

8.3	M JENSEN - RECONFIGURING A LOT - BOUNDARY REALIGNMENT - LOT 73 ON RP903071 & LOT 10 ON SP323246 - 1575 & 1593 KENNEDY HIGHWAY, KURANDA - RAL/21/0022
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Date Prepared: 1 February 2022
Author: Senior Planner
Attachments: 1. Proposal Plan

APPLICATION DETAILS

APPLICATION		PREMISES	
APPLICANT	M Jensen	ADDRESS	1575 & 1593 Kennedy Highway, Kuranda
DATE LODGED	1 December 2021	RPD	Lot 73 on RP903071 & Lot 10 on SP323246
TYPE OF APPROVAL	Development Permit		
PROPOSED DEVELOPMENT	Reconfiguring a Lot - Boundary Realignment		
FILE NO	RAL/21/0022	AREA	Lot 73 - 20.41 hectares Lot 10 - 3.546 hectares
LODGED BY	Kelly Reaston Development & Property Services	OWNER	Lot 73 - Arona Pty Ltd Lot 10 - M Jensen
PLANNING SCHEME	Mareeba Shire Council Planning Scheme 2016		
ZONE	Lot 73 - Rural zone Lot 10 - Rural Residential zone		
LEVEL OF ASSESSMENT	Impact Assessment		
SUBMISSIONS	Nil		

EXECUTIVE SUMMARY

Council is in receipt of a development application described in the above application details.

The application is impact assessable and no properly made submissions were received in response to public notification of the application.

The application and supporting material has been assessed against the Mareeba Shire Council Planning Scheme 2016 and is in conflict with certain purpose statements in the Rural zone code, as well as performance outcomes contained within the Reconfiguring a lot code which seeks to discourage the creation of any lot below 60 hectares within the Rural zone.

Both existing lots are significantly less than 60 hectares in size with Lot 10 (zoned Rural Residential) having an area of 3.546 hectares and Lot 73 having an area of 20.41 hectares.

The application proposes to reconfigure the two (2) allotments through a boundary realignment only (no additional lot created) whereby approximately 3.854 hectares of land will be transferred

from Lot 73 to proposed Lot 1. The area to be transferred from Lot 73 to proposed Lot 1 is otherwise inaccessible to the owners of Lot 73 due to a deeply incised gully. The boundary realignment will move the common boundary to follow this deeply incised gully and is a logical response to the locality's topography/environment without adversely impacting on the potential of the rural zone.

The Mareeba Shire Council Planning Scheme 2016 contains a hierarchy of assessment benchmarks. The Strategic Framework is the highest order assessment benchmark in the Planning Scheme and holds greater weight than the Rural zone code and Reconfiguring a Lot code. An officer assessment has determined that despite the identified conflicts with the lower order Rural zone code and Reconfiguring a Lot code provisions mentioned above, the proposed boundary realignment meets the intent of the Strategic Framework, in that the development will not further fragment, compromise or alienate productive agricultural land.

Draft conditions were provided to the Applicant / care of their consultant and have been agreed.

It is recommended that the application be approved in full with conditions.

OFFICE'S RECOMMENDATION

1. That in relation to the following development application:

APPLICATION		PREMISES	
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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 Reconfiguring a Lot - Boundary Realignment

(B) APPROVED PLANS:

Plan/Document Number	Plan/Document Title	Prepared by	Dated
ARO0115-SK04	Proposed Boundary Realignment	ARO	22 November 2021

(C) ASSESSMENT MANAGER'S CONDITIONS (COUNCIL)

(a) Development assessable against the Planning Scheme

1. Development must be carried out generally 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

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 Charges

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

(D) ASSESSMENT MANAGER'S ADVICE

- (a) A number of other charges or payments may be payable as conditions of approval. The applicable fee is set out in Council's Fees & Charges Schedule for each respective financial year.

(b) 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.

(c) 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.

(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.

