

8.1 N EVANS - RECONFIGURING A LOT - BOUNDARY REALIGNMENT (3 INTO 3 LOTS) - LOT 25 ON DA126, LOT 82 ON RP851550 & LOT 2 ON RP744259 - 2143 MOSSMAN - MOUNT MOLLOY ROAD & BROWN ROAD, JULATTEN - RAL/22/0021

Date Prepared: 28 June 2023

Author: Planning Officer

Attachments: 1. Proposal Plan
2. State Assessment Referral Agency (SARA) Response dated 27 June 2023

APPLICATION DETAILS

| APPLICATION | | PREMISES | |
|-----------------------------|--|----------------|--|
| APPLICANT | N Evans | ADDRESS | 2143 Mossman-Mount Molloy Road and Brown Road, Julatten |
| DATE LODGED | 16 December 2022 | RPD | Lot 25 on DA126, Lot 82 on RP851550 and Lot 2 on RP744259 |
| TYPE OF APPROVAL | Development Permit | | |
| PROPOSED DEVELOPMENT | Reconfiguring a Lot – Boundary Realignment (3 lots into 3 lots) | | |
| FILE NO | RAL/22/0021 | AREA | Lot 25 – 1,012m ² Lot 82 – 85.704ha Lot 2 – 109.249ha |
| LODGED BY | RPS AAP Consulting Pty Ltd | OWNER | Lot 25 & 82 – ND & MG Evans Lot 2 – NT & JD Evans |
| PLANNING SCHEME | Mareeba Shire Council Planning Scheme 2016 | | |
| ZONE | Lot 25 – Low Density Residential zone Lot 82 & 2 – Rural zone | | |
| LEVEL OF ASSESSMENT | Impact Assessment | | |
| SUBMISSIONS | No submissions received | | |

EXECUTIVE SUMMARY

Council is in receipt of an impact assessable development application described in the above application details. The application is impact assessable due to the changes to the Planning Scheme as a result of Temporary Local Planning Instrument (TLPI) No. 01 of 2021 (Subdivision in Rural zone). No submissions were received during the public notification period.

The proposed boundary realignment includes two (2) components. The first component of the development proposes the relocation of Lot 25 on DA126, which is a residential zoned allotment with an area of 1,012m². Lot 25 is currently situated in the north-west corner of the subject land in proximity to Bushy Creek and is subject to seasonal flooding during large rain events. It is proposed to relocate this allotment to the north-east corner of the site adjacent to the Julatten Primary School. In its new location, the allotment will achieve flood immunity and will be clustered with

existing residential allotments. The new location will decrease the likelihood of future land use conflict with surrounding farmland should the small allotment be on-sold. The zoning of the new relocated smaller allotment will be “Rural”, and it will have an area of just 3,690m².

The second component of the boundary realignment proposes the transfer of 25.44 hectares of land from existing Lot 82 on RP851550 to adjoining Lot 2 on RP744259. This transfer of land will create a larger 134.7 hectare parcel (proposed Lot 3) and a reduced 60 hectare parcel (proposed Lot 2).

The application and supporting material has been assessed against the Mareeba Shire Council Planning Scheme 2016. The first component of the proposed boundary realignment (relocation of residential sized Lot 25 on DA126 to create a 3,690m² Rural zoned allotment) is in conflict with some aspects of the Rural zone code and reconfiguring a lot code which seeks to discourage the creation of lots less than 60 hectares in the Rural zone. However, in this instance, the relocation of Lot 25 is considered common sense town planning, resulting in a more sensible lot configuration and will not compromise the Planning Schemes higher order Strategic Framework provisions which seek to protect agricultural land from fragmentation and alienation.

The second component of the proposed boundary realignment is compliant with the Planning Scheme’s assessment benchmarks and will maintain the desired minimum lot size of 60 hectares in both instances (proposed Lots 2 & 3).

It is recommended that the application be approved in full, subject to conditions.

