

Decision notice approval
Section 282 of the Planning Act 2016 for a decision notice (approval) under s63 Planning Act 2016



PLEASE QUOTE: RAL20/0006
YOUR REFERENCE: .
OUR REFERENCE: RW:ME:2004230254
ENQUIRIES TO: Riley Wise – Graduate Planning Officer

23 April 2020

Rosemay P Cox
PO Box 979
TULLY QLD 4854

Via Email: rosemaycox@gmail.com

Dear Madam

RAL20/0006 - Development application for Reconfiguring a Lot Boundary Realignment 2 Lots into 2 Lots on land described as Lot 2 RP 748623 Lot 1 RP 748623, situated at 139 Midgenoo-Feluga Road FELUGA QLD 4854

I acknowledge receipt of the above application on 17 March 2020 and confirm the following details.

I wish to advise that, on 23 April 2020 the above development application was -

- ☐ approved in full or
- ☐ approved in part for the following or
- ☒ approved in full with conditions. The conditions of this approval are set out in Attachment 1. These conditions are clearly identified to indicate whether the assessment manager or a concurrence agency imposed them or
- ☐ approved in part for the following, with conditions

The conditions of this approval are set out in **Attachment 1**. These conditions are clearly identified to indicate whether the assessment manager or a concurrence agency imposed them.

Approval under s64(5)

This application is ☐ / is not ☒ taken to have been approved (a deemed approval) under section 64(5) of the Planning Act 2016.

1. Details of the approval

The following approvals are given:

	Planning Regulation 2017 reference	Development Permit	Preliminary Approval
Development assessable under the planning scheme, superseded planning scheme, a temporary local planning instrument, a master plan or a preliminary approval which includes a variation approval - building work assessable under the planning scheme - plumbing or drainage work - material change of use - reconfiguring a lot - operational work		<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>

2. Conditions

This approval is subject to the conditions in Attachment 1.

3. Approved plans and documents

Plan Number	Plan Name	Date
Unnumbered	Site Plan	Received by Council: 17/04/2020

4. Currency period for the approval (s.85 of the Planning Act)

Currency Period: The currency period for the development approval (Reconfiguring a Lot) shall be four (4) years starting the day the approval is granted or takes effect. In accordance with Section 85 of the *Planning Act 2016 (PA)*, the development approval for a reconfiguration of a lot lapses if a plan for the reconfiguration is not given to Council within the abovementioned currency period.

An applicant may request Council to extend the currency period provided that such is made in accordance with Section 86 of *PA* and before the development approval lapses under Section 85 of *PA*.

5. Appeal rights

The rights of an applicant to appeal to a tribunal or the Planning and Environment Court against a decision about a development application are set out in chapter 6, part 1 of the Planning Act 2016. For particular applications, there may also be a right to make an application for a declaration by a tribunal (see chapter 6, part 2 of the Planning Act 2016).

Appeal by an applicant

An applicant for a development application may appeal to the Planning and Environment Court against the following:

- the refusal of all or part of the development application
- a provision of the development approval

- the decision to give a preliminary approval when a development permit was applied for
- a deemed refusal of the development application.

An applicant may also have a right to appeal to the Development tribunal. For more information, see schedule 1 of the *Planning Act 2016*.

The timeframes for starting an appeal in the Planning and Environment Court are set out in section 229 of the Planning Act 2016.

Attachment 2 is an extract from the *Planning Act 2016* that sets down the applicant's appeal rights and the appeal rights of a submitter regarding this decision.

If you wish to discuss this matter further, please contact Riley Wise - Graduate Planning Officer on Ph: (07) 4030 2208.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Manfred Boldy', with a stylized flourish at the end.

Manfred Boldy
DIRECTOR PLANNING & REGIONAL DEVELOPMENT

Attachment 1—Conditions of the approval

Part 1—Conditions imposed by the assessment manager

1. **Proposal:** That the development be undertaken generally in accordance with the application, documentation and plans in the table below, accepted by Council on 31 March 2020, all relating to Development Application – RAL20/0006, excepting where varied by the following conditions.

