

8.2	L MORGANTE - RECONFIGURING A LOT - BOUNDARY REALIGNMENT - LOT 1 ON RP912860 & LOT 3 ON SP315714 - 542 EMERALD END ROAD, MAREEBA - RAL/21/0011
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Date Prepared: 1 September 2021

Author: Planning Officer

Attachments: 1. Proposal Plan

APPLICATION DETAILS

APPLICATION		PREMISES	
APPLICANT	L Morgante	ADDRESS	542 Emerald End Road, Mareeba
DATE LODGED	28 May 2021	RPD	Lot 1 on RP912860 & Lot 3 on SP315714
TYPE OF APPROVAL	Development Permit		
PROPOSED DEVELOPMENT	Reconfiguring a Lot - Boundary Realignment		
FILE NO	RAL/21/0011	AREA	Lot 1 - 4.022 hectares Lot 3 - 12.9 hectares
LODGED BY	Twine Surveys Pty Ltd	OWNER	L Morgante
PLANNING SCHEME	Mareeba Shire Council Planning Scheme 2016		
ZONE	Rural Zone		
LEVEL OF ASSESSMENT	Impact Assessment		
SUBMISSIONS	No submissions received		

EXECUTIVE SUMMARY

Council is in receipt of an impact assessable development application described in the above application details. No submissions were received during the mandatory public notification period.

The application proposes to reconfigure the two (2) allotments, by way of a boundary realignment only (no additional lot created) whereby approximately 0.8 hectares (8,000m²) of land from the northern side of Lot 1 will be transferred to Lot 3. This section of land to be transferred contains the access to the water supply for the mango orchard on Lot 3, which currently encroaches into Lot 1.

The application and supporting material has been assessed against the Mareeba Shire Council Planning Scheme 2016 is in conflict with certain purpose statements in the Rural zone code, as well as performance outcomes contained within the Reconfiguring a lot code which seeks to discourage the creation of any lot below 60 hectares within the Rural zone.

In their current configuration, both lots are less than 60 hectares in size with Lot 1 considered a rural living allotment with an area of just 4.022 hectares and questionable stand-alone agricultural viability. The proposed boundary realignment will serve to secure access to the water supply needed for the orchard on Lot 3. Furthermore, the proposed boundary realignment will not result in any new or additional rural living allotment, nor does it create the opportunity for another dwelling house to be built within the Rural zone.

The Mareeba Shire Council Planning Scheme 2016 contains a hierarchy of assessment benchmarks. The Strategic Framework are the highest order assessment benchmarks contained in the Planning Scheme and hold greater weight than the Rural zone code and Reconfiguring a Lot code. An officer assessment has determined that despite the identified conflicts with the lower order Rural zone code and Reconfiguring a Lot code provisions mentioned above, the proposed boundary realignment meets the intent of the Strategic Framework, in that the development will not further fragment, compromise or alienate productive agricultural land, and will only help increase the agricultural viability of the existing farming activity on Lot 3 by securing the orchards water supply from Emerald Creek.

It is recommended that the application be approved.

OFFICER’S RECOMMENDATION

(A) That in relation to the following development application:

APPLICATION		PREMISES	
APPLICANT	L Morgante	ADDRESS	542 Emerald End Road, Mareeba
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PROPOSED DEVELOPMENT	Reconfiguring a Lot - Boundary Realignment		

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 does **not** consider that the assessment manager’s decision conflicts with a relevant instrument.

(B) APPROVED DEVELOPMENT: Development Permit for Reconfiguring a Lot - Boundary Realignment

(C) APPROVED PLANS:

Plan/Document Number	Plan/Document Title	Prepared by	Dated
Ref.: 8863	Development Plan Plan of Lots 1 & 2	Twine Surveys Pty Ltd	25/05/2021

(D) 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, and subject to any alterations:
 - found necessary by the 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 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.
 - 3.2 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.
 - 3.3 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.
 - 3.4 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.
 - 3.5 Where approved existing buildings and structures are to be retained, setbacks to new property boundaries are to be in accordance with Planning Scheme requirements for the relevant structure and/or Queensland Development Code. A plan demonstrating compliance must be submitted prior to endorsement of the plan of survey
 - 3.6 Charges

All outstanding rates, charges and expenses pertaining to the land are to be paid in full.
 4. Infrastructure Services and Standards
 - 4.1 Access

The existing access crossover that will service Lot 1 and a new access crossover servicing Lot 2 must be upgraded/constructed (from the edge of Emerald End

Road to the property boundaries) in accordance with FNQROC Development Manual standards, to the satisfaction of Council's delegated officer.

