

**PLANNING REPORT**

**SUBJECT:** D KEARNEY - RECONFIGURING A LOT - SUBDIVISION (1 INTO 2 LOTS) - LOT 11 ON SP101831 - 173 DE LACY ROAD, DIMBULAH - RAL/18/0006

**MEETING:** Ordinary

**MEETING DATE:** 16 May 2018

**REPORT OFFICER'S TITLE:** Planning Officer

**DEPARTMENT:** Corporate and Community Services

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**APPLICATION DETAILS**

APPLICATION		PREMISES	
<b>APPLICANT</b>	D Kearney	<b>ADDRESS</b>	173 De Lacy Road, Dimbulah
<b>DATE LODGED</b>	1 March 2018	<b>RPD</b>	Lot 11 on SP101831
<b>TYPE OF APPROVAL</b>	Development Permit		
<b>PROPOSED DEVELOPMENT</b>	Reconfiguring a Lot - Subdivision (1 into 2 Lots)		

<b>FILE NO</b>	RAL/18/0006	<b>AREA</b>	37.7019 hectares
<b>LODGED BY</b>	Gilvear Planning	<b>OWNER</b>	D Kearney
<b>PLANNING SCHEME</b>	Mareeba Shire Council Planning Scheme 2016		
<b>ZONE</b>	Rural Zone		
<b>LEVEL OF ASSESSMENT</b>	Code Assessment		
<b>SUBMISSIONS</b>	n/a		

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**ATTACHMENTS:** 1. Proposal Plan/s

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**EXECUTIVE SUMMARY**

*Council is in receipt of a code assessable development application described in the above application details. Being code assessable, the application was not required to undergo public notification.*

*The subject site is physically separated into two portions by De Lacy Road. The application proposes the subdivision of the site to separate these two portions. The northern portion (proposed Lot 111) has an area of 16.9219 hectares while the southern portion (proposed Lot 112) has an area of 20.78 hectares. The subject land and surrounding lots are actively farmed and are mapped as containing Class A agricultural land.*

*The application and supporting material has been assessed against the Mareeba Shire Council Planning Scheme 2016 and is in conflict with multiple performance outcomes contained within the Agricultural land overlay code relating to the conservation and protection of agricultural land.*

*Furthermore, the subject land is entirely contained within the 'potential flood hazard area' which severely limits the ability for proposed vacant Lot 111 to support future improvements such as a dwelling and sheds without the imposition of costly flood hazard investigations and subsequent flood hazard mitigation strategies. The Planning Scheme's Flood hazard overlay code specifically discourages the creation of additional lots within flood hazard areas.*

*The assessing officer has not identified sufficient planning grounds to justify approval of the application, despite the conflicts discussed above. It is therefore recommended that the application be refused.*

*Council considered this report at the 18 April 2018 ordinary meeting and resolved to defer consideration of this application to the next meeting and request that officers prepare a report outlining possible conditions for approval.*

*Draft conditions of approval are provided at the end of this report.*

## OFFICER'S RECOMMENDATION

- That in relation to the following development application:

APPLICATION		PREMISES	
APPLICANT	D Kearney	ADDRESS	173 De Lacy Road, Dimbulah
DATE LODGED	1 March 2018	RPD	Lot 11 on SP101831
TYPE OF APPROVAL	Development Permit		
PROPOSED DEVELOPMENT	Reconfiguring a Lot - Subdivision (1 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 into 2 Lots)

(B) ASSESSMENT MANAGER'S REASONS FOR REFUSAL:

That Council consider:

- The proposed development is in conflict with Overall outcomes (a) and (b) of the Agricultural land overlay code;*
- The proposed development conflicts with the following Performance Outcomes and Acceptable Outcome of the Agricultural land overlay code:*

### PO1

*The fragmentation or loss of productive capacity of land within the 'Class A' area or 'Class B' area identified on the **Agricultural land overlay maps (OM-001a-n)** is avoided unless:*

- (a) an overriding need exists for the development in terms of public benefit;*
- (b) no suitable alternative site exists; and*
- (c) loss or fragmentation is minimised to the extent possible.*

#### **AO1**

*Buildings and structures are not located on land within the 'Class A' area or 'Class B' area identified on the **Agricultural land overlay maps (OM-001a-n)** unless they are associated with:*

- (a) animal husbandry; or*
- (b) animal keeping; or*
- (c) cropping; or*
- (d) dwelling house; or*
- (e) home based business; or*
- (f) intensive animal industry (only where for feedlotting); or*
- (g) intensive horticulture; or*
- (h) landing; or*
- (i) roadside stalls; or*
- (j) winery.*

