

## 5.1. REQUEST FOR ASSESSMENT AGAINST SUPERSEDED PLANNING SCHEME FOR RECONFIGURATION OF A LOT 580R WHYANBEEL ROAD

<b>REPORT AUTHOR(S)</b>	Daniel Lamond, Planning Officer
<b>MANAGER</b>	Paul Hoyer
<b>DEPARTMENT</b>	Environment and Planning
<b>PROPOSAL</b>	Request for assessment against the superseded 2006 Douglas Shire Planning Scheme (as amended) for a reconfiguration of a lot (Boundary realignment)
<b>APPLICANT</b>	E F Showniruk & M A Showniruk C/- RPS Australia East Pty Ltd PO Box 1949 CAIRNS QLD 4870
<b>LOCATION OF SITE</b>	580R Whyanbeel Road WHYANBEEL
<b>PROPERTY</b>	Lot 4, 5 and 6 on RP851512

### LOCALITY PLAN

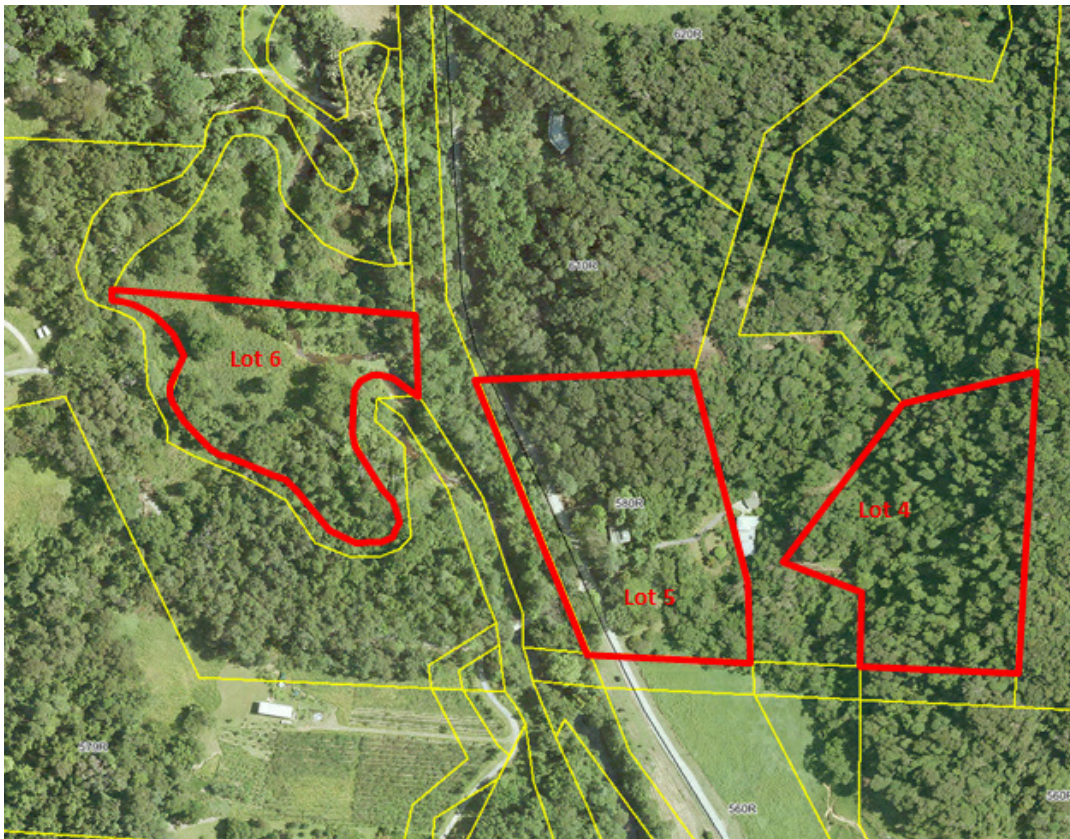


Figure 1 - Locality Plan

<b>LOCALITY</b>	Rural Areas and Rural Settlements Locality
<b>PLANNING AREA</b>	Rural Settlement
<b>PLANNING SCHEME</b>	Douglas Shire Planning Scheme 2006
<b>REFERRAL AGENCIES</b>	None triggered
<b>NUMBER OF SUBMITTERS</b>	There were no submissions for this application
<b>STATUTORY ASSESSMENT DEADLINE</b>	29 January 2019
<b>APPLICATION DATE</b>	28 November 2018

