

DELEGATED REPORT

SUBJECT: **HARDY FINANCIAL PTY LTD – RECONFIGURING A LOT – BOUNDARY REALIGNMENT (3 LOTS INTO 3 LOTS) – LOT 130 ON N157636 AND LOTS 94 & 95 ON SP184838 – BLACK MOUNTAIN ROAD AND 23-24 COCONUT GROVE, KURANDA – RAL/24/0011**

DATE: 9 October 2024

REPORT OFFICER'S TITLE: Senior Planner

DEPARTMENT: Corporate and Community Services

APPLICATION DETAILS

| APPLICATION | | PREMISES | |
|-----------------------------|---|-----------------|--|
| APPLICANT | Hardy Financial Pty Ltd | ADDRESS | Black Mountain Road and 23-24 Coconut Grove, Kuranda |
| DATE LODGED | 20 August 2024 | RPD | Lot 130 on N157636 and Lots 94 & 95 on SP184838 |
| TYPE OF APPROVAL | Development Permit | | |
| PROPOSED DEVELOPMENT | Reconfiguring a Lot – Boundary Realignment (3 lots into 3 lots) | | |

| | | | |
|----------------------------|--|--------------|---|
| FILE NO | RAL/24/0011 | AREA | Lot 130 – 28.308 ha Lot 94 – 7,463m ² Lot 95 – 4,311m ² |
| LODGED BY | Hardy Financial Pty Ltd | OWNER | Lot 130 – Hardy Financial Pty Ltd Lot 94 – J & K Selke Lot 95 – T & J Falvo |
| PLANNING SCHEME | Mareeba Shire Council Planning Scheme 2016 | | |
| ZONE | Rural and Rural Residential zone/s | | |
| LEVEL OF ASSESSMENT | Code Assessment | | |
| SUBMISSIONS | n/a | | |

ATTACHMENTS:

1. Proposal Plan/s
2. State Assessment and Referral Agency response dated 3 October 2024

EXECUTIVE SUMMARY

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

The application and supporting material have 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 with conditions.

OFFICER'S RECOMMENDATION

1. That in relation to the following development application:

| APPLICATION | | PREMISES | |
|----------------------|---|----------|--|
| APPLICANT | Hardy Financial Pty Ltd | ADDRESS | Black Mountain Road and 23-24 Coconut Grove, Kuranda |
| DATE LODGED | 20 August 2024 | RPD | Lot 130 on N157636 and Lots 94 & 95 on SP184838 |
| TYPE OF APPROVAL | Development Permit | | |
| PROPOSED DEVELOPMENT | Reconfiguring a Lot – Boundary Realignment (3 lots into 3 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:

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

And

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

(A) APPROVED DEVELOPMENT: Development Permit for Reconfiguring a Lot – Boundary Realignment (3 lots into 3 lots)

(B) APPROVED PLANS:

| Plan/Document Number | Plan/Document Title | Prepared by | Dated |
|----------------------|--|------------------|-------|
| 1afsg20240727B A | Proposal Plan to Reconfigure Lot 130 on N157636, Lot 94 & 95 on SP184838 | A de la Fonteyne | 27/7 |

(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 endorsement of the plan of survey, except where specified otherwise in these conditions of approval.

3. General

- 3.1 The development approval would not have been issued if not for the conditions requiring the construction of infrastructure or the payment of infrastructure charges/contributions contained within the conditions of approval.
- 3.2 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.
- 3.3 All payments required to be made to the Council (including contributions, charges and bonds) pursuant to any condition of this approval must be made prior the endorsement of the plan of survey and at the rate applicable at the time of payment.
- 3.4 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.
- 3.5 Where utilities (such as sewers on non-standard alignments) traverse lots to service another lot, easements must be created in favour of Council for access and maintenance purposes. The developer is to pay all costs (including Council's legal expenses) to prepare and register the easement documents.
- 3.6 Where approved existing buildings and structures are to be retained, setbacks to any new property boundaries are to be in accordance with Planning Scheme requirements for the relevant structure and/or Queensland Development Code. Where existing building/s are in proximity to new property boundaries, a plan demonstrating compliance with the required setback must be submitted prior to endorsement of the plan of survey.