(E) RELEVANT PERIOD

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

- Reconfiguring a Lot – four (4) 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

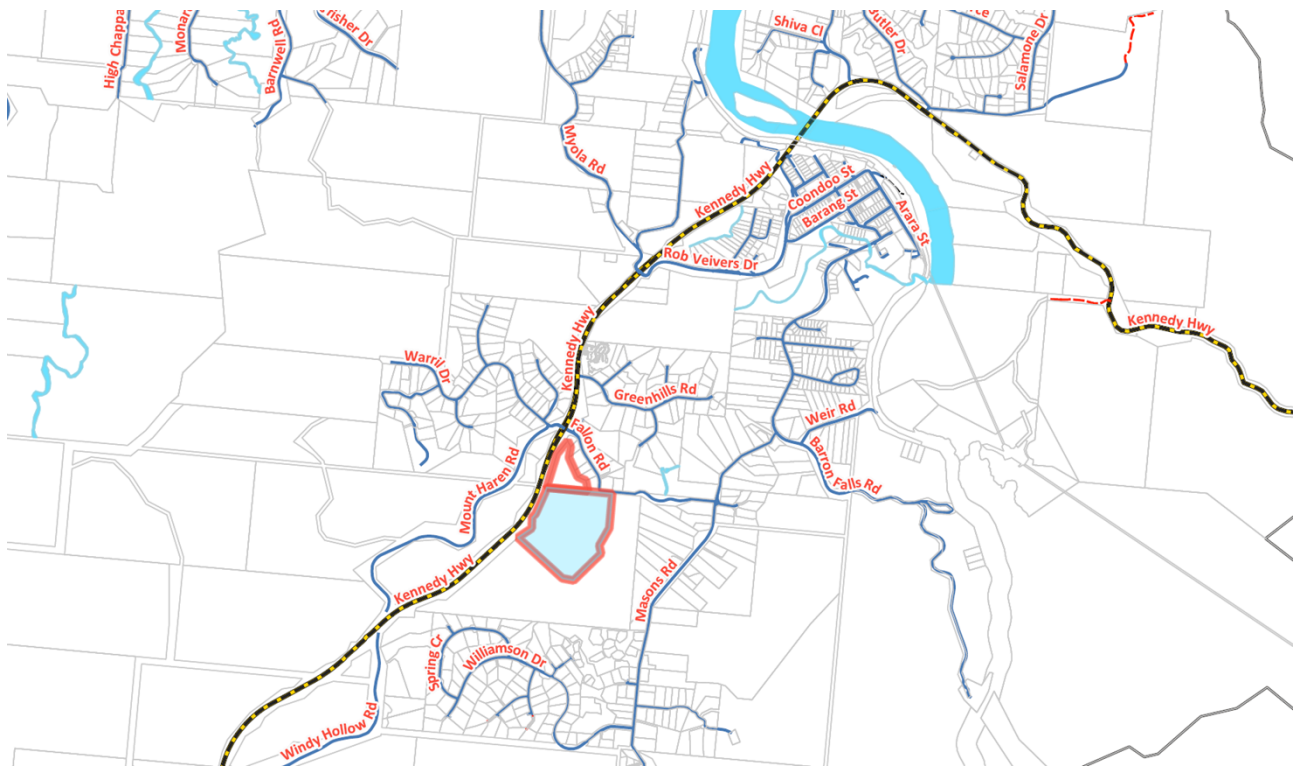
THE SITE

The subject site comprises of the following allotments:

- Lot 73 on RP903071, situated at 1593 Kennedy Highway, Kuranda, having an area of 20.41 hectares and a frontage of approximately 365 metres to the Kennedy Highway and 145 metres to Fallon Road; and
- Lot 10 on SP323246, situated at 1575 Kennedy Highway, Kuranda, having an area of 3.546 hectares and a frontage of approximately 305 metres to the Kennedy Highway and 20 metres frontage to unformed road reserve.

**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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The Kennedy Highway and Fallon Road are both constructed to bitumen sealed standard for the relevant frontages. Access to each lot is obtained via the Kennedy Highway as a deeply incised gully prevents practical access via Fallon Road.

