

**8.2 J & C ELDRED - RECONFIGURING A LOT - BOUNDARY REALIGNMENT (OPENING OF ROAD RESERVE) - LOT 2 ON RP718600 - 397 SPEEWAH ROAD, SPEEWAH - RAL/23/0013****Date Prepared:** 5 December 2023**Author:** Senior Planner**Attachments:** 1. Proposal Plan**APPLICATION DETAILS**

APPLICATION		PREMISES	
APPLICANT	Jan & Claire Eldred	ADDRESS	397 Speewah Road, Speewah
DATE LODGED	19 October 2023	RPD	Lot 2 on RP718600
TYPE OF APPROVAL	Development Permit		
PROPOSED DEVELOPMENT	Reconfiguring a Lot – Boundary Realignment (Opening Road Reserve)		
FILE NO	RAL/23/0013	AREA	50.038 Ha
LODGED BY	Scope Town Planning	OWNER	Jan & Claire Eldred
PLANNING SCHEME	Mareeba Shire Council Planning Scheme 2016		
ZONE	Rural		
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 application and supporting material has been assessed against the Mareeba Shire Council Planning Scheme 2016 and does not conflict with any relevant aspect of the Planning Scheme.

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

**OFFICER'S RECOMMENDATION**

(A) That in relation to the following development application:

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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.

(B) APPROVED DEVELOPMENT: Development Permit for Reconfiguring a Lot – Boundary Realignment (Opening of Road Reserve)

(C) APPROVED PLANS:

Plan/Document Number	Plan/Document Title	Prepared by	Dated
-	Proposed portion of land for Road Reserve dedication	Scope Town Planning	-

(D) 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 Charges

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

## (E) ASSESSMENT MANAGER'S ADVICE

### (a) 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.

### (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) Environmental Protection and Biodiversity Conservation Act 1999

The applicant is advised that referral may be required under the *Environmental Protection and Biodiversity Conservation Act 1999* if the proposed activities are likely to have a significant impact on a matter of national environmental significance. Further information on these matters can be obtained from [www.dcceew.gov.au](http://www.dcceew.gov.au).

### (d) Cultural Heritage

In carrying out the activity the applicant must take all reasonable and practicable measures to ensure that no harm is done to Aboriginal cultural heritage (the "cultural heritage duty of care"). The applicant will comply with the cultural heritage duty of care if the applicant acts in accordance with gazetted cultural heritage duty of care guidelines. An assessment of the proposed activity against the duty of care guidelines will determine whether or to what extent Aboriginal cultural heritage may be harmed by the activity. Further information on cultural heritage, together with a copy of the duty of care guidelines and cultural heritage search forms, may be obtained from [www.dsdsatsip.qld.gov.au](http://www.dsdsatsip.qld.gov.au).

### (e) 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.

(F) RELEVANT PERIOD

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

Reconfiguring a Lot – four (4) years (starting the day the approval takes effect).

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

- Nil

(H) OTHER APPROVALS REQUIRED FROM COUNCIL

- Nil

## THE SITE

The subject site is situated at 397 Speewah Road, Speewah and is described as Lot 2 on RP718600.

The site is irregular in shape with an area of 50.038 hectares and is zoned Rural under the Mareeba Shire Council Planning Scheme 2016.

The site contains approximately one (1) kilometre of frontage to Speewah Road and 720 metres of frontage to Stoney Creek Road. Both roads are constructed to rural bitumen sealed standard. Undeveloped road reserve encompasses the site to the south and east.