OFFICER’S RECOMMENDATION

1. That in relation to the following development application:

| APPLICATION | | PREMISES | |
|-----------------------------|---|----------------|---|
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| DATE LODGED | 16 December 2022 | RPD | Lot 25 on DA126, Lot 82 on RP851550 and Lot 2 on RP744259 |
| TYPE OF APPROVAL | Development Permit | | |
| PROPOSED DEVELOPMENT | Reconfiguring a Lot – Boundary Realignment (3 lots into 3 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), referral 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 (3 Lots into 3 Lots)

(B) APPROVED PLANS:

| Plan/Document Number | Plan/Document Title | Prepared by | Dated |
|----------------------|---|-------------|------------|
| AU006487-1C | Plan of Lots 1-3 – Cancelling Lot 25 on DA126, Lot 82 on RP851550 & Lot 2 on RP744259 | RPS | 09/06/2023 |

(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, and subject to any alterations:

- found necessary by the 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 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.

3.2 All payments or bonds required to be made to the Council pursuant to any condition of this approval must be made prior to the endorsement of the plan of survey and at the rate applicable at the time of payment.

3.3 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.

3.4 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.

3.5 Where approved existing buildings and structures are to be retained, setbacks to new property boundaries are to be in accordance with Planning Scheme requirements for the relevant structure and/or Queensland Development Code. A plan demonstrating compliance must be submitted prior to endorsement of the plan of survey.

3.6 Charges

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

3.7 Lot 2 and Lot 3 must achieve a minimum lot size of 60 hectares. Lot 1 must not exceed 3,700m² in size.

4. Infrastructure Services and Standards

4.1 Access

An access crossover to Lot 1 must be constructed (from the edge of Button Close to the property boundary of Lot 1) in accordance with FNQROC Development Manual Standards, to the satisfaction of Council's delegated officer.

4.2 Stormwater Drainage

4.2.1 The applicant/developer must take all necessary steps to ensure a non-worsening effect on surrounding land as a consequence of the development and must take all reasonable and practical measures to ensure discharge occurs in compliance with the Queensland Urban Drainage Manual (QUDM) and the FNQROC Development Manual, to the satisfaction of Council's delegated officer.

4.2.2 All stormwater drainage must be discharged to an approved legal point of discharge.

4.3 Water Supply

At the time of construction of a dwelling on Lot 1, a water supply must be provided via:

(a) a bore or bores are provided in accordance with the Design Guidelines set out in the Planning Scheme Policy 4 – FNQROC Regional Development Manual; or

(b) on-site water storage tank/s:

(i) with a minimum capacity of 90,000L; and

(ii) which are installed and connected prior to the occupation of the dwelling.

4.4 On-Site Wastewater Management

At the time of construction of any future dwelling on Lot 1, 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.

4.5 Electricity provision/supply

The applicant/developer must ensure that an appropriate level of electricity supply is provided to Lot 1 (only) in accordance with FNQROC Development Manual standards (as amended) to the satisfaction of Council's delegated officer.

Written advice from an Electricity Service Provider is to be provided to Council indicating that an agreement has been made for the provision of power reticulation.

4.6 Telecommunications

The applicant/developer must demonstrate that a connection to the national broadband network is available for Lot 1, or alternatively, enter into an agreement with a telecommunication carrier to provide telecommunication services to each lot and arrange provision of necessary conduits and enveloping pipes.

(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.

(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.

(E) REFFERAL AGENCY CONDITIONS

State Assessment and Referral Agency conditions dated 27 June 2023.

(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 land is situated at 2143 Mossman - Mount Molloy Road and Brown Road, Julatten and comprises three (3) allotments being Lot 25 on DA126, Lot 82 on RP851550 and Lot 2 on RP744259. Lot 25 is zoned Low density residential while Lot 82 and Lot 2 are zoned Rural under the Mareeba Shire Council Planning Scheme 2016.