#### **PO2**

*Sensitive land uses in the 'Class A' area, 'Class B' area or the 'Broadhectare rural' area identified on the **Agricultural land overlay maps (OM-001a-n)** are designed and located to:*

- (a) avoid land use conflict;*
- (b) manage impacts from agricultural activities, including chemical spray drift, odour, noise, dust, smoke and ash;*
- (c) avoid reducing primary production potential; and*
- (d) not adversely affect public health, safety and amenity.*

#### **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*
- (d) facilitates conservation outcomes; or*
- (d) resolves boundary issues where a structure is built over the boundary line of two lots;*

3. *The proposed development conflicts with the following Performance Outcome and Acceptable Outcome of the Reconfiguring a lot code:*

#### **PO1**

*Lots include an area and frontage that:*

- (a) is consistent with the design of lots in the surrounding area;*

- (b) *allows the desired amenity of the zone to be achieved;*
- (c) *is able to accommodate all buildings, structures and works associated with the intended land use;*
- (d) *allow the site to be provided with sufficient access;*
- (e) *considers the proximity of the land to:*
  - (i) *centres;*
  - (ii) *public transport services; and*
  - (iii) *open space; and*
- (f) *allows for the protection of environmental features; and*
- (g) *accommodates site constraints.*

**AO1.1**

*Lots provide a minimum area and frontage in accordance with **Table 9.4.4.3B**.*

4. *The proposed development conflicts with the following Performance Outcome of the Flood hazard overlay code:*

**PO13**

*Development where involving Reconfiguring a lot, is located and designed to:*

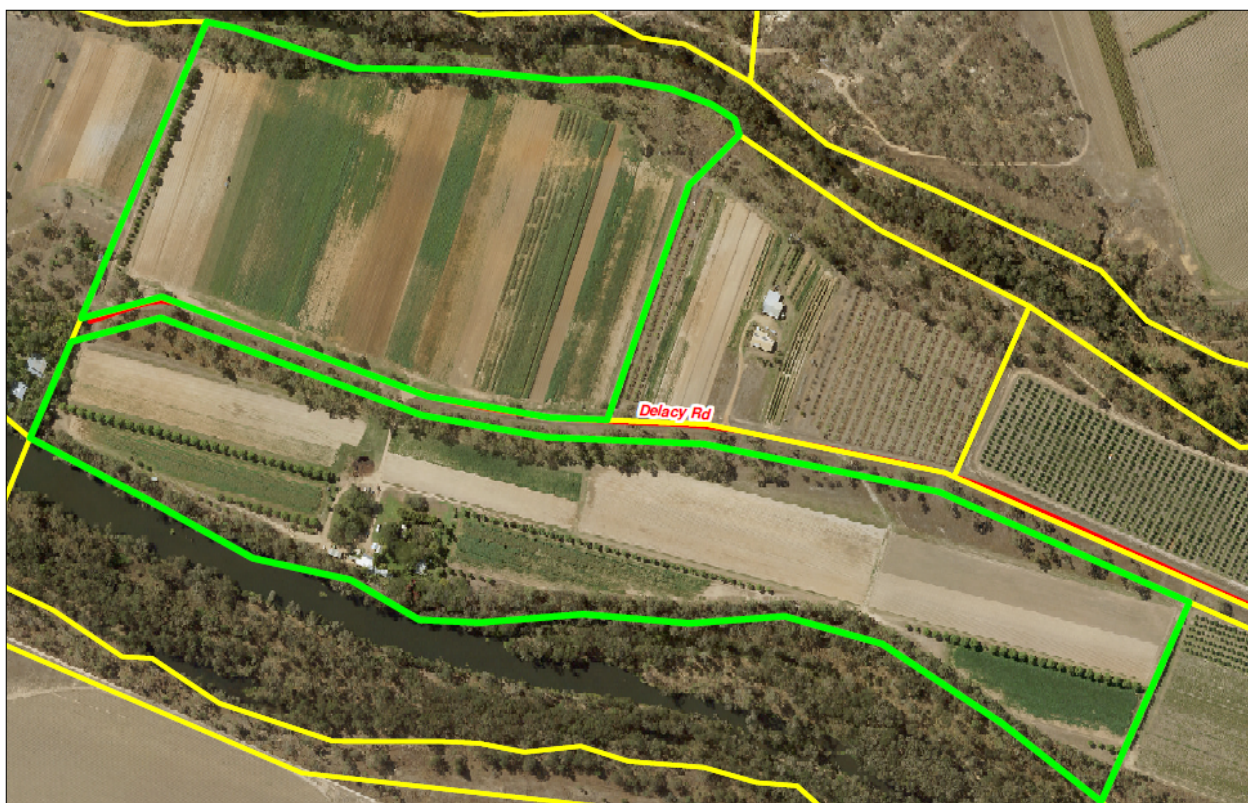
- (a) *maintain hydrological function of the premises;*
- (b) *not increase the number of people calculated to be at risk from flooding;*
- (c) *minimise the flood impact on adjoining premises;*
- (d) *ensure the safety of all persons by ensuring that a proportion of buildings are set above the defined flood level;*
- (e) *reduce the carriage of debris in flood waters;*
- (f) *reduce property damage; and*
- (g) *provide flood immune access to buildings.*

