

DELEGATED REPORT

SUBJECT: EDWARD & TANYA BAILEY - MATERIAL CHANGE OF USE -
ROADSIDE STALL - LOT 1 ON RP741738 - 3685 KENNEDY
HIGHWAY, MAREEBA - MCU/21/0013

DATE: 19 August 2021

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

DEPARTMENT: Corporate and Community Services

APPLICATION DETAILS

APPLICATION		PREMISES	
APPLICANT	Edward & Tanya Bailey	ADDRESS	3685 Kennedy Highway, Mareeba
DATE LODGED	29 June 2021	RPD	Lot 1 on RP741738
TYPE OF APPROVAL	Development Permit		
PROPOSED DEVELOPMENT	Material Change of Use - Roadside Stall		

FILE NO	MCU/21/0013	AREA	3.967 hectares
LODGED BY	E & T Bailey	OWNER	E & T Bailey
PLANNING SCHEME	Mareeba Shire Council Planning Scheme 2016		
ZONE	Rural residential zone		
LEVEL OF ASSESSMENT	Impact assessment		
SUBMISSIONS	No submissions received		

ATTACHMENTS: 1. Proposal Plan/s

EXECUTIVE SUMMARY

Council is in receipt of an impact assessable development application described in the above application details. Being impact assessable, the application was required to undergo public notification. During the public notification period, no submissions were received.

The application and supporting material has been assessed against the Mareeba Shire Council Planning Scheme 2016 and does not conflict with any relevant aspect of the Planning Scheme.

It is recommended that the application be approved in full.

OFFICER'S RECOMMENDATION

1. That in relation to the following development application:

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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 (E), further permits in (F), and further approvals from Council listed in (G);

And

The assessment manager does **not** consider that the assessment manager's decision conflicts with a relevant instrument.

(A) APPROVED DEVELOPMENT: Development Permit for Material Change of Use - Roadside Stall

(B) APPROVED PLANS:

Plan/Document Number	Plan/Document Title	Prepared by	Dated
-	Aerial Image - Location of stall, parking and vehicular circulation	E & T Bailey	-

(C) 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 commencement of the use except where specified otherwise in these conditions of approval.

- 2.2 Prior to the commencement of use, the applicant must notify Council that all the conditions of the development permit have been complied with, except where specified otherwise in these conditions of approval.

3. General

- 3.1 All works must be designed, constructed and carried out in accordance with FNQROC Development Manual requirements (as amended) and to the satisfaction of Council's delegated officer.

3.2 Signage

Two advertising devices are permitted in relation to the approved use as depicted on the approved plan. Advertising devices are limited to the size and locations shown on the approved plan and must:

- (i) Not resemble a traffic control device or give instructions to traffic;
- (ii) Not incorporate highly reflective materials or finishes;
- (iii) Not be illuminated, move, revolve, strobe or flash; and
- (iv) Be kept clean, in good order and safe repair for the life of the development.

The erection of any signage must comply with the Building Act and all other relevant Acts, Regulations and these approval conditions. All advertising devices must be removed should the use cease.

4. Infrastructure Services and Standards

4.1 Car Parking/Internal Driveways

- (a) The applicant/developer must ensure that car parking for customers is provided as per the approved plan.
- (d) All parking spaces and trafficable areas must be maintained in good order and safe repair for the life of the development, to the satisfaction of Council's delegated officer.

A sign must be erected in proximity to the access driveway indicating the availability of on-site parking.

(D) ASSESSMENT MANAGER'S ADVICE

(a) 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.

(b) Compliance with Acts and Regulations

The erection and use of the building must comply with the Building Act and all other relevant Acts, Regulations and Laws, and these approval conditions.

(c) 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.

(d) 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.