### RECOMMENDATION

**A. That Council agrees to the request (lodged on 28 November 2018 under section 29 of the *Planning Act 2016*) for assessment against the 2006 Douglas Shire Planning Scheme for reconfiguration of a lot (3 Lots into 2 Lots) over land described as Lot 4, 5 and 6 on RP851512, located at 580R Whyanbeel Road, Whyanbeel.**

And;

**B. That Council agrees to cancel Local Government Agreement 601479919 (T7000444R) from the titles of Lots 4, 5 and 6 on RP851512.**

And;

**C. That Council approves the development application for reconfiguring a lot (3 lots into 2 lots), subject to the following;**

### APPROVED DRAWING(S) AND / OR DOCUMENT(S)

The term 'approved drawing(s) and / or document(s)' or other similar expressions means:

Drawing or Document	Reference	Date
Proposed Reconfiguration Proposed Lots 1 & 2 cancelling Lots 4-6 on RP851512	Plan prepared by RPS Australia East Pty Ltd. Drawing Number PR139521-3	2 October 2018

### ASSESSMENT MANAGER CONDITIONS

1. Carry out the approved development generally in accordance with the approved drawing(s) and/or document(s), and in accordance with:
  - a. The specifications, facts and circumstances as set out in the application submitted to Council; and

- b. The following conditions of approval and the requirements of Council's Planning Scheme and the FNQROC Development Manual.

Except where modified by these conditions of approval

#### Timing of Effect

2. The conditions of the Development Permit must be effected prior to the endorsement of the Plan of Survey, except where specified otherwise in these conditions of approval.

#### Storm Water Drainage

3. The existing drainage path accommodating flows from Lot 2 across Lot 1 currently affecting the footing of the timber class 10 structure on Lot 1 must be formalised by way of an RPEQ certified engineering assessment. The assessment must be submitted and endorsed by the Chief Executive Officer and works must be completed prior to endorsement of the plan of survey.

#### Storm Water Drainage Easement

4. The existing drainage path accommodating flows from Lot 2 across Lot 1 must be contained within an easement burdening Lot 1 in favour of Lot 2. Easement documentation must be endorsed by the Chief Executive Officer prior to endorsement of the Plan of Survey.

#### Electricity and Telecommunications

5. Written evidence of negotiations with Ergon Energy and the telecommunications authority must be submitted to Council stating that both an electricity supply and telecommunications service will be provided to the development prior to endorsement of the Plan of Survey.

#### Structural Integrity of Timber Class 10 Structure

6. Determine whether the structural integrity of the class 10 structure on Lot 1 has been compromised by the storm water scouring the buildings footing. Provide advice from a suitably qualified person and undertake remediation works if required. The certification and remediation works if required, must be submitted and completed prior to the endorsement of the Plan of Survey.

#### PART 1B – ADVICE NOTES

1. This approval, granted under the provisions of the *Planning Act 2016*, shall lapse four (4) years from the day the approval takes effect in accordance with the provisions of section 85 of the *Planning Act 2016*.
2. This approval does not negate the requirement for compliance with relevant Local Laws and statutory requirements.

3. For information relating to the *Planning Act 2016* log on to <https://planning.dsdmip.qld.gov.au/>.
4. To access the FNQROC Development Manual, Douglas Shire Local Laws and other applicable Policies log on to [www.dsc.qld.gov.au](http://www.dsc.qld.gov.au)