**THE SITE**

The subject site is situated at 173 De Lacy Road, Dimbulah, and is more particularly described as Lot 11 on SP101831. The site is situated approximately 4 kilometres to the north-east of the Dimbulah Township on a peninsula of land bordered by Leadingham Creek to the north and the Walsh River to the south. De Lacy Road bisects the site in an east-west direction splitting the lot into two portions. The northern portion has an area of 16.9219 hectares while the southern portion has an area of 20.78 hectares (total combined area of 37.7019 hectares). The site is zoned Rural under the Mareeba Shire Council Planning Scheme 2016 and is almost entirely mapped as "Class A" agricultural land.

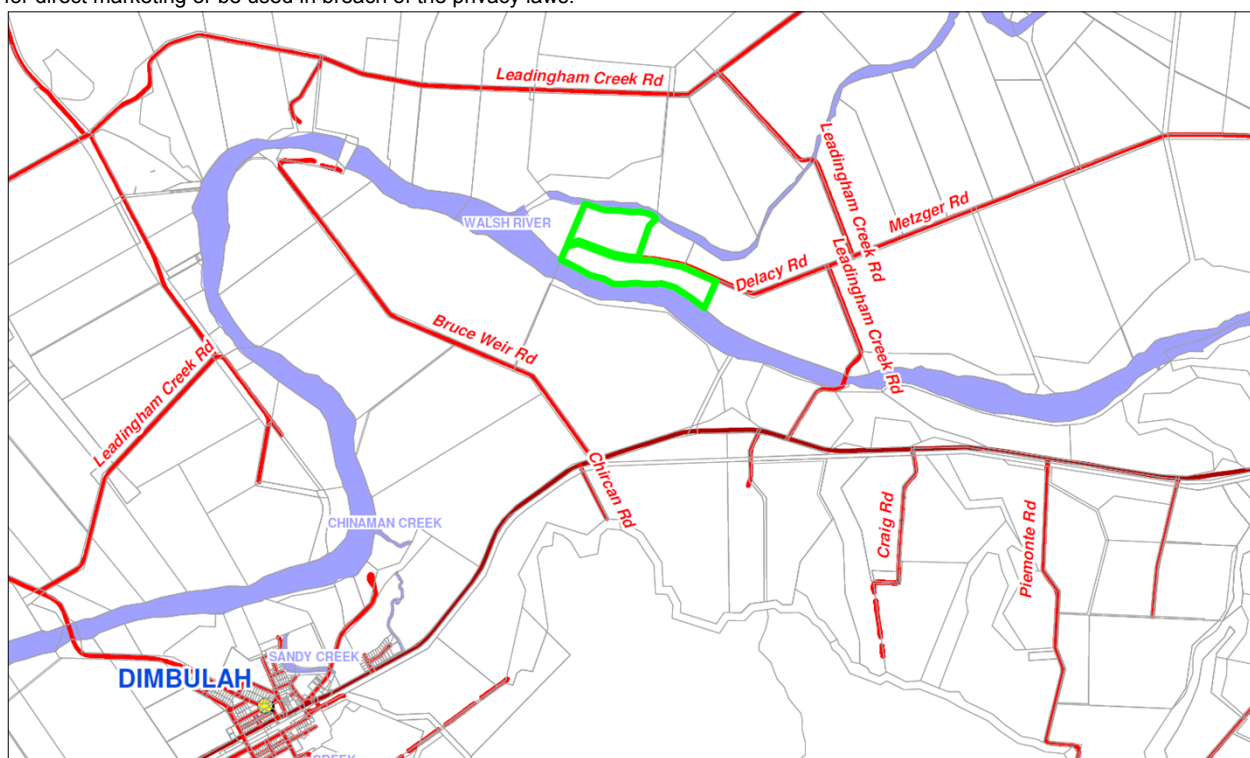
The site has a combined frontage of 1.746 kilometres to De Lacy Road which is constructed to a bitumen sealed standard for almost its entire length with only the last 60 metres of road constructed to a formed gravel standard. Both the northern and southern portions of the site are accessed from the same point off De Lacy Road via individual gravel crossovers.

