohesy River Road and Cedar Park Road. Lot 1 will have an area of 52.9 hectares. A previously disturbed part of proposed Lot 1 has been identified by the applicant as a location for future building works - shown below:



Proposed Lot 2 will comprise the southern and eastern severance (land parcels) and will remain separated by Clohesy River Road. Lot 2 will have an area of 68.1002 hectares. Lot 2 will contain the sites existing dwelling.



## 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' also identifies the site as containing:

- *Wetland Area of General Ecological Significance*
- *Terrestrial Area of High Ecological Significance*
- *Terrestrial Area of General Ecological Significance*

## PLANNING SCHEME DESIGNATIONS

Strategic Framework:	<b>Land Use Categories</b> <ul style="list-style-type: none"> <li>• Rural Other</li> <li>• Conservation</li> </ul> <b>Natural Environment Elements</b> <ul style="list-style-type: none"> <li>• Biodiversity Area</li> </ul> <b>Other Elements</b> <ul style="list-style-type: none"> <li>• Major Watercourse</li> </ul>
Zone:	Rural Zone
Overlays:	<ul style="list-style-type: none"> <li>• Bushfire Hazard Overlay</li> <li>• Environmental Significance Overlay</li> <li>• Flood Hazard Overlay</li> <li>• Hill &amp; Slope Overlay</li> <li>• Transport Infrastructure Overlay</li> </ul>

## 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 2016

#### Strategic Framework

#### 3.3 Settlement Pattern and built environment

##### 3.3.1 Strategic outcomes

- (5) *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.*

Comment

The proposed subdivision will create two (2) 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 through the subject site splitting it into three (3) land parcels which somewhat dictated the proposed lot layout. The subject land, and all immediate surrounding lots are heavily vegetated with an undulating topography and are not used for any commercial cropping and are unable to support any viable grazing activity.

Despite creating a new allotment with an area of just 52.9 hectares (7.1 hectares shy of the desired 60 hectare lot size), the proposed subdivision will not further fragment agricultural land or compromise agricultural activity in the immediate locality and is therefore considered to comply with Strategic outcome 5.

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

Comment

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.

With an area of just 52.9 hectares, the proposed development does not comply with Strategic outcome 6. This provision exists within the Planning Scheme as a result of Temporary Local Planning Instrument No. 01 of 2019 (Subdivision in Rural zone) enacted in December 2019.

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:

- 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.

Council officers consider there to be reasonable town planning grounds to approve the application despite the identified conflicts as follows:

- 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 unanticipated 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.

For reasons mentioned above, the proposed development is not considered to be in conflict with the overarching intent of TLPI No. 01 of 2019 and should be approved despite non-compliance with Strategic outcome 6.

### 3.3.11 Element - Rural areas

#### 3.3.11.1 Specific outcomes

- (2) *Land in rural areas is maintained in large (60ha or greater) lot sizes to ensure that regional landscape and rural production values are not compromised by fragmentation, alienation or incompatible land uses. Subdivision of land is not supported on lots less than 60ha in the Rural zone.*
- (3) *Other rural areas will be largely maintained in their current configuration, only being subdivided where large land holdings of 60ha or greater can be achieved and the infrastructure base of rural operations including workers accommodation, airstrips and farm infrastructure is provided.*

#### Comment

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.

With an area of just 52.9 hectares, the proposed development does not comply with Specific outcomes (2) and (3). 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.

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:

- 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.

Council officers consider there to be reasonable town planning grounds to approve the application despite the identified conflicts as follows:

- 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 unanticipated 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.

For reasons mentioned above, the proposed development is not considered to be in conflict with the overarching intent of TLPI No. 01 of 2019 and should be approved despite non-compliance with Specific outcomes (2) and (3).

### *3.6 Transport and infrastructure*

#### *3.6.1 Strategic outcomes*

- (6) *New development is appropriately sequenced and coordinated with existing and future water, wastewater, stormwater and transport infrastructure, to ensure the operations of existing*

*infrastructure are not compromised and community needs continue to be met. New infrastructure is provided to development in accordance with the council's desired standards of service and supports a consolidated urban form to maximise return on investment. The ongoing operation of key infrastructure elements is not prejudiced by inappropriate development. Subdivision of land in the Rural zone to create lots less than 60ha is not consistent with facilitating appropriately sequenced and coordinated development.*

#### Comment

See above comment. The application should be approved despite non-compliance with the 60 ha minimum lot size mentioned in Strategic outcome (6).