3.7 All works must be designed, constructed and carried out in accordance with FNQROC Development Manual requirements and to the satisfaction of Council's delegated officer.

3.8 Charges

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

(D) ASSESSMENT MANAGER'S ADVICE

(a) A number of other charges or payments may be payable as conditions of approval. The applicable fee is set out in Council's Fees & Charges Schedule for each respective financial year.

(b) Endorsement Fees

Council charges a fee for the endorsement of a Survey Plan, Community Management Statements, easement documents, and covenants. The fee is set out in Council's Fees & Charges Schedule applicable for each respective financial year.

(c) Compliance with applicable codes/policies

The development must be carried out to ensure compliance with the provisions of Council's Local Laws, Planning Scheme Policies, Planning Scheme and Planning Scheme Codes to the extent they have not been varied by a condition of this approval.

(d) Environmental Protection and Biodiversity Conservation Act 1999

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

(e) Cultural Heritage

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

(f) Electric Ants

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

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

the legislated restrictions. It is the responsibility of the applicant to check if the nominated property lies within a restricted zone.

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

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

(E) REFERRAL AGENCY CONDITIONS

State Assessment and Referral Agency conditions dated 3 October 2024.

(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

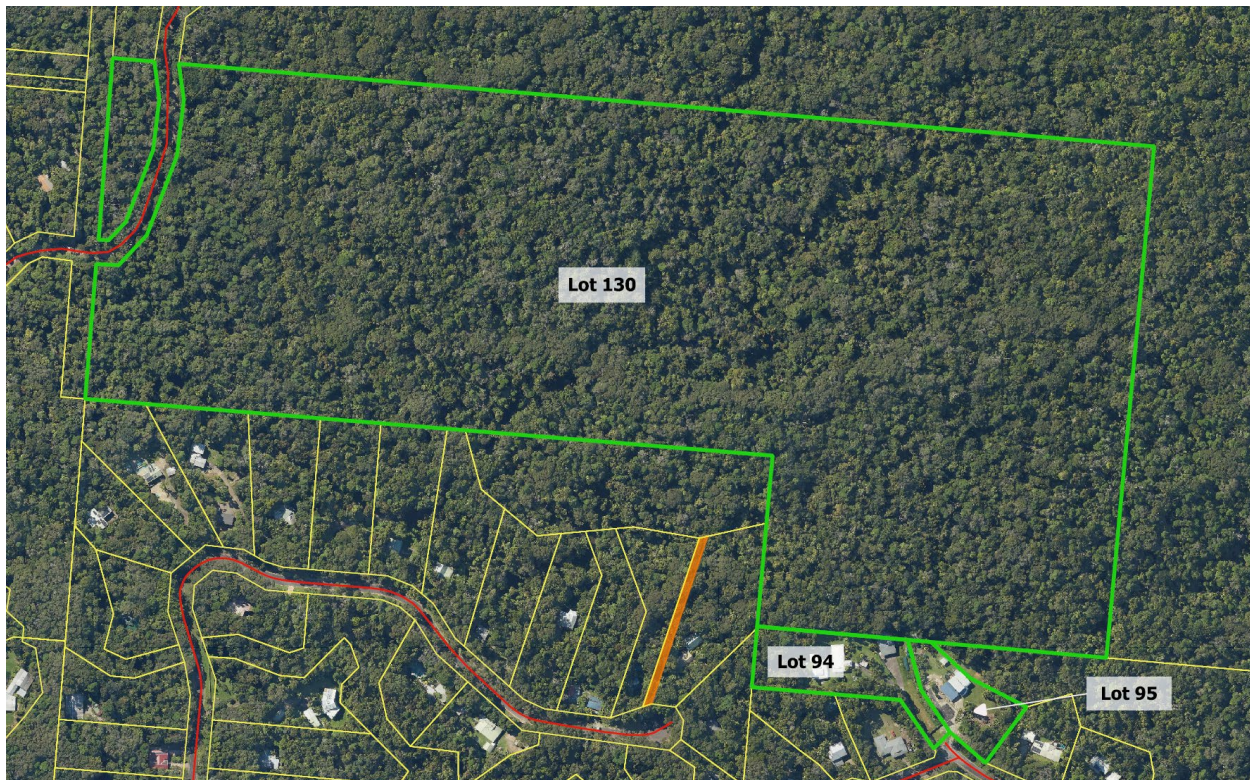
THE SITE

The subject site comprises of the following allotments:

