

8.1 D, D, M, B, P & P LAVERS - RECONFIGURING A LOT - SUBDIVISION (1 LOT INTO 2 LOTS) - LOT 2 ON SP261006 - 104 HENRY HANNAM DRIVE, MAREEBA - RAL/24/0001

Date Prepared: 23 April 2024
Author: Coordinator Planning Services
Attachments: 1. Proposal Plan
 2. Submissions

APPLICATION DETAILS

APPLICATION		PREMISES	
APPLICANT	D, D, M, B, P & P Lavers	ADDRESS	104 Henry Hannam Drive, Mareeba
DATE LODGED	16 February 2024	RPD	Lot 2 on SP261006
TYPE OF APPROVAL	Development Permit		
PROPOSED DEVELOPMENT	Reconfiguring a Lot – Subdivision (1 lot into 2 lots)		
FILE NO	RAL/24/0001	AREA	148.2 hectares
LODGED BY	U&i Town Plan	OWNER	D, D, M, B, P & P Lavers
PLANNING SCHEME	Mareeba Shire Council Planning Scheme 2016		
ZONE	Rural zone		
LEVEL OF ASSESSMENT	Impact Assessment		
SUBMISSIONS	Three (3)		

EXECUTIVE SUMMARY

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

The application is impact assessable and three (3) properly made submissions were received in response to public notification of the application.

The application proposes to subdivide rural zoned land into two (2) lots with areas of 11.93 hectares and 136.27 hectares respectively.

The application and supporting material has been assessed against the Mareeba Shire Council Planning Scheme 2016 and is in conflict with multiple provisions of the Strategic Framework, Rural zone code, Agricultural land overlay code and Reconfiguring a lot code.

The basis of the conflict is the creation of an additional rural zoned lot (proposed Lot 1) with an area less than 60 hectares.

It is recommended that the application be refused.

OFFICER’S RECOMMENDATION

1. That in relation to the following development application:

APPLICATION		PREMISES	
APPLICANT	D, D, M, B, P & P Lavers	ADDRESS	104 Henry Hannam Drive, Mareeba
DATE LODGED	16 February 2024	RPD	Lot 2 on SP261006
TYPE OF APPROVAL	Development Permit		
PROPOSED DEVELOPMENT	Reconfiguring a Lot – Subdivision (1 lot into 2 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:

Refused by Council for reasons set out in (B).

(A) REFUSED DEVELOPMENT: Development Permit for Reconfiguring a Lot – Subdivision (1 lot into 2 lots)

(B) ASSESSMENT MANAGER’S REASONS FOR REFUSAL:

1. The proposed development is in conflict with the following aspects of the 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 rural land. The valued, relaxed rural lifestyle, 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.

(9) New subdivisions which propose lots less than the minimum lot size of 60ha are not supported within the Rural zone, except for where:

(a) The subdivision results in no additional lots (boundary realignment) and does not create an additional *rural lifestyle* lot or *rural residential purposes* lot; or

(b) The subdivision is limited to one additional lot created to accommodate a *public reconfiguration purpose*.

3.3.11 Element – Rural areas

3.3.11.1 Specific outcomes

- (2) Land in *rural areas* is maintained in large 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 except for where:
 - (a) The subdivision results in no additional lots (boundary realignment) and does not create an additional *rural lifestyle* lot or *rural residential purposes* lot; or
 - (b) The subdivision is limited to one additional lot created to accommodate a *public reconfiguration* purpose.
- (6) *Agricultural areas* will be retained in large holdings (60ha or greater) and not fragmented or compromised by unsuitable development. Uses and development within this precinct will not cause land use conflicts with primary production or will ensure these conflicts are mitigated.
- (7) *Rural areas* preserve lands for future uses beyond the life of the planning scheme.

3.6 Transport and infrastructure

3.6.1 Strategic outcomes

- (12) Subdivision of land in the Rural zone to create lots less than 60ha is not consistent with facilitating appropriately sequenced and coordinated development, except for where:
 - (a) The subdivision results in no additional lots (boundary realignment) and does not create an additional *rural lifestyle* lot or *rural residential purposes* lot; or
 - (b) The subdivision is limited to one (1) additional lot created to accommodate a *public reconfiguration purpose*.

3.7 Economic development

3.7.2 Element – Rural and Agricultural land

3.7.2.1 Specific outcomes

- (1) *Agricultural areas* are preserved for the purpose of primary production and are protected from fragmentation, alienation and incompatible development.