Plan Number	Plan Name	Date
Unnumbered	Site Plan	Received by Council: 17/04/2020

2. **Timing of Effect:** The conditions of the Development Permit must be complied with prior to the endorsement of the Plan of Survey, except where specified otherwise in these conditions of approval.
3. **Stormwater Drainage:** The applicant/owner must ensure that the flow of all external stormwater from the property is directed to a lawful point of discharge, such that stormwater does not adversely affect surrounding properties to the satisfaction of the Director Planning & Regional Development.
4. **Outstanding Rates:** The applicant/owner is to ensure that all rates, interest and other charges levied on the property are paid prior to the endorsement of the Plan of Survey, to the requirements and satisfaction of the Chief Executive Officer.
5. **Survey Marks:** New survey marks are installed in accordance with the Plan of Survey, and a cadastral surveyor is to certify the survey work in writing, to the requirements and satisfaction of the Director of Planning & Regional Development, prior to the endorsement of the Plan of Survey.
6. **Declared Pests:** The parcel of land is to be cleared of all Class 1, 2 and 3 declared pests prior to the endorsement of the Plan of Survey and is to be maintained at all times, to the requirements and satisfaction of the Director of Planning and Regional Development.

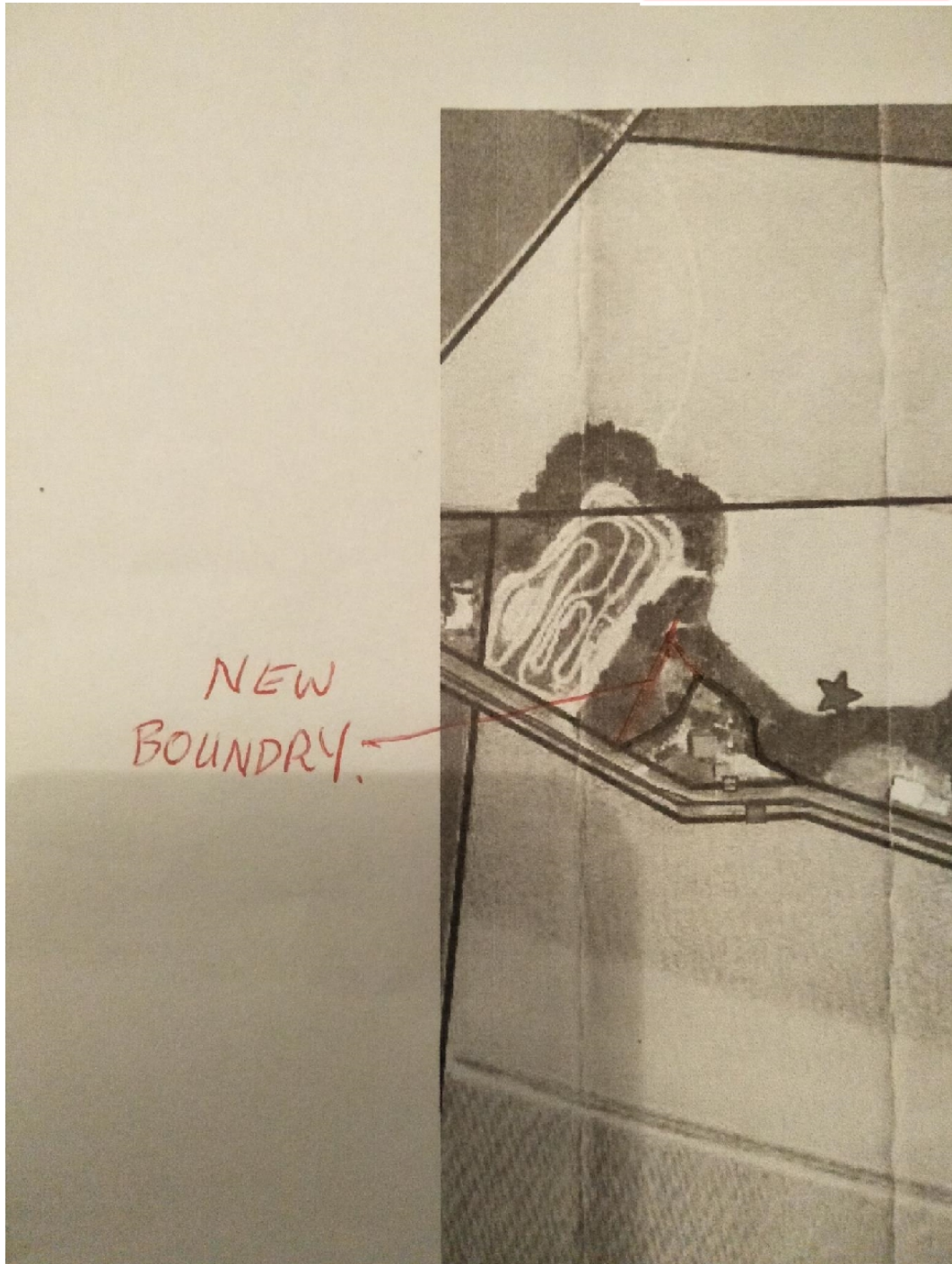
Assessment Manager's Advice

- a) **Currency Period:** The currency period for the development approval (Reconfiguring a Lot) shall be four (4) years starting the day the approval is granted or takes effect. In accordance with Section 85 of the *Planning Act 2016 (PA)*, the development approval for a reconfiguration of a lot lapses if a plan for the reconfiguration is not given to Council within the abovementioned currency period.
An applicant may request Council to extend the currency period provided that such is made in accordance with Section 86 of *PA* and before the development approval lapses under Section 85 of *PA*.