The proposed development will not place any unanticipated additional demand on Council's rural road network.

#### **Relevant Developments Codes** (as amended by TLPI No. 01 of 2019)

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

- 6.2.9 Rural zone code
- 8.2.3 Bushfire hazard overlay code
- 8.2.4 Environmental significance overlay code
- 8.2.6 Flood hazard overlay code
- 8.2.8 Hill and slope 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	<p>The application conflicts with 6.2.9.2 Purpose (3) (a) of the code as proposed Lot 1 will be under 60 ha in size.</p> <p>Despite this conflict, there is considered to be sufficient town planning grounds to approve the application - refer to the conflicts table in the Officer Recommendation section of report for further commentary.</p>
Bushfire hazard overlay code	<p>The application can be conditioned to comply with the relevant acceptable outcomes (or performance outcomes where no acceptable outcome is provided) contained within the code.</p>

Environmental significance overlay code	The application can be conditioned to comply with the relevant acceptable outcomes (or performance outcomes where no acceptable outcome is provided) contained within the code.
Flood hazard overlay code	The application can be conditioned to comply with the relevant acceptable outcomes (or performance outcomes where no acceptable outcome is provided) contained within the code.
Hill and slope overlay code	The application can be conditioned to comply with the relevant acceptable outcomes (or performance outcomes where no acceptable outcome is provided) contained within the code.
Landscaping code	Not considered relevant for a 1 into 2 lot subdivision in the Rural zone.
Parking and access code	Not considered relevant for a 1 into 2 lot subdivision in the Rural zone.
Reconfiguring a lot code	<p>The application conflicts with the following performance outcome:</p> <ul style="list-style-type: none"> <li>PO1.1</li> </ul> <p>Despite this conflict, there is considered to be sufficient town planning grounds to approve the application - refer to the conflicts table in the Officer Recommendation section of report for further commentary.</p>
Works, services and infrastructure code	The application can be conditioned to comply with the relevant acceptable outcomes (or performance outcomes where no acceptable outcome is provided) contained within the code.

#### **(D) Planning Scheme Policies/Infrastructure Charges Plan**

The following planning scheme policies are relevant to the application:

Planning Scheme Policy 4 - FNQROC Regional Development Manual

A condition will be attached to any approval requiring all development works be designed and constructed in accordance with FNQROC Development Manual standards.

#### **(E) Additional Trunk Infrastructure Condition**

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

Section 130 of the Planning Act 2016 allows Council to condition additional trunk infrastructure outside the PIA.

The development, which will create 1 additional rural allotment, is predicted to place additional demand on Council's trunk transport network (roads).

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.

The trunk infrastructure for which the payment is required is:

- The trunk transport infrastructure servicing the land (\$4,820.00 per additional lot)

## REFERRAL AGENCY

This application did not trigger referral to any Referral Agencies.

## Internal Consultation

Nil

## PUBLIC NOTIFICATION

The development proposal was placed on public notification from 4 March 2021 to 24 March 2021. The applicant submitted the notice of compliance on 25 March 2021 advising that the public notification requirements were carried out in accordance with the requirements of the Act.

3 properly made submissions were received and all 3 objected to the proposed development. The grounds for objection are summarised and commented on below:

Grounds for objection	Comment
Proposed Lot 1 does not achieve the 60 hectare minimum lot size required by the Planning Scheme. The application is in conflict with the Planning Scheme (as amended by TLPI No. 01 of 2019) and the FNQ Regional Plan 2009 - 2031.	Refer to Officer Recommendation section of report for further commentary. It is considered that sufficient justification exists to approve the application, despite the number of conflicts identified as a result of proposed Lot 1 not achieving an area of at least 60 hectares.
The subject land is situated within a mapped Bushfire Hazard Area (medium, high and very high). Increasing the number of allotments within hazard areas places added pressure on rural fire brigades to protect buildings and limits areas that can be back burnt.	A condition will be attached to any approval requiring the preparation of a detailed Bushfire Hazard Management Plan demonstrating compliance with the relevant sections of the Bushfire Hazard Overlay Code.  Even if the subdivision was refused or never applied for, the landowner is free to construct improvements on his property which would still place additional buildings within a bushfire hazard area. Stating that the subdivision will result in less area that will be back burnt is a subjective viewpoint, in fact, if proposed Lot 1 is created and under different ownership and contains a dwelling, the land is more likely to be managed and appropriately backburnt than in the properties current configuration.
The majority of the land is mapped as Essential Habitat (Northern Bettong) and Wildlife Habitat. No ecological assessment was submitted as part of the application.	An ecological assessment has been conditioned over the identified building envelope area. Regardless of whether this was conditioned or not, any future landowner would be required to carry out an ecological assessment for any planned development on any mapped Wildlife Habitat area.
<i>"the applicant in this case not only seeks approval to subdivide but to have the minimum area requirement reduced by</i>	Council officers are required to assess the lot layout applied for in the application. The application has been assessed on its merits and the assessing officers considers there to be