- Lot 94 on SP184838, situated at 23 Coconut Grove, Kuranda, having an area of 7,463m² hectares and a frontage of approximately 19 metres to Coconut Grove;
- Lot 95 on SP184838, situated at 24 Coconut Grove, Kuranda, having an area of 4,311m² and a frontage of approximately 38 metres to Coconut Grove; and
- Lot 130 on N157636, situated on Black Mountain Road, Kuranda and a frontage in excess of 300 metres to Black Mountain Road and unnamed road reserve.

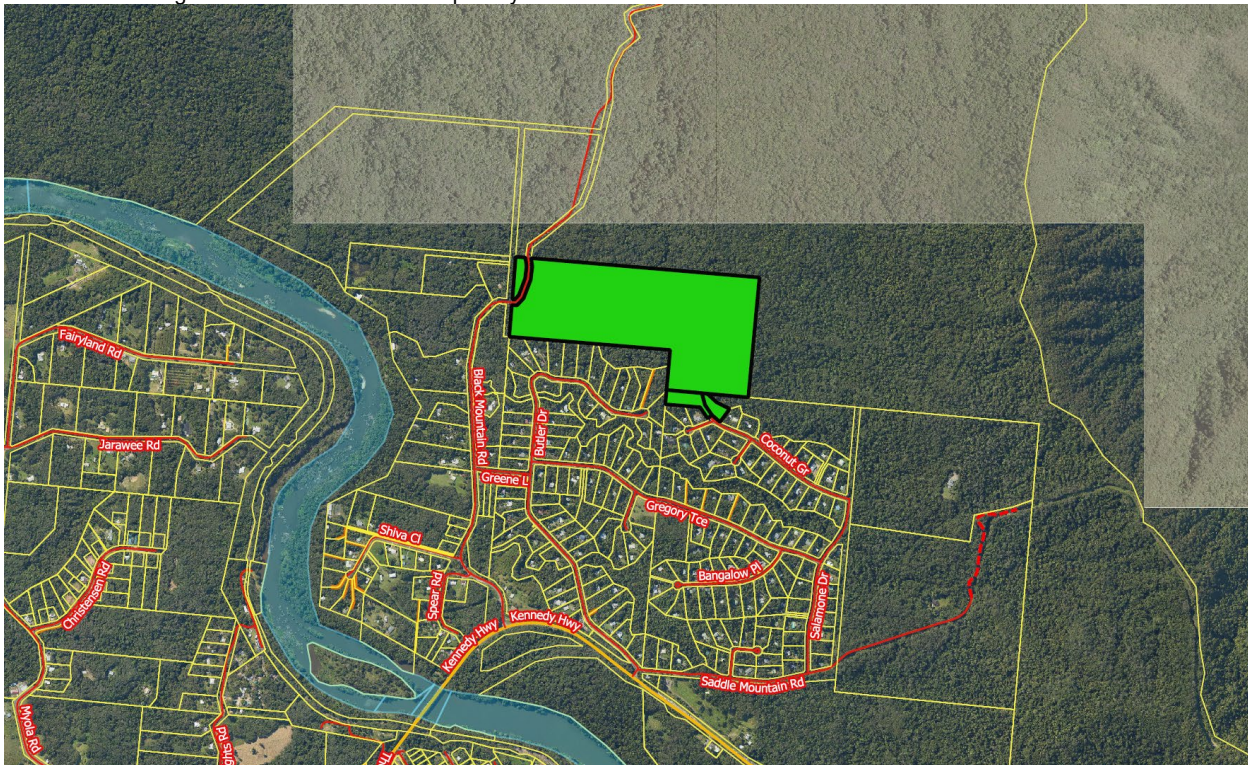
Black Mountain Road is formed to a rural gravel standard. Coconut Grove is formed to bitumen sealed standard with kerb on both sides. Lots 94 and 95 are both improved with a dwelling house and domestic outbuilding/s. Lot 130 is unimproved and remains covered by native vegetation.