- (2) *Other rural areas* are maintained in economically viable holdings and continue to develop and expand their rural infrastructure and operations.
 - (5) Development ensures rural activities in all *rural areas* are not compromised by incompatible development and fragmentation.
- 2. The proposed development conflicts with Overall outcome (3)(a) and Performance outcome PO9 of the Rural zone code:
 - (a) Areas for primary production and other rural activities are conserved and not fragmented below 60ha unless for a public reconfiguration purpose;

PO9 - Rural uses

Areas for use for primary production and rural activities are conserved and protected from fragmentation, alienation and degradation.

- 3. The proposed development conflicts with Overall outcome (2)(a) and Performance outcomes PO3 and PO6 of the Agricultural land overlay code:
 - (a) The alienation, fragmentation or reduction in primary production potential of land within the 'Class A' area or 'Class B' area is avoided, except where:
 - (i) an overriding need exists for the development in terms of public benefit,
 - (ii) no suitable alternative site exists; and
 - (iii) the fragmentation or reduced production potential of agricultural land is minimised;

PO3

Development in the 'Class A' area or 'Class B' area identified on the Agricultural land overlay maps (OM-001a-n):

- (a) ensures that agricultural land is not permanently alienated;
- (b) ensures that agricultural land is preserved for agricultural purposes; and
- (c) does not constrain the viability or use of agricultural land.

PO6

Any Reconfiguring a lot in the 'Class A' area, 'Class B' area or the 'Broadhectare rural' area identified on the Agricultural land overlay maps (OM-001a-n), including boundary realignments, only occurs where it:

- (a) improves agricultural efficiency;
- (b) facilitates agricultural activity; or
- (c) facilitates conservation outcomes; or
- (d) resolves boundary issues where a structure is built over the boundary line of two (2) lots.

4. The proposed development conflicts with Overall outcome (2)(i) and Performance outcome PO1.1 of the Reconfiguring a lot code:
 - (i) Subdivision within the Rural zone maintains lots equal to or larger than 60ha, except for where:
 - (a) The subdivision results in no additional lots (boundary realignment) and does not create an additional *rural lifestyle* lot or *rural residential purposes* lot; or
 - (b) The subdivision is limited to the creation of one additional allotment to accommodate a *public reconfiguration purpose*;

PO1.1 – Area and frontage of lots – Rural zone

No lots are created with an area of less than 60ha, except for where:

- (a) The subdivision results in no additional lots (boundary realignment) and does not create an additional *rural lifestyle* lot or *rural residential purposes* lot; or
- (b) The subdivision is limited to the creation of one additional allotment to accommodate a *public reconfiguration purpose*.

Note: This also applies to applications for boundary realignment.

5. There are not sufficient town planning grounds to justify approval of the application despite these identified conflicts.

THE SITE

The subject site is situated at 104 and 240 Henry Hannam Drive, Mareeba, and is described as Lot 2 on SP261006. The site has a total area of 148.2 hectares and is zoned Rural under the Mareeba Shire Council Planning Scheme 2016. The site contains two (2) sections of frontage to Henry Hannam Drive totalling approximately 650 metres, the majority of which the road is constructed to a formed gravel standard with a small 140 metre section of the road being bitumen sealed. The site also contains a further 240 metres of frontage to a section of undeveloped road reserve branching off Henry Hannam Drive.