Lot 25 on DA126 is irregular in shape with an area of 1,012m². Lot 25 includes 30 metres of frontage to Mossman – Mount Molloy Road with no formal access in place. It is situated in proximity to Bushy Creek and is understood to be subject to seasonal flooding during peak rain events. The lot is vacant and is surrounded by Lot 82 on RP851550 on all three (3) sides. Lot 25 is not separated from surrounding Lot 82 by any fencing and is used in conjunction with Lot 82 for grazing livestock.

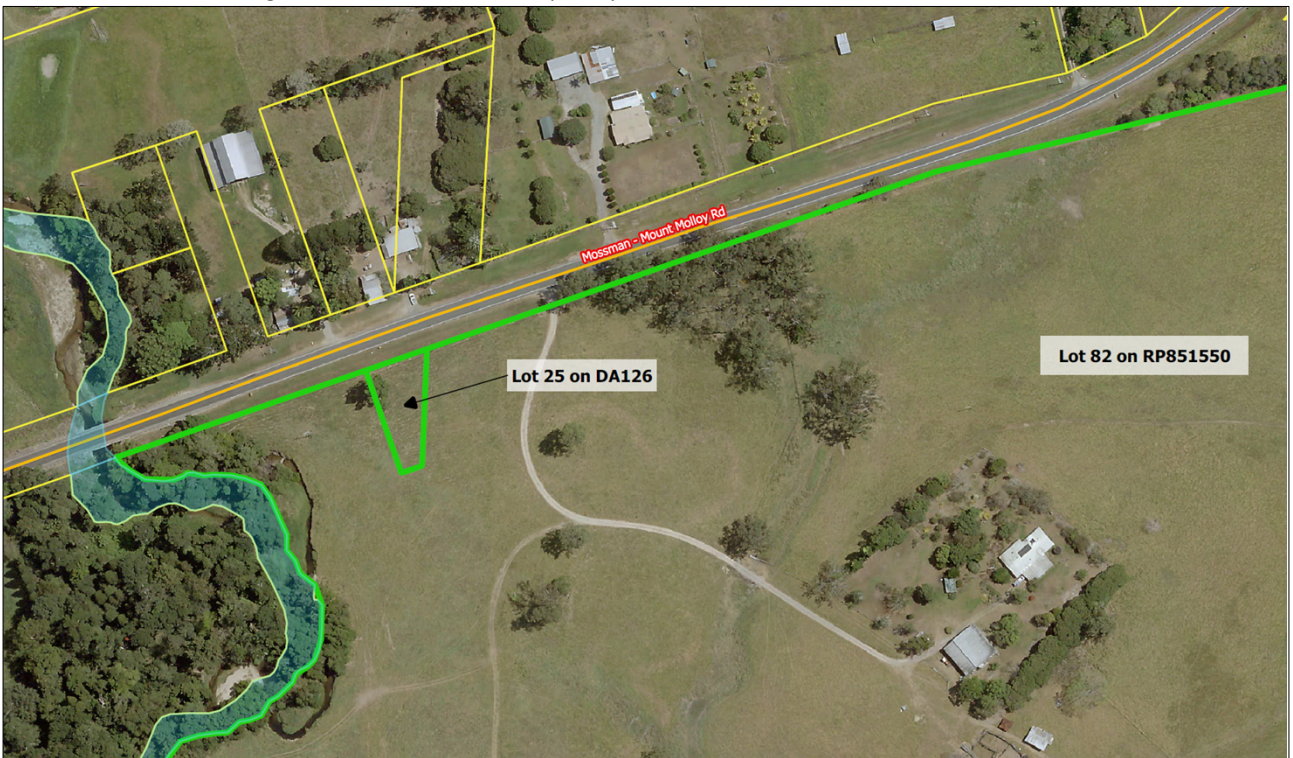
Lot 82 on RP851550 has an area of 85.704 hectares and includes 548 metres of frontage to Mossman – Mount Molloy Road, 55 metres of frontage to Button Close and 1.484 kilometres of frontage to an undeveloped section of the Brown Road reserve. Lot 82 is improved by a dwelling, outbuildings and cattle yards clustered together on the northern half of the property. Access is gained via Mossman – Mount Molloy Road by a gravel crossover. Bushy Creek spans the entire western boundary of the allotment. The land also contains a number of seasonal watercourses, wetlands and swamps that form tributaries to Bushy Creek.

