

10.3 PLANNING PERMIT APPLICATION PLP159/19 FOR THE RE-SUBDIVISION OF THE LAND AT 215 ENGLISHS ROAD BROADFORD

Author: Rees May - Statutory Planner
File No: PLP159/19
Attachments: 1. Proposed Plan of Subdivision
 2. Planning Policy Framework - Applicable Policies
 3. Advertising Area
Reference: PLP159/19

Property No.:	115999 and 121196
Title Details:	Lot 7 on Plan of Subdivision 548173L (Volume 11502 Folio 975) and Crown Allotment 152A Parish of Broadford
Applicant:	Eric Salter Pty Ltd
Zoning:	Farming Zone
Overlays:	Erosion Management Overlay
Objections Received:	None
Cultural Heritage Management Plan Required:	No. The subject site is not located within an area of Aboriginal Cultural Heritage Significance.

SITE MAP

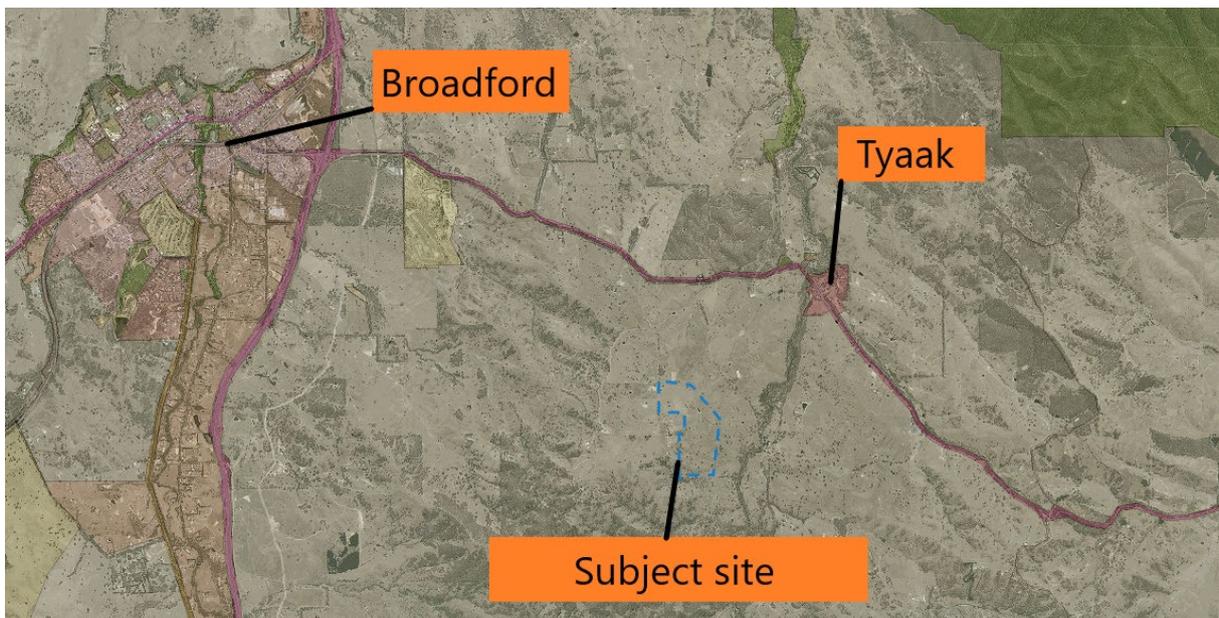


Image 1. Aerial image of the subject site and surrounding townships (Vic Plan aerial image)

