

8.4 A LEIGHTON - RECONFIGURING A LOT - BOUNDARY REALIGNMENT - LOT 77 ON HG470 & LOT 148 ON HG569 - 229 RANDAZZO ROAD, MAREEBA - RAL/23/0005

Date Prepared: 9 August 2023

Author: Coordinator Planning Services

Attachments:

1. Proposal Plan
2. State Assessment and Referral Agency response dated 5 July 2023

APPLICATION DETAILS

APPLICATION		PREMISES	
APPLICANT	A Leighton	ADDRESS	229 Randazzo Road, Mareeba
DATE LODGED	19 June 2023	RPD	Lot 77 on HG470 & Lot 148 on HG569
TYPE OF APPROVAL	Development Permit		
PROPOSED DEVELOPMENT	Reconfiguring a Lot – Boundary Realignment		
FILE NO	RAL/23/0005	AREA	Lot 77 – 3.077 ha Lot 148 – 58.06 ha
LODGED BY	RPS AAP Consulting Pty Ltd	OWNER	Lot 77 – R Nastasi Lot 148 – A Leighton
PLANNING SCHEME	Mareeba Shire Council Planning Scheme 2016, as amended by TLPI No. 01 of 2021		
ZONE	Rural 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 submissions were received in response to public notification of the application.

The applicants propose to reconfigure the common boundary between both allotments, by way of boundary realignment only (no additional allotment/s created). A small area will be transferred between the allotments to provide Lot 148 with legal access to Randazzo Road. Lot 148 is presently land-locked and reliant on the goodwill of neighbouring landowners for access.

The application and supporting material has been assessed against the Mareeba Shire Council Planning Scheme 2016 as amended by TLPI No. 01 of 2021, 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 seek to discourage the creation of any lot below 60 hectares within the Rural zone. In their current configuration, both lots are less than 60 hectares in size.

The Mareeba Shire Council Planning Scheme 2016 contains a hierarchy of assessment benchmarks.

The Strategic Framework are the highest order assessment benchmarks contained in the Planning Scheme and hold more 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.

OFFICER'S RECOMMENDATION

1. That in relation to the following development application:

APPLICATION		PREMISES	
APPLICANT	A Leighton	ADDRESS	229 Randazzo Road, Mareeba
DATE LODGED	19 June 2023	RPD	Lot 77 on HG470 & Lot 148 on HG569
TYPE OF APPROVAL	Development Permit		
PROPOSED DEVELOPMENT	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
AU009937-1	Proposed Boundary Realignment Lot 148 on HG569 & Lot 77 on HG470, Randazzo Road, Paddys Green	RPS	5-6-2023

(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. Where a structure is located in close proximity to a new property boundary, 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.

4. Infrastructure Services and Standards

- 4.1 An access crossover must be constructed (from the edge of the road pavement of Randazzo Road to the property boundary of proposed Lot 2) in accordance with the FNQROC Development Manual, to the satisfaction of Council's delegated officer.

(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.

(f) Electric Ants

Electric ants are designated as restricted biosecurity matter under the *Biosecurity Act 2014*.

Certain restrictions and obligations are placed on persons dealing with electric ant carriers within the electric ant restricted zone. Movement restrictions apply in accordance with Sections 74–77 of the *Biosecurity Regulation 2016*. Penalties may be

imposed on movement of electric ant carriers and electric ants in contravention of the legislated restrictions. It is the responsibility of the applicant to check if the nominated property lies within a restricted zone.

All persons within and outside the electric ant biosecurity zone have an obligation (a ***general biosecurity obligation***) to manage biosecurity risks and threats that are under their control, they know about, or they are expected to know about. Penalties may apply for failure to comply with a general biosecurity obligation.

For more information please visit the electric ant website at [Electric ants in Queensland | Business Queensland](#) or contact Biosecurity Queensland 13 25 23.