Lot 2 on RP744259 has an area of 109.249 hectares and includes 658 metres of frontage to McLeans Bridge Road and a further 693 metres of frontage to the undeveloped section of the Browns Road reserve. Lot 2 is improved by some small livestock/feeding shelters and paddock fencing only and is predominately cleared with a large low lying wetland area over the eastern half of the allotment which forms a tributary to Rifle Creek which runs along the southern boundary of the site for approximately 200 metres.



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

The original development application proposed the creation of a smaller proposed Lot 2 with an area of just 43.5 hectares. Due to significant conflicts with the Mareeba Shire Council Planning Scheme 2016 (as emended by the TLPI) the applicants were notified of Council officers’ intentions to recommend that this component of the application be refused, and that insufficient town planning justification existed to justify approval, despite these conflicts.

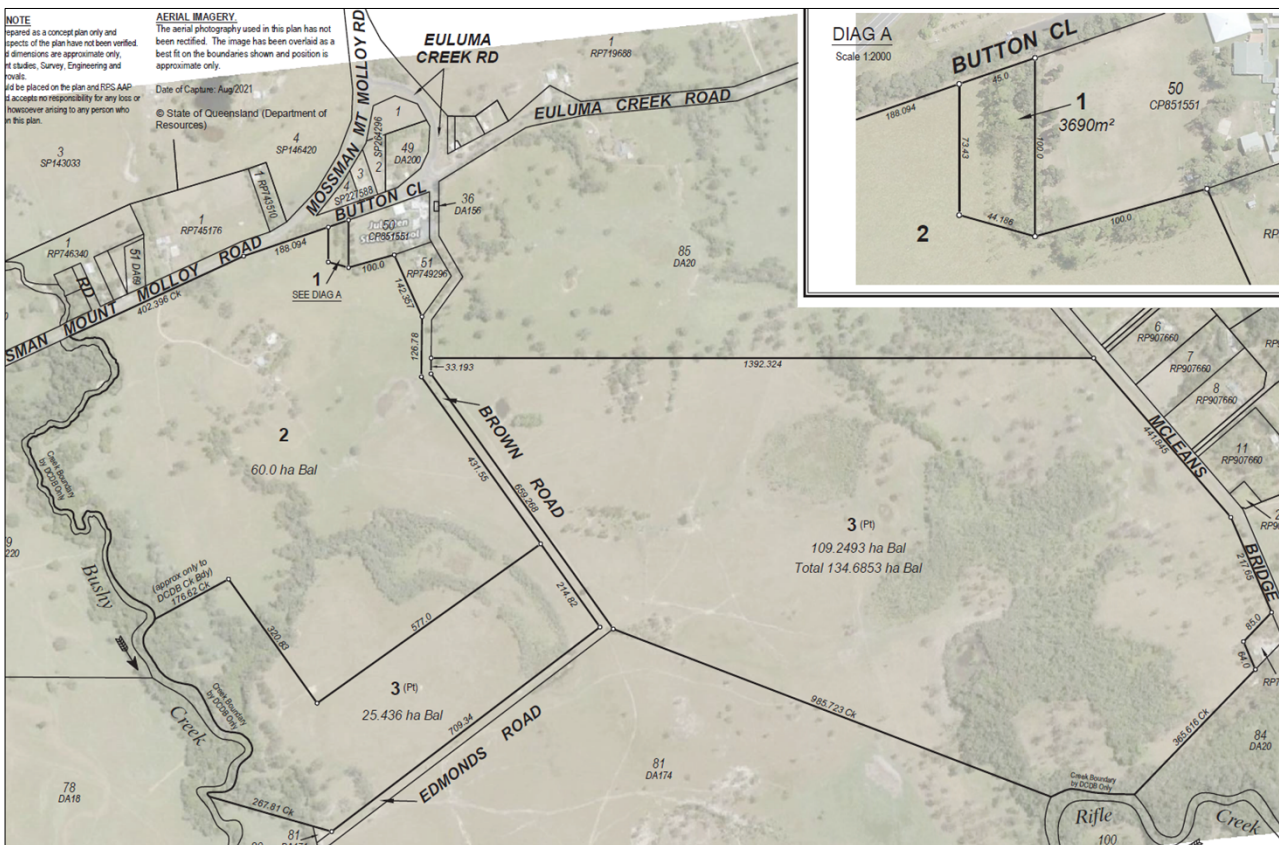
As a result, the application was subsequently amended (through the minor change process) to include a larger proposed Lot 2 with an area of 60 hectares.