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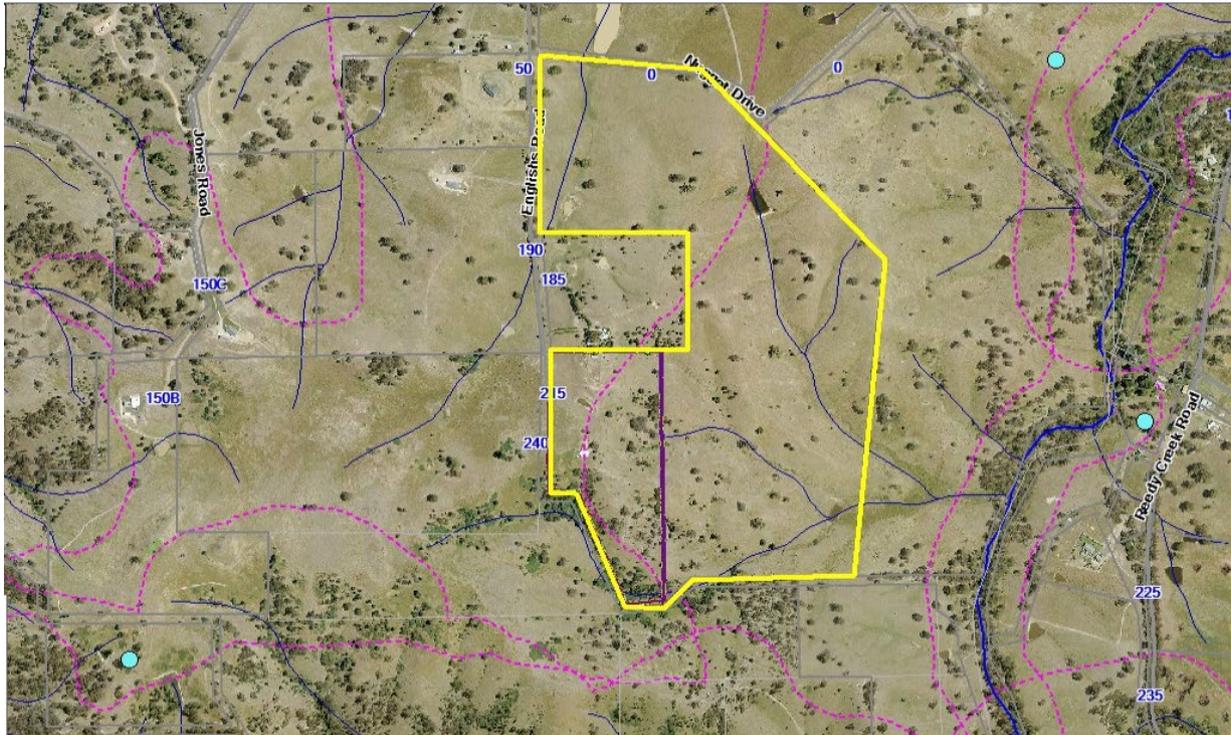


Image 2. Aerial image of the subject site at 215 Englishs Road Broadford (2019 Aerial image)

SUMMARY

Council has received an application for a two-lot re-subdivision of the land that is seeking to create a small lot being two (2) hectares (containing an existing dwelling) and a larger balance lot being 62.57 hectares. The land is zoned Farming and affected by the Erosion Management Overlay.

The application was advertised by sending letters to adjoining landowners and occupiers. No objections were received.

This report recommends that Council issue a Notice of Refusal to Grant a Planning Permit for Planning Application PLP159/19 for a two-lot re-subdivision of the land.

Refusal is recommended as the proposed re-subdivision is not consistent with the relevant Planning Policy Framework, or the purpose and decision guidelines of the Farming Zone. The proposal fragments productive agricultural land, adversely affects the agricultural viability of the surrounding agricultural land and allows for potential conflict between residential uses and agricultural uses. **SITE AND SURROUNDS**

Subject Site Description

The subject site is located at 215 Englishs Road, Broadford and is legally described as Lot 7 on Plan of Subdivision 548173L (Volume 11502 Folio 975) and Crown Allotment 152A Parish of Broadford. The overall land is irregular in shape with Crown Allotment 152A having an area of 11.04 hectares and Lot 7 having an area of 53.43 hectares.

The subject site is undulating in nature and contains several natural drainage lines, several dams and a small amount of native vegetation scattered throughout the site. A single dwelling is located in the south-western portion of the site on Crown allotment 152A.

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The site has frontage onto Englishs Road and Nugget Drive. Access to the site is offered by single vehicle crossover onto Englishs Road.

Planning Background

A search of Council's Electronic Record Management system indicates that no previous Planning Permits have been lodged on the site.

Title/Restrictions/Agreements

The title is encumbered by Covenant AL437018B that seeks to prevent any dwelling or other building that is second hand or is relocated from another piece of land.

No easements traverse through the properties.

Surrounding Area

The subject site is located approximately 7km to the south-east of the Township of Broadford via Englishs Road. Properties in proximity to the subject site vary in size and shape and are primarily large parcels.

Parcels vary from eight (8) hectares through to parcels in excess of 40 hectares. These parcels are typically used for agricultural purposes (grazing). Dwellings on lots are evident within the area but do not form the primary use.

The nearest dwellings are located at 185, 190 and 50 Englishs Road. The topography of the land in the area is undulating in nature and mostly cleared of native vegetation other than a few trees scattered throughout paddocks. There are also several drainage lines/seasonal creeks throughout the area, which are mostly tributaries of Reedy Creek to the east of the subject site.

PROPOSAL

Crown Allotment 152A is 11.04 hectares in area and Lot 7 is 53.4 hectares in area. The proposed re-subdivision layout is as follows:

Lot 1 will contain the existing dwelling, have an area of two (2) hectares, be irregular in shape and located at the western portion of the current Crown Allotment 152A. Proposed Lot 1 will utilise the existing access onto Englishs Road.

Lot 2 will have an area of approximately 62.57 hectares and be irregular in shape. Access is proposed to the lot via a crossover onto Englishs Road in the north-western portion of the lot.

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Pursuant to Clause 44.01-5 a permit is required to subdivide land.

Particular Provisions

Clause 65 – Decision Guidelines

Clause 65.02 of the Planning Scheme provides a number of decision guidelines to be considered as part of the assessment of an application to subdivide land. These decision guidelines are relevant to the current application.