(E) REFFERAL AGENCY CONDITIONS

State Assessment and Referral Agency conditions dated 5 July 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 site comprises of the following allotments:

- Lot 77 on HG470, situated at 229 Randazzo Road, Mareeba, having an area of 3.077 hectares and a frontage of approximately 590 metres to Randazzo Road; and
- Lot 148 on HG569, situated at Randazzo Road, Mareeba, having an area of 58.06 hectares and no road frontage.

Randazzo Road is constructed to rural road bitumen sealed standard for the full frontage of Lot 77. Access to Lot 77 is obtained via a single driveway commencing near the southern boundary. Lot 148 is land locked and is reliant on an informal access through Sunwater's adjoining Lot 228 on HG479.

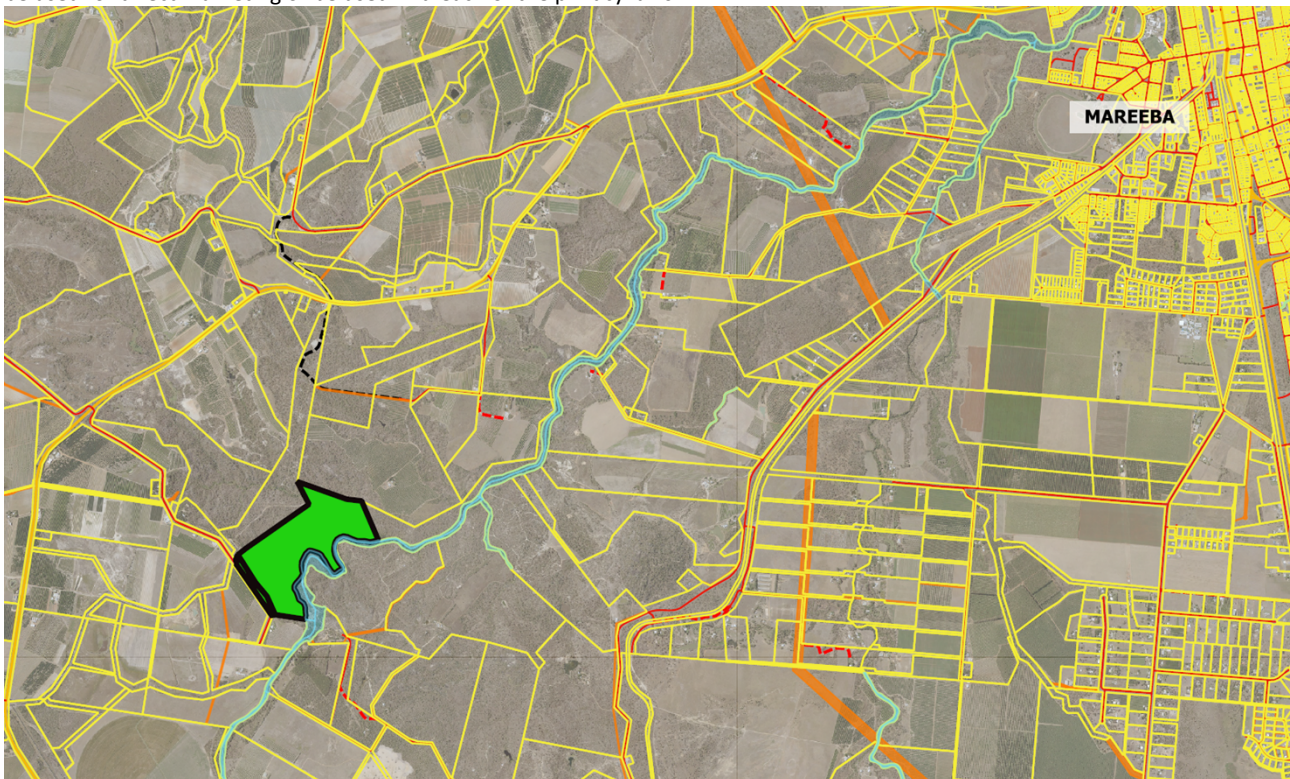
Lot 148 is currently unimproved and largely covered in remnant native vegetation. Lot 77 is improved by a dwelling house and domestic outbuilding. Granite Creek adjoins the south-eastern boundary of Lot 148.