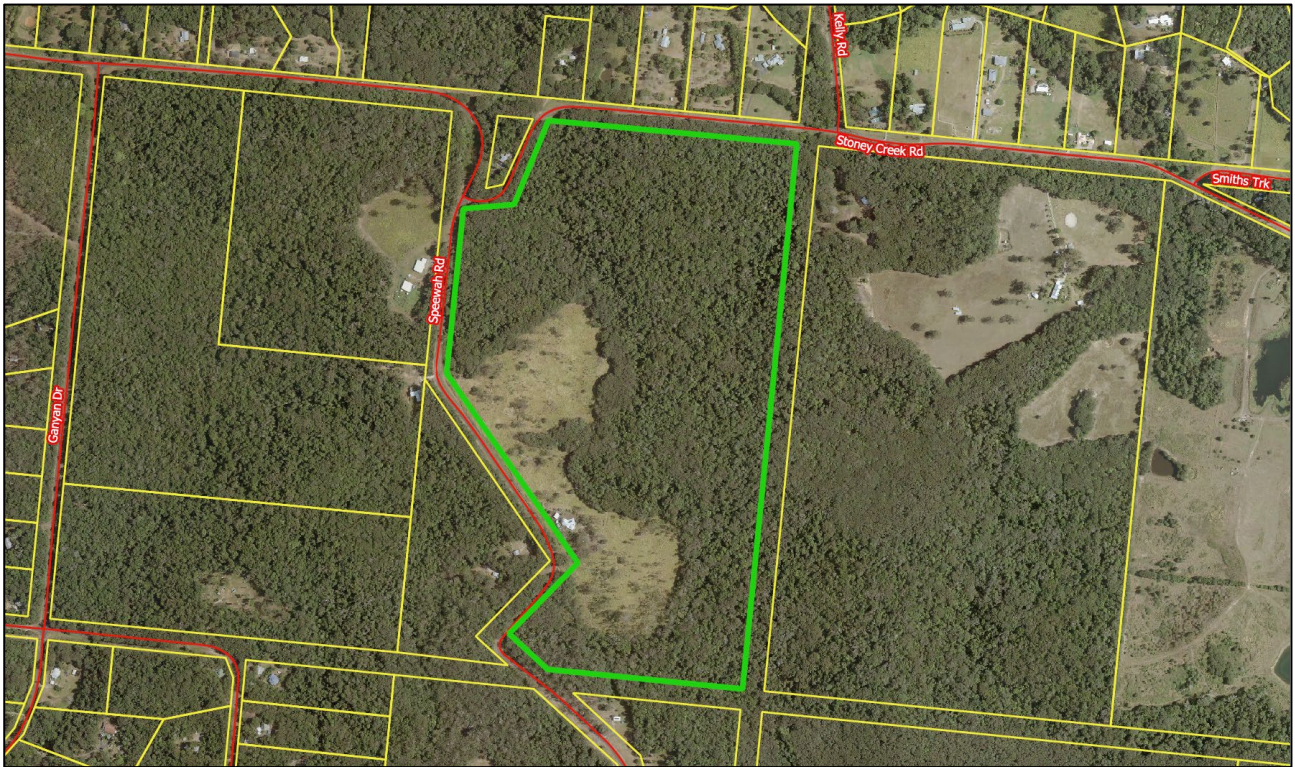
Access to the subject site is obtained via an existing crossover on the Speewah Road frontage. No access is available off the Stoney Creek Road frontage.

The site is improved by a dwelling house and outbuildings which are grouped together and located approximately 600 metres to the south of the Speewah Road/Stoney Creek Road intersection.

The subject site remains mostly vegetated, apart from a 10 hectare clearing around the dwelling house and fronting Speewah Road.