(E) ASSESSMENT MANAGER'S ADVICE

(a) 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.

(b) 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.

(c) 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

(d) 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

(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

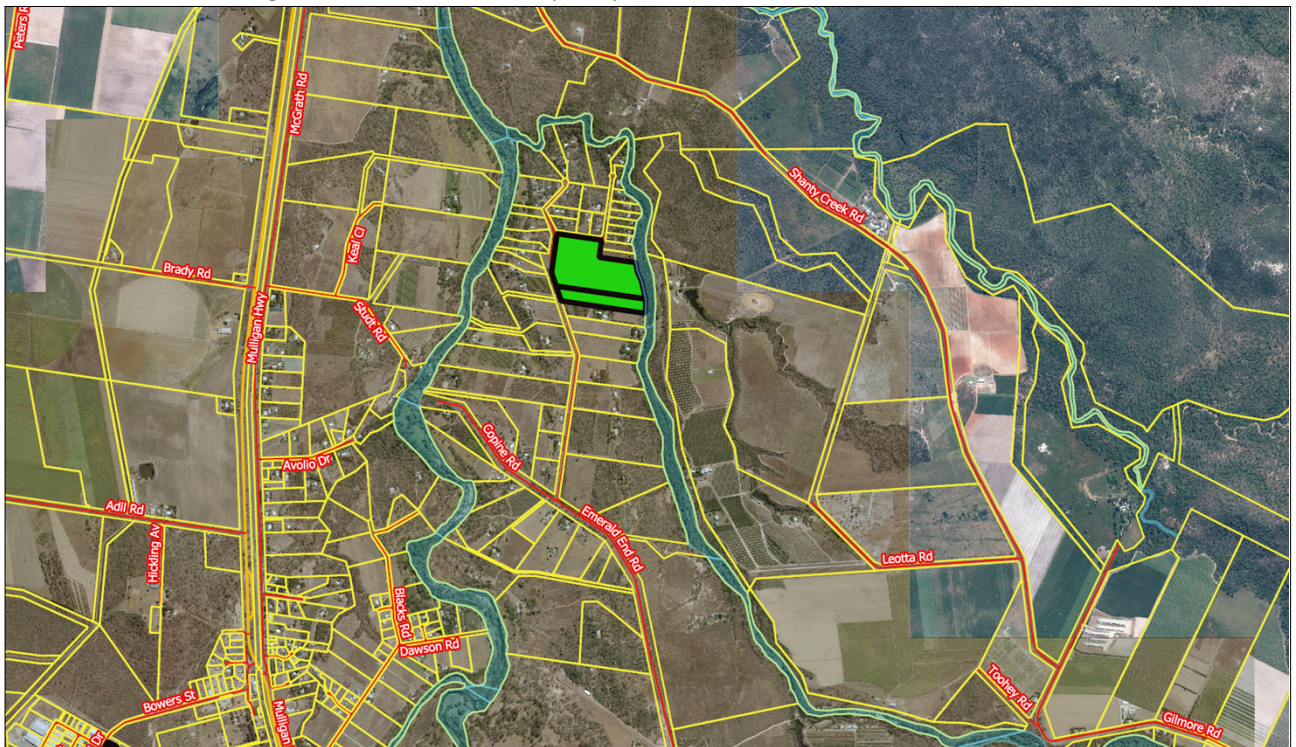
(H) OTHER APPROVALS REQUIRED FROM COUNCIL

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



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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THE SITE

The subject land comprises of two (2) allotments situated at 542 Emerald End Road, Mareeba and are more particularly described as Lot 1 on RP912860 and Lot 3 on SP315714. Both lots are zoned *Rural* under the Mareeba Shire Council Planning Scheme 2016.

Lot 1 is generally regular in shape with an area of 4.022 hectares and includes approximately 90 metres of frontage to Emerald End Road, which is constructed to a bitumen sealed standard. Lot 1 is currently unimproved and is predominantly cleared.

Lot 3 is irregular in shape with an area of 12.9 hectares and includes 311 metres of frontage to Emerald End Road and a further 261 metres of frontage to Emerald End Close. Emerald End Close is also constructed to a bitumen sealed standard for its entire length. Lot 3 is improved by a dwelling and multiple outbuildings (sheds) clustered in the centre of the allotment as well as a Mango Orchard that covers the western half of the allotment. The eastern half remains unused and is also predominantly cleared.

Surrounding lots are a mix of Rural and Rural residential zoned land and are predominately used as rural lifestyle lots, with no significant agricultural activity present in the immediate surroundings other than small hobby farms. Emerald Creek flows to the east of the land, with both lots backing onto the watercourse.

