PLANNING REPORT

SUBJECT: **S & M LAND AND M CORDINGLEY - RECONFIGURING A LOT - SUBDIVISION (1 INTO 2 LOTS) - LOT 97 ON SP202902 - MCMILLAN ROAD, PADDY'S GREEN - RAL/18/0003**

MEETING: Ordinary

MEETING DATE: 21 February 2018

REPORT OFFICER'S TITLE: Senior Planner

DEPARTMENT: Corporate and Community Services

APPLICATION DETAILS

APPLICATION		PREMISES	
APPLICANT	S & M Land and M Cordingley	**ADDRESS**	McMillan Road, Paddy's Green
DATE LODGED	24 January 2018	**RPD**	Lot 97 on SP202902
TYPE OF APPROVAL	Development Permit		
PROPOSED DEVELOPMENT	Reconfiguring a Lot - Subdivision (1 into 2 Lots)		

FILE NO	RAL/18/0003	**AREA**	41.36 hectares
LODGED BY	Freshwater Planning Pty Ltd	**OWNER**	S & M Land and M Cordingley
PLANNING SCHEME	Mareeba Shire Council Planning Scheme 2016		
ZONE	Rural Zone		
LEVEL OF ASSESSMENT	Code Assessment		
SUBMISSIONS	n/a		

ATTACHMENTS: 1. Proposal Plan/s

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 currently physically separated into two (2) land parcels by Lot 148 on DA800498 which is a drainage reserve managed by Sunwater Ltd. The application proposes the subdivision of the site to separate these two (2) land parcels. The northern land parcel (proposed Lot 972) has an area of 39.39 hectares while the southern land parcel (proposed Lot 971) has an area of just 1.966 hectares. The site is situated in the Paddy's Green area and is mapped as containing Agricultural Land Class A & B.

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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.

Proposed Lot 971, with an area of just 1.966 hectares, is significant smaller than the Planning Schemes desired minimum reconfigured lot size of 60 hectares for rural land. The proposed development conflicts with an overarching intent of the Agricultural land overlay code and Rural zone code as it would result in further fragmentation of agricultural land, the ad-hoc creation of an additional rural lifestyle allotment, and an increase in dwelling densities within an actively farmed rural area.

It is recommended that the application be refused.

OFFICER'S RECOMMENDATION

"1. That in relation to the following development application:

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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:

1. *The proposed development is in conflict with Overall outcomes (a) and (b) of the Agricultural land overlay code;*

2. *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****."*

THE SITE

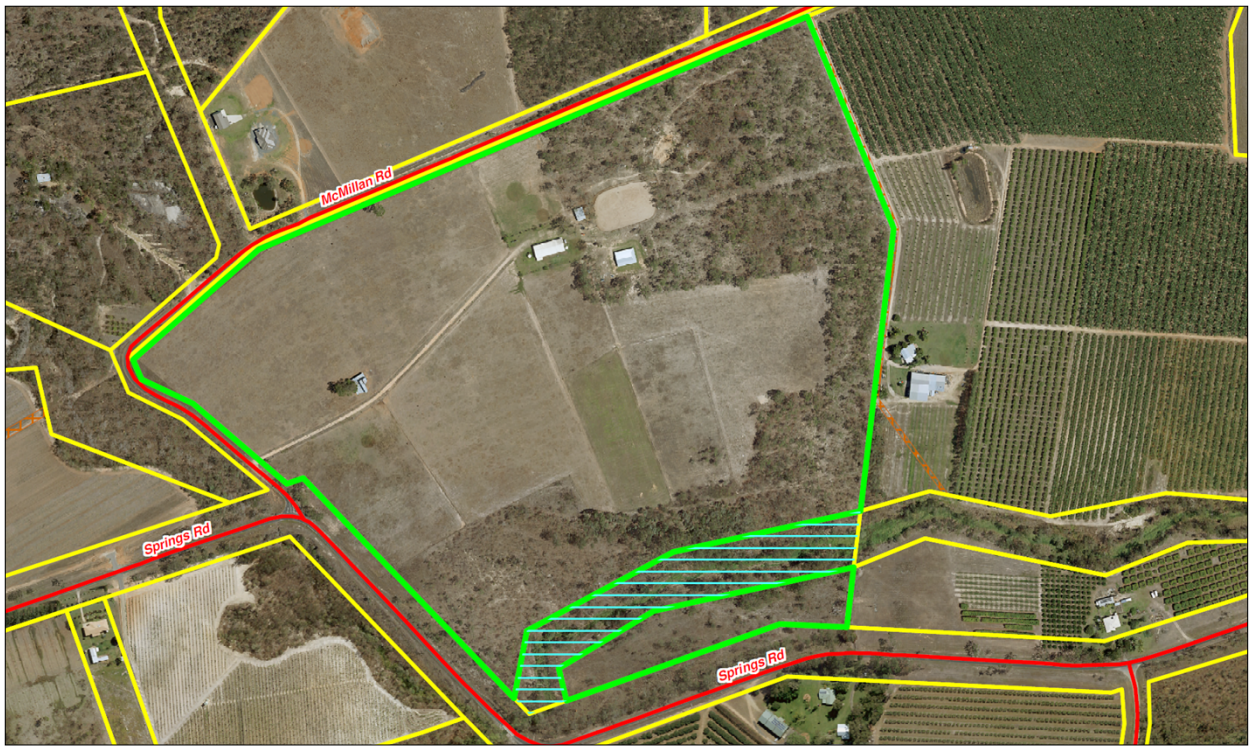
The subject land is described as Lot 97 on SP202902, situated at 6 McMillan Road, Paddy's Green.