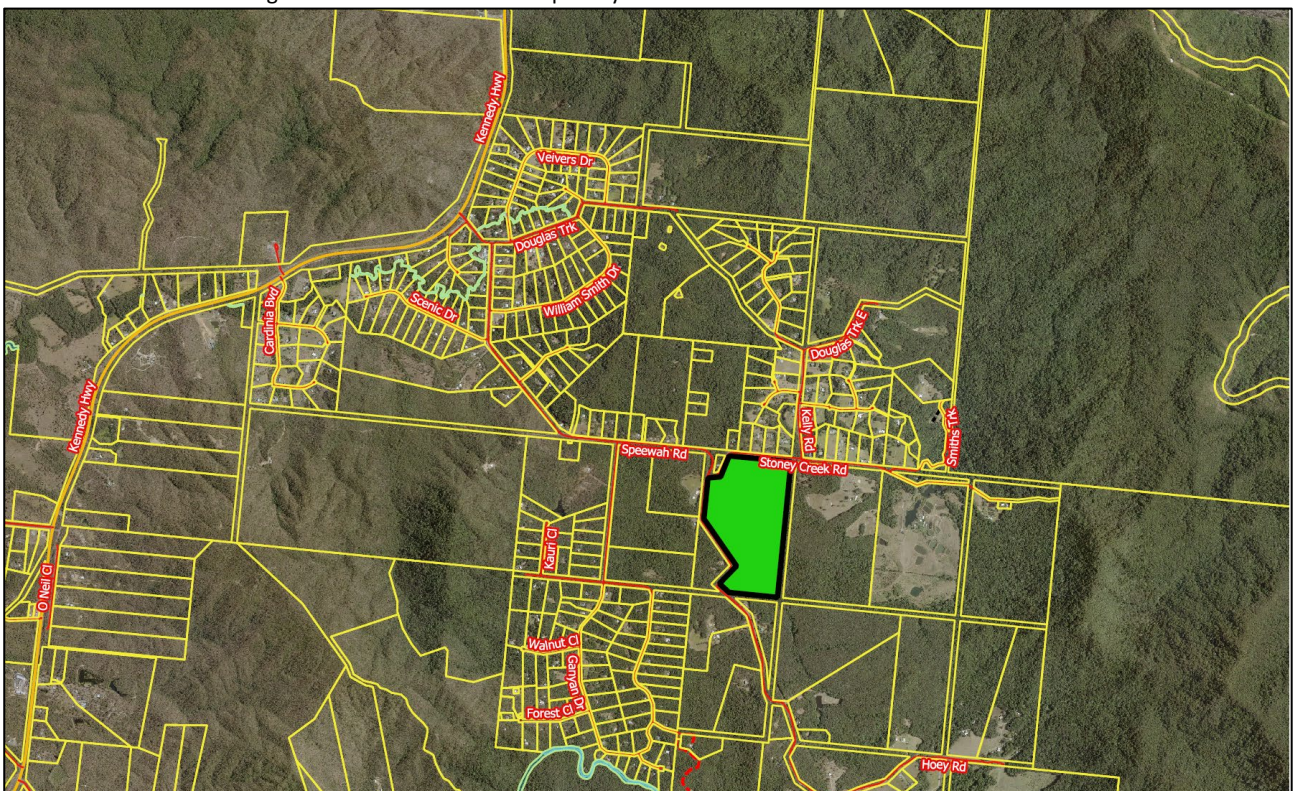
Surrounding properties are zoned rural or rural residential and are primarily used for rural living purposes.





**Map Disclaimer:**

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**BACKGROUND AND CONTEXT**

Nil

**PREVIOUS APPLICATIONS & APPROVALS**MCU/23/0007 – Animal Keeping (Equine Training Facility)

On 9 May 2023 Council, under delegated authority, approved an application made by J & C Eldred for Material Change of Use – Animal Keeping (Equine Training Facility) over land described as Lot 2 on RP718600, situated at 397 Stoney Creek Road, Speewah. To date, this approval has not been acted upon.

**DESCRIPTION OF PROPOSED DEVELOPMENT**

The development application seeks a Development Permit for Reconfiguring a Lot – Boundary Realignment (Opening of Road Reserve) in accordance with the plans shown in **Attachment 1**.

The proposed boundary realignment will transfer approximately 380m<sup>2</sup> of the site into the adjoining Speewah Road reserve. This section of Speewah Road (which includes a single lane bridge across Hurley Creek) comes within approximately two (2) metres of the site's boundary. The proposed boundary realignment will increase the width of the road reserve at this location which will provide a strategic benefit for Council should any upgrades be required to Speewah Road or the Hurley Creek bridge.

