

	COUNCIL POLICY	
	Tradeable Development Rights	
	POLICY NO	091
	DEPARTMENT	Development Services
	PROGRAM	Development Assessment
APPROVED BY COUNCIL	9 December 2020 Resolution: ORD-2020-328	

## 1.0 Scope and application

This policy applies to land within the Rural zone and the Agricultural land overlay(s) under the Mackay Region Planning Scheme 2017 (planning scheme) and involves reconfiguring a lot.

This policy does not apply to land within:

- the Investigation area precinct (precinct no. RU1) under the Rural zone, where involving a receiving development rights lot (receiving lot)<sup>1</sup>; and
- all zones, other than the Rural zone, in all circumstances.

Use of this policy may be applied where the sending development rights lot (sending lot) component of development (relating to reconfiguring a lot) triggers assessment against the Agricultural land overlay code under the planning scheme and where the eligibility criteria in section 6.2 of this policy is met.

The eligibility criteria in section 6.2 of this policy act as alternative acceptable outcomes and can be used in the assessment of a development application to address the following relevant performance outcomes (amongst others) in the planning scheme:

Planning scheme code	Performance outcomes
6.2.17 Rural zone code	PO2
8.2.2 Agricultural land overlay code	PO5 and PO6
9.4.3 Reconfiguring a lot code	PO7, PO8 and PO15

This policy does not replace or override the zone, overlay and other relevant development requirements of the planning scheme, which prevail over the content of this policy in all circumstances.

Where there is a conflict between this policy and the planning scheme, the planning scheme will prevail in all circumstances to the extent of the conflict.

<sup>1</sup> Sending development rights lots (sending lots) may come from land within the Investigation area precinct (precinct no. RU1) under the Rural zone.

## 2.0 Purpose

The purpose and primary objectives of this policy are to:

- provide alternative acceptable outcomes for the management and protection of Rural zoned land affected by Agricultural land overlays that comply with the relevant performance outcomes of the planning scheme.
- promote the protection and consolidation of agricultural land through the amalgamation of titles, whilst providing opportunity for rural landowners to realise value from titles by the trading of development rights that transfers a title right to a location that does not impact or diminish productive agricultural land.

The purpose of this policy is not to:

- create rural lifestyle allotments to a degree that would compromise landowners with existing rights to further subdivide their land in the Rural residential zone. Where receiving rights are being offered on the market for sale, approvals under this policy may be limited on an annual basis to a volume which does not impact the market function in delivering new lots within the Rural residential zone; and
- reinstate or replicate former 'family subdivision' policies and associated requirements / outcomes on farming lots and must not be treated as such.

## 3.0 Related documents

The following documents are related to this policy:

- State Planning Policy (as amended and replaced from time to time), including supporting guidelines and reference material, specifically State Planning Policy - state interest guidance material – Agriculture
- Mackay Region Planning Scheme 2017 (as amended and replaced from time to time), in particular:
  - 6.2.17 Rural zone code;
  - 8.2.2 Agricultural land overlay code;
  - 9.4.1 General development requirements code
  - 9.4.3 Reconfiguring a lot code;
  - SC2.3 Zone maps; and
  - SC2.5 Overlay maps - Agricultural land overlay maps.

The above documents have particular relevance through all codes, policies and assessment benchmarks dealing with agricultural land, Rural zoned land and reconfiguring a lot.

## 4.0 Definitions

To assist in interpretation, the following definitions apply. All other terms have the same meaning as they would in the planning scheme or applicable planning legislation. Terms not defined have their common meaning.

**Agricultural land** means:

- Good quality agricultural land (GQAL); or
- Agricultural Land Class A and B (ALCAB); or
- Locally important agricultural land (LIAA); or
- Short cycle cropping land (SCCL); or
- Strategic cropping land (SCL); or
- any combination or derivative of the above; or
- any other title given to agricultural land by a planning instrument for the purposes of identification or classification.

**Council** means the Mayor and Councillors of Mackay Regional Council.

**MRC** means Mackay Regional Council.

**Planning scheme** means the Mackay Region Planning Scheme as amended and replaced from time to time.

**Receiving development rights lot** means the lot to be created by the traded title right outside of agricultural land areas.

**Rural lifestyle lot** means a small lot in the Rural zone that is used for a dwelling house not primarily associated with an agricultural use. The size of rural lifestyle lots are typically 1ha or consistent with the average size of lots within the rural lifestyle node and are usually too small for agricultural use.