Each lot contains an established dwelling house and domestic outbuildings.

Both lots feature steeply undulating topography and for the most part retain a coverage of dense vegetation.

Surrounding lots are predominantly zoned rural residential and are used for rural residential lifestyle purposes.

BACKGROUND AND CONTEXT

Nil

PREVIOUS APPLICATIONS & APPROVALS

Nil

DESCRIPTION OF PROPOSED DEVELOPMENT

The development application seeks a Development Permit for Reconfiguring a Lot - Boundary Realignment in accordance with the plans shown in **Attachment 1**.

The application proposes to transfer approximately 3.854 hectares from existing Lot 73 to proposed Lot 1 by moving the common boundary so that it generally follows a deeply incised gully. The area

to be transferred from Lot 73 to proposed Lot 1 is otherwise inaccessible to the owners of Lot 73 and is a logical part of proposed Lot 1. The boundary realignment is a logical response to the locality's topography/environment.

The realigned lots will be as follows:

- Lot 1 - area of 7.4 hectares, approximately 480 metres frontage to the Kennedy Highway and 20 metres frontage to unformed road reserve; and
- Lot 2 - area of 16.1 hectares, approximately 190 metres frontage to the Kennedy Highway and 145 metres frontage to Fallon Road.

Both proposed lots will retain their established dwelling house and domestic outbuildings. All servicing arrangements for the existing dwelling houses will remain in place.

There will be no change in the existing Kennedy Highway access arrangements.

REGIONAL PLAN DESIGNATION

The subject site is included within the Regional Landscape and Rural Production Area (Lot 73) and the Rural Living Area (Lot 10) land use categories in the Far North Queensland Regional Plan 2009-2031. The Regional Plan Map 3- 'Areas of Ecological Significance' also identifies the site as:

- *Strategic Rehabilitation Area*
- *State & Regional Conservation Corridors*
- *Terrestrial Area of General Ecological Significance*

PLANNING SCHEME DESIGNATIONS

Strategic Framework:	<p>Land Use Category</p> <ul style="list-style-type: none"> • Rural Area (rural other) - Lot 73 • Rural Residential Area - Lot 10 <p>Natural Environment Elements</p> <ul style="list-style-type: none"> • Biodiversity Area <p>Transport Elements</p> <ul style="list-style-type: none"> • Principal Cycle Network • State Controlled Road • Local Collector Road
Zone:	<p>Lot 73 - Rural zone Lot 10 - Rural Residential zone</p>
Overlays:	<p>Environmental Significance Overlay Hill and Slope Overlay Scenic Amenity Overlay</p>

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 development is for a "boundary realignment" only, so it does not constitute a "subdivision" by definition.

Both existing lots are significantly less than 60 hectares in size, with Lot 10 (zoned Rural Residential) having an area of 3.546 hectares and Lot 73 having an area of 20.41 hectares.

A dwelling house and domestic outbuildings are already established on each lot and the proposed boundary realignment does not allow for additional residential development on either lot.

The boundary realignment is intended to move the common boundary to generally follow a deeply incised gully. The 3.854 hectares of land to be transferred from Lot 73 to Lot 10 is otherwise inaccessible to the owners of Lot 73 and is a logical extension of Lot 10.

The boundary realignment is a logical response to the locality's topography/environment and in no way compromises the Rural zone.

The proposed development is 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 development is for a "boundary realignment" only, so it does not constitute a "subdivision" by definition.

Both existing lots are significantly less than 60 hectares in size, with Lot 10 (zoned Rural Residential) having an area of 3.546 hectares and Lot 73 having an area of 20.41 hectares.

A dwelling house and domestic outbuildings are already established on each lot and the proposed boundary realignment does not allow for additional residential development on either lot.

The boundary realignment is intended to move the common boundary to generally follow a deeply incised gully. The 3.854 hectares of land to be transferred from Lot 73 to Lot 10 is otherwise inaccessible to the owners of Lot 73 and is a logical extension of Lot 10.