PREVIOUS APPLICATIONS & APPROVALS

Nil

DESCRIPTION OF PROPOSED DEVELOPMENT

The development application seeks a Development Permit for Reconfiguring a Lot – Boundary Realignment (3 lots into 3 lots) in accordance with the plan shown below and included as **Attachment 1**:



The proposed boundary realignment includes two (2) components. The first component of the development proposes the relocation of Lot 25 on DA126, which is a residential zoned allotment with an area of 1,012m². Lot 25 is currently situated in the north-west corner of the subject land adjacent Bushy Creek and is subject to seasonal flooding in its current location. It is proposed to relocate this allotment to the north-east corner of the site adjacent the Julatten Primary School. In its new location, the allotment will achieve flood immunity and will be clustered with existing residential allotments. Proposed Lot 1 will have an area of 3,680m² and will be accessed from Button Close.

The second component of the boundary realignment proposes the transfer of 25.44 hectares of land from existing Lot 82 on RP851550 to adjoining Lot 2 on RP744259. This transfer of land will create a larger 134.7 hectare parcel (proposed Lot 3) and a reduced 60 hectare parcel (proposed Lot 2). No change to the access arrangements for either proposed lots 2 or 3 will occur.

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:

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

PLANNING SCHEME DESIGNATIONS

| | |
|----------------------|---|
| Strategic Framework: | <p>Land Use Categories</p> <ul style="list-style-type: none"> • Rural Area <ul style="list-style-type: none"> - Rural Agricultural Area - Rural Other • Residential Area <p>Natural Environment Elements</p> <ul style="list-style-type: none"> • Biodiversity Area • Habitat Linkage <p>Transport Elements</p> <ul style="list-style-type: none"> • State Controlled Road • Principal Cycle Routes <p>Infrastructure Elements</p> <ul style="list-style-type: none"> • Major Electrical Infrastructure |
| Zone: | <ul style="list-style-type: none"> - Low Density Residential Zone - Rural Zone |
| Overlays: | <ul style="list-style-type: none"> - Agricultural Land Overlay - Bushfire Hazard Overlay - Environmental Significance Overlay - Flood Hazard Overlay - Regional Infrastructure and Substations Overlay - Transport Infrastructure Overlay |

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

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

The boundary realignment includes two (2) components, the first being the relocation of an existing 1,012m² allotment from its existing low lying flood prone location adjacent Bushy Creek to the

north-east corner of the subject land adjacent the Julatten School. Although this component of the proposal will result in the creation of a rural zoned allotment with an area of just 3,690m² it is considered to be common sense town planning and will result in an existing residential sized lot being relocated to a more suitable, flood free location adjacent the school and clustered with other residential allotments. A further town planning benefit of the relocation of this allotment will be to reduce the likelihood of future land use conflict that may occur in its current location as a residential lot surrounded on three (3) sides by productive agricultural land, particularly considering the possibility that this surrounding farm land could one day be used for broadacre cropping (e.g. sugar cane production).