The sites improvements include a dwelling and multiple farm sheds clustered together adjacent the southern boundary overlooking the Walsh River. The northern portion of the site remains unimproved. The majority of the site has been cleared of vegetation and is used for cropping. Some mature vegetation remains along the De Lacy Road frontage of the site as well as mature riparian vegetation along both the Walsh River and Leadingham Creek boundaries of the site. All immediate surrounding lots are also zoned Rural and are used for cropping.



**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 into 2 Lots) in accordance with the plans shown in **Attachment 1**.

The details of the proposed allotments are as follows:

- Proposed Lot 111 (northern portion of the site), area of 16.9219 hectares, frontage of 557 metres to De Lacy Road; and
- Proposed Lot 112 (southern portion of the site), area of 20.78 hectares, frontage of 1,186 metres to De Lacy Road.

Proposed Lot 111 will be created vacant, while Proposed Lot 112 will contain the sites existing improvements which include a dwelling and farm sheds.

## 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:

- *Wetland Area of General 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>• <i>Rural Agricultural Area</i></li> <li>• <i>Rural other</i></li> </ul> <b>Other Elements</b> <ul style="list-style-type: none"> <li>• <i>Major Watercourse</i></li> </ul>
Zone:	Rural zone
Overlays:	Agricultural land overlay Bushfire hazard overlay Flood hazard 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
8.2.1	Agricultural land overlay code
8.2.3	Bushfire hazard overlay code
8.2.4	Environmental significance overlay code
8.2.6	Flood hazard 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	The application can be conditioned to comply with the relevant acceptable outcomes and/or performance outcomes (where no acceptable outcome provided) contained within the code.
Agricultural land overlay code	The application conflicts with the following performance outcomes and acceptable outcomes: <ul style="list-style-type: none"> <li>PO1 and AO1</li> <li>PO2</li> <li>PO3</li> <li>PO6</li> </ul> Refer to planning discussion section of this report.
Bushfire hazard overlay code	The application can be conditioned to comply with the relevant acceptable outcomes and/or performance outcomes (where no acceptable outcome provided) contained within the code.
Environmental significance overlay code	The application can be conditioned to comply with the relevant acceptable outcomes and/or performance outcomes (where no acceptable outcome provided) contained within the code.
Flood hazard overlay code	The application can be conditioned to comply with the relevant acceptable outcomes and/or performance outcomes (where no acceptable outcome provided) contained within the code apart from the following: <ul style="list-style-type: none"> <li>PO13</li> </ul> Refer to planning discussion section of this report.



Landscaping code	The application can be conditioned to comply with the relevant acceptable outcomes and/or performance outcomes (where no acceptable outcome provided) contained within the code.
Parking and access code	The application can be conditioned to comply with the relevant acceptable outcomes and/or performance outcomes (where no acceptable outcome provided) contained within the code.
Reconfiguring a lot code	The application can be conditioned to comply with the relevant acceptable outcomes and/or performance outcomes (where no acceptable outcome provided) contained within the code apart from the following: <ul style="list-style-type: none"> <li>PO1 and AO1</li> </ul> Refer to planning discussion section of this report.
Works, services and infrastructure code	The application can be conditioned to comply with the relevant acceptable outcomes and/or performance outcomes (where no acceptable outcome 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

All development works will be conditioned to be designed and constructed in accordance with the FNQROC Development Manual.

### **(f) Additional Trunk Infrastructure Condition**

The subject land is located outside the identified Priority Infrastructure Area (PIA).

Section 130 of the Planning Act 2016 allows Council to condition additional trunk infrastructure outside the PIA.

The development, creating an additional allotment, is predicted to place additional demand on Council's trunk transport infrastructure (roads).

The developer must pay a one-off payment of \$4,500.00 (per additional lot) as a contribution toward trunk infrastructure with the amount of the contribution increased on 1 July each year in accordance with the increase for the PPI index for the period starting on the day the development approval takes effect, adjusted by reference to the 3-yearly PPI index average to the date of payment.