#### **PART 1C – STATEMENT OF REASONS**

1. Sections 60, 62 and 63 of the *Planning Act 2016*:
    - a. the approved plan(s) and document(s);
    - b. the Conditions and advices;
    - c. The proposed development generally satisfies the benchmarks of the 2006 Douglas Shire Planning Scheme; and
    - d. to ensure compliance with the *Planning Act 2016*.
  2. Findings on material questions of fact:
    - a. the development application can be considered properly lodged to the Douglas Shire Council on 22 January 2019 under section 51 of the *Planning Act 2016* and Part 1 of the Development Assessment Rules; and
    - b. the development application contained information from the applicant which Council reviewed together with Council's own investigation of assessment against the 2006 Douglas Shire Planning Scheme in making its assessment manager decision.
  3. Evidence or other material on which findings were based:
    - a. the development triggered assessment under the Assessment Table associated with the Rural Areas and Rural Settlements Locality;
    - b. Council undertook an assessment in accordance with the provisions of sections 60, 62 and 63 of the *Planning Act 2016*; and
    - c. the applicant's reasons have been considered and the following findings are made:
      - i. Subject to conditions the development is considered to meet the Planning Scheme requirements.
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#### **EXECUTIVE SUMMARY**

Council is in receipt of a request to consider a development application to reconfigure a lot under the superseded 2006 Douglas Shire Planning Scheme. The request also makes application to have the proposal assessed and decided.

The superseded planning scheme application seeks Councils approval for a proposal to cancel an agreement (Local Government Agreement) that restricts the separate disposition of Lots 4, 5 and 6 on RP851512 and to reconfigure the land into two lots rather than three. Proposed Lot 1 (comprising four (4) part lots) and Proposed Lot 2 where the house and access is located on existing Lot 5 on RP851512.

Application for superseded planning scheme assessment is being made as the allotments were within the Rural Settlement Planning Area under the 2006 Douglas Shire Planning Scheme where the minimum lot size within this zone was 4000 square metres. Under the 2018 Douglas Shire Planning Scheme the allotments are within the Rural Zone where the minimum lot size for new lots is 40 hectares. Given proposed Lot 2 exceeds the minimum lot size under superseded planning scheme at 5272 square metres, the proposal for superseded planning scheme assessment and the proposal to reconfigure the lots from three bound lots into two separate lots is recommended for approval, subject to conditions.

## **TOWN PLANNING CONSIDERATIONS**

### **Proposal**

The superseded planning scheme application seeks Councils approval of a proposal to cancel the Local Government Agreement that restricts the separate disposition of Lots 4, 5 and 6 on RP851512 and to reconfigure the land into 2 lots being proposed Lot 1 (comprising four part lots) and proposed Lot 2 where the house and access is located on existing Lot 5 on RP851512, as per RPS Drawing PR139521-3 provided for reference in Attachment 1.

Proposed Lot 2 excises the existing house from Lot 5 on RP851512 and Proposed Lot 1, comprising of four parts which facilitates the cancellation of the Local Government Agreement (by tying the land together as a part lot which was not an option when the Local Government Agreement was arranged) and ultimately proposes the southern part of Lot 1 to be created as a separate lot once the balance of Lot 1 is effectively amalgamated with Lot 10 on RP748614 by way of a separate boundary re-alignment development application.

Proposed Lot 2, containing the existing house, comprises an area of 5,272 square metres inclusive of the access leg which includes the existing driveway and services. The proposed lot boundaries include the on-site effluent disposal area and provide compliant separation distances to the house and effluent disposal area. The southern portion of Proposed Lot 1 comprises an area of 4,276 square metres and proposes a 1056 square metre building envelope for the establishment of a house via a downstream approval.

### **State Planning Requirements**

The superseded planning scheme appropriately reflected the State Planning Policies which existed at the time of scheme development. Accordingly, assessment against the applicable planning scheme provisions will address any relevant State Planning Policy provisions relevant at the time, notwithstanding that this application is code assessable meaning only the codes applicable within the planning scheme are able to be considered for assessment.

Given that Lot 5 on RP851512 is included in the Superseded Planning Scheme's Rural Settlement Planning Area, the Regional Plan is not considered particularly relevant to the

proposed development. Essentially the proposal complies with the intent of the Regional Plan.

## Douglas Shire Planning Scheme Assessment

Table 1.

