

**DELEGATED REPORT**

**SUBJECT:** H AOYAMA & S MUSUMECI - RECONFIGURING A LOT -  
BOUNDARY REALIGNMENT - LOTS 3 & 4 ON RP887895 - 325  
& 367 KOAH ROAD, KOAH - RAL/22/0022

**DATE:** 27 September 2022

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

**DEPARTMENT:** Corporate and Community Services

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**APPLICATION DETAILS**

<b>APPLICATION</b>		<b>PREMISES</b>	
<b>APPLICANT</b>	H Aoyama & S Musumeci	<b>ADDRESS</b>	325 & 367 Koah Road, Koah
<b>DATE LODGED</b>	13 July 2022	<b>RPD</b>	Lots 3 & 4 on RP887895
<b>TYPE OF APPROVAL</b>	Development Permit		
<b>PROPOSED DEVELOPMENT</b>	Reconfiguring a Lot - Boundary Realignment		

<b>FILE NO</b>	RAL/22/0012	<b>AREA</b>	Lot 3 - 2.003 hectares Lot 4 - 35.441 hectares
<b>LODGED BY</b>	Scope Town Planning	<b>OWNER</b>	H Aoyama & S Musumeci
<b>PLANNING SCHEME</b>	Mareeba Shire Council Planning Scheme 2016		
<b>ZONE</b>	Rural Residential zone		
<b>LEVEL OF ASSESSMENT</b>	Code Assessment		
<b>SUBMISSIONS</b>	n/a		

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**ATTACHMENTS:**

1. Proposal Plan/s
2. State Assessment and Referral Agency Response dated 19 September 2022

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**EXECUTIVE SUMMARY**

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

The application is code assessable and was not required to undergo public notification.

It has been assessed against the relevant statutory planning instruments, including the Regional Plan and the Planning Scheme and does not conflict with any relevant planning instrument.

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.

## OFFICER'S RECOMMENDATION

1. That in relation to the following development application:

APPLICATION		PREMISES	
<b>APPLICANT</b>	H Aoyama & S Musumeci	<b>ADDRESS</b>	325 & 367 Koah Road, Koah
<b>DATE LODGED</b>	13 July 2022	<b>RPD</b>	Lots 3 & 4 on RP887895
<b>TYPE OF APPROVAL</b>	Development Permit		
<b>PROPOSED DEVELOPMENT</b>	Reconfiguring a Lot - Boundary Realignment		

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), concurrence agency conditions in (E), relevant period in (F), further permits in (G), and further approvals from Council listed in (H);

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
22010	Lots 3 & 4 RP887895	Scope Town Planning	July 2022

(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.

### 3.9 Drainage Easement

A drainage easement in favour of Council, must be provided over proposed Lots 3 and 4 to allow for drainage between Koah Road and existing Easement B on

RP887895. The new easement shall generally follow the dotted blue line on Plan no. 22010 and shall not be less than 10 metres in width.

Where Council is party to a proposed easement and/or if the proposed easement is in favour of Council the applicant/developer is to pay all costs (including Council's legal expenses) to prepare and register the easement documents, using Council's standard form of easement.

The approved easement documents must be submitted at the same time the applicant/developer seeks endorsement of the plan of survey and must be lodged and registered in the Department of Resources in conjunction with the plan of survey.

(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.dcceew.gov.au](http://www.dcceew.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.dsdsatsip.qld.gov.au](http://www.dsdsatsip.qld.gov.au).

(E) CONCURRENCE AGENCY CONDITIONS

State Assessment and Referral Agency conditions dated 19 September 2022

(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

- Nil

## THE SITE

The subject site comprises of the following allotments:

- Lot 3 on RP887895, situated at 325 Koah Road, Koah, having an area of 2.003 hectares and a frontage of approximately 80 metres to Koah Road; and
- Lot 4 on RP887895, situated at 367 Koah Road, Koah, having an area of 35.441 hectares and a frontage of approximately 600 metres to Koah Road.

Koah Road is constructed to bitumen sealed standard for the full frontage of both lots. Each lot has an established driveway crossover. A dwelling house and domestic outbuildings are established on each of the lots. A small dam straddles the common boundary of both lots.