The land is irregular in shape, having an area of 41.36 hectares with frontages of approximately 238 metres to McMillan Road and 727 metres to Springs Road. Both roads are formed to bitumen sealed standard for their entire frontage with the subject land.

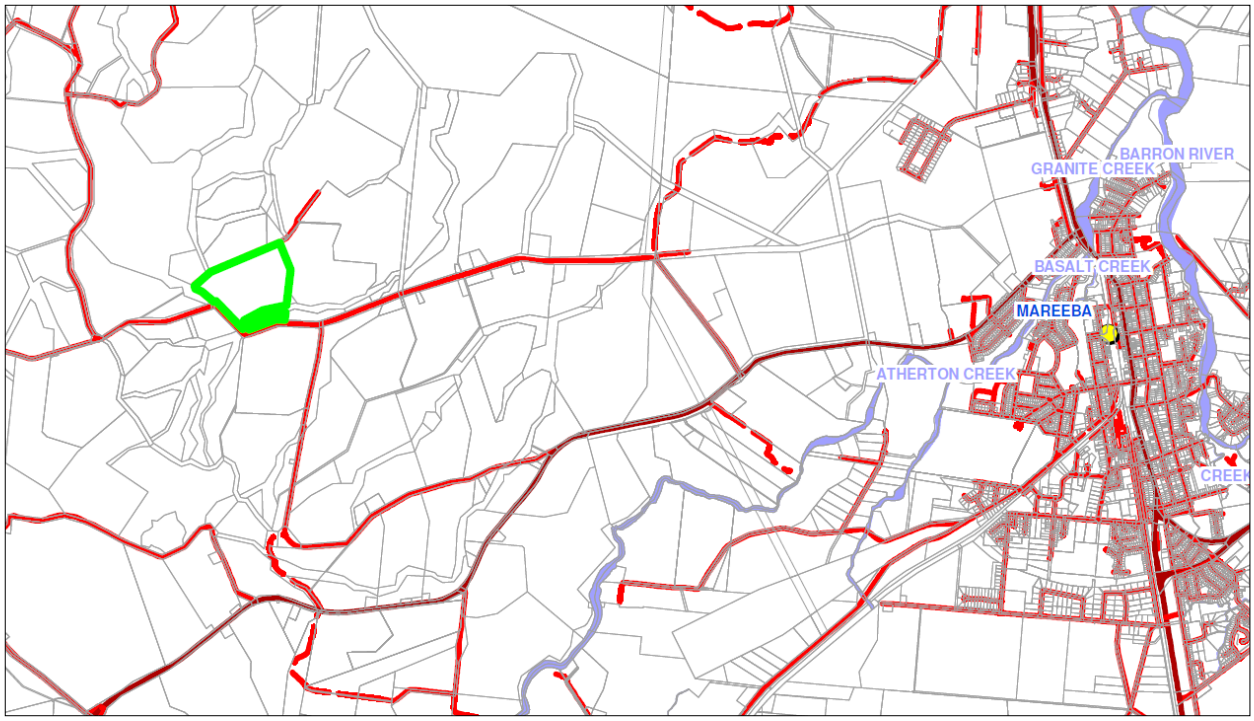
The land is severed into two (2) portions by a SunWater controlled drainage area (Lot 148 on DA800498) which bisects the land in an east-west direction.

The larger of the two (2) portions (proposed Lot 972) is used for low impact animal husbandry. A dwelling house and multiple farm sheds are established within this area. The smaller portion is undeveloped.

Most surrounding allotments are zoned Rural under the Planning Scheme and are used primarily for rural purposes.



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:

- Lot 971 - 1.966 hectares, 347.51 metres frontage to Springs Road;
- Lot 972 - 39.39 hectares, 618.91 metres frontage to Springs Road and McMillan Road.

Proposed Lot 972 will contain the established farm dwelling house, sheds and associated onsite effluent disposal system. All developed farming activities will be retained within the confines of proposed Lot 972.

