

8.2 L & J ABENTHUM - MATERIAL CHANGE OF USE - DWELLING HOUSE (AND ANCILLARY SECONDARY DWELLING & OUTBUILDING) - LOT 9 ON RP901433 - 2 DEBEL CLOSE, MAREEBA - MCU/23/0017

Date Prepared: 16 October 2023
Author: Senior Planner
Attachments: 1. Proposal Plan

APPLICATION DETAILS

APPLICATION		PREMISES	
APPLICANT	L & J Abenthum	ADDRESS	2 Debel Close, Mareeba
DATE LODGED	5 September 2023	RPD	Lot 9 on RP901433
TYPE OF APPROVAL	Development Permit		
PROPOSED DEVELOPMENT	Material Change of Use – Dwelling House (and Ancillary Secondary Dwelling and Outbuilding)		
FILE NO	MCU/23/0017	AREA	4,131m ²
LODGED BY	L & J Abenthum	OWNER	L & J Abenthum
PLANNING SCHEME	Mareeba Shire Council Planning Scheme 2016		
ZONE	Recreation and Open Space zone		
LEVEL OF ASSESSMENT	Impact Assessment		
SUBMISSIONS	Nil		

EXECUTIVE SUMMARY

Council is in receipt of an impact assessable development application described in the above application details. No submissions were received during the mandatory public notification period.

The subject site which is situated within the Recreation and open space zone was identified as surplus to Council requirements and subsequently on-sold in March 2022. The land was on-sold with the expectation that it would be developed for residential purposes. As an alternative to rezoning the land, the landowners have opted to instead seek use rights over the land for a dwelling house and ancillary infrastructure which is impact assessable development in the Recreation and open space zone. This process is significantly less onerous than rezoning the land.

The application and supporting material has been assessed against the Mareeba Shire Council Planning Scheme 2016 and although not consistent with the intent of the current zoning, the proposal is consistent with the future intent of the land for residential purposes. As such, no significant town planning issues were identified. Obtaining a material change of use approval for a dwelling house will allow the site to accommodate a dwelling and be used for residential purposes until the land is rezoned from the Recreation and open space zone as part of a major Planning Scheme amendment.

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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and in accordance with the Planning Act 2016, the applicant be notified that the application for a development permit for the development specified in (A) is:

Approved by Council in accordance with the approved plans/documents listed in (B), subject to assessment manager conditions in (C), assessment manager’s advice in (D), relevant period in (E), further permits in (F), and further approvals from Council listed in (G);

And

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

(A) APPROVED DEVELOPMENT: Development Permit for Material Change of Use – Dwelling House (and Ancillary Secondary Dwelling & Outbuilding)

(B) APPROVED PLANS:

Plan/Document Number	Plan/Document Title	Prepared by	Dated
-	Building Footprint Plan/Sketch	-	-

(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 commencement of the use 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 commencement of the use and at the rate applicable at the time of payment.
- 3.3 All works must be designed, constructed and carried out in accordance with FNQROC Development Manual requirements (as amended) and to the satisfaction of Council's delegated officer.
- 3.4 The setbacks the dwelling house and outbuildings any existing property boundary must comply with the requirements of the Queensland Development Code, specifically A1 and A2 of MP 1.2.

Any alternate siting must comply with the requirement of P1 and P2 of MP 1.2 and must be approved by Council's delegated officer prior to the issue of a development permit for building works.

4. Infrastructure Services and Standards

4.1 Access

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

The access must be from the lower order road being Debel Close.

4.2 Stormwater Drainage/Water Quality

- (a) The applicant/developer must take all necessary steps to ensure a non-worsening affect on surrounding land as a consequence of the development.
- (b) All stormwater drainage must be discharged to an approved legal point of discharge.

4.3 Water Supply

Where the existing reticulated water supply does not currently service the site or is not at an adequate capacity, the developer is required to extend or upgrade the reticulated water supply infrastructure to connect the site to Council's existing infrastructure at a point that has sufficient capacity to service the development in accordance with FNQROC Development Manual standards (as amended).

If a new or upgraded water service connection is required to service the development, it must be provided in accordance with FNQROC Development Manual standards (as amended) to the satisfaction of Council's delegated officer.