(E) RELEVANT PERIOD

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

- Material Change of Use – six (6) years (starting the day the approval takes effect);

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

- Nil

(G) OTHER APPROVALS REQUIRED FROM COUNCIL

- Nil

THE SITE

The subject site is situated at 3685 Kennedy Highway, Mareeba and is described as Lot 1 on RP741738. The site is irregular in shape with a total area of 3.967 hectares and is zoned Rural residential under the Mareeba Shire Council Planning Scheme. The site contains approximately 277 metres of frontage to the Kennedy Highway which is constructed to a highway standard and is bitumen/asphalt sealed. The site is accessed via a bitumen sealed crossover in the north-west corner of the allotment.

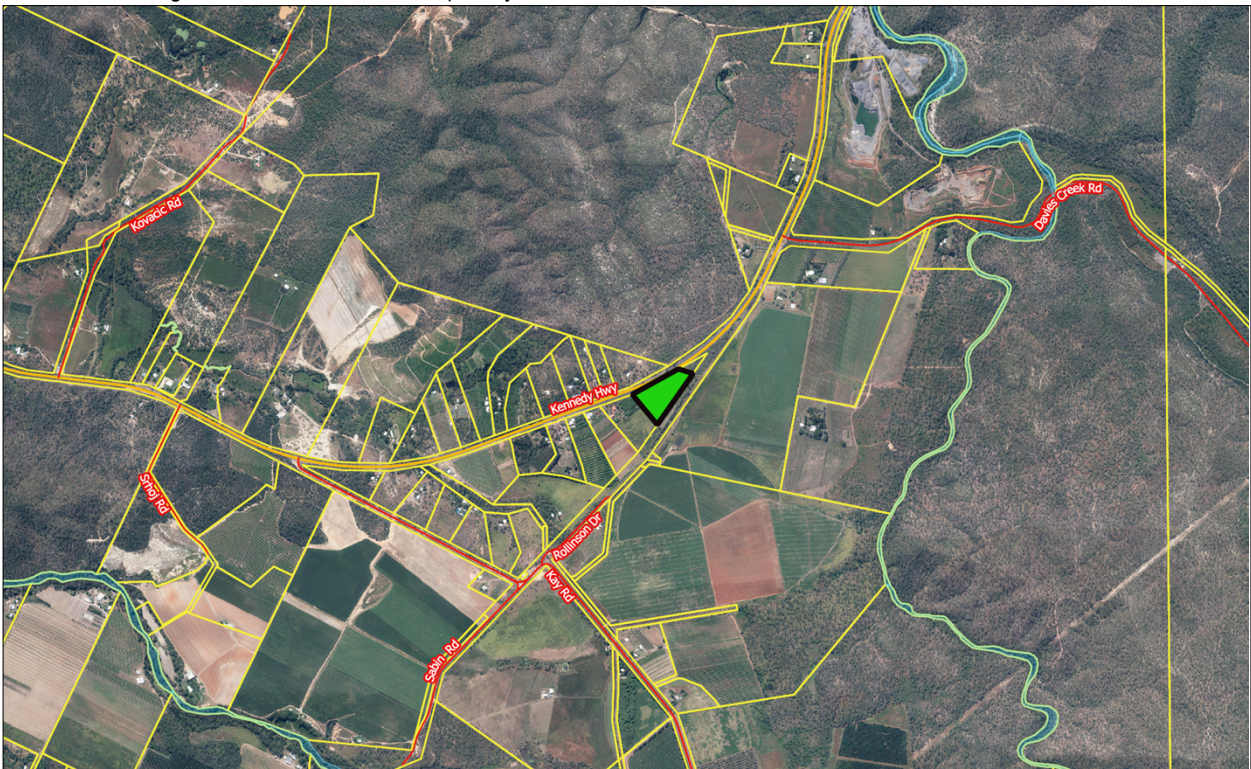
The site is improved by a dwelling and multiple outbuildings (sheds) clustered together on the western side of the property. A small fruit orchard and dam are also present on-site.

All immediate adjoining lots are zoned Rural residential.



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

Nil

PREVIOUS APPLICATIONS & APPROVALS

Nil

DESCRIPTION OF PROPOSED DEVELOPMENT

The development application seeks a Development Permit for Material Change of Use - Roadside Stall in accordance with the plans shown below and in **Attachment 1**. The stall will exclusively sell plants grown on the property.