The second component of the boundary realignment proposes the transfer of 25.44 hectares of land from existing Lot 82 on RP851550 to adjoining Lot 2 on RP744259. This transfer of land will create a larger 134.7 hectare parcel (proposed Lot 3) and a reduced 60 hectare parcel (proposed Lot 2). This component of the proposal complies with all relevant Planning Scheme provisions.

The proposed development will not result in the creation of any additional lifestyle lots, nor will it result in an increase in dwelling densities in the locality and could only benefit the Shires agricultural sector by decreasing the likelihood of future land use conflict. The proposed development complies with Strategic Outcomes 5 and 6, and 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

The proposed boundary realignment will have no impact on water, wastewater and stormwater infrastructure, and a negligible impact on the local government maintained transport infrastructure (1 additional lot accessing from Button Close). As such, the proposed development does not compromise Strategic Outcome 6.

Relevant Developments Codes

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

- 6.2.6 Low density residential zone code
- 6.2.9 Rural zone code
- 8.2.1 Agricultural land overlay code
- 8.2.3 Bushfire hazard overlay code

- 8.2.4 Environmental significance overlay code
- 8.2.6 Flood hazard overlay code
- 8.2.9 Regional infrastructure corridors and substations 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 would conflict with assessment benchmarks contained in the Rural zone code and Reconfiguring a lot code as a result of Temporary Local Planning Instrument No. 01 of 2021 (Subdivision in Rural zone). A summary of compliance/non-compliance is provided below:

| Relevant Codes | Comments |
|--|--|
| Low density residential zone code | The application either 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 zone code | 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. Refer to planning discussion section of the report for further commentary. |
| Agricultural land overlay code | The application either 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 application either 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. |
| Environmental significance overlay code | The application either 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. |
| Flood hazard overlay code | The application either 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. |
| Regional infrastructure corridors and substations overlay code | The application either 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. |
| Scenic amenity overlay code | The application either 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. |
| Landscaping code | The application either 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 application either 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. |
| Reconfiguring a lot code | The application conflicts with the following performance outcomes: <ul style="list-style-type: none"> • PO1.1 • PO1.2 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. |
| Works, services and infrastructure code | The application either 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. |

(D) Planning Scheme Policies

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.

REFERRAL AGENCY

The application triggered referral to the State Assessment and Referral Agency as a Concurrence Agency for State transport infrastructure and clearing native vegetation.

That Department advised in a letter dated 27 June 2023 that they require the conditions to be attached to any approval **(Attachment 2)**.

Internal Consultation

Not applicable.

PUBLIC NOTIFICATION

The development proposal was placed on public notification from 28 March 2023 to 21 April 2023. The applicant submitted the notice of compliance on 24 April 2023 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

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. Proposed Lot 1 is significantly less than 60 hectares in size with an area of just 4,690m².

In its current location in proximity to Bushy Creek, Lot 25 is subject to seasonal flooding. The allotment is also a standalone residential zoned allotment surrounded on 3 sides by productive Class A agricultural land. It is proposed to relocate this allotment to the north-east corner of the site adjacent to the Julatten Primary School. The relocation of Lot 25 to create proposed Lot 1 is considered to be common sense town planning and will result in an existing residential sized lot being relocated to a more suitable, flood free location adjacent to the school and clustered with other residential allotments and non-agricultural uses (school). A further town planning benefit of the relocation of this allotment will be a reduction in the likelihood of future land use conflict that may occur in its current location as a standalone residential lot surrounded on three (3) sides by productive agricultural land, particularly considering the possibility that this surrounding farm land could one day be used for broadacre cropping (e.g. sugar cane production).

The second component of the boundary realignment proposes the transfer of 25.44 hectares of land from existing Lot 82 on RP851550 to adjoining Lot 2 on RP744259. This transfer of land will create a larger 134.7 hectare parcel (proposed Lot 3) and a reduced 60 hectare parcel (proposed Lot 2). This component of the boundary realignment complies with Purpose statement (3)(a).

