



19 June 2024

Planning Officer: Brian Millard
Direct Phone: 4086 4649
Our Reference: RAL/24/0001
Your Reference: R11-23

D, D, M, B, P & P Lavers
C/- U&I Town Plan
PO Box 426
COOKTOWN QLD 4895

Dear Applicants,

Decision Notice Refusal

Planning Act 2016

I refer to your application and advise that on 19 June 2024, Council decided to refuse the application.

Details of the decision are as follows:

APPLICATION DETAILS

Application No: RAL/24/0001
Street Address: 104 Henry Hannam Drive, Mareeba
Real Property Description: Lot 2 on SP261006
Planning Scheme: Mareeba Shire Council Planning Scheme 2016

DECISION DETAILS

Type of Decision: Refused
Type of Application: Development Permit for Reconfiguration of a Lot – Subdivision (1 lot into 2 lots)
Date of Decision: 19 June 2024

ASSESSMENT MANAGER REASONS FOR REFUSAL

(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.

REFERRAL AGENCIES

Not applicable.

SUBMISSIONS

There were three (3) properly made submissions about the application. In accordance with the *Planning Act 2016*, the name, residential or business address, and electronic address of the principal submitter for each properly made submission is provided below:

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

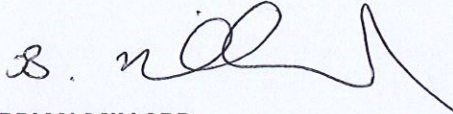
RIGHTS OF APPEAL

You are entitled to appeal against this decision. A copy of the relevant appeal provisions from the *Planning Act 2016* is attached.

OTHER DETAILS

If you wish to obtain more information about Council's decision, electronic copies are available on line at www.msc.qld.gov.au, or at Council Offices.

Yours faithfully



BRIAN MILLARD
COORDINATOR PLANNING SERVICES

Enc: Appeal Rights

Appeal Rights

PLANNING ACT 2016 & THE PLANNING REGULATION 2017

Chapter 6 Dispute resolution

Part 1 Appeal rights

229 Appeals to tribunal or P&E Court

- (1) Schedule 1 of the Planning Act 2016 states –
- (a) Matters that may be appealed to –
 - (i) either a tribunal or the P&E Court; or
 - (ii) only a tribunal; or
 - (iii) only the P&E Court; and
 - (b) The person-
 - (i) who may appeal a matter (**the appellant**); and
 - (ii) who is a respondent in an appeal of the matter; and
 - (iii) who is a co-respondent in an appeal of the matter; and
 - (iv) who may elect to be a co-respondent in an appeal of the matter.

(Refer to Schedule 1 of the Planning Act 2016)

- (2) An appellant may start an appeal within the appeal period.
- (3) The **appeal period** is –
- (a) for an appeal by a building advisory agency – 10 business days after a decision notice for the decision is given to the agency; or
 - (b) for an appeal against a deemed refusal – at any time after the deemed refusal happens; or
 - (c) for an appeal against a decision of the Minister, under chapter 7, part 4, to register premises or to renew the registration of premises – 20 business days after a notice is published under section 269(3)(a) or (4); or
 - (d) for an appeal against an infrastructure charges notice – 20 business days after the infrastructure charges notice is given to the person; or
 - (e) for an appeal about a deemed approval of a development application for which a decision notice has not been given – 30 business days after the applicant gives the deemed approval notice to the assessment manager; or
 - (f) for any other appeal – 20 business days after a notice of the decision for the matter, including an enforcement notice, is given to the person.

Note –

See the P&E Court Act for the court's power to extend the appeal period.

- (4) Each respondent and co-respondent for an appeal may be heard in the appeal.
- (5) If an appeal is only about a referral agency's response, the assessment manager may apply to the tribunal or P&E Court to withdraw from the appeal.
- (6) To remove any doubt. It is declared that an appeal against an infrastructure charges notice must not be about-

- (a) the adopted charge itself; or
- (b) for a decision about an offset or refund-
 - (i) the establishment cost of trunk infrastructure identified in a LGIP; or
 - (ii) the cost of infrastructure decided using the method included in the local government's charges resolution.

230 Notice of appeal

- (1) An appellant starts an appeal by lodging, with the registrar of the tribunal or P&E Court, a notice of appeal that-
 - (a) is in the approved form; and
 - (b) succinctly states the grounds of the appeal.
- (2) The notice of appeal must be accompanied by the required fee.
- (3) The appellant or, for an appeal to a tribunal, the registrar must, within the service period, give a copy of the notice of appeal to –
 - (a) the respondent for the appeal ; and
 - (b) each co-respondent for the appeal; and
 - (c) for an appeal about a development application under schedule 1, table 1, item 1 – each principal submitter for the development application; and
 - (d) for an appeal about a change application under schedule 1, table 1, item 2 – each principal submitter for the change application; and
 - (e) each person who may elect to become a co-respondent for the appeal, other than an eligible submitter who is not a principal submitter in an appeal under paragraph (c) or (d); and
 - (f) for an appeal to the P&E Court – the chief executive; and
 - (g) for an appeal to a tribunal under another Act – any other person who the registrar considers appropriate.
- (4) The *service period* is –
 - (a) if a submitter or advice agency started the appeal in the P&E Court – 2 business days after the appeal has started; or
 - (b) otherwise – 10 business days after the appeal is started.
- (5) A notice of appeal given to a person who may elect to be a co-respondent must state the effect of subsection (6).
- (6) A person elects to be a co-respondent by filing a notice of election, in the approved form, within 10 business days after the notice of appeal is given to the person.

231 Other appeals

- (1) Subject to this chapter, schedule 1 and the P&E Court Act, unless the Supreme Court decides a decision or other matter under this Act is affected by jurisdictional error, the decision or matter is non-appealable.
- (2) The *Judicial Review Act 1991*, part 5 applies to the decision or matter to the extent it is affected by jurisdictional error.
- (3) A person who, but for subsection (1) could have made an application under the *Judicial Review Act 1991* in relation to the decision or matter, may apply under part 4 of that Act for a statement of reasons in relation to the decision or matter.
- (4) In this section –
decision includes-
 - (a) conduct engaged in for the purpose of making a decision; and

- (b) other conduct that relates to the making of a decision; and
- (c) the making of a decision or failure to make a decision; and
- (d) a purported decision ; and
- (e) a deemed refusal.

non-appealable, for a decision or matter, means the decision or matter-

- (a) is final and conclusive; and
- (b) may not be challenged, appealed against, reviewed, quashed, set aside or called into question in any other way under the Judicial Review Act 1991 or otherwise, whether by the Supreme Court, another court, a tribunal or another entity; and
- (c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground.

232 Rules of the P&E Court

- (1) A person who is appealing to the P&E Court must comply with the rules of the court that apply to the appeal.
- (2) However, the P&E Court may hear and decide an appeal even if the person has not complied with the rules of the P&E Court.