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 in accordance with the plan/s shown in **Attachment 1**.

The proposed boundary realignment will shift the common boundary approximately 16 metres to the south in order to ensure the water supply for the mango orchard is entirely contained within Lot 3 (proposed Lot 1).

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:	Land Use Categories
Zone:	<ul style="list-style-type: none"> • Rural Agricultural Area
Overlays:	Rural zone <ul style="list-style-type: none"> • Agricultural Land Overlay • Airport Environs Overlay • Bushfire Hazard 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

Strategic Framework

Strategic Framework

3.3 Settlement Pattern and built environment

3.3.1 Strategic outcomes

- (5) *Primary industries in Rural areas are not compromised or fragmented by incompatible and/or unsustainable development, including but not limited to subdivision that results in a detrimental impact on rural productivity or fragments large land holdings. The valued, relaxed rural character and scenic qualities of the rural area are preserved and enhanced. The rural area is largely maintained to its current extent, while accommodating development directly associated with or reliant on natural resources including rural activities and tourism. Rural areas protect the shire's agricultural area and ensure food security. Other rural areas predominantly remain agricultural grazing properties.*

Comment

The proposed development is for a "boundary realignment" only, so does not constitute a "subdivision" by definition.

In their current configuration, both lots are less than 60 hectares in size with Lot 1 considered a rural lifestyle allotment with an area of just 4.022 hectares and questionable stand-alone agricultural viability. The proposed boundary realignment will serve to secure access to the water supply needed for the orchard on Lot 3.

The proposed boundary realignment will not result in any new or additional rural living allotment, nor does it create the opportunity for another dwelling house to be built within the Rural zone as no additional title will be created.

Therefore, the proposed development will not further fragment agricultural land or compromise agricultural activity in the immediate locality and is considered to comply with Strategic outcome 5.

(6) New subdivisions which propose lots less than the minimum lot size of 60ha are not supported within the Rural zone.

Comment

The proposed development is for a "boundary realignment" only, so does not constitute a "subdivision" by definition.

In their current configuration, both lots are less than 60 hectares in size with Lot 1 considered a rural lifestyle allotment with an area of just 4.022 hectares and questionable stand-alone agricultural viability. The proposed boundary realignment will serve to secure access to the water supply needed for the orchard on Lot 3.

The proposed boundary realignment will not result in any new or additional rural living allotment, nor does it create the opportunity for another dwelling house to be built within the Rural zone as no additional title will be created.

The proposed development does not conflict with Strategic Outcome 6.

3.3.11 Element - Rural areas

3.3.11.1 Specific outcomes

(2) Land in rural areas is maintained in large (60ha or greater) lot sizes to ensure that regional landscape and rural production values are not compromised by fragmentation, alienation or incompatible land uses. Subdivision of land is not supported on lots less than 60ha in the Rural zone.

Comment

The proposed development is for a "boundary realignment" only, so it does not constitute a "subdivision" by definition.

In their current configuration, both lots are less than 60 hectares in size with Lot 1 considered a rural lifestyle allotment with an area of just 4.022 hectares and questionable stand-alone agricultural viability. The proposed boundary realignment will serve to secure access to the water supply needed for the orchard on Lot 3.

The proposed boundary realignment will not result in any new or additional rural living allotment, nor does it create the opportunity for another dwelling house to be built within the Rural zone as no additional title will be created.

Therefore, the proposed development will not compromise, fragment, or alienate agricultural land and is considered to satisfy Specific Outcome 2.

- (3) *Other rural areas will be largely maintained in their current configuration, only being subdivided where large land holdings of 60ha or greater can be achieved and the infrastructure base of rural operations including workers accommodation, airstrips and farm infrastructure is provided.*

Comment

The proposed development is for a "boundary realignment" only, so it does not constitute a "subdivision" by definition.

In their current configuration, both lots are less than 60 hectares in size, with Lot 1 considered a rural lifestyle allotment with an area of just 4.022 hectares and questionable stand-alone agricultural viability. The proposed boundary realignment will serve to secure access to the water supply needed for the orchard on Lot 3.

The proposed boundary realignment will not result in any new or additional rural living allotment, nor does it create the opportunity for another dwelling house to be built within the Rural zone as no additional title will be created.

Therefore, the proposed development will not compromise, fragment, or alienate agricultural land and is considered to satisfy Specific Outcome 3.