*approximately 12%, a not insignificant amount. To partially justify this request the reason given being that it would be "nonsensical" to use boundaries other than those that currently exist. This argument I believe is flawed. Many boundaries are not marked by roads or other features. The boundary between my own property and that adjoining is not marked other than on a survey plan. If this applicant is interested in still subdividing to suit the TLPI requirement, then I am sure that a surveyor could make his application at least compliant in this regard."*

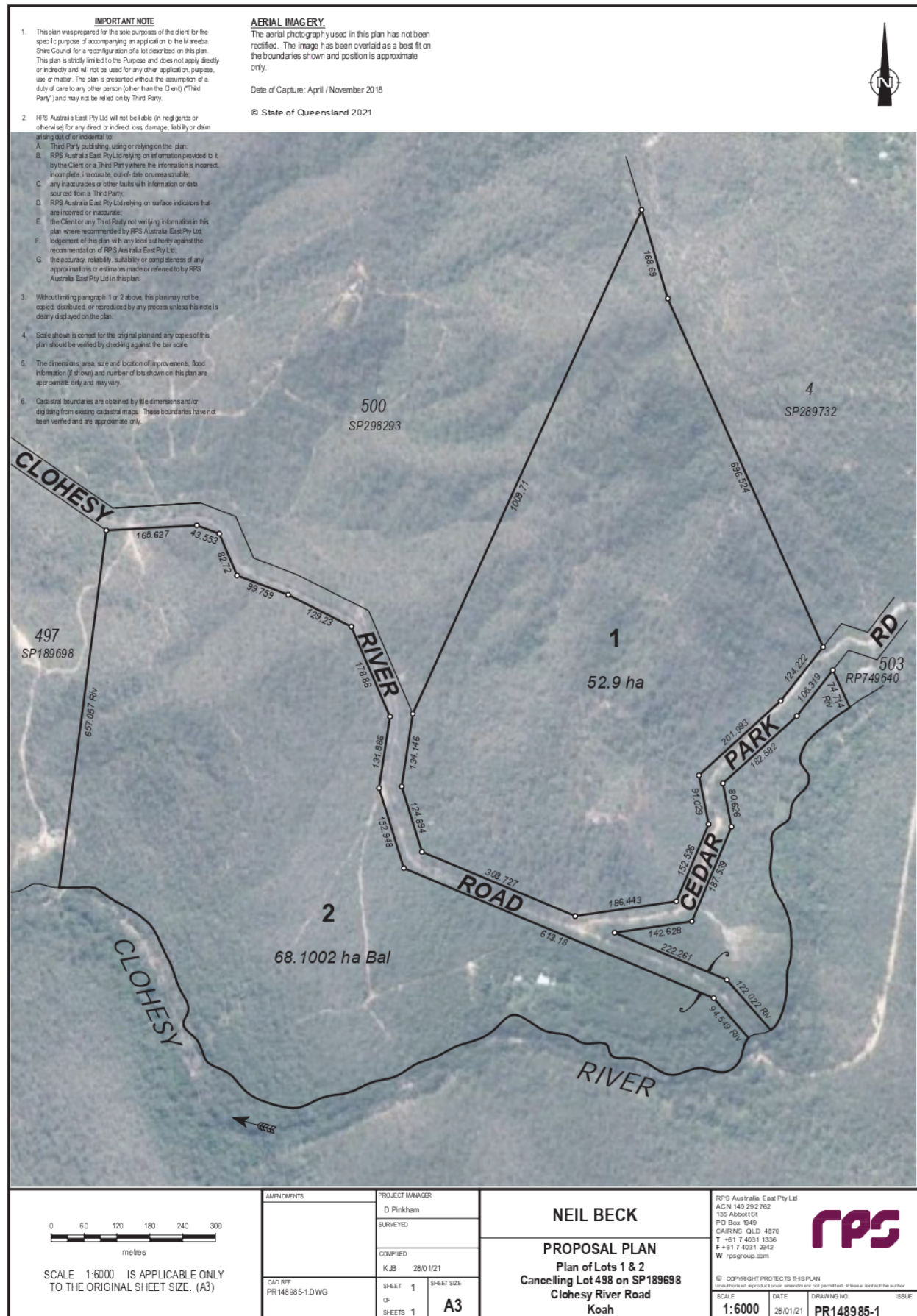
sufficient justification to approve the application, despite a number of conflicts with provisions in the Planning Scheme relating to the 60 hectare minimum lot size.