Proposed Lot 971 will be created vacant and will likely accommodate a new dwelling house at some time in the future.

Access to proposed Lot 972 would continue via the existing property access off McMillan Road. A new access off Springs Road would be provided for proposed Lot 971. Both accesses would be required to meet the current FNQROC development manual standard.

The applicant submits the following in support of the application:

- *Can meet the Performance Outcomes relating to minimum allotment size and dimension for the Rural Zone as the proposal is similar in configuration and size to those adjoining to the east and within the immediate and surrounding vicinity;*

- *No change to the existing nature or character of the area is envisaged, and the Subdivision will ensure that the new allotments will remain to be used for Rural Uses with proposed Lot 971 containing the ability for diversification and new Rural Enterprises to be created;*

- *Can meet the Performance Outcomes and the Intent of the Reconfiguring a Lot Code for land included in the Rural Zone of the Mareeba Shire Planning Scheme;*

- *Can meet the Intent and Objectives for the Rural Zone Code; and*

- *Is not in conflict with the Intent for Regional Landscape and Rural Production Area in the FNQ Regional Plan 2009-2031, especially given that the proposal resolves Land Tenure Issues and provides for similar Rural configurations to the surrounding Rural Area.*

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 is:

- *Terrestrial Area of General Ecological Significance*

PLANNING SCHEME DESIGNATIONS

Strategic Framework:	**Land Use Categories** • *Rural Agricultural Area* • *Rural other*
Zone:	Rural zone
Overlays:	Agricultural land overlay Airport environs overlay Bushfire hazard overlay Environmental significance overlay Transport infrastructure overlay

RELEVANT PLANNING INSTRUMENTS

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

(a) Far North Queensland Regional Plan 2009-2031

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

(b) State Planning Policy

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

(c) Mareeba Shire Council Planning Scheme 2016

Relevant Development Codes

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

6.2.9 Rural zone code
8.2.1 Agricultural land overlay code
8.2.2 Airport environs overlay code
8.2.3 Bushfire hazard overlay code
8.2.4 Environmental significance overlay code
8.2.12 Transport infrastructure 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 the identified sections of the Agricultural Land Overlay Code and Reconfiguring a Lot Code.

Relevant Codes	**Comments**
Rural zone code	The application can be conditioned to comply with the relevant acceptable outcomes contained within the code.
Agricultural land overlay code	The application conflicts with the following performance outcomes and acceptable outcomes: ▪ PO1 and AO1 ▪ PO2 ▪ PO3 ▪ PO6 Refer to planning discussion section of this report.
Airport environs overlay code	The application can be conditioned to comply with the relevant acceptable outcomes contained within the code.
Bushfire hazard overlay code	The application can be conditioned to comply with the relevant acceptable outcomes contained within the code.
Environmental significance overlay code	The application can be conditioned to comply with the relevant acceptable outcomes contained within the code.
Transport infrastructure overlay code	The application can be conditioned to comply with the relevant acceptable outcomes contained within the code.

Landscaping code	The application can be conditioned to comply with the relevant acceptable outcomes contained within the code
Parking and access code	The application can be conditioned to comply with the relevant acceptable outcomes contained within the code
Reconfiguring a lot code	The application conflicts with the following performance outcomes and acceptable outcomes: ▪ PO1 and AO1.1 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 contained within the code

(e) Planning Scheme Policies

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 (Section 130 of PA)

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

Section 130 of PA 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

The application did not trigger a referral to the State Referral Agency or an advice agency.

Internal Consultation

Technical services

PLANNING DISCUSSION

Noncompliance with the Performance Outcomes and Acceptable Outcomes of the Agricultural Land Overlay Code and the Reconfiguring a Lot Code are summarised as follows:

Conflicts with 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.

Comment

The development would create proposed Lot 971 as a vacant rural allotment with accepted development rights to allow the construction of a dwelling house.

A dwelling house could not be sited on proposed Lot 971 without resulting in a loss of Class A area.

There is no overriding need for the development in terms of public benefit and an extensive supply of land for urban development is available within the nearby Mareeba township.

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

The development would create proposed Lot 971 as a vacant rural allotment with accepted development rights to allow the construction of a dwelling house. The planning scheme defines a dwelling house as a sensitive land use.

A dwelling house could not be sited on proposed Lot 971 outside the Class A area.

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 development would create proposed Lot 971 as a vacant rural allotment with accepted development rights to allow the construction of a dwelling house.

A dwelling house could not be sited on proposed Lot 971 outside the Class A area.

Siting an additional dwelling house within the Class A area will alienate that portion of land for the life of the dwelling house (@100 years). Creating proposed Lot 971 as a stand alone 1.9 hectare allotment will constrain the agricultural viability of the 1.9 hectares.

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.