2006 Douglas Shire Planning Scheme		Code Applicability	Compliance
<b>Locality</b>	Rural Areas and Rural Settlements Locality Code	✓	Complies
<b>Planning Area</b>	Rural Settlement Code	✓	See comment below
<b>Overlay Codes</b>	Natural Hazards Code	✓	Complies
<b>Development Codes</b>	Natural Areas and Scenic Amenity Code	✓	Complies
	Reconfiguring a Lot Code	✓	See comment below
	Vehicle Parking and Access Code	✓	Complies

### Compliance Issues

#### Rural Settlement Planning Area Code

Acceptable solution 7.1 of the code requires that buildings or structures are developed on land with a maximum slope not exceeding 15%. However, in the case of this proposal a building envelope has been proposed on part of Lot 1 which extends from level ground well into the hill slope which has a 30% grade. Excavation for the development of the building envelope could potentially result in an eight (8) metre high cut which is not compliant with the corresponding performance criteria (P7) of the Rural Settlement Planning Area Code which requires that buildings and structures are sited to be responsive to the constraints of sloping sites. It must be noted that the proposal being considered does not include a proposal for any building work. It is important to note that any future development of a house within the building envelope proposed triggers the requirement for a code assessable development application where Council will undertake an assessment to ensure an appropriate outcome.

#### Reconfiguring a Lot Code

A1.1 of the code requires that new Rural Settlement lots have a 50 metre by 50 metre square of developable area. This is not applicable to proposed lot 2 as it accommodates an existing house. Proposed Lot 1 only has one practically developable area being the part lot of 4,276 square metres within a proposed building envelope. The 1056 square metre building envelope proposed is considered appropriate and achieves compliance with the corresponding performance criteria P1.

A12.1 of the code requires that stormwater drainage is designed and constructed in accordance with the specifications set out in the FNQROC Development Manual. The corresponding performance criteria requires that stormwater run off does not adversely affect the built environment either up stream or down stream. Proposed Lot 2 discharges

storm water down an informal open drainage feature which runs almost parallel with the driveway servicing the house. The drainage feature has scoured the footing of the timber shed structure near the road downstream of the house as flows have widened the drain. This puts the structural integrity of the wooden shed structure in question. The drainage line appears to be the natural drainage path so the most appropriate solution would be to accommodate the existing drainage alignment but formalise the treatment of the drain to prohibit any further scouring or erosion of the footing of the adjacent building and drainage path. Importantly, the proposal to reconfigure the boundary means that the drainage path will flow from Proposed Lot 2 into Proposed Lot 1 prior to discharging to the road. A condition has been imposed to formalise the drain with an engineered solution and remedy the structural damage caused to the wooden shed. A condition has also been imposed to contain the drain within an easement in favour of Lot 2 over Lot 1 to allow for a lawful point of discharge.

With respect to the FNQROC Development Manual, new allotments are required to achieve immunity from the 1 in 100 year flood event. The portion of Lot 1 with the proposed building envelope includes a significant area of elevated land accommodating the ability to develop a flood immune house. The proximity of the part Lot with the building envelope to Whyanbeel Creek raises flooding queries; however, the actual flood height requirements are considerations for the future house development approval which will be required prior to carrying out building work on the allotment.

### Referral Agency Requirements

There were no referral agencies for this application.

### Public Notification / Submissions

Not applicable.

### ADOPTED INFRASTRUCTURE CHARGES

The proposed development does not trigger Adopted Infrastructure Charges.

### COUNCIL'S ROLE

Council can play a number of different roles in certain circumstances and it is important to be clear about which role is appropriate for a specific purpose or circumstance. The implementation of actions will be a collective effort and Council's involvement will vary from information only through to full responsibility for delivery.

The following area outlines where Council has a clear responsibility to act:

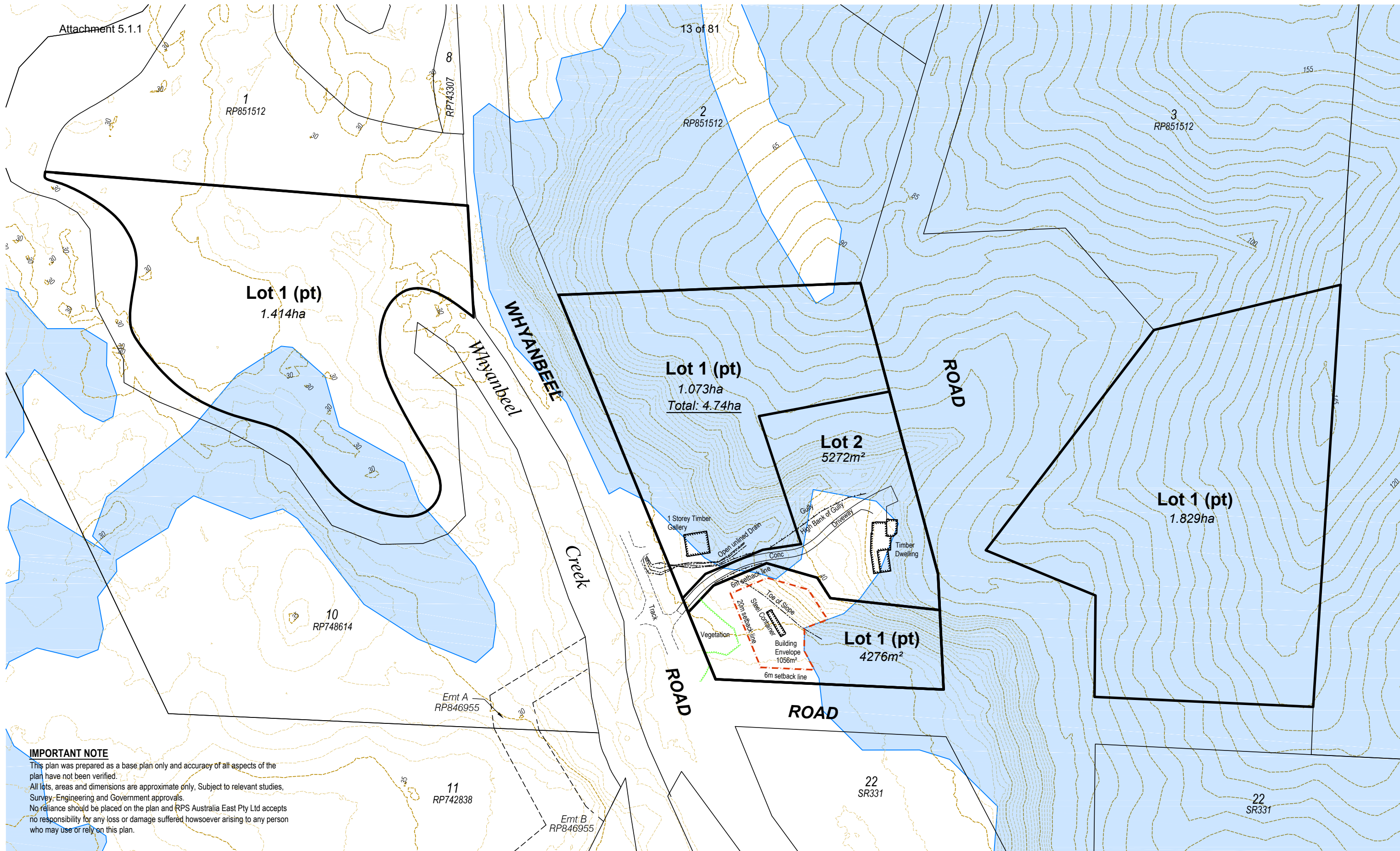
**Regulator:** Meeting the responsibilities associated with regulating activities through legislation or local law.

Under the *Planning Act 2016* and the *Planning Regulation 2017*, Council is the assessment manager for the application.

## **ATTACHMENTS**

1. Attachment 1- Approved Plan **[5.1.1]**





**IMPORTANT NOTE**  
 This plan was prepared as a base plan only and accuracy of all aspects of the plan have not been verified.  
 All lots, areas and dimensions are approximate only. Subject to relevant studies, Survey, Engineering and Government approvals.  
 No reliance should be placed on the plan and RPS Australia East Pty Ltd accepts no responsibility for any loss or damage suffered howsoever arising to any person who may use or rely on this plan.

**Marc Showniruk**  
 Proposed Reconfiguration  
 Proposed Lots 1 & 2  
 cancelling Lots 4-6 on RP851512

**Legend**

- RVM Category B - Remnant
- DNRM LiDAR Contours
  - Interval 1.0m (<50.0m)
  - Index 5.0m

DNRM DCDB boundaries have been shifted as a best fit to the DNRM LiDAR data. Boundary & contour locations are approximate only.

**RPS**

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