### Submitters

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

### PLANNING DISCUSSION

Nil





To the assessment manager

15 March 2021

Submission to RAL210003 Lot498 SP189698 subdivision of one lot into two at 280 Clohesy River Road.

One of the proposed lots is only 52.9ha.

This is against the FNQ2031, MSC2016 plan and the TLPI, which all state newly created lots in a rural zone must have a minimum lot size of 60ha. See excerpts of Temporary Local Planning Instrument No. 01 of 2019 (Subdivision in Rural zone), 6 December 2019:

*Land in rural areas is maintained in large (60ha or greater) lot sizes to ensure that regional landscape and rural production values are not compromised by fragmentation, alienation or incompatible land uses. Subdivision of land is not supported on lots less than 60ha in the Rural zone.*

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

*New development is appropriately sequenced and coordinated with existing and future water, wastewater, stormwater and transport infrastructure, to ensure the operations of existing infrastructure are not compromised and community needs continue to be met. New infrastructure is provided to development in accordance with the council's desired standards of service and supports a consolidated urban form to maximise return on investment. The ongoing operation of key infrastructure elements is not prejudiced by inappropriate development. Subdivision of land in the Rural zone to create lots less than 60ha is not consistent with facilitating appropriately sequenced and coordinated development.*

If Council gives way to the developers reasoning and approves the application it sets a precedent of subjective interpretation of the MSC2016



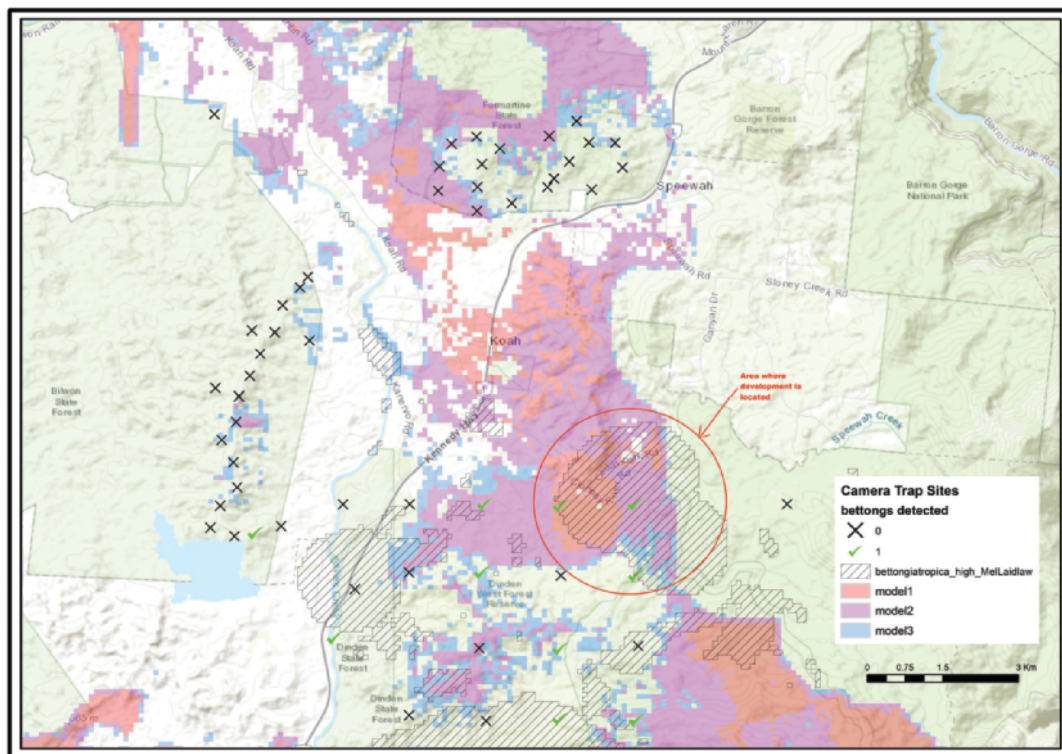
planning scheme when the Minister tried to put a stop to this past behavior with the TLPI by making it clear that new blocks must be 60ha or bigger.