**Rural lifestyle node** means a cluster of six (6) or more rural lifestyle lots within the Rural zone with, or intended for, a dwelling house. Rural lifestyle nodes are not zoned Rural residential.

**Sending development rights lots** means the lots entirely within agricultural land to be amalgamated and where a title right is transferred to a receiving development rights lot.

**Title right** means a registered lot that is used as a subdivision credit in the trading of a development right from one location to another.

## 5.0 Background

Development in the Rural zone is often contested with conflicting interests of agriculture and incompatible non-rural activities or urban expansion. Farmers face particular issues of succession planning, financing and raising capital to remain on the land. Sugar is the region's oldest industry which suffers from loss of land under

production each year due to a range of factors such as changing agricultural activities or the sale of farming land to non-farmers. Whilst sugar is the dominant form of agriculture in the region, there are a range of other high value and productive agricultural activities (either cropping or animal related) that can be undertaken in a range of formats and occur in place of sugar.

The planning scheme protects agricultural land by requiring a minimum lot size of 100 hectares in the Rural zone and through the mapping of the most productive agricultural land in overlays with associated requirements. Local and state planning policies seek to protect valuable agricultural land through limiting development opportunity. The reconfigured lot arrangement as per this policy (i.e. the amalgamation of sending lots and the creation of receiving lots) is supported where the configuration of lots for the sending lots and receiving lot(s) does not:

- result in lot sizes that fragment, alienate or result in the loss or diminished productive capacity of Class A or Class B agricultural land; and
- reduce the utility and accessibility of rural land for rural activities (including agricultural activities); and
- increase the potential conflict between rural (including agricultural activities) and non-rural land uses.

The achievement of these goals is problematic for single landowners. Facilitating the transfer of title rights through multiple parties with the commitment of all stakeholders can potentially satisfy the range of goals from protection of agricultural land to farm succession planning.

The situation in the Mackay region is particularly acute, with the existing lot configuration in the rural area having a high level of fragmentation due to historic smaller farm holdings and manual farming practices. The urban settlement occurring on the most productive agricultural land for cane production adjacent to the Pioneer River represents a small proportion of the total land available for agricultural and rural activities. When agricultural land is required for urban growth through the planning scheme, it is taken on a measured and considered basis. As a cumulation of these factors, there is a heightened need to protect and manage this resource and recognising the significant need to reduce further fragmentation of agricultural land from a local and state-wide economic, employment and food security perspective.

MRC may support the trade of development rights (in the form of titles rights) located on agricultural land (where an improvement in agricultural production outcomes can be demonstrated) to an area in the Rural zone where the outcome does not reduce or compromise the productive capacity of agricultural land, whilst maintaining the overall intent and requirements of the Rural zone code and Agricultural land overlay code under the planning scheme. This is to be achieved through the amalgamation of agricultural land into a single parcel and the transfer (and sale) of the development rights (i.e. title right) to another party on Rural zoned land where the relocated title does not reduce or compromise the productive capacity of agricultural land and is sited within or directly adjoining a rural lifestyle node.

## 6.0 Policy statement

### 6.1 Application

This policy can only be applied to land set out in section 1.0 of this policy and can only be executed through the:

- eligibility criteria set out in section 6.2 of this policy; and
- process set out in sections 6.3, 6.4, 6.5 and 6.6 of this policy.

### 6.2 Eligibility criteria (alternative acceptable outcomes)

To be eligible under this policy, the following criteria must be met:

- (a) the sending development rights lots (sending lots) and receiving lot are zoned Rural under the planning scheme;
- (b) the sending lots are within the Agricultural land overlay, including Agricultural land class A and B and Locally important agricultural land mapping layers;
- (c) the sending lots must be capable of siting a dwelling house and when amalgamated demonstrate an improvement to the utility and agricultural productivity of the land;
- (d) the combined area of the sending lots does not exceed 160 hectares;
- (e) the sending lots do not result in an amalgamation which straddles a road reserve or relies upon a vinculum or multiple parts;
- (f) the receiving lot must be located within or directly adjoining (not opposite or nearby) a recognisable rural lifestyle node of rural lifestyle lots with, or intended for, a dwelling house;
- (g) the receiving lot must be compliant (or capable of achieving compliance through conditions of approval) with the relevant planning scheme provisions for rural residential development as though it were supported by the planning scheme in force at the time;
- (h) the receiving lot must have direct frontage and access to a constructed public road and not rely on an easement for access;
- (i) the receiving lot must not:
  - (i) significantly expand or extend an existing rural lifestyle node;
  - (ii) be isolated from existing rural lifestyle nodes resulting in the fragmentation of a new area;
  - (iii) reduce or compromise the utility and productive capacity of agricultural land;
  - (iv) increase the potential conflict between rural (including agricultural activities) and non-rural land uses; and
  - (v) be on land which is overly constrained by environmental matters to a degree that concessions would be required to develop the lot.