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 97 on SP202902 has an area of 41.36 hectares which is below the 60 hectares minimum area nominated in Table 9.4.4.3B.

Proposed Lots 971 and 972 will have areas of 1.966 hectares and 39.39 hectares respectively.

The area of proposed Lot 972 is not inconsistent with the design of lots in the surrounding area and it is considered that proposed Lot 972 complies with PO1.

The area of proposed Lot 971 is not consistent with the typical design of lots in the surrounding area, nor will it allow the desired amenity of the Rural zone to be achieved.

The proposed reconfiguration conflicts with PO1.

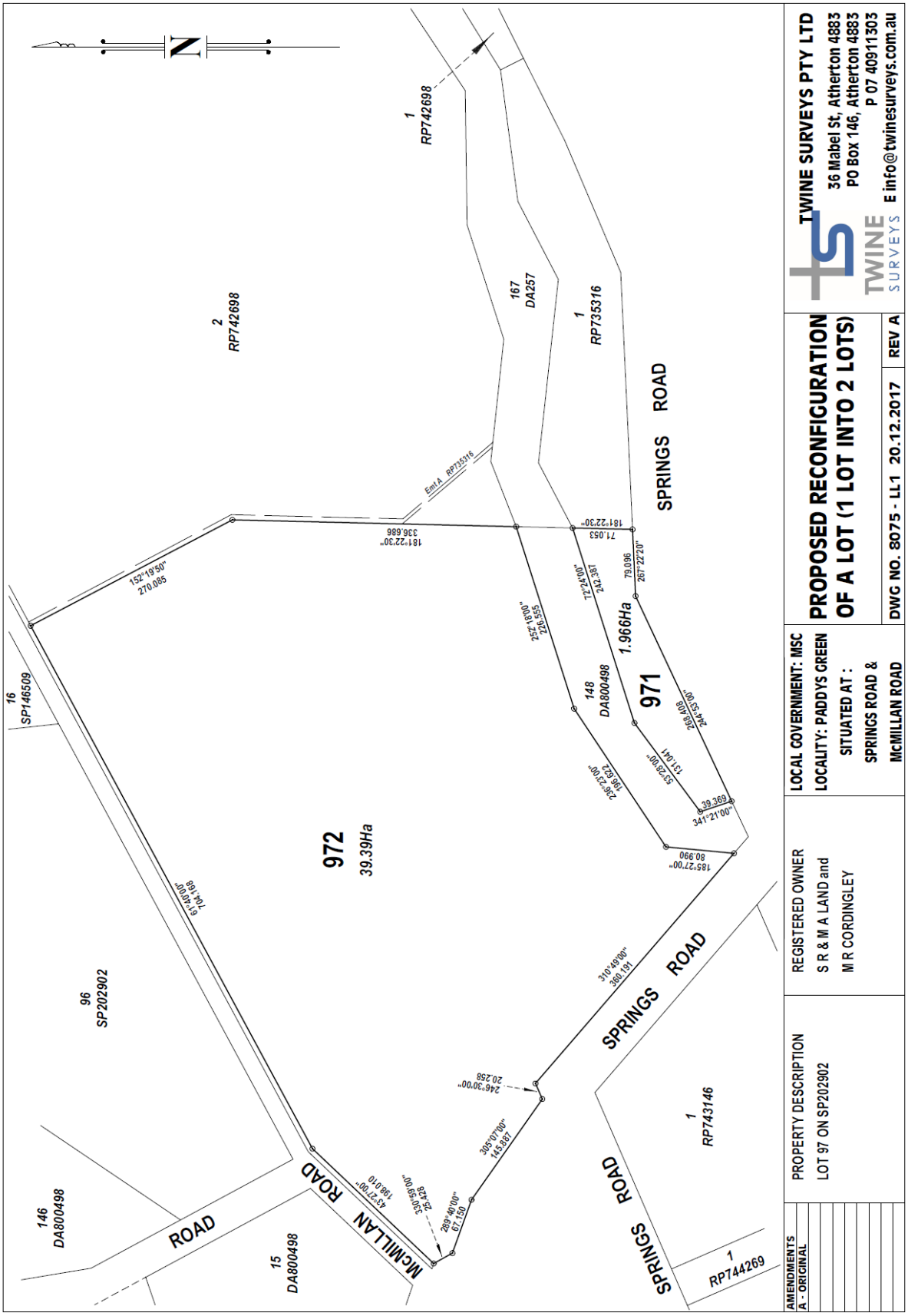
The intent of the planning scheme for the rural zone is to discourage the creation of additional small rural lots. The proposed development, which essentially proposes the creation of an additional small rural lifestyle allotment, is in conflict with this intent.

It is recommended the application be refused.

Date Prepared: *12 February 2018*

ATTACHMENT 1

PLANS



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