The trunk infrastructure for which the payment is required is:

- The trunk transport infrastructure servicing the land (\$4,500.00)

The developer may elect to provide part of the trunk infrastructure instead of making the payment.

If the developer elects to provide part of the trunk infrastructure the developer must:

- Discuss with Council's delegated officer the part of the works to be undertaken;
- Obtain the necessary approvals for the part of the works;
- Indemnify the Council in relation to any actions, suits or demands relating to or arising from the works;



- Take out joint insurance in the name of the Council and the developer in the sum of \$20,000,000 in relation to the undertaking of the works;
- Comply with the reasonable direction of Council officers in relation to the completion of the works;
- Complete the works to the standards required by the Council; and
- Complete the works prior to endorsement of the plan of subdivision

## REFERRALS

This application did not trigger a referral to a State Referral Agency.

## Internal Consultation

Not applicable

## PLANNING DISCUSSION

Noncompliance with the Overall Outcomes, Performance Outcomes and Acceptable Outcomes of the Agricultural land overlay code, Reconfiguring a lot code and Flood hazard overlay code are discussed as follows:

### Conflicts with the Agricultural Land Overlay Code

#### 8.2.1.2 Purpose

(2) *The purpose of the code will be achieved through the following overall outcomes:*

- (a) *The alienation, fragmentation or reduction in primary production potential of land within the 'Class A' and or 'Class B' area is avoided, except where:*
  - (i) *an overriding need exists for the development in terms of public benefit;*
  - (ii) *no suitable alternate sites exist; and*
  - (iii) *the fragmentation or reduced production potential of agricultural land is minimised;*
- (b) *'Class A' areas and 'Class B' areas continue to be used primarily for more intensive agricultural activities which utilise the land quality provided in these areas;*

### Comment

The site in its current configuration has a total area of 37.7019 hectares and is actively farmed, as are the surrounding lots. While it is acknowledged that the subject land is somewhat fragmented by De Lacy Road, it is still able to be farmed as one productive unit as this road experiences very little vehicle traffic. The presence of the road bisection is not considered to be sufficient planning grounds to justify further fragmentation of agricultural land through the creation of two separate titles. Each proposed lot would be well below the minimum desired reconfigured lot size of 60 hectares, and because of this, their agricultural viability (or production potential) moving forward would be questionable.

While the current application is for reconfiguring a lot only, it is expected that a dwelling house would be established in future on proposed vacant Lot 111 as a consequence of the reconfiguration. A dwelling house could not be sited on proposed Lot 111 outside the Class A area and as a result, that portion of Class A area would be permanently alienated from agricultural production. Furthermore, increasing dwelling densities within the Rural zone only increases the likelihood of land use conflict occurring, especially when appropriate separation distances cannot be achieved. Increasing dwelling densities within the Rural zone also increases the difficulty

associated with establishing new intensive rural activities or expanding existing intensive rural activities such as poultry farms, feedlots and kennels.

Whilst there may be a benefit to the applicants, there is not considered to be an overriding need in terms of benefit to the community.

The proposed development conflicts with Overall Outcomes (a) and (b).

### **PO1**

*The fragmentation or loss of productive capacity of land within the 'Class A' area or 'Class B' area identified on the **Agricultural land overlay maps (OM-001a-n)** is avoided unless:*

- (a) an overriding need exists for the development in terms of public benefit;*
- (b) no suitable alternative site exists; and*
- (c) loss or fragmentation is minimised to the extent possible.*

### **AO1**

*Buildings and structures are not located on land within the 'Class A' area or 'Class B' area identified on the **Agricultural land overlay maps (OM-001a-n)** unless they are associated with:*

- (a) animal husbandry; or*
- (b) animal keeping; or*
- (c) cropping; or*
- (d) dwelling house; or*
- (e) home based business; or*
- (f) intensive animal industry (only where for feedlotting); or*
- (g) intensive horticulture; or*
- (h) landing; or*
- (i) roadside stalls; or*
- (j) winery.*

### Comment

The development would create proposed Lot 111 as a vacant rural allotment with the ability for the allotment to potentially accommodate a future dwelling. A dwelling house could not be sited on proposed Lot 111 without resulting in a loss of Class A area.

The proposed development is in conflict with PO1.

### **PO2**

*Sensitive land uses in the 'Class A' area, 'Class B' area or the 'Broadhectare rural' area identified on the **Agricultural land overlay maps (OM-001a-n)** are designed and located to:*

- (a) avoid land use conflict;*
- (b) manage impacts from agricultural activities, including chemical spray drift, odour, noise, dust, smoke and ash;*
- (c) avoid reducing primary production potential; and*
- (d) not adversely affect public health, safety and amenity.*

### Comment

While the current application is for reconfiguring a lot only, it is expected that a dwelling house would be established in future on proposed vacant Lot 111 as a consequence of the reconfiguration. The planning scheme defines a dwelling house as a sensitive land use.