The boundary realignment is a logical response to the locality's topography/environment and in no way compromises the Rural zone.

The proposed development does not conflict 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.*

Comment

The proposed development is for a "boundary realignment" only, so it does not constitute a "subdivision" by definition.

Both existing lots are significantly less than 60 hectares in size, with Lot 10 (zoned Rural Residential) having an area of 3.546 hectares and Lot 73 having an area of 20.41 hectares.

A dwelling house and domestic outbuildings are already established on each lot and the proposed boundary realignment does not allow for additional residential development on either lot.

The boundary realignment is intended to move the common boundary to generally follow a deeply incised gully. The 3.854 hectares of land to be transferred from Lot 73 to Lot 10 is otherwise inaccessible to the owners of Lot 73 and is a logical extension of Lot 10.

The boundary realignment is a logical response to the locality's topography/environment. The proposed development will not compromise, fragment, or alienate agricultural land and is considered to satisfy Specific Outcome 2.

- (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 development is for a "boundary realignment" only, so it does not constitute a "subdivision" by definition.

Both existing lots are significantly less than 60 hectares in size, with Lot 10 (zoned Rural Residential) having an area of 3.546 hectares and Lot 73 having an area of 20.41 hectares.

A dwelling house and domestic outbuildings are already established on each lot and the proposed boundary realignment does not allow for additional residential development on either lot.

The boundary realignment is intended to move the common boundary to generally follow a deeply incised gully. The 3.854 hectares of land to be transferred from Lot 73 to Lot 10 is otherwise inaccessible to the owners of Lot 73 and is a logical extension of Lot 10.

The boundary realignment is a logical response to the locality's topography/environment and in no way compromises the Rural zone. The proposed development is considered to satisfy Specific Outcome 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

The proposed development is for a "boundary realignment" only, so it does not constitute a "subdivision" by definition. No additional title will be created, and no significant change to the service arrangement of each lot will occur as a result of the development.

Relevant Developments Codes

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

- 6.2.9 Rural zone code
- 6.2.10 Rural residential zone code
- 7.2.1 Kuranda local plan code
- 8.2.4 Environmental significance overlay code
- 8.2.8 Hill and slope overlay code
- 8.2.11 Scenic amenity 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 outcomes (or performance outcome where no acceptable outcome 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 Lots 1 and 2 will be under 60 ha in size.</p> <p>Despite this conflict, it is considered that the proposed development complies with the higher order strategic/specific outcomes contained in the Planning Scheme's Strategic Framework. Refer to planning discussion section of report for commentary.</p>
Rural residential zone code	<p>The application can be conditioned to comply with the code's relevant acceptable outcomes and/or performance outcomes (where no acceptable outcome is provided).</p>
Kuranda local plan code	<p>The application can be conditioned to comply with the code's relevant acceptable outcomes and/or performance outcomes (where no acceptable outcome is provided).</p>
Environmental significance overlay code	<p>The application can be conditioned to comply with the code's relevant acceptable outcomes and/or performance outcomes (where no acceptable outcome is provided).</p>
Hill and slope overlay code	<p>The application can be conditioned to comply with the code's relevant acceptable outcomes and/or performance outcomes (where no acceptable outcome is provided).</p>
Scenic amenity overlay code	<p>The application can be conditioned to comply with the code's relevant acceptable outcomes and/or performance outcomes (where no acceptable outcome is provided).</p>
Landscaping code	<p>The application can be conditioned to comply with the code's relevant acceptable outcomes and/or performance outcomes (where no acceptable outcome is provided).</p>
Parking and access code	<p>The application can be conditioned to comply with the code's relevant acceptable outcomes and/or performance outcomes (where no acceptable outcome is provided).</p>
Reconfiguring a lot code	<p>The application conflicts with the following performance outcomes:</p> <ul style="list-style-type: none"> • PO1.1 • PO1.2 <p>Despite conflicting with the abovementioned performance outcomes, it is considered that the proposed development complies with the higher order strategic/specific outcomes contained in the Planning Scheme's Strategic Framework. Refer to planning discussion section of report for commentary.</p>

Works, services and infrastructure code	The application can be conditioned to comply with the code's relevant acceptable outcomes and/or performance outcomes (where no acceptable outcome is provided).
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(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

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

(E) Adopted Infrastructure Charges Notice

The application is for a boundary realignment only. No additional vacant lot will be created.