All surrounding lots are zoned Rural.



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 applicant has provided the following description of the development:

“The intent of the proposed development is to facilitate lawful access from a gazetted road to Lot 148 on HG569, which is currently land-locked with no formal road frontage.

Historically, the parent parcel of Lot 148 on HG569 was subject of a compulsory acquisition by the State government for the purposes of the establishing the existing Mareeba Dimbulah Irrigation Scheme, currently managed by Sunwater. At the time of the acquisition, Sunwater’s predecessor did not establish an access easement burdening Lot 228 on HG479 for the benefit of Lot 148 on HG569. As a consequence, no formal access arrangements were established from a gazetted road to Lot 148 on HG569.

Adjoining Lot 228 on HG479 is owned and operated by Sunwater as part of the irrigation scheme and the applicant had previously been granted informal access through Lot 228 on HG479 to Lot 148 on HG569 from Randazzo Road. Formal legal advice has recently been received from Sunwater advising that the existing informal access arrangements are to be rescinded and the applicant would no longer have access through Lot 228 on HG479 to Lot 148 from Randazzo Road.

The applicant has investigated all other potential options for provision of access from a gazetted road to Lot 148 on HG569. The south-west corner of the site is constrained by an existing gully and is persistently wet, therefore does not provide a suitable location for access. Extensive discussions have been held with the adjoining landowner of Lot 77 on HG470 regarding the provision of either:

- Access easement through Lot 77 on HG470 for the benefit of Lot 148 on HG569; or*
- Potential land swap, requiring the provision of a reconfiguration of a lot to realign the boundaries to provide access to Lot 148 on HG569 from Randazzo Road.*

No agreement could be reached in relation to provision of an access easement, therefore, the applicant seeks development approval for Reconfiguring a Lot (Boundary Realignment – 2 Lots into 2 Lots) over land located at 229 Randazzo Road, Paddys Green described as Lot 77 on HG470 and Lot 148 on HG569.

Whilst it is noted that the subject site is zoned Rural and is subject to the Temporary Local Planning Instrument, restricting reconfiguring a lot applications for lots below 60ha, the intent of the proposal is solely to facilitate access to an existing land-locked parcel of land. The proposal will not alter existing land use activities currently conducted on the site, nor facilitate the fragmentation of agricultural land. Both existing Lot 77 on HG470 and Lot 148 on HG569 are below the minimum lot size of 60ha.

The proposed lots would have frontage to a gazetted road and the proposed lots are summarised below:

- *Proposed Lot 1 – 3.416 hectares, approx. 548 metres to Randazzo Road; and*
- *Proposed Lot 2 – 55.675 hectares, approx. 36 metres to Randazzo Road.”*

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 General Ecological Significance*

PLANNING SCHEME DESIGNATIONS

Strategic Framework:	Land Use Categories <ul style="list-style-type: none"> • Rural Area (Rural Other) Natural Environmental Elements <ul style="list-style-type: none"> • Biodiversity Areas • Habitat Linkage Natural Resource Elements <ul style="list-style-type: none"> • Key Resource Area
Zone:	Rural zone
Overlays:	Agricultural Land Overlay Airport Environs Overlay Bushfire Hazard Overlay Environmental Significance Overlay Extractive Resources Overlay Flood Hazard Overlay Hill and Slope 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.*

Comment

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

In their current configuration, both lots are already less than 60 hectares in size and no new allotment less than 60 hectares will be created.

The boundary realignment is limited to a land swap to provide legal access to proposed Lot 2. Existing Lot 148 (proposed Lot 2) is currently landlocked.

The boundary realignment does not adversely impact on the rural zone, nor does it result in the creation of an additional rural lifestyle lot or an additional rural residential purposes lot.

The boundary realignment is essential to secure legal access to existing Lot 148 (proposed Lot2), thereby allowing this rural land to be used for its intended rural purpose.