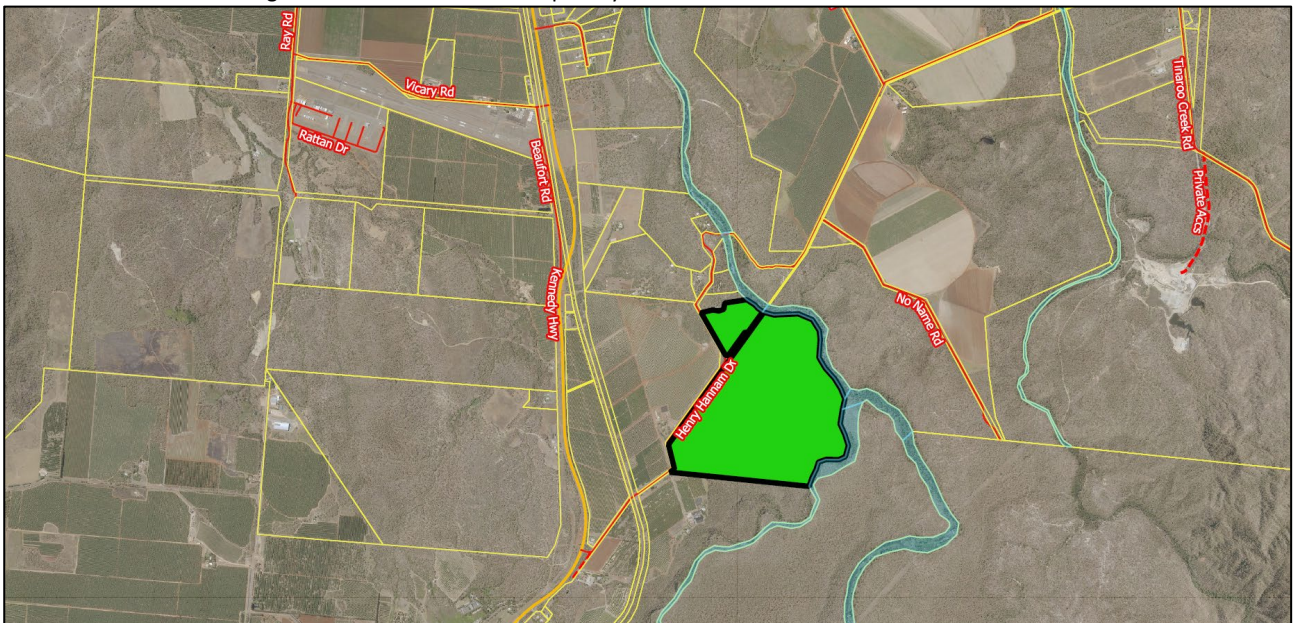
The site is split into two (2) land parcels by Lot 595 on NR4242 which is a long 10m wide parcel of land leased by Sunwater. Lot 595 contains a major irrigation water supply pipeline.

The site is improved by a single dwelling and carport sited at the northern end of the property and a 15-hectare avocado orchard in the south-west corner of the property. With the exception of an 18-hectare unused clearing situated towards the centre of the allotment, the remainder of the site is covered in mature remnant vegetation with a slightly undulating topography. Rocky Creek and the Barron River span the eastern and north-eastern boundaries of the site which includes steep sloping land on the downhill approaches to both watercourses. All surrounding lots are zoned Rural and are used for a mixture of activities including large orchards, rural lifestyle lots and grazing purposes.



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 – Subdivision (1 lot into 2 lots) in accordance with the plans shown in **Attachment 1**.

The subdivision would create the following allotments:

- Proposed Lot 1 - area of approximately 11.93 hectares, frontages of approximately 410 metres to Henry Hannam Drive and 240 metres to undeveloped road reserve;
- Proposed Lot 2 - area of approximately 136.27 hectares, frontage of approximately 240 metres to Henry Hannam Drive.

Proposed Lot 1 will contain the existing dwelling house and domestic outbuildings.

Access to both lots would continue via established crossovers onto Henry Hannam Drive.

A building envelope is identified for proposed Lot 2 to ensure any future buildings would be established outside of the areas of regulated vegetation.

The applicant describes the proposed development as follows:

“This development application is seeking a development permit to Reconfigure the allotments under the Planning Act 2016 at 104 & 240 Henry Hannam Drive, Mareeba to facilitate the creation of 1 into 2 allotments.

Currently proposed Lot 1 contains the existing dwelling on the parcel and is separate from proposed Lot 2 by a significant barrier in the Sunwater / channel lease. Proposed Lot 1 is mapped as regulated vegetation making it unusable for farming purposes, with limited to no grazing value given the terrain and rockiness of the slope as supported in Appendix 4 in Dr. Mike Gilbert assessment from Landline Consulting.

Proposed Lot 2 is farmed with avocados covering an area of only 13.9ha with Avocados (9.3% of the property), with another 15.2ha (10.2%) area cleared for grazing/farming. That leaves the balance area equating to 80% of the site mapped as regulated vegetation.

In terms of its location, the property is situated approximately 10km from the CBD of Mareeba and is surrounded by smaller rural lifestyle lots adjacent and to the north along the river, and larger rural properties to the south, east and west all within the rural zone.

The closest farming activity is 250m south west of the existing established dwelling on proposed Lot 1. Accordingly, this substantial separation and the fact that the dwelling is existing and established supports the fact that the proposed new rural lifestyle lot in proposed Lot 1 will not impact on the surrounding farming activities in the area. Therefore it makes logical and sound planning sense to separate what is already separate from the large portion by the Sunwater lease, from the small section in proposed Lot 1. By way of this development application, the applicant is seeking specific approval to undertake the development as detailed in this planning report and approval of the plans.”