Surrounding lots are predominantly zoned Rural, Rural Residential or Conservation.



Map Disclaimer:

Based on or contains data provided by the State of Queensland (Department of Environment and Resource Management) (2009). In consideration of the State permitting use of this data you acknowledge and agree that the State gives no warranty in relation to the data (including accuracy, reliability, completeness, currency or suitability) and accepts no liability (including without limitation, liability in negligence) for any loss, damage or costs (including consequential damage) relating to any use of the data. Data must not be used for direct marketing or be used in breach of the privacy laws.



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BACKGROUND AND CONTEXT

Nil

PREVIOUS APPLICATIONS & APPROVALS

Nil

DESCRIPTION OF PROPOSED DEVELOPMENT

The development application seeks a Development Permit for Reconfiguring a Lot – Boundary Realignment (3 lots into 3 lots) in accordance with the plans shown in **Attachment 1**.

The proposed development is the realignment of the property boundary between Lot 130 on N157636 and two (2) adjoining rural residential properties being Lots 94 and 95 on SP184838. The boundary realignment is necessary to resolve existing encroachments whereby infrastructure belonging to Lots 94 and 95 is partly within Lot 130.

Upon resolution of the encroachments, it is understood that Lot 130 is to be handed over to the State as an extension of National Park (Lot 25 on AP19345).

The proposed allotments are as follows:

- Lot 94 – area of 8,304 square metres;
- Lot 95 – area of 4,534 square metres; and
- Lot 130 – area of 28.3 hectares.

No change is proposed to existing frontages, access or servicing arrangements.

REGIONAL PLAN DESIGNATION

The subject site is included within the Regional Landscape and Rural Production Area and Rural Living Area land use category in the Far North Queensland Regional Plan 2009-2031. The Regional Plan Map 3- 'Areas of Ecological Significance' also identifies the site is:

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

PLANNING SCHEME DESIGNATIONS

| | |
|----------------------|--|
| Strategic Framework: | Land Use Categories <ul style="list-style-type: none"> • <i>Rural Residential Area</i> • <i>Rural Other</i> Natural Environmental Elements <ul style="list-style-type: none"> • <i>Biodiversity Areas</i> Transport Elements <ul style="list-style-type: none"> • <i>Local Collector Road</i> |
| Zone: | Rural Zone |

| | |
|-----------|--|
| | Rural Residential Zone - (4,000m2 Precinct) |
| Overlays: | Airport Environs Overlay Environmental Significance Overlay Flood Hazard Overlay Hill and Slope Overlay Transport Infrastructure Overlay |

RELEVANT PLANNING INSTRUMENTS

Assessment of the proposed development against the relevant planning instruments is summarised as follows:

(a) Far North Queensland Regional Plan 2009-2031

Separate assessment against the Regional Plan is not required because the Mareeba Shire Council Planning Scheme appropriately advances the Far North Queensland Regional Plan 2009-2031, as it applies to the planning scheme area.

(b) State Planning Policy

Separate assessment against the State Planning Policy (SPP) is not required because the Mareeba Shire Council Planning Scheme appropriately integrates all relevant aspects of the SPP.

(c) Mareeba Shire Council Planning Scheme 2016

Relevant Development Codes

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

- 6.2.9 Rural zone code
- 6.2.10 Rural residential zone code
- 8.2.2 Airport environs 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 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 |
|-----------------|---|
| Rural zone code | The application can be conditioned to comply with the relevant acceptable outcomes (or performance outcomes where no acceptable outcome is provided) contained within the code. |