The proposed development will not further fragment agricultural land or compromise agricultural activity in the immediate locality and is therefore considered to comply with Strategic outcome 5.

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

Comment

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

In their current configuration, both lots are already less than 60 hectares in size and no new allotment less than 60 hectares will be created. The boundary realignment is essential to secure

legal access to existing Lot 148 (proposed Lot2), thereby allowing this rural land to be used for its intended rural purpose.

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 does not constitute a "subdivision" by definition.

In their current configuration, both lots are already less than 60 hectares in size and no new allotment less than 60 hectares will be created.

The boundary realignment is limited to a land swap to provide legal access to proposed Lot 2. Existing Lot 148 (proposed Lot 2) is currently landlocked.

The boundary realignment does not adversely impact on the rural zone, nor does it result in the creation of an additional rural lifestyle lot or an additional rural residential purposes lot.

The boundary realignment is essential to secure legal access to existing Lot 148 (proposed Lot2), thereby allowing this rural land to be used for its intended rural purpose.

The proposed development will not compromise, fragment or alienate agricultural land and is therefore 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 does not constitute a "subdivision" by definition.

In their current configuration, both lots are already less than 60 hectares in size and no new allotment less than 60 hectares will be created.

The boundary realignment is limited to a land swap to provide legal access to proposed Lot 2. Existing Lot 148 (proposed Lot 2) is currently landlocked.

The boundary realignment does not adversely impact on the rural zone, nor does it result in the creation of an additional rural lifestyle lot or an additional rural residential purposes lot.

The boundary realignment is essential to secure legal access to existing Lot 148 (proposed Lot2), thereby allowing this rural land to be used for its intended rural purpose.

The proposed development will not compromise, fragment or alienate agricultural land and is therefore 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 does not constitute a "subdivision" by definition. No additional title will be created, and the only change resulting from the development will be the construction of a new access to proposed Lot 2.

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:

- 6.2.9 Rural zone code
- 8.2.1 Agricultural land overlay code
- 8.2.2 Airport environs overlay code
- 8.2.3 Bushfire hazard overlay code
- 8.2.4 Environmental significance overlay code
- 8.2.5 Extractive resources 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 zone code	<p>The application conflicts with 6.2.9.2 Purpose (3) (a) of the code as both lots 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>
Agricultural land 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.
Airport environs 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.
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.
Extractive resources 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	<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</p>

	contained in the Planning Scheme's Strategic Framework. Refer to planning discussion section of report for commentary.
Works, services and infrastructure code	The application can be conditioned to comply with the relevant acceptable outcomes (or performance outcomes where no acceptable outcome is provided) contained within the code.

(D) Planning Scheme Policies/Infrastructure Charges Plan

The following planning scheme policies are relevant to the application:

Planning Scheme Policy 4 - FNQROC Regional Development Manual

A condition of approval will be included requiring all development works be designed and constructed/upgraded in accordance with FNQROC Development Manual standards.

(E) Adopted Infrastructure Charges Notice

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

REFERRAL AGENCY

The application triggered referral to the State Assessment and Referral Agency (SARA) as a Concurrence Agency for native vegetation clearing.

SARA advised in a letter dated 5 July 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 17 July 2023 to 8 August 2023. The applicant submitted the notice of compliance on 9 August 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.

In their current configuration, both lots are already less than 60 hectares in size and no new allotment less than 60 hectares will be created.

The boundary realignment is limited to a land swap to provide legal access to proposed Lot 2. Existing Lot 148 (proposed Lot 2) is currently landlocked.

The boundary realignment does not adversely impact on the rural zone, nor does it result in the creation of an additional rural lifestyle lot or an additional rural residential purposes lot.

The boundary realignment is essential to secure legal access to existing Lot 148 (proposed Lot2), thereby allowing this rural land to be used for its intended rural purpose. The proposed development will not further fragment agricultural land or compromise agricultural activity in the immediate locality.

Despite not complying with Purpose (3)(a) of the Rural zone code, 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 will only increase the rural viability of proposed Lot 2.

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

No new allotment less than 60 hectares in area will be created.