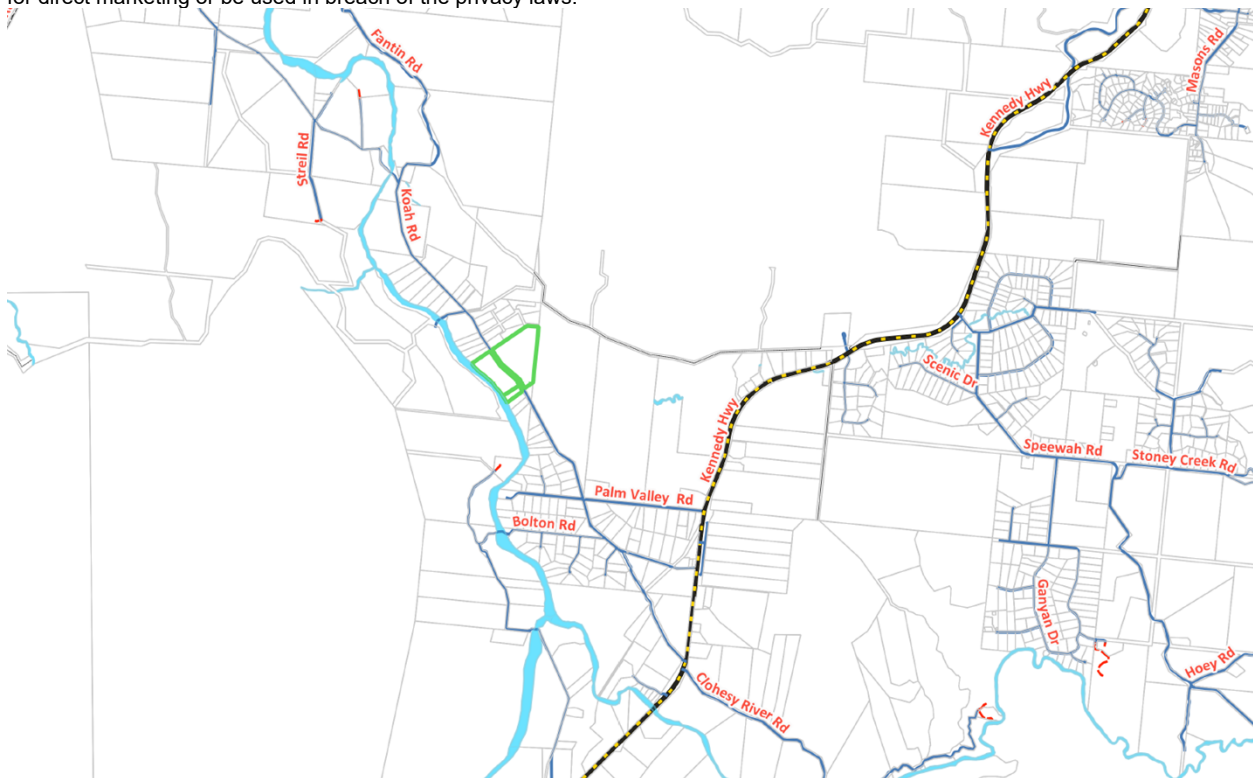
The Clohesy River forms the western boundary of both lots. Several secondary drainage features traverse through lots, with one drainage feature partly covered by Easement B on RP887895. Lot 3 remains largely vegetated, whilst Lot 4 has been mostly cleared to facilitate agriculture.

Surrounding lots are a mixture of Rural and Rural Residential zoned land.



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 Reconfiguring a Lot - Boundary Realignment in accordance with the plans shown in **Attachment 1**.

The proposed development is the realignment of the property boundary between Lots 3 and 4 to incorporate all of the established dam within proposed Lot 3. The dam is presently split by the existing boundary.

The realignment will involve the relocation of the existing boundary to establish a new boundary to be located 20m north of the northern lot corner on the road frontage extending inward of the front boundary for 130m, running parallel to the current side boundary where it will then be angled to meet the existing south-west lot corner.

The realignment will increase the area of Lot 3 by 7,260m<sup>2</sup>.