4.4 On-Site Wastewater Management

All on site affluent disposal associated with the approved use must be in compliance with the latest version of On-Site Domestic Wastewater

Management Standard (AS/NZS1547) to the satisfaction of the Council's delegated officer.

(D) ASSESSMENT MANAGER'S ADVICE

(a) Water Meters/Water Service Connection

Prior to the water service connection works commencing and the installation of the meters by Council, an application for a Plumbing Compliance Permit is required to be submitted with detailed hydraulic drawings. The cost of the required water connection and meter (capping of any existing meter may be required) will be determined based upon the approved hydraulic drawings at the time of lodgement of a Water Quotation Request.

(b) 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.

(c) Compliance with Acts and Regulations

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

(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) RELEVANT PERIOD

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

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

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

- Development Permit for Building Work

(G) OTHER APPROVALS REQUIRED FROM COUNCIL

- Compliance Permit for Plumbing and Drainage Work
- Access approval arising from condition number 4.1 (Please contact Planning Section to obtain application form and applicable fee)

THE SITE

The subject site is situated on the corner of McGrath Road and Debel Close, Mareeba, and is more particularly described as Lot 9 on RP901433. The site is generally regular in shape with a total area of 4,131m² and is zoned Recreation and open space under the Mareeba Shire Council Planning Scheme 2016.

The site contains approximately 81 metres of frontage to McGrath Road, 41 metres of frontage to Debel Close and 21 metres of frontage to Williams Close, all of which are constructed to a bitumen/asphalt sealed standard, although Debel Close is the only frontage that contains kerb and channel. The site is currently unimproved and remains grassed with large mature trees scattered throughout, consistent with its previous use as a park.

The majority of surrounding lots are within the Emerging community zone and contains single detached dwellings. The lot immediately to the south is also in the Recreation and open space zone. This allotment, as well as the adjoining Emerging community zoned allotment contain the 'Cape Gateway' hotel/motel development.



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 site was previously owned by Council and is zoned Recreation and open space. The land was identified as surplus to Council’s needs and was on-sold with the expectation that it would be redeveloped for residential purposes, consistent with the established surrounding residential character.

PREVIOUS APPLICATIONS & APPROVALS

Nil

DESCRIPTION OF PROPOSED DEVELOPMENT

The development application seeks a Development Permit for Material Change of Use – Dwelling House (and Ancillary Secondary Dwelling & Outbuilding) in accordance with the plans shown in **Attachment 1**.

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. Mareeba is identified as a Major Regional Activity Centre in the Regional Plan. The site does not contain any areas of ecological significance.

PLANNING SCHEME DESIGNATIONS

Strategic Framework:	Land Use Categories • Residential Area
Zone:	Recreation and open space
Overlays:	Flood hazard overlay Environmental significance overlay Transport infrastructure overlay

Planning Scheme Definitions

The proposed use is defined as:

Column 1 Use	Column 2 Definition	Column 3 Examples include	Column 4 Does not include the following examples
Dwelling house	<p><i>A residential use of premises for one household that contains a single dwelling.</i></p> <p><i>The use includes domestic outbuildings and works normally associated with a dwelling and may include a secondary dwelling.</i></p>	<i>No examples provided.</i>	<i>Caretaker’s accommodation, dual occupancy, rooming accommodation, short-term accommodation, student accommodation, multiple dwelling</i>

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

- (3) Residential areas and urban expansion areas support strategically located and logically sequenced residential development, maximising the efficient utilisation of new and existing infrastructure, particularly active and public transport. Residential development, including infill housing in designated areas, is focussed in Mareeba and the Kuranda district. A diversity of housing choices is developed within proximity to services and activity centres while protecting the character of the shire.*

Housing for aged persons, both for independent and assisted living, is provided to support the aging population of the shire. Aged care development is provided in suitable locations in the residential areas and urban expansion areas of the shire.

Comment

The development of a dwelling house on the subject site is consistent with its Residential Area designation under the Strategic Framework. No new infrastructure is required to accommodate the development and it will be consistent with the existing residential development on Debel Close.

The development complies with Strategic Outcome (3).