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.

Activity Centre in the Regional Plan. The Regional Plan Map 3- 'Areas of Ecological Significance' does not identify the site as containing any area of ecological significance.

PLANNING SCHEME DESIGNATIONS

Strategic Framework:	Land Use Categories <ul style="list-style-type: none"> Rural Residential Area Transport Elements <ul style="list-style-type: none"> <i>State Controlled Road</i> <i>Principal Cycle Route</i>
Zone:	Rural Zone
Overlays:	<ul style="list-style-type: none"> Agricultural Land Overlay Bushfire Hazard Overlay Transport Infrastructure Overlay

Planning Scheme Definitions

The proposed use is defined as:-

Column 1 Use	Column 2 Definition	Column 3 Examples include	Column 4 Does not include the following examples
Roadside stall	Premises used for the roadside display and sale of goods in rural areas.	Produce stall	Market

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**

The proposed development is for a small roadside stall which will sell plants to passers-by using the Kennedy Highway.

The Proposed development does not conflict with any relevant Strategic Outcomes or Specific Outcomes contained within the Planning Scheme.

Relevant Development Codes

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

- 6.2.9 Rural zone code
- 8.2.1 Agricultural land overlay code
- 8.2.3 Bushfire hazard overlay code
- 9.3.6 Rural activities code
- 9.4.3 Parking and access code
- 9.4.5 Works, services and infrastructure code

The application included a planning report and assessment against the planning scheme. An officer assessment has found that the application satisfies the relevant acceptable solutions (or probable solutions/performance criteria where no acceptable solution applies) of the relevant codes set out below, provided reasonable and relevant conditions are attached to any approval.

Relevant Codes	Comments
Rural zone code	The proposed development complies or can be conditioned to comply with the relevant acceptable outcomes (or performance outcomes where no acceptable outcome is provided) contained within the code.
Agricultural land overlay code	The proposed development complies or can be conditioned to comply with the relevant acceptable outcomes (or performance outcomes where no acceptable outcome is provided) contained within the code.
Bushfire hazard overlay code	The proposed development complies or can be conditioned to comply with the relevant acceptable outcomes (or performance outcomes where no acceptable outcome is provided) contained within the code.
Rural activities code	The proposed development complies or can be conditioned to comply with the relevant acceptable outcomes (or performance outcomes where no acceptable outcome is provided) contained within the code.
Parking and access code	The proposed development complies or can be conditioned to comply with the relevant acceptable outcomes (or performance outcomes where no acceptable outcome is provided) contained within the code.
Works, services and infrastructure code	The proposed development complies or can be conditioned to comply with the relevant acceptable outcomes (or performance outcomes where no acceptable outcome is provided) contained within the code.

(e) Planning Scheme Policies/Infrastructure Charges Plan

Planning Scheme Policy 4 - FNQROC Regional Development Manual

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

REFERRAL AGENCY

This application did not trigger referral to any Referral Agencies.

Despite the proposed development being accessed from the State controlled Kennedy Highway, the proposed use is considered to be an **excluded material change of use**.

An excluded material change of use **does not** require referral under *Schedule 10, Part 9, Division 4, Subdivision 2, Table 4 - Material change of use near a State transport corridor*.

Internal Consultation

Not applicable.

PUBLIC NOTIFICATION

The development proposal was placed on public notification from 21 July 2020 to 10 August 2021. The applicant submitted the notice of compliance on 11 August 2021 advising that the public notification requirements were carried out in accordance with the requirements of the Act.

No submissions were received.

PLANNING DISCUSSION

Nil

Date Prepared: 19 August 2021

DECISION BY DELEGATE

DECISION

Having considered the Planning Officer's report detailed above, I approve, as delegate of Council, the application subject to the conditions listed in the report.

Dated the 19 day of August 2021



PETER FRANKS
CHIEF EXECUTIVE OFFICER

MAREEBA SHIRE
AS DELEGATE OF THE COUNCIL

PROPOSED PLANS (ECM DSI # 3972601)

Aerial image – location of stall, parking and vehicular circulation