## 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 is:

- *Local Conservation Corridors*
- *State & Regional Conservation Corridors*
- *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>• <i>Rural Residential Area</i></li> </ul> <b>Natural Environmental Elements</b> <ul style="list-style-type: none"> <li>• <i>Biodiversity Areas</i></li> </ul> <b>Transport Elements</b> <ul style="list-style-type: none"> <li>• <i>Local Collector Road</i></li> </ul> <b>Other Elements</b> <ul style="list-style-type: none"> <li>• <i>Major Watercourse</i></li> </ul>
Zone:	Rural Residential zone
Precinct:	Precinct C - 2 hectares
Overlays:	Bushfire Hazard Overlay Environmental Significance Overlay Flood Hazard Overlay Hill & Slope Hazard

	Transport Infrastructure Overlay
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## 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

#### Relevant Development Codes

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

- 6.2.10 Rural residential 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 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 residential zone 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.
Bushfire 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.
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	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.
Parking and access 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.
Reconfiguring a lot 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.
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.

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

The following planning scheme policies are relevant to the application:

Planning Scheme Policy 4 - FNQROC Regional Development Manual

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

#### (f) Adopted Infrastructure Charges Notice

Not applicable as the proposed development is for a boundary realignment and no additional vacant allotment will be created.

### REFERRALS

The application triggered referral to the State Assessment and Referral Agency as a concurrence agency (clearing native vegetation).

CairnsSARA advised in a letter dated 19 September 2022 that they require the conditions to be attached to any approval (**Attachment 2**).

### Internal Consultation

Nil

### PLANNING DISCUSSION

Nil

**Date Prepared:** 27 September 2022

## DECISION BY DELEGATE

## DECISION

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

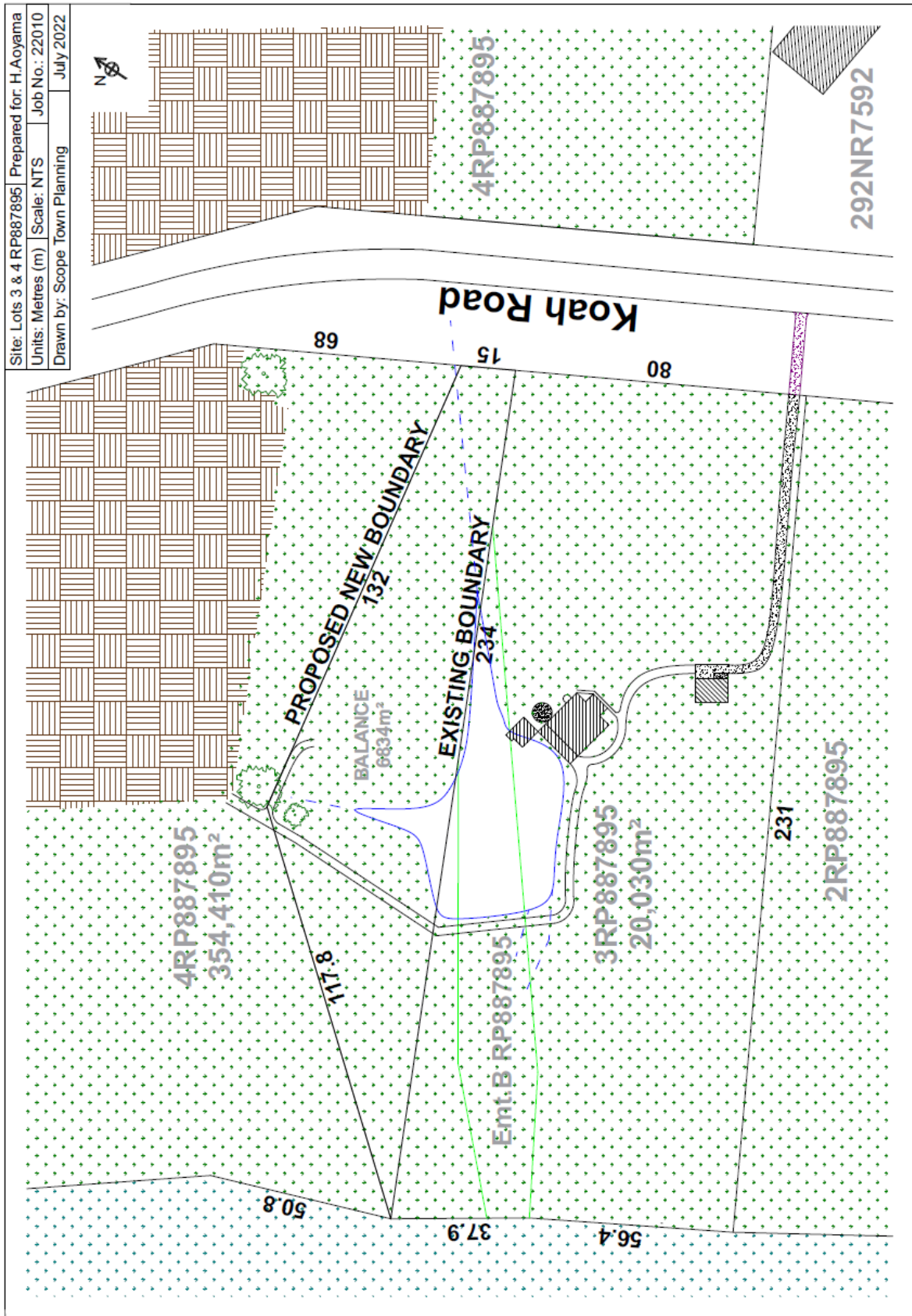
Dated the 27<sup>TH</sup> day of ~~SEPTEMBER~~ 2022