3.5 Community identity and diversity

3.5.1 Strategic outcomes

- (4) *Development integrates a range of well linked and accessible open space and recreational areas within residential areas and centre areas and their surrounds. Open space and recreation areas are retained for community use, protected from incompatible development and incorporate important biodiversity areas and buffers to wetlands and watercourses. Open space supports a range of recreational activities which are consistent with community demand and encourage healthy and active lifestyles, including sporting and leisure facilities and trail networks.*

Comment

Council has undertaken a detailed review of the open space and recreational needs for Mareeba. The subject site was determined to be surplus to these needs and was consequently sold to the current owners.

Mary Andrews Park remains the primary open space and recreational area for this locality.

The subject site is no longer being considered for open space and recreational purposes.

3.5.5 Element – Open space and recreation

3.5.5.1 Specific outcomes

- (1) *New and enhanced sports infrastructure and recreational and social interaction spaces are accessible and attractive to the majority of residents in convenient locations.*
- (2) *Public open space incorporates and protects environmentally significant features, including remnant native vegetation, wildlife habitat, major waterbodies and major watercourses.*
- (3) *New development enhances public access and connections to, and supports activation and appreciation of, features which are highly valued and utilised for outdoor recreational pursuits, including:*
- (a) *parts of the Barron and Walsh Rivers;*
 - (b) *stock routes, particularly those of regional recreation and tourism significance such as the stock routes near Julatten and Mt Molloy;*
 - (c) *historic trails including Douglas track and Smiths track;*
 - (d) *decommissioned elements of the railway network, including rail trails of regional recreation and tourism significance, including former rail corridor between Almaden and Mungana;*
 - (e) *conservation areas;*
 - (f) *the existing network of parks and reserves in Mareeba Shire.*

- (4) *A network of public open space is integrated and well linked across urban and rural areas to provide continuous trails for walking, horse riding and cycling, including through the establishment of principal cycle routes.*

Comment

Council has undertaken a detailed review of the open space and recreational needs for Mareeba. The subject site was determined to be surplus to these needs and was consequently sold to the current owners.

Mary Andrews Park remains the primary open space and recreational area for this locality.

The subject site is no longer being considered for open space and recreational purposes.

Relevant Developments Codes

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

- 6.2.8 Recreation and open space zone code
- 8.2.4 Environmental significance overlay code
- 8.2.6 Flood hazard overlay code
- 9.3.1 Accommodation activities code
- 9.3.3 Community activities code
- 9.4.2 Landscaping code
- 9.4.3 Parking and access code
- 9.4.5 Works, services and infrastructure code

The application did not include 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
Recreation and open space zone code	The application satisfies 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 satisfies 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 satisfies or can be conditioned to comply with the relevant acceptable outcomes (or performance outcomes where no acceptable outcome is provided) contained within the code.
Accommodation activities code	The application complies with applicable acceptable/probable solutions/performance criteria apart from the following: <ul style="list-style-type: none"> • A06.1(a)

	Refer to planning discussion section of report.
Community activities code	The application satisfies 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 satisfies 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 satisfies or can be conditioned to comply with the relevant acceptable outcomes (or performance outcomes where no acceptable outcome is provided) contained within the code.
Works, services and infrastructure code	The application satisfies 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/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.

(E) Adopted Infrastructure Charges Notice

The subject land has a credit for one (1) allotment which allows for the proposed development.

REFERRAL AGENCY

This application did not trigger referral to a Referral Agency.

Internal Consultation

Nil

PUBLIC NOTIFICATION

The development proposal was placed on public notification from 27 September 2023 to 20 October 2023. The applicant submitted the notice of compliance on 20 October 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 Accommodation Activities Code are discussed below:

9.3.1 Accommodation activities code

PO6

Where a Dwelling house involves a secondary dwelling, it is designed and located to:

- (a) not dominate the site;*
- (b) remain subservient to the primary dwelling; and*
- (c) be consistent with the character of the surrounding area;*

AO6.1

The secondary dwelling is located within:

- (a) 10 metres of the primary dwelling where on a lot that has an area of 2 hectares or less; or*
- (b) 20 metres of the primary dwelling where on a lot that has an area of greater than 2 hectares.*

Comment

As the subject site has an area less than 2 hectares, a 10 metre setback is called for under AO6.1(a).

The proposed secondary dwelling would be approximately 29 metres from the primary dwelling and approximately six metres from the Debel Close frontage.

Notwithstanding the greater separation distance, the small size of the secondary dwelling will keep it subservient to the primary dwelling and remain consistent with the local character.

The development complies with PO6.