It is anticipated that if the boundary realignment is ever completed and proposed smaller Lot 1 is created, that it will be subsequently rezoned into a residential zoning either when the current Planning Scheme undergoes a relevant amendment or a new Planning Scheme is implemented.

The proposed development will not result in the creation of any additional lifestyle lots, nor will it result in an increase in dwelling densities in the locality and could only benefit the Shires agricultural sector by decreasing the likelihood of future land use conflict. The proposed development complies with Strategic Outcomes 5 and 6, and specific outcomes 2 and 3.

9.4.4 Reconfiguring a lot code

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

Proposed Lot 1 will have an area of just 3,690m² and is therefore non-compliant with PO1.1.

In its current location in proximity to Bushy Creek, Lot 25 is subject to seasonal flooding. The allotment is also a standalone residential zoned allotment surrounded on three (3) sides by productive Class A agricultural land. It is proposed to relocate this allotment to the north-east corner of the site adjacent to the Julatten Primary School. The relocation of Lot 25 to create proposed Lot 1 is considered to be common sense town planning and will result in an existing residential sized lot being relocated to a more suitable, flood free location adjacent the school and clustered with other residential allotments and non-agricultural uses (school). A further town planning benefit of the relocation of this allotment will be a reduction in the likelihood of future land use conflict that may occur in its current location as a standalone residential lot surrounded on three (3) sides by productive agricultural land, particularly considering the possibility that this surrounding farm land could one day be used for broadacre cropping (e.g. sugar cane production).

The second component of the boundary realignment proposes the transfer of 25.44 hectares of land from existing Lot 82 on RP851550 to adjoining Lot 2 on RP744259. This transfer of land will create a larger 134.7 hectare parcel (proposed Lot 3) and a reduced 60 hectare parcel (proposed Lot 2). This component of the boundary realignment complies with Purpose statement (3)(a).

It is anticipated that if the boundary realignment is ever completed and proposed smaller Lot 1 is created, it will be subsequently rezoned into a residential zoning either when the current Planning Scheme undergoes a relevant amendment or a new Planning Scheme is implemented.

Despite not complying with PO1.1, it is considered that the proposed boundary realignment meets the intent of the higher order Strategic Framework provisions in that the development will not result in the creation of any additional lifestyle lots, nor will it result in an increase in dwelling densities in the locality and could only benefit the Shires agricultural sector by decreasing the likelihood of future land use conflict.

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 Lots 2 and 3 will exceed the 400m frontage requirement. Relocated proposed Lot 1 will achieve a frontage to Button Close of only 45 metres and is therefore non-compliant with PO1.2. Despite the reduced frontage to Lot 1, this frontage is adequate to provide for access, whilst maintaining a regular lot shape and reduced lot size.

The frontage proposed for Lot 1 is appropriate given its likely future use as a lifestyle allotment.





RA6-N
 SARA reference: 2301-32748 SRA
 Council reference: RAL/22/0021
 Applicant reference: AU006487

27 June 2023

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

Attention: Carl Ewin

Dear Sir/Madam

Changed SARA referral agency response—Boundary Realignment (3 lots into 3 lots) at 2143 & 2233 Mossman Mount Molloy Road, Julatten

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

On 13 June 2023, the State Assessment and Referral Agency (SARA) received notice of a change to the development application described below. SARA has assessed the changes and now provides this changed referral agency response which replaces the response dated 17 March 2023.

Response

| | |
|-------------------|--|
| Outcome: | Referral agency response – with conditions |
| Date of response: | ###Secondary1### |
| Conditions: | The conditions in Attachment 1 must be attached to any development approval |
| Advice: | Advice to the applicant is in Attachment 2 |
| Reasons: | The reasons for the referral agency response are in Attachment 3 |

Development details

| | | |
|--------------|--------------------|---|
| Description: | Development permit | Reconfiguring a Lot - Boundary Realignment (3 Lots into 3 Lots) |
| SARA role: | Referral agency | |