3.6 Transport and infrastructure

3.6.1 Strategic outcomes

- (6) *New development is appropriately sequenced and coordinated with existing and future water, wastewater, stormwater and transport infrastructure, to ensure the operations of existing infrastructure are not compromised and community needs continue to be met. New infrastructure is provided to development in accordance with the council's desired standards of service and supports a consolidated urban form to maximise return on investment. The ongoing operation of key infrastructure elements is not prejudiced by inappropriate development. Subdivision of land in the Rural zone to create lots less than 60ha is not consistent with facilitating appropriately sequenced and coordinated development.*

Comment

The proposed development is for a "boundary realignment" only, so it does not constitute a "subdivision" by definition. No additional title will be created, and no change to the service arrangement of each lot will occur as a result of the development.

The proposed development does not compromise Strategic Outcome 6.Relevant Developments 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
- 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 included a planning report and assessment against the planning scheme. An officer assessment has found that the application would conflict with assessment benchmarks contained in the Rural zone code and Reconfiguring a lot code as a result of Temporary Local Planning Instrument No. 01 of 2019 (Subdivision in Rural zone). Despite the identified conflicts, it is considered that the proposed development will comply with the higher order strategic/specific outcomes contained within the Planning Scheme Strategic Framework.

Relevant Codes	Comments
Rural zone code	The application conflicts with 6.2.9.2 Purpose (3) (a) of the code as proposed Lots 1 and 2 will be under 60 ha in size. Despite this conflict, it is considered that the proposed development complies with the higher order strategic/specific outcomes contained in the Planning Scheme's Strategic Framework. Refer to planning discussion section of report for commentary.
Agricultural land 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.
Bushfire 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.
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	Despite being triggered for assessment by the Planning Schemes Tables of Assessment, this code is not considered applicable for rural boundary realignments.
Parking and access code	Despite being triggered for assessment by the Planning Schemes Tables of Assessment, this code is not considered applicable for rural boundary realignments.
Reconfiguring a lot code	<p>The application conflicts with the following performance outcomes:</p> <ul style="list-style-type: none"> • PO1.1 • PO1.2 <p>Despite conflicting with the abovementioned performance outcomes, it is considered that the proposed development complies with the higher order strategic/specific outcomes contained in the Planning Scheme's Strategic Framework. Refer to planning discussion section of report for commentary.</p>
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.

(D) 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.

REFERRAL AGENCY

This application did not trigger referral to a Referral Agency.

Internal Consultation

Nil

PUBLIC NOTIFICATION

The development proposal was placed on public notification from 30 June 2021 to 28 July 2021. The applicant submitted the notice of compliance on 29 July 2021 advising that the public notification requirements were carried out in accordance with the requirements of the Act.

No submissions were received.

PLANNING DISCUSSION

Non-compliance with assessment benchmarks contained within the Rural zone code and Reconfiguring a lot code are discussed below:

6.2.9 Rural zone code (as amended by the TLPI)

6.2.9.2 Purpose

(3) (a) *Areas for use for primary production are conserved and new allotments below the minimum lot size identified in Table 9.4.4.3B is not supported.*

Comment

Table 9.4.4.3B dictates a minimum reconfiguring lot size of 60 hectares for land within the Rural zone. Proposed Lot 2 is significantly less than 60 hectares in size with a proposed area of just 3.2 ha hectares.

In their current configuration, both lots are less than 60 hectares in size with Lot 1 considered a rural living allotment with an area of just 4.022 hectares and questionable stand-alone agricultural viability. The proposed boundary realignment will serve to secure access to the water supply needed for the orchard on Lot 3 (proposed Lot 1).

The proposed boundary realignment will not result in any new or additional rural living allotment, nor does it create the opportunity for another dwelling house to be built within the Rural zone as no additional title will be created.

Despite not complying with Purpose (3)(a) of the Rural zone code, it is considered that the proposed boundary realignment meets the intent of the higher order Strategic Framework, in that the development will not further fragment, compromise or alienate productive agricultural land, and will only increase the agricultural viability of an existing farming enterprise.

9.4.4 Reconfiguring a lot code (as amended by the TLPI)

Area and frontage of lots - Rural zone

PO1.1

No lots are created with an area of less than 60 ha

Note: This also applies to applications for boundary realignment

AO1.1

No acceptable outcome is provided.

Comment

Proposed Lot 2 is significantly less than 60 hectares in size with a proposed area of just 3.2 ha hectares.

In their current configuration, both lots are less than 60 hectares in size with Lot 1 considered a rural living allotment with an area of just 4.022 hectares and questionable stand-alone agricultural viability. The proposed boundary realignment will serve to secure access to the water supply needed for the orchard on Lot 3 (proposed Lot 1).

The proposed boundary realignment will not result in any new or additional rural living allotment, nor does it create the opportunity for another dwelling house to be built within the Rural zone as no additional title will be created.