**BRIAN MILLARD**  
**SENIOR PLANNER**

MAREEBA SHIRE  
AS A DELEGATE OF THE COUNCIL

PROPOSAL PLANS



## ATTACHMENT 2

RA6-N



SARA reference: 2207-29971 SRA  
 Council reference: RAL/22/0012  
 Applicant reference: 22010

19 September 2022

Chief Executive Officer  
 Mareeba Shire Council  
 PO Box 154  
 MAREEBA QLD 4880  
 planning@msc.qld.gov.au

Attention: Carl Ewin

Dear Sir/Madam

## SARA response—Boundary Realignment at 325 and 367 Koah Road, Koah (Lots 3 and 4 on RP887895)

(Referral agency response given under section 56 of the *Planning Act 2016*)

The development application described below was confirmed as properly referred by the State Assessment and Referral Agency (SARA) on 12 August 2022.

### Response

Outcome:	Referral agency response – with conditions
Date of response:	19 September 2022
Conditions:	The conditions in <b>Attachment 1</b> must be attached to any development approval
Advice:	Advice to the applicant is in <b>Attachment 2</b>
Reasons:	The reasons for the referral agency response are in <b>Attachment 3</b>

### Development details

Description:	Development Permit	Reconfiguring a Lot - Boundary Realignment (2 lots into 2 lots)
SARA role:	Referral agency	
SARA trigger:	<b>Schedule 10, Part 3, Division 4, Table 2</b> (Planning Regulation 2017) Reconfiguring a lot involving vegetation clearing	

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Far North Queensland regional office  
 Ground Floor, Cnr Grafton and Hartley  
 Street, Cairns  
 PO Box 2358, Cairns QLD 4870

2207-29971 SRA

SARA reference: 2207-29971 SRA  
Assessment Manager: Mareeba Shire Council  
Street address: 325 and 367 Koah Road, Koah  
Real property description: Lot 3 on RP887895 and Lot 4 on RP887895  
Applicant name: Hizuri Aoyama and Sam Musumeci  
Applicant contact details: C/- Scope Town Planning  
13 Jacana Close  
Mareeba QLD 4880  
scopetownplanning@gmail.com

## Representations

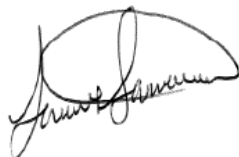
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An applicant may make representations to a concurrence agency, at any time before the application is decided, about changing a matter in the referral agency response (s.30 Development Assessment Rules). Copies of the relevant provisions are in **Attachment 4**.

A copy of this response has been sent to the applicant for their information.

For further information please contact Anthony Westbury, Planning Officer, on 40373214 or via email [CairnsSARA@dasilgp.qld.gov.au](mailto:CairnsSARA@dasilgp.qld.gov.au) who will be pleased to assist.