**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 as containing:

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

**PLANNING SCHEME DESIGNATIONS**

Strategic Framework:	<b>Land Use Categories</b> <ul style="list-style-type: none"><li>• Rural Area (Rural Other)</li></ul> <b>Natural Environmental Elements</b> <ul style="list-style-type: none"><li>• Biodiversity Areas</li><li>• Habitat Linkage</li></ul> <b>Transport Elements</b> <ul style="list-style-type: none"><li>• Local Collector Road</li></ul>
Zone:	- Rural
Overlays:	<ul style="list-style-type: none"><li>- Bushfire Hazard Overlay</li><li>- Environmental significance Overlay</li><li>- Hill and Slope Overlay</li><li>- Transport Infrastructure Overlay</li></ul>

**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** (as amended by TLPI No. 01 of 2021)**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 site is not mapped as agricultural land and the 380m<sup>2</sup> portion of the site proposed to be amalgamated into the Speewah Road reserve is fully vegetated with mapped “wildlife habitat”.

The subject site is less than 60ha in size at present and a further reduction in size by 380m<sup>2</sup>, will not compromise the site in any way, nor impact on the ability of the sites existing cleared areas to be used for rural ventures and activities.

The development does not conflict with Strategic outcomes (5) and (6), or 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 could only benefit Council’s transport infrastructure by providing additional width in the current road reserve to accommodate future road/bridge upgrades. The proposed development complies with Strategic outcome (6).

#### **Relevant Developments Codes** (as amended by TLPI No. 01 of 2021)

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

- 6.2.9 Rural zone code
- 8.2.3 Bushfire hazard overlay code
- 8.2.4 Environmental significance 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 solutions (or probable solutions/performance criteria where no acceptable solution applies) of the relevant codes set out below, provided reasonable and relevant conditions are attached to any approval.

Relevant Codes	Comments
Rural zone code	<p>The application conflicts with 6.2.9.2 Purpose (3) (a) of the code as proposed Lot 1 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>
Bushfire hazard overlay code	<p>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.</p>
Environmental significance overlay code	<p>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.</p>
Hill and slope overlay code	<p>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.</p>
Landscaping code	<p>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.</p>
Parking and access code	<p>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.</p>
Reconfiguring a lot code	<p>The application conflicts with the following performance outcomes:</p> <ul style="list-style-type: none"> <li>PO1.1</li> </ul> <p>Despite conflicting with the abovementioned performance outcome, it is considered that the proposed development complies with the higher order strategic/specific outcomes contained in the Planning Scheme's Strategic Framework. Refer to planning discussion section of report for commentary.</p>
Works, services and infrastructure code	<p>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.</p>

**(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.

**REFERRAL AGENCY**

This application did not trigger referral to any Referral Agencies.

**Internal Consultation**

Not applicable.

**PUBLIC NOTIFICATION**

The development proposal was placed on public notification from 2 November 2023 to 22 November 2023. The applicant submitted the notice of compliance on 23 November 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. The site is not mapped as agricultural land and the 380m<sup>2</sup> portion of the site proposed to be amalgamated into the Speewah Road reserve is fully vegetated with mapped "wildlife habitat".

The subject site is less than 60ha in size at present and a further reduction in size by 380m<sup>2</sup>, will not compromise the site as a rural holding, nor impact on the ability of the sites existing cleared areas to be used for rural ventures and activities.

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 rural land.

#### 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

The proposed boundary realignment will transfer approximately 380m<sup>2</sup> of the site to the adjacent Speewah Road reserve (road opening). The site has an existing area of 50.038 Ha and will be reduced to an area of 50 Ha. The 380m<sup>2</sup> portion of the site to be transferred to the adjacent road reserve is covered in mature vegetation mapped as “wildlife habitat”, rendering it essentially unusable anyway.

The subject site is less than 60ha in size at present and a further reduction in size by 380m<sup>2</sup>, will not compromise the site as a rural holding, nor impact on the ability of the sites existing cleared areas to be used for rural ventures and activities. 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 rural land.