Despite not complying with PO1.1, it is considered that the proposed boundary realignment meets the intent of the higher order Strategic Framework, in that the development will not further fragment, compromise or alienate productive agricultural land, and will only increase the agricultural viability of an existing farming enterprise.

PO1.2

No lots are created with a frontage less than 400m

Note: This also applies to applications for boundary realignment.

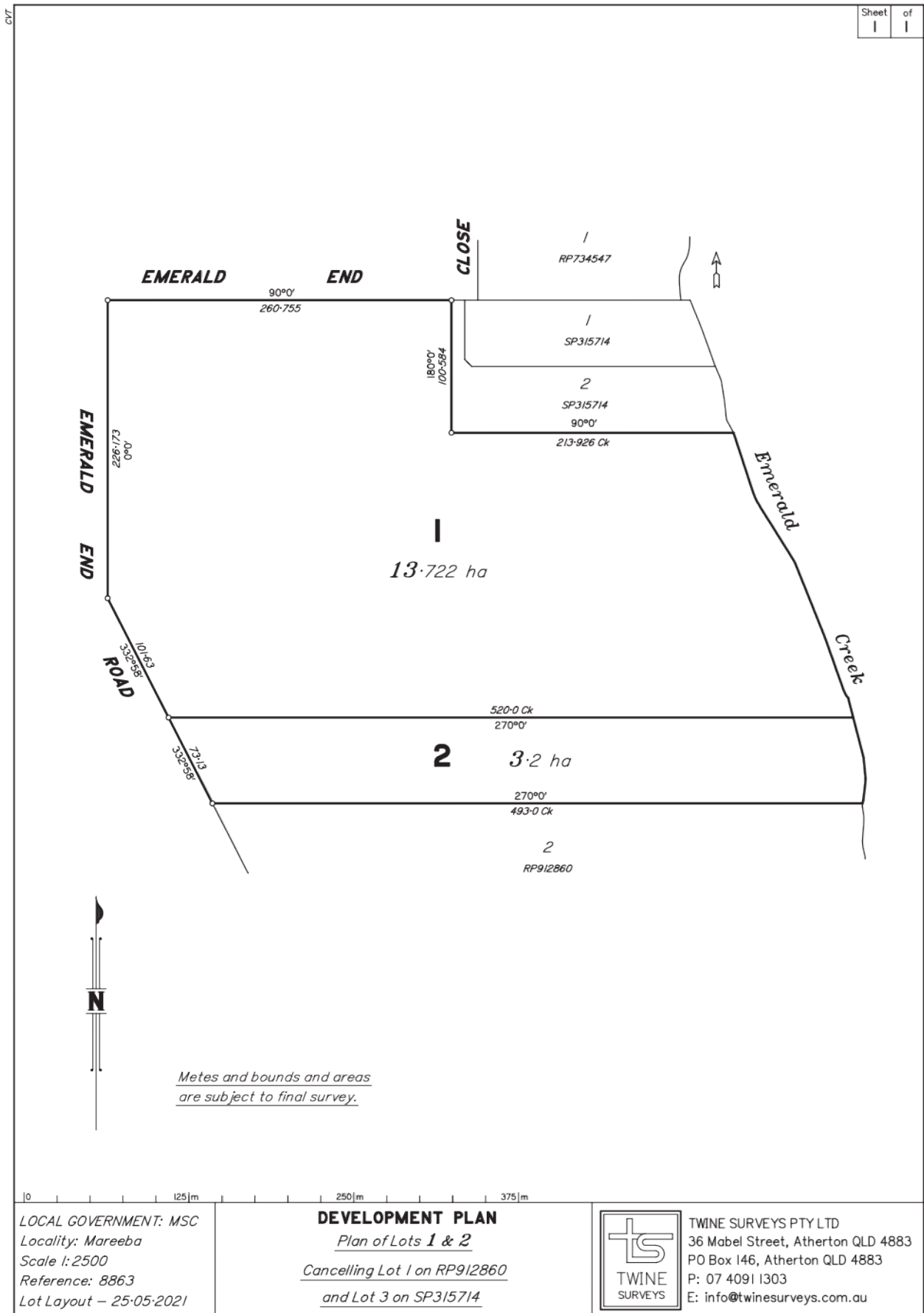
AO1.2

No acceptable outcome is provided.

Comment

Proposed Lot 1 complies with a frontage to Emerald End Road well in excess of 400 metres. Proposed Lot 2 would have a frontage of approximately 73 metres. This lesser frontage allows for adequate access and is generally consistent with other similar sized allotments in the area.

The frontage proposed for each lot is appropriate.



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