I am concerned that if Council approves this application, despite having every right and the support from the Minister to refuse it, it will set a precedent for future developers applying to create smaller than 60ha blocks and open a doorway to litigation. Council very likely will feel they would have to approve future applications out of fear developers could appeal refusals/sue Council. This reason was used many times in the past when approving development applications inconsistent with planning schemes.

There is also no need for extra subdivisions of this kind as there is already an oversupply of similar rural blocks without water and services in the area. Blocks along the same road are selling very slowly like for example Lot 510, Clohesy River Road (<https://www.realestate.com.au/property-residential+land-qld-koah-202829922>)

The proposed subdivision land is mapped as bush fire hazard area medium, high and very high. Increasing population in those areas puts extra strain on emergency departments trying to keep people safe. Bushfire hazard mitigation is often associated with negative environmental impacts.

The land is predominately covered by remnant vegetation and is mostly mapped as essential habitat(Northern Bettong). The most recent camera trapping program in 2018 found Northern Bettongs close by(see attached map of camera locations and findings). Increasing human population in Northern Bettong habitat puts more strain on the endangered species.



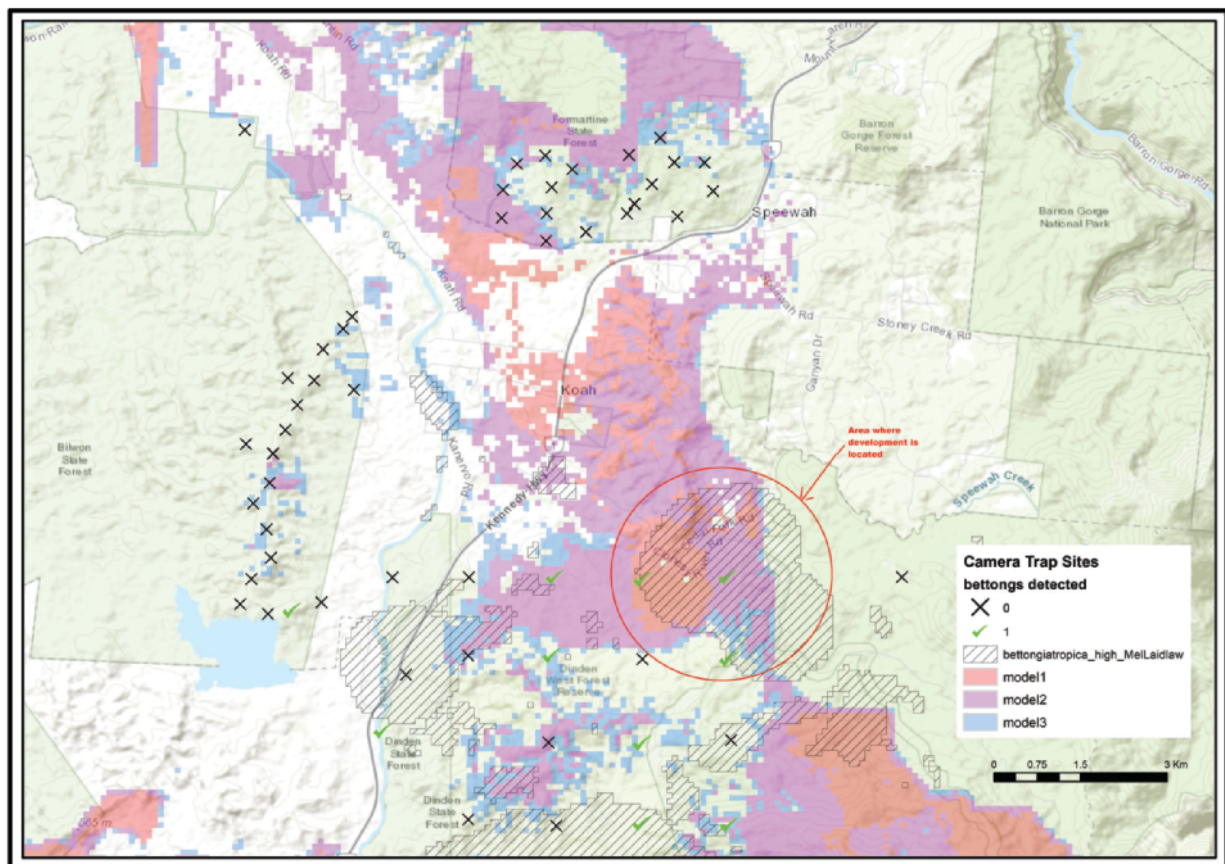
There has been no independent ecological assessment report submitted as part of the application, despite it being a requirement under the MSC2016 planning scheme's environmental significance overlay code in areas of wildlife habitat. Neither has Council requested an ecological assessment report as per requirement for development in wildlife habitat areas. A comprehensive Northern Bettong survey must be included in an ecological assessment report. See excerpt from MSC2016 planning scheme:

*Note—Development applications must identify any EVNT species or their habitats that may be affected by the proposal. In particular, applications are to identify and describe how the development avoids adverse impacts on ecological processes within or adjacent to the development area.*

*Note—A supporting Ecological Assessment Report is prepared in accordance with Planning Scheme Policy 2 – Ecological Assessment Reports.*

from  
Nadine O'Brien  
345 Fantin Road  
Koah  
QLD 4881

nadine\_obrien@yahoo.com.au  
Tel:0740850054





20<sup>th</sup> March 2021

To the Assessment Manager

Re: RAL 210003 – Re Configuring **Lot 498 SP189698** Closehy River Road into two lots

I wish to make a submission against the proposed reconfiguration. My objections are primarily based on the actual need for such a reconfiguration to occur and the necessity to have the TLPI over such development subverted to suit one individual application.

Firstly, the current owner of this block purchased the land as suitable for his needs at the time. If the lot was too large for his needs then he need not have purchased it. If however the owner's intention was to purchase the land and at some stage cut the land into smaller parcels and hopefully profit by this endeavour then he would need to meet the criteria existing at the time. I do not believe it is the role of councils to facilitate the circumvention of a State Government initiative. The TLPI, while not precluding all development, has set reasonable criteria of a 60Ha minimum block size. This figure is not a starting point for negotiation but is the legislated minimum area. If council were to entertain the reduction of minimum size then a precedent would be set and it could expect many more applications of a similar nature and legal proceedings against it, which rate payers would be left to defend.

The applicant in this case not only seeks approval to subdivide but to have the minimum area requirement reduced by approximately 12%, a not insignificant amount. To partially justify this request the reason given being that it would be "nonsensical" to use boundaries other than those that currently exist. This argument I believe is flawed. Many boundaries are not marked by roads or other features. The boundary between my own property and that adjoining is not marked other than on a survey plan. If this applicant is interested in still subdividing to suit the TLPI requirement, then I am sure that a surveyor could make his application at least compliant in this regard.

The current TLPI seeks to limit the fragmentation of rural land for the obvious reasons of species habitat being continually put under pressure by development encroachment limiting range. The 2016 Planning Scheme requires that *Development applications must identify any EVNT species or their habitats that may be affected by the proposal*. The Northern Bettong is an EVNT species and is endemic to this area yet this requirement does not appear to be met in this proposal. To further endanger an already listed as 'endangered' species is unacceptable in a country that already rates as having the highest mammal extinction rate on the planet.

The system of land banking for the purpose of seeking profit as more undeveloped virgin land is destroyed is anachronistic and the TLPI recognises this and it should be fully supported by any environmentally and economically responsible council.