| | |
|---|---|
| Rural residential zone code | The application can be conditioned to comply with the relevant acceptable outcomes (or performance outcomes where no acceptable outcome is provided) contained within the code. |
| Airport environs overlay code | The application can be conditioned to comply with the relevant acceptable outcomes (or performance outcomes where no acceptable outcome is provided) contained within the code. |
| Environmental significance overlay code | The application can be conditioned to comply with the relevant acceptable outcomes (or performance outcomes where no acceptable outcome is provided) contained within the code. |
| Flood hazard overlay code | The application can be conditioned to comply with the relevant acceptable outcomes (or performance outcomes where no acceptable outcome is provided) contained within the code. |
| Hill and slope overlay code | The application can be conditioned to comply with the relevant acceptable outcomes (or performance outcomes where no acceptable outcome is provided) contained within the code. |
| Landscaping code | The application can be conditioned to comply with the relevant acceptable outcomes (or performance outcomes where no acceptable outcome is provided) contained within the code. |
| Parking and access code | The application can be conditioned to comply with the relevant acceptable outcomes (or performance outcomes where no acceptable outcome is provided) contained within the code. |
| Reconfiguring a lot code | 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. |
| Works, services and infrastructure code | The application can be conditioned to comply with the relevant acceptable outcomes (or performance outcomes where no acceptable outcome is provided) contained within the code. |

(e) 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.

(f) Adopted Infrastructure Charges Notice

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

REFERRAL AGENCY

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

That Department advised in a letter dated 3 October 2024 that they require the conditions to be attached to any approval (**Attachment 2**).

Internal Consultation

Nil

PLANNING DISCUSSION

Nil

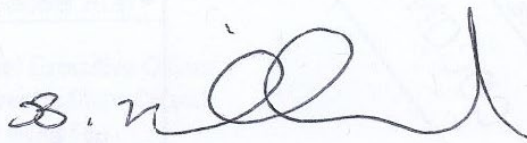
Date Prepared: *9 October 2024*

DECISION BY DELEGATE

DECISION

Having considered the Senior Planner's report detailed above, I approve, as a delegate of Council, the application subject to the conditions listed in the report.