A dwelling house could not be sited on proposed Lot 111 outside the Class A area. Furthermore, increasing dwelling densities within an actively farmed rural area will only increase the likelihood of future land use conflict resulting from impacts associated with farming activity such as spray drift, odour, dust and noise.

Siting an additional dwelling house within the Class A area will reduce primary production potential.

The proposed development is in conflict with PO2.

### **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.*

### Comment

The site in its current configuration has a total area of 37.7019 hectares and is actively farmed, as are surrounding lots. While it is acknowledged that the subject land is somewhat fragmented by De Lacy Road, it is still farmed as one productive unit. The presence of the road bisection is not considered to be sufficient planning grounds to justify further fragmentation of agricultural land through the creation of two separate titles. Each proposed lot would be well below the minimum desired reconfigured lot size of 60 hectares, and because of this, their agricultural viability moving forward would be questionable.

While the current application is for reconfiguring a lot only, it is expected that a dwelling house would be established in future on proposed vacant Lot 111 as a consequence of the reconfiguration. A dwelling house could not be sited on proposed Lot 111 outside the Class A area and as a result, that portion of Class A area would be permanently alienated from agricultural production.

The proposed development would permanently compromise Class A agricultural land both through the siting of an additional dwelling and by further fragmenting the land into separate allotments with questionable agricultural viability (production potential) due to their reduced size.

The proposed development is in conflict 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*
- (d) 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 reconfiguration does not improve agricultural efficiency; does not facilitate agricultural activity; does not facilitate a conservation outcome; and does not resolve a boundary issue where a structure is built over the boundary.

While it is acknowledged that the subject land is somewhat fragmented by De Lacy Road, it is still farmed as one productive unit. The presence of the road bisection is not considered to be sufficient planning grounds to justify further fragmentation of agricultural land through the creation of two separate titles. Each proposed lot would be well below the minimum desired reconfigured lot size of 60 hectares, and because of this, their agricultural viability moving forward would be questionable.

The proposed development is in conflict with PO6.

### **Conflicts with the Reconfiguring a Lot Code**

#### **PO1**

*Lots include an area and frontage that:*

- (g) *is consistent with the design of lots in the surrounding area;*
- (h) *allows the desired amenity of the zone to be achieved;*
- (i) *is able to accommodate all buildings, structures and works associated with the intended land use;*
- (j) *allow the site to be provided with sufficient access;*
- (k) *considers the proximity of the land to:*
  - (i) *centres;*
  - (ii) *public transport services; and*
  - (iii) *open space; and*
- (l) *allows for the protection of environmental features; and*
- (g) *accommodates site constraints.*

#### **AO1.1**

*Lots provide a minimum area and frontage in accordance with **Table 9.4.4.3B**.*

#### **Comment**

Existing Lot 11 on SP101831 has an area of 37.7019 hectares. Proposed Lots 111 and 112 will have areas of 16.9219 hectares and 20.78 hectares respectively.

Table 9.4.4.3B dictates a minimum lot size of 60 hectares for land within the Rural zone. The reason for such a lot size is to maintain lots in economically viable sizes and to maintain dwelling densities at a low level to allow the functioning of the zone, which is primarily for agriculture and primary production purposes. The fact that the subject site is currently smaller than the Planning Scheme's desired 60 Ha lot size is not considered to be sufficient grounds to support further fragmentation of the land.

In terms of amenity, the desired amenity of the rural zone is one which includes provision for negative environmental outputs associated with farming activity, including spray drift, dust, odour and noise. Creating additional small rural lots will only increase dwelling densities, ergo increasing the likelihood of future land use conflict.

The proposed reconfiguration conflicts with PO1.

### **Conflicts with the Flood Hazard Overlay Code**

#### **PO13**

*Development, where involving Reconfiguring a lot, is located and designed to:*

- (a) *maintain hydrological function of the premises;*
- (b) *not increase the number of people calculated to be at risk of flooding;*
- (c) *minimise the flood impact on adjoining premises;*
- (d) *ensure the safety of all persons by ensuring that a proportion of buildings are set above the defined flood level;*
- (e) *reduce the carriage of debris in flood waters;*
- (f) *reduce property damage; and*
- (g) *provide flood immune access to buildings.*

**Note** - Where the development is located in a 'Potential flood hazard area' identified on the **Flood hazard overlay maps (OM006a-o)** and there is no defined flood level a hydraulic (flood hazard assessment) report prepared by a RPEQ is required in substantiation of an alternative outcome is required or the defined flood level from the adjacent representative hazard zone is used.