The boundary realignment is limited to a land swap to provide legal access to proposed Lot 2.

Existing Lot 148 (proposed Lot 2) is currently landlocked.

The boundary realignment does not adversely impact on the rural zone, nor does it result in the creation of an additional rural lifestyle lot or an additional rural residential purposes lot.

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.

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.

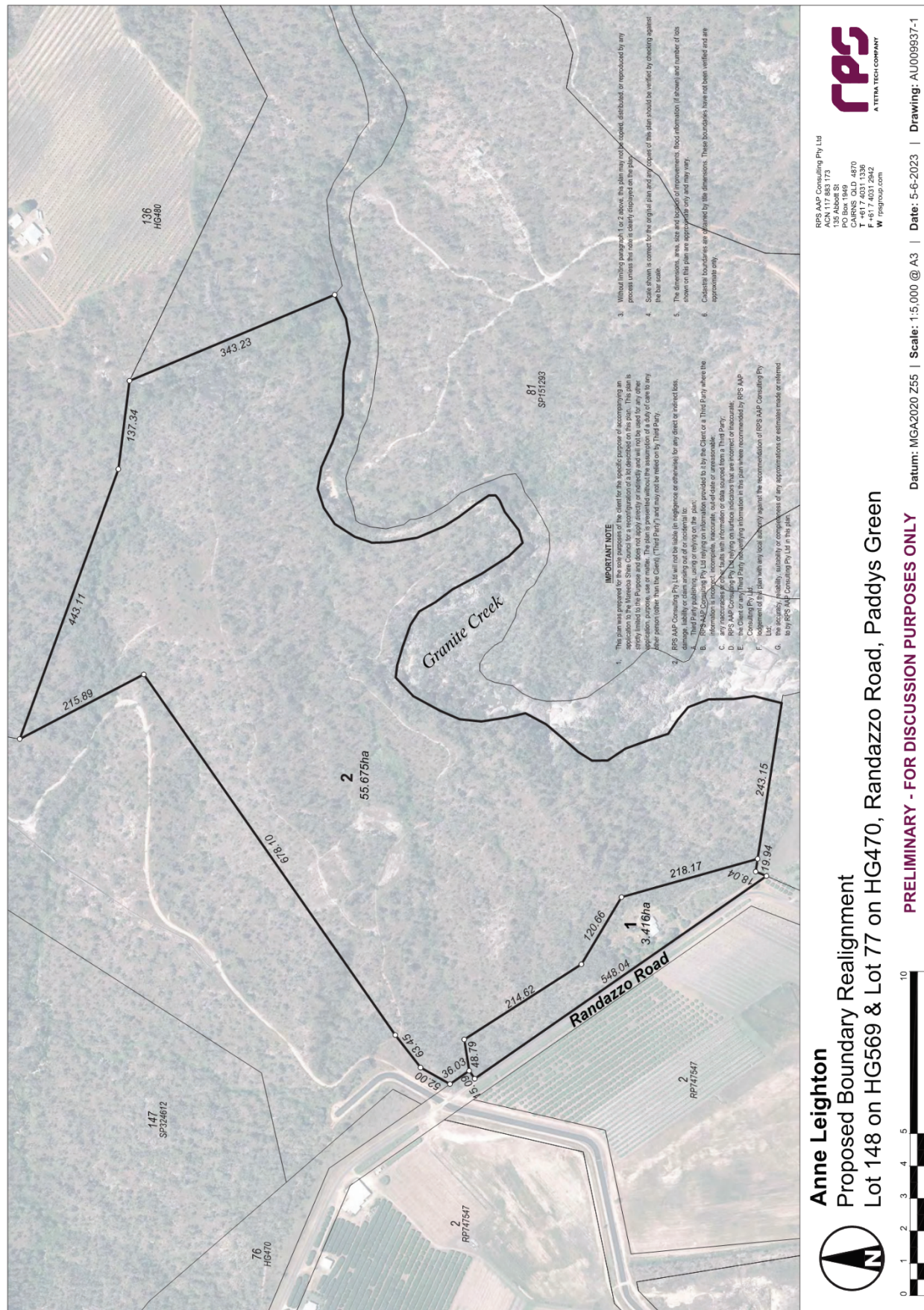
Comment

The boundary realignment is limited to a land swap to provide legal access to proposed Lot 2.