Dated the 9TH day of OCTOBER 2024

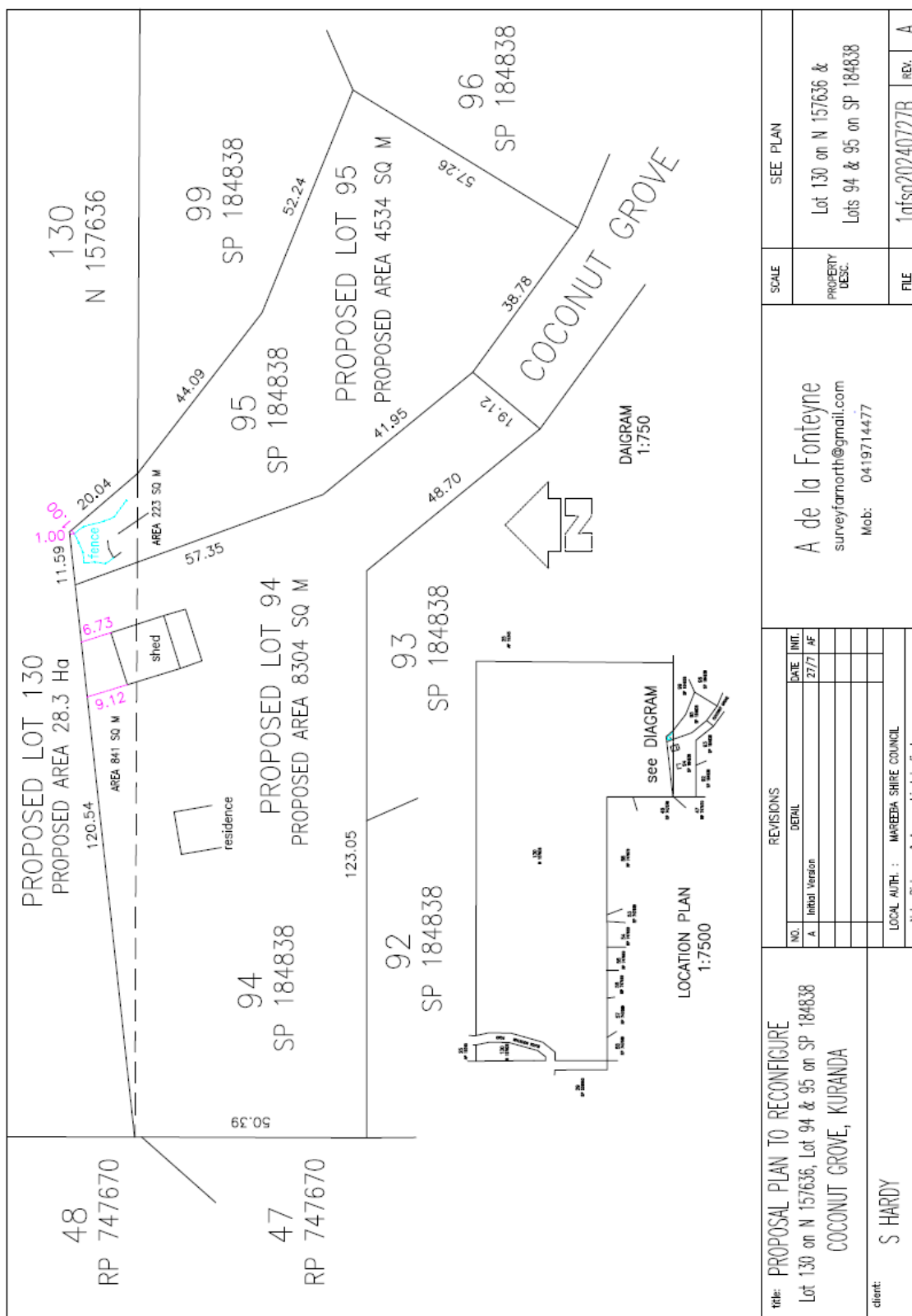


BRIAN MILLARD
COORDINATOR PLANNING SERVICES

MAREEBA SHIRE
AS A DELEGATE OF THE COUNCIL

ATTACHMENT 1

PROPOSAL PLANS



ATTACHMENT 2

RA6-N



SARA reference: 2409-42202 SRA
 Council reference: RAL/24/0011
 Applicant reference: -

3 October 2024

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

Attention: Carl Ewin

Dear Sir/Madam

SARA referral agency response — Black Mountain Road and 23-24 Coconut Grove, Kuranda

(Referral agency response given under section 56 of the *Planning Act 2016*)

The development application described below was confirmed as properly referred by the State Assessment and Referral Agency (SARA) on 9 September 2024.

Response

| | |
|-------------------|--|
| Outcome: | Referral agency response – with conditions |
| Date of response: | 3 October 2024 |
| Conditions: | The conditions in Attachment 1 must be attached to any development approval |
| Advice: | Advice to the applicant is in Attachment 2 |
| Reasons: | The reasons for the referral agency response are in Attachment 3 |

Development details

| | | |
|--------------|--------------------|--|
| Description: | Development permit | Reconfiguring a lot - Boundary realignment |
| SARA role: | Referral agency | |

2409-42202 SRA

SARA trigger: Schedule 10, Part 3, Division 4, Table 2, Item 1 (Planning Regulation 2017) – Reconfiguring a lot that involves clearing native vegetation

SARA reference: 2409-42202 SRA

Assessment manager: Mareeba Shire Council

Street address: Black Mountain Road and 23-24 Coconut Grove, Kuranda

Real property description: Lot 130 on N157636 and Lots 94 & 95 on SP184838

Applicant name: Hardy Financial Pty Ltd

Applicant contact details: PO Box 32
Woden ACT 2606
Steve.Hardy@hindmarsh.com.au

Human Rights Act 2019 considerations: A consideration of the 23 fundamental human rights protected under the *Human Rights Act 2019* has been undertaken as part of this decision. It has been determined that this decision does not limit human rights.

Representations

An applicant may make representations to a concurrence agency, at any time before the application is decided, about changing a matter in the referral agency response (s.30 Development Assessment Rules). Copies of the relevant provisions are in **Attachment 4**.

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

For further information please contact Charlton Best, Senior Planning Officer, on 07 4037 3200 or via email CairnsSARA@dsdipg.qld.gov.au who will be pleased to assist.