Submitted by: Raymond Ganley

77 Monaro Close,

Kuranda QLD 4881

Tel.: 40939988 | email:jajanti1@bigpond.com

To the assessment manager 21 March 2021:

**Submission re RAL210003 Lot498 SP189698**

**subdivision of one lot into two  
at 280 Clohesy River Road.**

I wish to oppose this subdivision on the grounds that:

1. **One of the proposed lots is only 52.9ha., less than the required 60 hectares for subdivision in a rural area.**

In **Far North Queensland Regional Plan 2009–2031 2.6 rural subdivision p.57** it states: 'The FNQ Regulatory Provisions establish **a minimum lot size of 60 hectares for subdivision in the regional landscape and rural production area to prevent further fragmentation of rural zoned lands.** The minimum lot size in the rural areas is aimed at maintaining lot sizes that are more likely to maintain agricultural, economic viability and preventing residential or rural residential development outside designated urban footprint or rural living areas '.

This is reiterated in the Temporary Local Planning Instrument No. 01 of 2019 (Subdivision in Rural zone), 6 December 2019:

**'Land in rural areas is maintained in large (60ha or greater) lot sizes** to ensure that regional landscape and rural production values are not compromised by fragmentation, alienation or incompatible land uses. Subdivision of land is not supported on lots less than 60ha in the Rural zone.'

and again in the **Mareeba Shire Council (MSC) Planning Scheme 2016 table 9.4.4.3B—Minimum area and dimensions for Reconfiguring a lot .** ( Please see table attached)

2. **The proposed subdivision land is mapped as a bush fire hazard area.**

The proposed subdivision land is mapped as a bush fire hazard area medium, high and very high. An increased number of blocks increases the pressure on fire brigades to protect buildings and inhabitants and limits areas that can be back burnt.

3. **Bushfire hazard mitigation is often associated with negative environmental impacts.**

Once the block has been cleared for bush fire breaks, tracks and a house site, any wildlife habitat will be very fragmented.

4. **Essential Habitat ( Northern Bettong)**

The land is predominately covered by remnant vegetation and is mostly mapped as essential habitat (Northern Bettong) The northern bettong is an endangered species with a [Queensland government recovery plan](#). The most recent camera trapping program in 2018 found Northern Bettongs in the area. Please see attached map.

Has there been an independent ecological assessment report submitted as part of the application? This appears to be a requirement under the MSC planning scheme 2016 's environmental significance overlay code in areas of wildlife habitat.

In Part 8 p.253 Preferred Outcome (PO) 5 it states :

'Development within a 'Wildlife habitat' area identified on the Environmental Significance Overlay Maps (OM-004a-o):

- (a) protects and enhances the habitat of Endangered, Vulnerable and Near Threatened (EVNT) species and local species of significance;
- (b) incorporates siting and design measures to protect and retain identified ecological values and underlying ecosystem processes within or adjacent to the development site;
- (c) maintains or enhances wildlife interconnectivity at a local and regional scale; and
- (d) mitigates the impact of other forms of potential disturbance (such as presence of vehicles, pedestrian use, increased exposure to domestic animals, noise and lighting impacts) to protect critical life stage ecological processes (such as feeding, breeding or roosting).

Note—Development applications must identify any EVNT species or their habitats that may be affected by the proposal. In particular, applications are to identify and describe how the development avoids adverse impacts on ecological processes within or adjacent to the development area.

**Note—A supporting Ecological Assessment Report is prepared in accordance with Planning Scheme Policy 2 – Ecological Assessment Reports.'**