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:

- *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

<p>Strategic Framework:</p>	<p>Land Use Categories</p> <ul style="list-style-type: none"> • Rural Area <ul style="list-style-type: none"> - Rural Agricultural Area - Rural Other <p>Natural Environment Elements</p>
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	<ul style="list-style-type: none"> • Biodiversity Areas • Habitat Linkage <p>Transport Elements</p> <ul style="list-style-type: none"> • Local Collector Road
Zone:	Rural zone
Overlays:	Agricultural land overlay Airport environs overlay Bushfire hazard overlay Environmental significance overlay Flood hazard overlay Hill and slope 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 rural land. The valued, relaxed rural lifestyle, 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

Council adopted Major Amendment No.1 of 2023 to the Mareeba Shire Council Planning Scheme 2016 on 28 November 2023. This amended version of the planning scheme commenced on 8 December 2023 and is applicable to this application.

The primary effect of Major Amendment No.1 of 2023 was to make it unambiguous that the planning scheme did not support the subdivision (fragmentation) of rural zoned land below 60 hectares except for certain boundary realignments (no additional lot created) or where the lot was to accommodate a public reconfiguration purpose.

Public reconfiguration purpose is defined as:

Reconfiguring a lot where the purpose of the land is a cemetery, a crematorium; a detention facility; emergency services; an environmental facility; major electricity infrastructure; a park; a renewable energy facility; a substation; a telecommunications facility; a utility installation other than a transport service; or a wind farm.

This application does not purpose a boundary realignment or a public reconfiguration purpose.

The proposed development would fragment rural land by creating proposed Lot 1 with an area of 11.93 hectares, well below the planning scheme's 60 hectare minimum rural lot size.

The proposed development conflicts with Strategic Outcome (5).

- (9) New subdivisions which propose lots less than the minimum lot size of 60ha are not supported within the Rural zone, except for where:
- (a) The subdivision results in no additional lots (boundary realignment) and does not create an additional *rural lifestyle* lot or *rural residential purposes* lot; or
 - (b) The subdivision is limited to one additional lot created to accommodate a *public reconfiguration purpose*.

Comment

Council adopted Major Amendment No.1 of 2023 to the Mareeba Shire Council Planning Scheme 2016 on 28 November 2023. This amended version of the planning scheme commenced on 8 December 2023 and is applicable to this application.

The primary effect of Major Amendment No.1 of 2023 was to make it unambiguous that the planning scheme did not support the subdivision (fragmentation) of rural zoned land below 60 hectares except for certain boundary realignments (no additional lot created) or where the lot was to accommodate a public reconfiguration purpose.

Public reconfiguration purpose is defined as:

Reconfiguring a lot where the purpose of the land is a cemetery, a crematorium; a detention facility; emergency services; an environmental facility; major electricity infrastructure; a park; a renewable energy facility; a substation; a telecommunications facility; a utility installation other than a transport service; or a wind farm.

This application does not purpose a boundary realignment or a public reconfiguration purpose.

The proposed development would fragment rural land by creating proposed Lot 1 with an area of 11.93 hectares, well below the planning scheme's 60 hectare minimum rural lot size.

The proposed development conflicts with Strategic Outcome (9).

3.3.11 Element—Rural areas

3.3.11.1 Specific outcomes

- (2) Land in *rural areas* is maintained in large 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 except for where:
- (a) The subdivision results in no additional lots (boundary realignment) and does not create an additional *rural lifestyle* lot or *rural residential purposes* lot; or
 - (b) The subdivision is limited to one additional lot created to accommodate a *public reconfiguration purpose*.

Comment

Council adopted Major Amendment No.1 of 2023 to the Mareeba Shire Council Planning Scheme 2016 on 28 November 2023. This amended version of the planning scheme commenced on 8 December 2023 and is applicable to this application.

The primary effect of Major Amendment No.1 of 2023 was to make it unambiguous that the planning scheme did not support the subdivision (fragmentation) of rural zoned land below 60 hectares except for certain boundary realignments (no addition lot created) or where the lot was to accommodate a public reconfiguration purpose.

Public reconfiguration purpose is defined as:

Reconfiguring a lot where the purpose of the land is a cemetery, a crematorium; a detention facility; emergency services; an environmental facility; major electricity infrastructure; a park; a renewable energy facility; a substation; a telecommunications facility; a utility installation other than a transport service; or a wind farm.

This application does not purpose a boundary realignment or a public reconfiguration purpose.

The proposed development would fragment rural land by creating proposed Lot 1 with an area of 11.93 hectares, well below the planning scheme's 60 hectare minimum rural lot size.