Yours sincerely



Javier Samanes  
A/Manager (Planning)

cc Hizuri Aoyama and Sam Musumeci, [scopetownplanning@gmail.com](mailto:scopetownplanning@gmail.com)  
enc Attachment 1 - Referral agency conditions  
Attachment 2 - Advice to the applicant  
Attachment 3 - Reasons for referral agency response  
Attachment 4 - Representations provisions  
Attachment 5 - Approved plan

### Attachment 1—Referral agency conditions

(Under section 56(1)(b)(i) of the *Planning Act 2016* the following condition must be attached to any development approval relating to this application) (A copy of the plan referenced below are found at **Attachment 5**)

No.	Condition	Condition timing
<b>Reconfiguring a lot</b>		
Schedule 10, Part 3, Division 4, Table 2—Reconfiguring a lot involving native vegetation clearing—The chief executive administering the <i>Planning Act 2016</i> nominates the Director-General of the Department of Resources to be the enforcement authority for the development to which this development approval relates for the administration and enforcement of any matter relating to the following condition:		
1.	<p>The reconfiguring a lot must be carried out generally in accordance with the following plan:</p> <ul style="list-style-type: none"> <li>• Site: Lots 3 &amp; 4 RP887895 prepared by Scope Town Planning, dated July 2022, Job No. 22010.</li> </ul>	At all times.

## Attachment 2—Advice to the applicant

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General advice	
1.	Terms and phrases used in this document are defined in the <i>Planning Act 2016</i> its regulation or the State Development Assessment Provisions (SDAP) v3.0. If a word remains undefined it has its ordinary meaning.

### **Attachment 3—Reasons for referral agency response**

(Given under section 56(7) of the *Planning Act 2016*)

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**The reasons for SARA's decision are:**

The proposed development, with a condition, complies with the relevant provisions of State code 16:

Native vegetation clearing as follows:

- the proposed development has reasonably avoided, and minimised, the impacts to native vegetation and essential habitat
- clearing is limited to essential management exemptions for fencing of the new boundary
- clearing will not occur within 40m of the Clohesy River
- there is no clearing of endangered regional ecosystems, of concern regional ecosystems, or essential habitat
- clearing will retain sufficient vegetation in the subject lots and adjacent landscape to maintain ecological connectivity.

**Material used in the assessment of the application:**

- the development application material and submitted plans
- *Planning Act 2016*
- Planning Regulation 2017
- the SDAP (version 3.0)
- the Development Assessment Rules
- SARA DA Mapping system
- State Planning Policy mapping system
- *Human Rights Act 2019*



## **Attachment 4—Representations provisions**

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(page left intentionally blank – attached separately)

## **Attachment 5—Approved plan**

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## Development Assessment Rules—Representations about a referral agency response

The following provisions are those set out in sections 28 and 30 of the Development Assessment Rules<sup>1</sup> regarding **representations about a referral agency response**

### Part 6: Changes to the application and referral agency responses

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#### 28 Concurrence agency changes its response or gives a late response

- 28.1. Despite part 2, a concurrence agency may, after its referral agency assessment period and any further period agreed ends, change its referral agency response or give a late referral agency response before the application is decided, subject to section 28.2 and 28.3.
- 28.2. A concurrence agency may change its referral agency response at any time before the application is decided if—
- (a) the change is in response to a change which the assessment manager is satisfied is a change under section 26.1; or
  - (b) the Minister has given the concurrence agency a direction under section 99 of the Act; or
  - (c) the applicant has given written agreement to the change to the referral agency response.<sup>2</sup>
- 28.3. A concurrence agency may give a late referral agency response before the application is decided, if the applicant has given written agreement to the late referral agency response.
- 28.4. If a concurrence agency proposes to change its referral agency response under section 28.2(a), the concurrence agency must—
- (a) give notice of its intention to change its referral agency response to the assessment manager and a copy to the applicant within 5 days of receiving notice of the change under section 25.1; and
  - (b) the concurrence agency has 10 days from the day of giving notice under paragraph (a), or a further period agreed between the applicant and the concurrence agency, to give an amended referral agency response to the assessment manager and a copy to the applicant.

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<sup>1</sup> Pursuant to Section 68 of the *Planning Act 2016*

<sup>2</sup> In the instance an applicant has made representations to the concurrence agency under section 30, and the concurrence agency agrees to make the change included in the representations, section 28.2(c) is taken to have been satisfied.