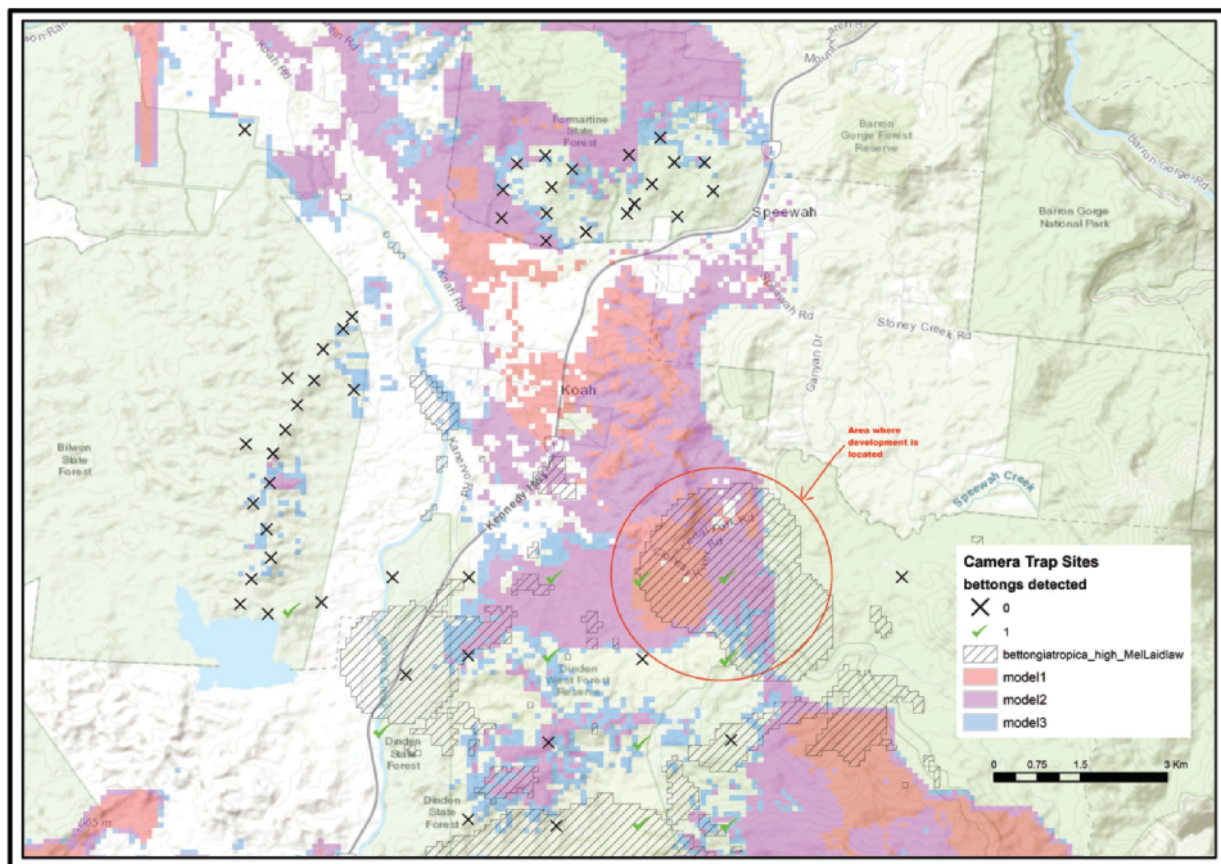
Therefore I ask you to refuse this subdivision.

Sarah Isaacs

345 Fantin Road

Koah

QLD 4881



Far North Queensland Regional Planning - Mareeba Shire Council - Microsoft Word - Mareeba Shire Council Planning Scheme 2011

https://websync.msc.qld.gov.au/public\_documents/files/865/Mareeba Shire Planning Scheme 2011

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Other Bookmarks

Table 9.4.4.3B—Minimum area and dimensions for Reconfiguring a lot

Zone	Lot type	Minimum area	Minimum frontage
Centre	All lots	600m <sup>2</sup>	20 metres
Community facilities	All lots	Not specified	Not specified
Conservation	All lots	Not specified	Not specified
Emerging community	All lots	10 hectares	100 metres
Low density residential	Where greenfield development and connected to reticulated water and sewerage		
	Rear lot	600m <sup>2</sup>	5 metres
	All other lots	350m <sup>2</sup>	10 metres
	Where connected to reticulated water and sewerage		
	Rear lot	600m <sup>2</sup>	5 metres
	All other lots	600m <sup>2</sup>	15 metres
Medium density residential	Where connected to reticulated water		
	Rear lot	1,000m <sup>2</sup>	5 metres
	All other lots	800m <sup>2</sup>	15 metres
Industry	Rear lot	600m <sup>2</sup>	5 metres
	All other lots	400m <sup>2</sup>	10 metres
Recreation and open space	All lots	1,500m <sup>2</sup>	45 metres
Rural	Recreation and open space		
	All lots	Not specified	Not specified
	All lots	60 hectares	400 metres
	2 hectares precinct	2 hectares	50 metres
	1 hectare precinct	1 hectare	40 metres
Rural residential	All lots	4,000m <sup>2</sup>	40 metres
	All lots	4,000m <sup>2</sup>	40 metres

80 hectares

Highlight | Match Case | Match Diagonals | Whole Words | 4 of 4 matches