### **AO13**

*No acceptable outcome is provided.*

### Comment

The subject site is entirely contained within the 'potential flood hazard area'. An information request was issued to the applicant requesting that the Flood hazard overlay code be addressed as part of this application. The information request response stated the following:

*"The proposed subdivision, on its own and without any building works or new dwellings is not considered to be in conflict with the code. The conflict only occurs when building works occur. Any new development on the site, including a dwelling house, would need to comply with the Flood Hazard Overlay Code and a flood assessment is perhaps more relevant at that time. To ensure that any new potential owner is aware of this, a note could be placed on the Council rates file notifying any new owners of this issue."*

While the current application is for reconfiguring a lot only, it is expected that a dwelling house would be established in future on proposed vacant Lot 111 as a consequence of the reconfiguration. Council planning officers believe that if a development application proposing the creation of additional lots is lodged over land within a flood hazard area, then the potential flood hazard should be addressed at time of subdivision and the responsibility not passed onto a prospective landowner. Sensible town planning provides little scope for the 'buyer beware' approach to development, particularly where the potential for loss of life or property is a consideration.

Given that no flood hazard data is available for the subject site (flood heights/depths, water velocity etc.) a site-specific flood hazard assessment (as required by PO13) to determine if any future dwelling/sheds on vacant Lot 111 could achieve flood immunity would incur significant cost for a future landowner. In fact, given the location of the land between two watercourses, there is the very real possibility that flood immunity could be unachievable in this instance.

The proposed development is considered to be in conflict with PO13 which directly discourages the creation of new lots within flood hazard areas.

### Conclusion

It is considered that the application holds significant conflicts with the Mareeba Shire Council Planning Scheme 2016, in particular the Agricultural land overlay code as it would result in further fragmentation of agricultural land, the ad-hoc creation of essentially two large lifestyle allotments

with questionable agricultural viability, and the very real prospect of an increase in dwelling densities within the Rural zone, if the potential flood hazard over the subject land is adequately addressed in future.

It is therefore recommended that the application be refused.

### Draft conditions of approval

- That in relation to the following development application:

APPLICATION		PREMISES	
<b>APPLICANT</b>	D Kearney	<b>ADDRESS</b>	173 De Lacy Road, Dimbulah
<b>DATE LODGED</b>	1 March 2018	<b>RPD</b>	Lot 11 on SP101831
<b>TYPE OF APPROVAL</b>	Development Permit		
<b>PROPOSED DEVELOPMENT</b>	Reconfiguring a Lot - Subdivision (1 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:

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 considers that the development has been reasonably conditioned to comply with all relevant instruments.

- (A) APPROVED DEVELOPMENT: Development Permit for Reconfiguring a Lot - Subdivision (1 into 2 lots)

- (B) APPROVED PLANS:

Plan/Document Number	Plan/Document Title	Prepared by	Dated
SP177746	Plan of Lots 111 & 112	Twine Surveys Pty Ltd	12 February 2018

- (C) ASSESSMENT MANAGER'S CONDITIONS (COUNCIL)

- (a) Development assessable against the Planning Scheme

- Development must be carried out substantially 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

- 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 development approval would not have been issued if not for the conditions requiring the construction of infrastructure or the payment of infrastructure charges 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 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.
- 3.4 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 Any existing buildings or structures (pools/tennis courts or fences) and/or incidental works that straddle the new boundaries must be altered, demolished or removed, as required, to align with the new property boundaries and/or be wholly contained within a new allotment, unless approved by Council's delegated officer.
- 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.
- 3.9 Rural Addressing
- The applicant must pay a contribution per additional lot for provision of rural addressing at the rate identified in the Fees and Charges Schedule at the time of payment.

## 4. Infrastructure Services and Standards



#### 4.1 Access

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

#### 4.2 Stormwater Drainage

The applicant must ensure a non-worsening effect on surrounding land as a consequence of the development and must take all reasonable and practicable measures to ensure discharge occurs in compliance with the Queensland Urban Drainage Manual (QUDM) and the FNQROC Development Manual.