The proposed development conflicts with Specific Outcome (2).

- (6) *Agricultural areas* will be retained in large holdings (60ha or greater) and not fragmented or compromised by unsuitable development. Uses and development within this precinct will not cause land use conflicts with primary production or will ensure these conflicts are mitigated.

Comment

Council adopted Major Amendment No.1 of 2023 to the Mareeba Shire Council Planning Scheme 2016 on 28 November 2023. This amended version of the planning scheme commenced on 8 December 2023 and is applicable to this application.

The primary effect of Major Amendment No.1 of 2023 was to make it unambiguous that the planning scheme did not support the subdivision (fragmentation) of rural zoned land below 60 hectares except for certain boundary realignments (no addition lot created) or where the lot was to accommodate a public reconfiguration purpose.

Public reconfiguration purpose is defined as:

Reconfiguring a lot where the purpose of the land is a cemetery, a crematorium; a detention facility; emergency services; an environmental facility; major electricity infrastructure; a park; a renewable energy facility; a substation; a telecommunications facility; a utility installation other than a transport service; or a wind farm.

This application does not purpose a boundary realignment or a public reconfiguration purpose.

The proposed development would fragment rural land by creating proposed Lot 1 with an area of 11.93 hectares, well below the planning scheme's 60 hectare minimum rural lot size.

The proposed development conflicts with Strategic Outcome (6).

- (7) *Rural areas* preserve lands for future uses beyond the life of the planning scheme.

Comment

A common definition of *preserve* is 'to keep in its original or existing state'.

Fragmentation of the subject site to create a lot less than the 60 hectare minimum rural lot size does not keep the subject site in its existing state. The proposed development does not preserve the subject site and conflicts with Strategic Outcome (7).

3.6 Transport and infrastructure

3.6.1 Strategic outcomes

- (12) Subdivision of land in the Rural zone to create lots less than 60ha is not consistent with facilitating appropriately sequenced and coordinated development, except for where:
- (a) The subdivision results in no additional lots (boundary realignment) and does not create an additional *rural lifestyle* lot or *rural residential purposes* lot; or
 - (b) The subdivision is limited to one additional lot created to accommodate a *public reconfiguration purpose*.

Comment

Council adopted Major Amendment No.1 of 2023 to the Mareeba Shire Council Planning Scheme 2016 on 28 November 2023. This amended version of the planning scheme commenced on 8 December 2023 and is applicable to this application.

The primary effect of Major Amendment No.1 of 2023 was to make it unambiguous that the planning scheme did not support the subdivision (fragmentation) of rural zoned land below 60 hectares except for certain boundary realignments (no addition lot created) or where the lot was to accommodate a public reconfiguration purpose.

Public reconfiguration purpose is defined as:

Reconfiguring a lot where the purpose of the land is a cemetery, a crematorium; a detention facility; emergency services; an environmental facility; major electricity infrastructure; a park; a renewable energy facility; a substation; a telecommunications facility; a utility installation other than a transport service; or a wind farm.

This application does not purpose a boundary realignment or a public reconfiguration purpose.

The proposed development would fragment rural land by creating proposed Lot 1 with an area of 11.93 hectares, well below the planning scheme's 60 hectare minimum rural lot size.

The proposed development conflicts with Strategic Outcome (12).

3.7.2 Element—Rural and Agricultural land

3.7.2.1 Specific outcomes

- (1) *Agricultural areas* are preserved for the purpose of primary production and are protected from fragmentation, alienation and incompatible development.

Comment

Council adopted Major Amendment No.1 of 2023 to the Mareeba Shire Council Planning Scheme 2016 on 28 November 2023. This amended version of the planning scheme commenced on 8 December 2023 and is applicable to this application.

The primary effect of Major Amendment No.1 of 2023 was to make it unambiguous that the planning scheme did not support the subdivision (fragmentation) of rural zoned land below 60 hectares except for certain boundary realignments (no addition lot created) or where the lot was to accommodate a public reconfiguration purpose.

Public reconfiguration purpose is defined as:

Reconfiguring a lot where the purpose of the land is a cemetery, a crematorium; a detention facility; emergency services; an environmental facility; major electricity infrastructure; a park; a renewable energy facility; a substation; a telecommunications facility; a utility installation other than a transport service; or a wind farm.

This application does not purpose a boundary realignment or a public reconfiguration purpose.

The proposed development would fragment rural land by creating proposed Lot 1 with an area of 11.93 hectares, well below the planning scheme's 60 hectare minimum rural lot size.