### 6.3 Pre-lodgement meeting and confirmation of acceptance

Once commercial agreement is reached between the private parties, (MRC is not involved in the commercial terms of the trade between landowners) the parties must undertake the following acceptance process:

- (a) the parties book a pre-lodgement meeting with Development Services to confirm eligibility and that the policy can be applied; and
- (b) preliminary plans of the proposal must be presented showing existing lot boundaries, proposed lot boundaries and any other information that is relevant for MRC to confirm support such as:
  - (i) details of the sending lots such as size (before and after amalgamation), access, existing buildings, structures and infrastructure, and benefit / improvement from trading the development right(s) and resulting amalgamation; and
  - (ii) details of the receiving lot such as size, access, topography and particular characteristics; and
  - (iii) surrounding lots and land uses for the receiving lot.

A preliminary assessment will be made of the suitability of the sending lots against the eligibility criteria in section 6.2 of this policy and the receiving lot/s against the provisions of the planning scheme as though it were in the Rural residential zone and the relevant planning provisions.

Development Services will confirm acceptance of the proposal under the terms of this policy in writing. The supporting correspondence will confirm that the policy can be applied, the sending and receiving lots are suitable, any changes to be made to the proposal plans and any other planning advice deemed appropriate.

### 6.4 Expiration of written support

The parties must act upon Development Services written support (i.e. written confirmation of acceptance) for trading development rights through lodgement of a development application within three months of the date of the written pre-lodgement support. An extension may be considered by Development Services upon written request. After this time, the support confirmation is withdrawn, and the parties will need to recommence the process where the policy remains in place.

### 6.5 Development application process

The parties must lodge a development application as follows:

- (a) a single development application must be lodged as a Reconfiguring a lot (Tradeable Development Rights Policy);
- (b) the application is subject to:

- (i) all fees and charges applicable at the time; and
- (ii) assessment of the relevant provisions of the planning scheme in force at the time of application; and
- (iii) demonstrated compliance with the eligibility criteria (section 6.2) of this policy; and
- (iv) developer contributions (if applicable) in accordance with the policy at the time; and
- (v) reasonable and relevant conditions of approval.

To be clear, this means that all relevant assessable matters and benchmarks under the planning scheme must be addressed in any application such as development, infrastructure and/or environmental matters which may involve supporting reports, referral to state agencies and demonstrating that development is appropriate.

The confirmation that an application can be lodged is in relation to this policy only and in no way infers the terms of approval. MRC will provide appropriate advice on matters within its jurisdiction in accordance with section 6.3.

In determining whether or not to approve the development application, MRC will have regard to the specific context of the sending lots and the capacity of the receiving lot to accommodate the additional development to achieve the relevant outcomes of the planning scheme.

- (c) The development permit is subject to all relevant legislation under which the permit is issued.

## 6.6 Permit execution

Once the permit is issued, the parties must comply with the conditions of approval on the development permit which may relate to infrastructure connections, access, building envelopes, contributions and other matters set out in the conditions of approval. The parties must adhere to all relevant MRC standards and processes when executing the development permit such as operational works or compliance permits and the survey plan lodgement process.

A copy of the registered survey plan and the new title for the amalgamated sending lots (on agricultural land) must be included in the lodgement of the plan of survey for the receiving lot. MRC will hold the plan of survey for the creation of the new lot until amalgamation of the sending lots is confirmed through issue of a new title.

## 7.0 Review of Policy

This policy will be reviewed when any of the following occur:

1. The related documents identified in section 3.0 are amended or replaced.
2. Other circumstances as determined from time to time by a resolution of council.

Notwithstanding the above, this policy is to be reviewed at intervals of no more than two (2) years.

---

Version Control:

Version	Reason / Trigger	Change	Endorsed / Reviewed	Date
1	New Policy	New Policy	Council	27.01.16
2	2018 Review of Policy	Amendments to Policy	Council	12.12.18
3	2020 Review of Policy	Amendments to Policy	Council	9.12.20