#### 4.3 Water Supply

Proposed Lot 112 must be provided with a water supply via:

- (a) a bore or bores are provided in accordance with the Design Guidelines set out in the Planning Scheme Policy 4 – FNQROC Regional Development Manual; or
- (b) A minimum 2 megalitre water allocation from SunWater's irrigation supply network; or
- (c) on-site water storage tank/s:
  - (i) with a minimum capacity of 90,000L;
  - (ii) fitted with a 50mm ball valve with a camlock fitting;
  - (iii) which are installed and connected prior to the occupation or use of the development.

At the time of construction of a dwelling on proposed Lot 111, a water supply must be provided via:

- (a) a bore or bores are provided in accordance with the Design Guidelines set out in the Planning Scheme Policy 4 – FNQROC Regional Development Manual; or
- (b) A minimum 2 megalitre water allocation from SunWater's irrigation supply network; or
- (c) on-site water storage tank/s:
  - (i) with a minimum capacity of 90,000L;
  - (ii) fitted with a 50mm ball valve with a camlock fitting;
  - (iii) which are installed and connected prior to the occupation or use of the development.

#### 4.4 On-Site Wastewater Management

At the time of construction of a new dwelling on proposed Lot 111, any associated on-site effluent disposal system must be constructed in compliance

with the latest version On-Site Domestic Wastewater Management Standard (ASNZ1547) to the satisfaction of the Council's delegated officer.

#### 4.5 Electricity provision/supply

The applicant/developer must ensure that an appropriate level of electricity supply is provided to each allotment in accordance with FNQROC Development Manual standards (as amended) to the satisfaction of Council's delegated officer.

Written advice from an Electricity Service Provider is to be provided to Council indicating that an agreement has been made for the provision of power reticulation.

#### 4.6 Telecommunications

The applicant/developer must demonstrate that a connection to the national broadband network is available for each allotment, or alternatively, enter into an agreement with a telecommunication carrier to provide telecommunication services to each lot and arrange provision of necessary conduits and enveloping pipes.

### 5. Additional Payment Condition/s (section 130 of the Planning Act 2016)

5.1 The additional payment condition has been imposed as the development will create additional demand on trunk infrastructure which will create additional trunk infrastructure costs for council.

5.2 The developer must pay \$4,500.00 per additional lot as a contribution toward trunk infrastructure with the amount of the contribution increased on 1 July each year in accordance with the increase for the PPI index for the period starting on the day the development approval takes effect, adjusted by reference to the 3-yearly PPI index average to the date of payment.

5.3 The trunk infrastructure for which the payment is required is:

- The trunk transport network servicing the land (\$4,500.00 per additional allotment)

5.4 The developer may elect to provide part of the trunk infrastructure instead of making the payment.

5.5 If the developer elects to provide part of the trunk infrastructure the developer must:

- Discuss with Council's delegated officer the part of the works to be undertaken;
- Obtain the necessary approvals for the part of the works;
- Indemnify the Council in relation to any actions, suits or demands relating to or arising from the works;
- Take out joint insurance in the name of the Council and the developer in the sum of \$20,000,000 in relation to the undertaking of the works;
- Comply with the reasonable direction of Council officers in relation to the completion of the works;
- Complete the works to the standards required by the Council; and

- Complete the works prior to endorsement of the plan of subdivision.

(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) Easement Documents

Council has developed standard easement documentation to assist in the drafting of formal easement documents for Council easements. Please contact the Planning Section for more information regarding the drafting of easement documents for Council easements.

- (c) 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.

- (d) 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.

- (e) Notation on Rates Record

A notation will be placed on Council's Rate record with respect to each lot regarding the following conditions:

- conditions regarding on-site wastewater disposal system design (at time of dwelling construction)
- an approved source of water supply
- Lot 111 is entirely within the Potential Flood Hazard Area as identified by the Flood Hazard Overlay of the Mareeba Shire Council Planning Scheme 2016. The ability to construct a dwelling house and/or future buildings on Lot 111 will be dependent on the land owner demonstrating compliance with the Flood Hazard Overlay Code of the Mareeba Shire Council Planning Scheme 2016.

- (f) 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.environment.gov.au](http://www.environment.gov.au).

- (g) 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.datsip.qld.gov.au](http://www.datsip.qld.gov.au).

(E) RELEVANT PERIOD

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

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

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

- Nil

(G) OTHER APPROVALS REQUIRED FROM COUNCIL

- Access approval arising from condition number 4.1 (Please contact Planning Section to obtain application form and applicable fee)

**Date Prepared:** 1 May 2018

## ATTACHMENT 1

## APPROVED PLANS (ECM Doc Set ID 3348084)