The proposed development conflicts with Specific Outcome (1).

- (2) *Other rural areas* are maintained in economically viable holdings and continue to develop and expand their rural infrastructure and operations.

Comment

Council adopted Major Amendment No.1 of 2023 to the Mareeba Shire Council Planning Scheme 2016 on 28 November 2023. This amended version of the planning scheme commenced on 8 December 2023 and is applicable to this application.

The primary effect of Major Amendment No.1 of 2023 was to make it unambiguous that the planning scheme did not support the subdivision (fragmentation) of rural zoned land below 60 hectares except for certain boundary realignments (no addition lot created) or where the lot was to accommodate a public reconfiguration purpose.

Public reconfiguration purpose is defined as:

Reconfiguring a lot where the purpose of the land is a cemetery, a crematorium; a detention facility; emergency services; an environmental facility; major electricity infrastructure; a park; a renewable energy facility; a substation; a telecommunications facility; a utility installation other than a transport service; or a wind farm.

This application does not purpose a boundary realignment or a public reconfiguration purpose.

The proposed development would fragment rural land by creating proposed Lot 1 with an area of 11.93 hectares, well below the planning scheme's 60 hectare minimum rural lot size.

The proposed development conflicts with Specific Outcome (2).

- (5) Development ensures rural activities in all *rural areas* are not compromised by incompatible development and fragmentation.

Comment

Council adopted Major Amendment No.1 of 2023 to the Mareeba Shire Council Planning Scheme 2016 on 28 November 2023. This amended version of the planning scheme commenced on 8 December 2023 and is applicable to this application.

The primary effect of Major Amendment No.1 of 2023 was to make it unambiguous that the planning scheme did not support the subdivision (fragmentation) of rural zoned land below 60 hectares except for certain boundary realignments (no addition lot created) or where the lot was to accommodate a public reconfiguration purpose.

Public reconfiguration purpose is defined as:

Reconfiguring a lot where the purpose of the land is a cemetery, a crematorium; a detention facility; emergency services; an environmental facility; major electricity infrastructure; a park; a renewable energy facility; a substation; a telecommunications facility; a utility installation other than a transport service; or a wind farm.

This application does not purpose a boundary realignment or a public reconfiguration purpose.

The proposed development would fragment rural land by creating proposed Lot 1 with an area of 11.93 hectares, well below the planning scheme's 60 hectare minimum rural lot size.

The proposed development conflicts with Specific Outcome (5).

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

- 8.2.6 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 would conflict with the identified sections of the Planning Scheme identified below:

Relevant Codes	Comments
Rural zone code	<p>The application conflicts with Overall Outcome 3(a) and Performance Outcome PO9 of the Rural zone code.</p> <p>Refer to planning discussion section of report for further commentary.</p>
Agricultural land overlay code	<p>The application conflicts with Overall Outcome 2(a) and Performance Outcome PO3 and PO6 of the Agricultural land overlay code.</p> <p>Refer to planning discussion section of report for further commentary.</p>
Airport environs overlay code	<p>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.</p>
Bushfire hazard overlay code	<p>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.</p>
Environmental significance overlay code	<p>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.</p>
Flood hazard overlay code	<p>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.</p>
Hill and slope overlay code	<p>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.</p>
Landscaping code	<p>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.</p>
Parking and access code	<p>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.</p>

Reconfiguring a lot code	<p>The application conflicts with Overall Outcome 2(i) and Performance Outcome PO1.1 of the Reconfiguring a lot code.</p> <p>Refer to planning discussion section of report for further commentary.</p>
Works, services and infrastructure code	<p>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.</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

The development could be conditioned to require all development works be designed and constructed in accordance with FNQROC Development Manual standards.

(E) Adopted Infrastructure Charges Notice

Adopted Infrastructure Charges Resolution (No. 1) of 2023 identifies a charge rate of \$20,768.00 per additional allotment created.

As the proposed allotments will not be serviced by reticulated water or sewerage infrastructure, the relevant charge rate is discounted by 40%. The applicable charge rate is therefore \$12,460.80 per additional allotment created.

The application proposes the creation of 1 additional allotment.

Should the development be approved, the applicable infrastructure charge would be \$12,460.80.

REFERRAL AGENCY

This application did not trigger referral to a Referral Agency.

A referral for the clearing of regulated vegetation has been avoided by the applicant through the identification of a building envelope for proposed Lot 2.

Internal Consultation

Not applicable.