REFERRAL AGENCY

This application did not trigger referral to a Referral Agency.

Internal Consultation

Not applicable.

PUBLIC NOTIFICATION

The development proposal was placed on public notification from 6 January 2022 to 28 January 2022. The applicant submitted the notice of compliance on 31 January 2022 advising that the public notification requirements were carried out in accordance with the requirements of the Act.

No submissions were received.

PLANNING DISCUSSION

Non-compliance with assessment benchmarks contained within the Rural zone code and Reconfiguring a lot code are discussed below:

6.2.9 Rural zone code (as amended by the TLPI)

6.2.9.2 Purpose

- (3) (a) *Areas for use for primary production are conserved and new allotments below the minimum lot size identified in Table 9.4.4.3B is not supported.*

Comment

Table 9.4.4.3B dictates a minimum reconfiguring lot size of 60 hectares for land within the Rural zone.

Both existing lots are significantly less than 60 hectares in size, with Lot 10 (zoned Rural Residential) having an area of 3.546 hectares and Lot 73 having an area of 20.41 hectares.

The application proposes to reconfigure the two (2) allotments through a boundary realignment only (no additional lot created) whereby approximately 3.854 hectares of land will be transferred from Lot 73 to proposed Lot 1.

The area to be transferred from Lot 73 to proposed Lot 1 is otherwise inaccessible to the owners of Lot 73 due to a deeply incised gully. The boundary realignment will move the common boundary to follow this deeply incised gully and is a logical response to the locality's topography/environment without adversely impacting on the potential of the rural zone.

9.4.4 Reconfiguring a lot code (as amended by the TLPI)

Area and frontage of lots - Rural zone

PO1.1

No lots are created with an area of less than 60 ha

Note: This also applies to applications for boundary realignment

AO1.1

No acceptable outcome is provided.

Comment

Both existing lots are significantly less than 60 hectares in size, with Lot 10 (zoned Rural Residential) having an area of 3.546 hectares and Lot 73 having an area of 20.41 hectares.

The application proposes to reconfigure the two (2) allotments through a boundary realignment only (no additional lot created) whereby approximately 3.854 hectares of land will be transferred from Lot 73 to proposed Lot 1.

The area to be transferred from Lot 73 to proposed Lot 1 is otherwise inaccessible to the owners of Lot 73 due to a deeply incised gully. The boundary realignment will move the common boundary to follow this deeply incised gully and is a logical response to the locality's topography/environment without adversely impacting on the potential of the rural zone.

Despite not complying with PO1.1, it is considered that the proposed boundary realignment meets the intent of the higher order Strategic Framework, in that the development will not further fragment, compromise or alienate productive agricultural land, and has no impact on future primary production potential.

PO1.2

No lots are created with a frontage less than 400m

Note: This also applies to applications for boundary realignment.

AO1.2

No acceptable outcome is provided.

Comment

Proposed Lot 1 will comply.

Proposed Lot 2 would have a combined road frontage of approximately 335 metres to the Kennedy Highway and Fallon Road. This frontage is adequate to provide for access, whilst retaining the already irregular lot shape.

The frontage proposed for each lot is appropriate.

This document contains information that is confidential to the Council of the City of Newcastle. It is not to be distributed to the public without the approval of the Council.



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Newcastle NSW 1590
Tel: 081 428 1697

LOT 10 ON SP323246 & LOT 73
ON RP903071, MAREEBA

PROPOSED BOUNDARY
REALIGNMENT

1:2000
AT F.I.J. 5/28
AR00115-SK04

Acad No. AR00115-SK04(2) 23rd November 2021