Yours sincerely



Brett Nancarrow
Manager (Planning)

cc Mr Steve Hardy, Steve.Hardy@hindmarsh.com.au

enc Attachment 1 - Referral agency conditions
Attachment 2 - Advice to the applicant
Attachment 3 - Reasons for referral agency response
Attachment 4 - Representations about a referral agency response provisions
Attachment 5 - Documents referenced in conditions

Attachment 1—Referral agency conditions

(Under section 56(1)(b)(i) of the *Planning Act 2016* the following conditions must be attached to any development approval relating to this application) (Copies of the documents referenced below are found at Attachment 5)

| No. | Conditions | Condition timing |
|--|--|--|
| Reconfiguring a lot | | |
| Schedule 10, Part 3, Division 4, Table 2 – Clearing native vegetation — The chief executive administering the <i>Planning Act 2016</i> nominates the Director-General of the Department of Resources to be the enforcement authority for the development to which this development approval relates for the administration and enforcement of any matter relating to the following conditions: | | |
| 1. | The new allotment boundaries must be located generally in accordance with the following plan: (a) Proposal Plan to Reconfigure Lot 130 on N157636, Lot 94 & 95 on SP184838 Coconut Grove, Kuranda, prepared by A de La Fonteyne dated 27/7, reference 1afsg20240727B, revision A. | Prior to submitting the Plan of Survey to the local government for approval. |

Attachment 2—Advice to the applicant

| General advice | |
|----------------|--|
| 1. | Terms and phrases used in this document are defined in the <i>Planning Act 2016</i> , its regulation or the State Development Assessment Provisions (SDAP) (version 3.0). If a word remains undefined it has its ordinary meaning. |

Attachment 3—Reasons for referral agency response

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

The reasons for the SARA's decision are:

- The proposed development has reasonably avoided clearing where possible and reasonably minimised the adverse impacts of clearing where it cannot be reasonably avoided.
- SARA has carried out an assessment of the development application against State code 16: Native vegetation clearing, and has found that with conditions, the proposed development complies with relevant performance outcomes.

Material used in the assessment of the application

- The development application material and submitted plans
- *Planning Act 2016*
- *Planning Regulation 2017*
- The State Development Assessment Provisions (version 3.0)
- The Development Assessment Rules
- SARA DA Mapping system
- *Human Rights Act 2019*

Attachment 4—Representations about a referral agency response provisions

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Attachment 5—Documents referenced in conditions

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Development Assessment Rules—Representations about a referral agency response

The following provisions are those set out in sections 28 and 30 of the Development Assessment Rules¹ regarding **representations about a referral agency response**

Part 6: Changes to the application and referral agency responses

28 Concurrence agency changes its response or gives a late response

- 28.1. Despite part 2, a concurrence agency may, after its referral agency assessment period and any further period agreed ends, change its referral agency response or give a late referral agency response before the application is decided, subject to section 28.2 and 28.3.
- 28.2. A concurrence agency may change its referral agency response at any time before the application is decided if—
 - (a) the change is in response to a change which the assessment manager is satisfied is a change under section 26.1; or
 - (b) the Minister has given the concurrence agency a direction under section 99 of the Act; or
 - (c) the applicant has given written agreement to the change to the referral agency response.²
- 28.3. A concurrence agency may give a late referral agency response before the application is decided, if the applicant has given written agreement to the late referral agency response.
- 28.4. If a concurrence agency proposes to change its referral agency response under section 28.2(a), the concurrence agency must—
 - (a) give notice of its intention to change its referral agency response to the assessment manager and a copy to the applicant within 5 days of receiving notice of the change under section 25.1; and
 - (b) the concurrence agency has 10 days from the day of giving notice under paragraph (a), or a further period agreed between the applicant and the concurrence agency, to give an amended referral agency response to the assessment manager and a copy to the applicant.

¹ Pursuant to Section 68 of the *Planning Act 2016*

² In the instance an applicant has made representations to the concurrence agency under section 30, and the concurrence agency agrees to make the change included in the representations, section 28.2(c) is taken to have been satisfied.

Part 7: Miscellaneous

30 Representations about a referral agency response

- 30.1. An applicant may make representations to a concurrence agency at any time before the application is decided, about changing a matter in the referral agency response.³

³ An applicant may elect, under section 32, to stop the assessment manager's decision period in which to take this action. If a concurrence agency wishes to amend their response in relation to representations made under this section, they must do so in accordance with section 28.