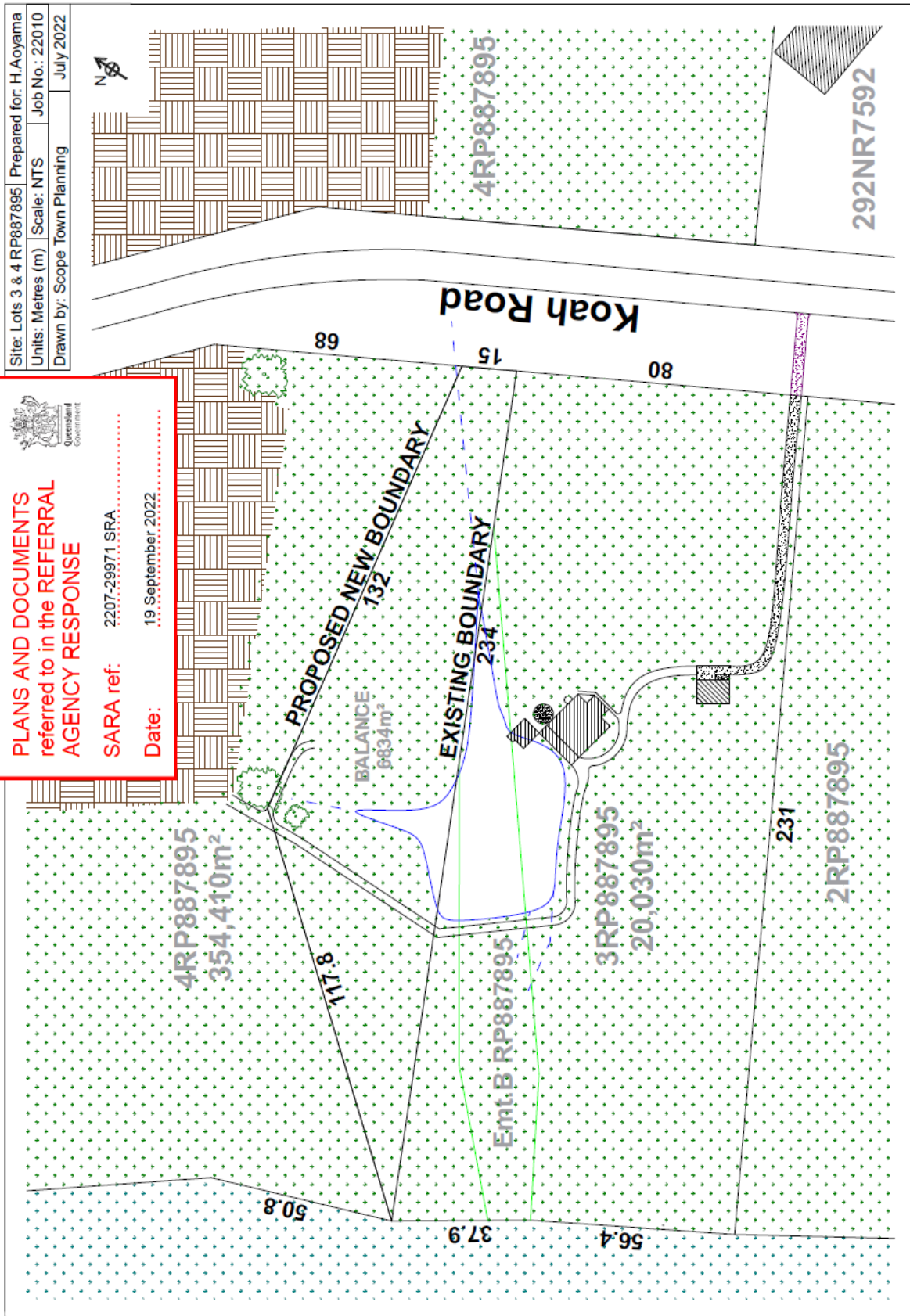
## Part 7: Miscellaneous

### 30 Representations about a referral agency response

- 30.1. An applicant may make representations to a concurrence agency at any time before the application is decided, about changing a matter in the referral agency response.<sup>3</sup>

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<sup>3</sup> An applicant may elect, under section 32, to stop the assessment manager's decision period in which to take this action. If a concurrence agency wishes to amend their response in relation to representations made under this section, they must do so in accordance with section 28.



**PLANS AND DOCUMENTS**  
referred to in the REFERRAL  
**AGENCY RESPONSE**

**SARA ref:** 2207-29971 SRA  
**Date:** 19 September 2022

Site: Lots 3 & 4 RP887895 Prepared for: H.Aoyama  
Units: Metres (m) Scale: NTS Job No.: 22010  
Drawn by: Scope Town Planning July 2022