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

2301-32748 SRA

SARA trigger: **Schedule 10, Part 9, Division 4, Subdivision 2, Table 1** (Planning Regulation 2017) – Reconfiguring a lot near a state-controlled road
Schedule 10, Part 3, Division 4, Table 2 (Planning Regulation 2017) – Reconfiguring a lot involving vegetation clearing

SARA reference: 2301-32748 SRA
 Assessment manager: Mareeba Shire Council
 Street address: 2143 and 2233 Mossman Mount Molloy Road, Julatten
 Real property description: Lot 25 on DA126, Lot 82 on RP851550, and Lot 2 on RP744259
 Applicant name: Neville Evans
 Applicant contact details: C/- RPS AAP Consulting Pty Ltd
 135 Abbott Street
 Cairns QLD 4870
 Stacey.Devaney@rpsgroup.com.au

Human Rights Act 2019 considerations: Section 58 of the *Human Rights Act 2019* specifies required conduct for public entities when acting or making a decision. Sections 15 – 37 of the *Human Rights Act 2019* identifies the human rights a public entity must consider in making a decision.
 This decision does not limit the above identified human rights.

Representations

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@dssilgp.qld.gov.au who will be pleased to assist.

Yours sincerely



Brett Nancarrow
 Manager (Planning)

- cc Neville Evans, Stacey.Devaney@rpsgroup.com.au
- enc Attachment 1 - Changed referral agency conditions
 Attachment 2 - Changed advice to the applicant
 Attachment 3 - Changed reasons for referral agency response
 Attachment 4 - Representations about a referral agency response
 Attachment 5 - Documents referenced in conditions

2301-32748 SRA

Attachment 1—Changed referral agency conditions

(Under section 56(1)(b)(i) of the *Planning Act 2016* the following conditions must be attached to any development approval relating to this application) (Copies of the plans and specifications referenced below are found at **Attachment 5**)

| Reconfiguring a lot | | |
|--|---|---------------|
| 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(s): | | |
| 1. | The development must be carried out generally in accordance with the following plan: <ul style="list-style-type: none"> • RECONFIGURATION OF A LOT, Plan of Lots 1-3 – Cancelling Lot 25 on DA126, Lot 82 on RP851550 & Lot 2 on RP744259, prepared by RPS, dated 09-06-2023, Drawing AU006487-1C. | At all times. |

2301-32748 SRA

Attachment 2—Changed advice to the applicant

| 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—Changed reasons for referral agency response

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

The reasons for the SARA decision are:

The proposed development, with conditions, complies with the relevant provisions of State code 1: Development in a state-controlled road environment, and State code 16: Native vegetation clearing, as follows:

- The proposed development is unlikely to compromise the safety, function, and efficiency of Mossman Mount Molloy Road, a state-controlled road.
- No new or changed access is required to Mossman Mount Molloy Road.
- The proposed development is not increasing traffic generation via Mossman Mount Molloy Road.
- The proposed rural lots are of sufficient size to ensure stormwater and drainage flow is discharged on-site and will not adversely affect Mossman Mount Molloy Road.
- No mandatory measures to mitigate impacts from transport corridor noise are required adjacent to this part of Mossman Mount Molloy Road.
- 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 between Proposed Lots 2 and 3.
- Clearing will not occur within 47m of Bushy Creek.
- Clearing of endangered regional ecosystems, of concern regional ecosystems, and essential habitat, is within acceptable limits.
- 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 State Development Assessment Provisions (version 3.0)
- the Development Assessment Rules
- SARA DA Mapping system
- State Planning Policy mapping system
- *Human Rights Act 2019*

2301-32748 SRA

Attachment 4— Representations about a referral agency response

(page left intentionally blank – attached separately)

2301-32748 SRA

Attachment 5—Documents referenced in conditions

(page left intentionally blank – attached separately)

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 Rules¹ regarding **representations about a referral agency response**

Part 6: Changes to the application and referral agency responses

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.²
- 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.

¹ Pursuant to Section 68 of the *Planning Act 2016*

² 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.³

³ 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.