PUBLIC NOTIFICATION

The development proposal was placed on public notification from 20 March 2024 to 12 April 2024. The applicant submitted the notice of compliance on 14 April 2024 advising that the public notification requirements were carried out in accordance with the requirements of the Act.

Three (3) properly made submissions were received and two (2) of those objected to the proposed development.

The grounds for objection/support are summarised and commented on below:

Grounds for objection /support	Comment
The proposed development conflicts with Major Amendment No.1 of 2023 to the Mareeba Shire Council Planning Scheme 2016 and conflicts with the Regional Plan.	Agreed. This report outlines the multiple conflicts.
Access to the proposed lots must avoid crossing Sunwater land.	Both proposed lots would have frontage to road reserve and access can be provided directly from this frontage.

Submitters

Name of Principal submitter	Address
1. Kur-Alert Inc.	PO Box 560, Kuranda QLD 4881
2. Nadine O’Brien	345 Fantin Road, Koah QLD 4881
3. Sunwater	PO Box 15536, City East QLD 4002

PLANNING DISCUSSION

The proposed development’s noncompliance with the Overall Outcomes and Performance Outcomes of the Rural zone code, Agricultural land overlay code and Reconfiguring a Lot Code are summarised as follows:

Conflicts with the Rural zone code

- **Overall Outcome (3)(a)**

(a) Areas for primary production and other rural activities are conserved and not fragmented below 60ha unless for a public reconfiguration purpose;

Comment

The subject site is zoned Rural and the application is proposing a subdivision (fragmentation) into two (2) lots. Proposed Lot 1 would have an area of 11.93 hectares.

Proposed Lot 1 is not being created to accommodate a public reconfiguration purpose.

The proposed development conflicts with Overall Outcome (3)(a).

- **Performance Outcome**

PO9

Areas for use for primary production and rural activities are conserved and protected from fragmentation, alienation and degradation.

AO9

No acceptable outcome is provided.

Comment

The subject site is zoned Rural and the application is proposing a subdivision (fragmentation) into two (2) lots. Proposed Lot 1 would have an area of 11.93 hectares.

Proposed Lot 1 is not being created to accommodate a public reconfiguration purpose.

The proposed development conflicts with PO9.

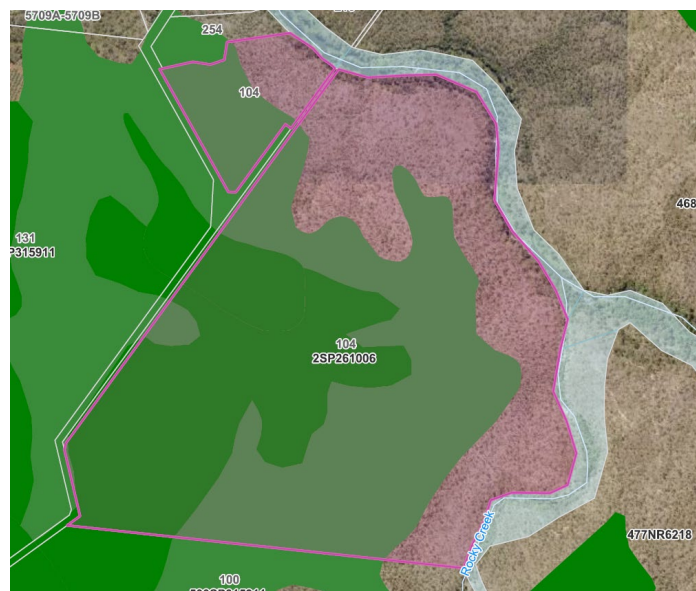
Conflicts with the Agricultural land overlay code

- **Overall Outcome (2)(a)**

- (a) *The alienation, fragmentation or reduction in primary production potential of land within the 'Class A' area or 'Class B' area is avoided, except where:*
- (i) *an overriding need exists for the development in terms of public benefit,*
 - (ii) *no suitable alternative site exists; and*
 - (iii) *the fragmentation or reduced production potential of agricultural land is minimised;*

Comment

The Agricultural land overlay mapping identifies the following Class A (dark green) and Class B (light green) areas within the subject site.



Approximately half of proposed Lot 1 is identified as Class B area, so the proposed development would result in a fragmentation of Class B area.

There is no overriding need for the proposed development in terms of public benefit.

The development conflicts with Overall Outcome (2)(a).