- b) **Aboriginal Cultural Heritage:** The applicant/owner is to ensure compliance with the requirements of the Aboriginal Cultural Heritage Act and in particular 'the duty of care' that it imposes all landowners, developers and the like; and
- c) **Fees and Charges:** When the plan of subdivision for the reconfiguring of a lot is submitted to Council for endorsement, such plan shall be accompanied by the endorsement fee in accordance with Council's Schedule of Fees and Charges.

- d) Council Indemnity: The Council is indemnified against any claims arising from works carried out by the Applicant/Owner on Council property.
- e) Compliance with Laws: This approval does not negate the requirement for compliance with all other relevant local laws and other statutory requirements.

Approved Plans

CASSOWARY COAST REGIONAL COUNCIL
PLANNING
APPROVED
(SUBJECT TO CONDITIONS)
D/A NUMBER: HAL23/0006
DATE: 23/04/2020



Attachment 2–Planning Act 2016 extract on appeal rights

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 and 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.

Statement of Reasons

The following information is provided in accordance with section 63 of the Planning Act 2016.



Development Application:	RAL20/0006
Property Description:	Lot 1 & 2 on RP748623
Property Address:	139 Midgenoo-Feluga Road, Feluga
Proposal:	Reconfiguring a Lot Boundary Realignment 2 Lots into 2 Lots
Planning Scheme:	Cassowary Coast Regional Council Planning Scheme 2015
Decision Date:	Approved with conditions on 23 April 2020

REASONS FOR DECISION

The proposed reconfiguration demonstrates a consistency with the purpose of all applicable codes identified in the Cassowary Coast Regional Council Planning Scheme 2015. In particular, the proposal does not result in the fragmentation or alienation of ALC Class A and B land. The approximate 800m² of additional land will ensure that the property will have a more regular shape and maintain a land area that is more constant to surrounding properties. The proposal will not affect road access to the lot or adjoining properties and not have an effect on local or through traffic. Lastly, the realignment will not have an impact of the surrounding vegetation or waterway corridor adjacent to the eastern boundary.