Existing Lot 148 (proposed Lot 2) is currently landlocked.

The boundary realignment remedies an historic error which allowed Lot 148 to be sold by the State without legal frontage/access.

The frontages proposed for each lot are appropriate.



RA6-N



SARA reference: 2306-35291 SRA
Council reference: RAL/23/0005
Applicant reference: AU009937

5 July 2023

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

Attention: Carl Ewin

Dear Mr Ewin

SARA referral agency response— Boundary realignment (2 lots into 2 lots)

(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 21 June 2023.

Response

Outcome:	Referral agency response – with conditions
Date of response:	5 July 2023
Conditions:	The conditions in Attachment 1 must be attached to any development approval
Reasons:	The reasons for the referral agency response are in Attachment 2

Development details

Description:	Development permit	Reconfiguring of a Lot - Boundary realignment (2 lots into 2 lots)
SARA role:	Referral agency	
SARA trigger:	Schedule 10, Part 3, Division 4, Table 2, Item 1 of the Planning Regulation 2017 – Native vegetation clearing	
SARA reference:	2306-35291 SRA	

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

2306-35291 SRA

Assessment manager: Mareeba Shire Council
Street address: 46 Tyrconnell Road & 229 Randazzo Road, Paddys Green
Real property description: Lot 148 on HG569, Lot 77 on HG470
Applicant name: Ann Leighton C/- RPS AAP Consulting Pty Ltd
Applicant contact details: 135 Abbott Street
Cairns QLD 4870
sam.leggerini@rpsgroup.com.au
Human Rights Act 2019 considerations: A consideration of the 23 fundamental human rights protected under the *Human Rights Act 2019* has been undertaken as part of this decision. It has been determined that this decision does not limit 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 3**.

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

For further information please contact Isley Peacey, Senior Planning Officer, on 4037 3202 or via email CairnsSARA@dsdilgp.qld.gov.au who will be pleased to assist.

Yours sincerely



Brett Nancarrow
Manager (Planning)

cc Ann Leighton, sam.leggerini@rpsgroup.com.au
enc Attachment 1 - Referral agency conditions
Attachment 2 - Reasons for referral agency response
Attachment 3 - Representations about a referral agency response provisions
Attachment 4 - Documents referenced in conditions

2306-35291 SRA

Attachment 1—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 documents referenced below are found at Attachment 4)

No.	Conditions	Condition timing
Reconfiguring of a lot		
10.3.4.2.1 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 reconfiguring a lot must be carried out generally in accordance with the following plans: (a) Proposed Boundary Realignment - Lot 148 on HG569 & Lot 77 on HG470, Randazzo Road, Paddys Green, prepared by RPS AAP Consulting Pty Ltd, dated 05/06/2023, reference AU009937-1.	Prior to submitting the Plan of Survey to the local government for approval.

2306-35291 SRA

Attachment 2—Reasons for referral agency response

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

The reasons for the SARA's decision are:

- The proposed development appropriately avoids and minimises clearing, with much of the vegetation on site retained to avoid the loss of biodiversity, maintain ecological processes, avoid land degradation and conserve vegetation.
- The development site is not subject to any notice requiring compliance on the development site or vegetation management requirements for particular regulated areas that the proposed clearing may be contrary to.
- The proposed development avoids impacts on vegetation and minimises and mitigates impacts on vegetation where avoidance is not possible.
- The proposed development does not result in a significant residual impact on a matter of state environmental significance.

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), as published by SARA
- the Development Assessment Rules
- SARA DA Mapping system
- section 58 of the *Human Rights Act 2019*

Attachment 3—Representations about a referral agency response provisions

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Attachment 4—Documents referenced in conditions

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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 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.