- **Performance Outcome**

PO3

Development in the 'Class A' area or 'Class B' area identified on the Agricultural land overlay maps (OM-001a-n):

- (a) ensures that agricultural land is not permanently alienated;*
- (b) ensures that agricultural land is preserved for agricultural purposes; and*
- (c) does not constrain the viability or use of agricultural land.*

AO3

No acceptable outcome is provided.

Comment

The subject site contains large areas of Class A and Class B.

Approximately half of proposed Lot 1 is identified as Class B area, so the proposed development would result in a fragmentation of Class B area.

Proposed Lot 2 would be required to establish a building envelope to ensure future development was sited clear of the regulated vegetation. The consequence of the building envelope would be to force future buildings to be sited within the Class A or Class B areas.

It is probable that a dwelling house and associated improvements would be established on proposed Lot 2 at some point in the future, leading to a loss of Class A or Class B area.

The proposed development conflicts with PO3.

PO6

Any Reconfiguring a lot in the 'Class A' area, 'Class B' area or the 'Broadhectare rural' area identified on the Agricultural land overlay maps (OM-001a-n), including boundary realignments, only occurs where it:

- (a) improves agricultural efficiency;*
- (b) facilitates agricultural activity; or*
- (c) facilitates conservation outcomes; or*
- (d) resolves boundary issues where a structure is built over the boundary line of two lots.*

AO6

No acceptable outcome is provided.

Comment

The subject site contains large areas of Class A and Class B.

The proposed development does not improve agricultural efficiency or facilitate agricultural activity.

The proposed development does not facilitate a conservation outcome, nor is it for a boundary realignment.

The proposed development conflicts with PO6.

Conflicts with the Reconfiguring a Lot Code

- **Overall Outcome (2)(i)**

(i) *Subdivision within the Rural zone maintains lots equal to or larger than 60ha, except for where:*

(a) *The subdivision results in no additional lots (boundary realignment) and does not create an additional rural lifestyle lot or rural residential purposes lot; or*

(b) *The subdivision is limited to the creation of one additional allotment to accommodate a public reconfiguration purpose;*

Comment

Council adopted Major Amendment No.1 of 2023 to the Mareeba Shire Council Planning Scheme 2016 on 28 November 2023. This amended version of the planning scheme commenced on 8 December 2023 and is applicable to this application.

The primary effect of Major Amendment No.1 of 2023 was to make it unambiguous that the planning scheme did not support the subdivision (fragmentation) of rural zoned land below 60 hectares except for certain boundary realignments (no addition lot created) or where the lot was to accommodate a public reconfiguration purpose.

Public reconfiguration purpose is defined as:

Reconfiguring a lot where the purpose of the land is a cemetery, a crematorium; a detention facility; emergency services; an environmental facility; major electricity infrastructure; a park; a renewable energy facility; a substation; a telecommunications facility; a utility installation other than a transport service; or a wind farm.

This application does not purpose a boundary realignment or a public reconfiguration purpose.

The proposed development would fragment rural land by creating proposed Lot 1 with an area of 11.93 hectares, well below the planning scheme's 60 hectare minimum rural lot size.

The proposed development conflicts with Overall Outcome (2)(i).

- **Performance Outcome**

PO1.1

No lots are created with an area of less than 60ha, except for where:

(a) *The subdivision results in no additional lots (boundary realignment) and does not create an additional rural lifestyle lot or rural residential purposes lot; or*

(b) *The subdivision is limited to the creation of one additional allotment to accommodate a public reconfiguration purpose.*

Note: This also applies to applications for boundary realignment.

AO1.1

No acceptable outcome is provided.

Comment

Council adopted Major Amendment No.1 of 2023 to the Mareeba Shire Council Planning Scheme 2016 on 28 November 2023. This amended version of the planning scheme commenced on 8 December 2023 and is applicable to this application.

The primary effect of Major Amendment No.1 of 2023 was to make it unambiguous that the planning scheme did not support the subdivision (fragmentation) of rural zoned land below 60 hectares except for certain boundary realignments (no addition lot created) or where the lot was to accommodate a public reconfiguration purpose.

Public reconfiguration purpose is defined as:

Reconfiguring a lot where the purpose of the land is a cemetery, a crematorium; a detention facility; emergency services; an environmental facility; major electricity infrastructure; a park; a renewable energy facility; a substation; a telecommunications facility; a utility installation other than a transport service; or a wind farm.

This application does not purpose a boundary realignment or a public reconfiguration purpose.

The proposed development would fragment rural land by creating proposed Lot 1 with an area of 11.93 hectares, well below the planning scheme's 60 hectare minimum rural lot size.

The proposed development conflicts with Performance Outcome PO1.1.