ASSESSMENT BENCHMARKS

Assessment Benchmarks:	State Planning Policy Far North Queensland Regional Plan 2009-2031 Cassowary Coast Regional Council Planning Scheme 2015 <ul style="list-style-type: none">• 6.2.4 Rural zone code• 9.4.7 Reconfiguring a lot code• 8.2.7 Flood hazard code• 8.2.11 Waterway corridors and wetlands code
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COMPLIANCE WITH BENCHMARKS

Assessment Benchmark	Reasons for the approval despite non-compliance with benchmark
Rural zone code	
AO13.1 ▼ The development site does not contain: (a) class 1 or 2 pests identified in the Land Protection (Pest and Stock Route Management) Act 2002; (b) local pests identified in Planning Scheme Policy SC6.4 Landscaping.	PO13 The development site must be kept free of pest plants and animals. Compliance: The existing lot is clear of pests and the proposal will be conditioned to ensure that the site is kept free of all pest plants and animals.
Reconfiguring a lot code	
AO3.1 Lots comply with the area and dimensions identified for lots in the relevant zone or precinct in Table 9.4.7.4. AO3.2 Lots have their own street frontage, unless access is provided by way of easement, in which case multiple lots do not utilise the same access easement (ie. each lot has its own dedicated access easement).	PO3 Lots are of sufficient area and dimensions to: (a) accommodate the intended land use; (b) provide for suitable building envelopes and safe vehicular and pedestrian access without the necessity for major earthworks and major retaining walls; (c) provide private outdoor space, on site landscaping and on site parking; (d) achieve consistency with the character of surrounding development; (e) protect environmental features and take into account site constraints. Compliance: The proposed boundary realignment extends an established Lot 1 RP748623 so it achieves a greater consistency in lot size with surrounding lots. The boundary realignment will provide approximately 800m ² of additional private outdoor space to the occupants. In the process Lot 2 will maintain the character and consistency with surrounding lots. The proposal will not have an impact on the existing land uses and does not require any major earthworks or retaining walls. All vehicular access points will not be impacted as a result of the proposal and will remain. Lastly, the design of the new boundary considers the stream running through the property. It ensures the stream remains within one property so accessing the stream is easier for maintenance purposes.

<p>AO5.1</p> <p>Lots comply with the area and dimensions identified for lots in the relevant zone or precinct in Table 9.4.7.4.</p> <p>AO5.2</p> <p>Each land use and associated infrastructure is contained within each lot.</p> <p>AO5.3</p> <p>Buildings and structures comply with the relevant boundary setbacks and zone or precinct requirements.</p>	<p>PO5</p> <p>Lots which are configured to incorporate existing land uses ensure:</p> <p>(a) lots are of a sufficient area and dimension;</p> <p>(b) the provision of a safe, efficient and effective infrastructure network.</p> <p>Compliance:</p> <p>The proposed configuration change will provide sufficient area and dimension for the existing single unit dwelling. Additionally, the realignment will not have an impact to the current infrastructure network in the area.</p>
<p>AO33.1</p> <p>Prior to Council endorsing the Plan of Survey, the development site is cleared of:</p> <p>(a) class 1 or 2 pests identified in the <i>Land Protection (Pest and Stock Route Management) Act 2002</i>;</p> <p>(b) local pests identified in Planning Scheme Policy SC6.4 Landscaping.</p>	<p>PO33</p> <p>New lots are cleared of pest plants and animals.</p> <p>Compliance:</p> <p>The existing lot is clear of pests and the proposal will be conditioned to ensure that the site is kept free of all pest plants and animals.</p>
Flood hazard code	
<p>AO10.1</p> <p>For development involving the reconfiguring of a lot in a flood hazard area, a building location plan must be provided for each lot demonstrating that each lot can contain an area for a building/s and ancillary structures that is a minimum of 10 metres in width and the greater of:</p> <p>(a) 60% of the new lot size; or</p> <p>(b) a 300m² rectangular shaped area, and achieves the design levels in Table 8.2.7.5 of this code.</p>	<p>PO10</p> <p>All lots contain a suitably sized and shaped area to accommodate a building and ancillary structures and provide maximum possible flood immunity for the safety of people and the protection of property for all flood events.</p> <p>Compliance:</p> <p>There is no new development proposed and the existing infrastructure on the site resides in an area that is suitably sized to provide maximum flood immunity in the event of all floods.</p>