Planning Policy Framework (PPF) and Local Planning Policy Framework (LPPF)

Please refer to the attachment Planning Policy Framework – Applicable Policies

PUBLIC NOTIFICATION (ADVERTISING)

Formal notification of the application was given by means of sending letters to adjoining landowners and occupiers. No objections were received.

REFERRALS

External

The application was not required to be referred to any external referral authorities under section 55 of the *Planning and Environment Act 1987* (the Act) pursuant to Clause 66 of the Scheme.

Internal

The application was not required to be referred to any of Councils internal departments.

DISCUSSION

Response to Planning Policy Framework & Local Planning Policy Framework

The Planning Policy Framework & Local Planning Policy Framework seeks to protect land and support the enhancement of agricultural land and industry. The proposal fails to respond to the relevant Planning Policy Framework (attached to this report) as the proposal will result in the further fragmentation of agricultural land.

The re-subdivision has the potential to create land use conflict between rural residential and agricultural land uses. The proposal will not result in the clear land management practices, as proposed Lot 1 is unable to be used for agricultural purposes. At two (2) ha in area this proposed lot would introduce a rural residential use into an existing farming area, contrary to the purpose of the policy and zone.

Farming Zone

The Farming Zone allows for the ability to re-subdivide land and create smaller lots than required under the zone. The proposed re-subdivision must fulfil the purposes of the Farming Zone which include:

- To provide for the use of land for agriculture;
- To encourage the retention of productive agricultural land;
- To ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture; and

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- To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.

Lot 1 is being reduced in area from 11.04 hectares to the proposed area of two (2) hectares. It is submitted that the proposed re-subdivision does not adequately respond to the purposes of the Farming Zone for the following reasons:

- The primary purpose of the re-subdivision is not based on the continued agricultural production of the land. Rather, it is intended to reduce the size in Lot 1, which includes an existing dwelling for a rural residential lifestyle;
- The productive agricultural land for Lot 1 will be further fragmented, effectively creating a lot for residential use;
- The introduction of the rural residential use into the area is detrimental to the surrounding agricultural uses; and
- The re-subdivision will not lead to the long-term sustainable management of the land for Lot 1.

The Farming Zone also sets out a number of decision guidelines which must be considered in the assessment of an application. The relevant decision guidelines are:

- Whether the use or development will support and enhance agricultural production;
- Whether the use or development will adversely affect soil quality or permanently remove land from agricultural production;
- The potential for the use or development to limit the operation and expansion of adjoining and nearby agricultural uses;
- The capacity of the site to sustain the agricultural use; and
- The agricultural qualities of the land, such as soil quality, access to water and access to rural infrastructure.

Having regards to the relevant decision guidelines the following assessment is made:

- The proposal will be detrimental to the agricultural production of the land as it will further reduce the area of Lot 1, therefore Lot 1 cannot be used productively;
- The fragmentation Lot 1 and the agricultural land leads to the permanent removal of this land for agriculture use;
- The proposal allows for Lot 1 to be used for lifestyle purposes and not genuine agriculture uses;
- The re-subdivision may lead to a conflict between residential uses and surrounding agricultural uses; and
- The application has been accompanied by a Whole Farm Plan which sets out proposed agricultural activity for the proposed Lot 2. However, the plan states that proposed Lot 1 will be limited in its capabilities for a stand-alone agricultural use and only proposes re-vegetation on this parcel. It is clear that proposed Lot 1 cannot sustain an agricultural use in its own right.

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Having considered the relevant matters of the Farming Zone it is concluded that the proposed development does not meet the tests of the zone and is contrary to the purposes of the zone and decision guidelines.

Erosion Management Overlay

The proposal does not seek to undertake any earthworks or vegetation removal, except for the proposed creation of vehicle access to proposed Lot 2. Therefore, the proposed re-subdivision of the land is unlikely to cause impacts in relation to erosion as the earthworks are minimal. Given the nature of the proposal, it is considered that the risk of erosion on the site is minimal and the proposal adequately addresses the overlay.

Clause 65 General Decision Guidelines

The application has been assessed against the matters in section 60 of the Act, the Municipal Planning Strategy and the Planning Policy Framework, the Farming Zone and the Erosion Management Overlay. It is considered that the proposal is inconsistent with the purpose of the Farming Zone.

The proposal fails to contribute to the orderly planning of the area and limits the potential of agricultural activity. The re-subdivision is also likely to cause future land use conflicts and the 'rural lifestyle property' will experience compromised levels of amenity.

CONCLUSION

The application proposes a re-subdivision of two (2) lots where the smaller parcel will contain the existing dwelling and a large balance lot. The proposed lot layout is as follows:

- Lot 1 would be two (2) hectares in size and contain an existing dwelling; and
- Lot 2 would be 62.57 hectares.

The proposed re-subdivision will fragment viable agricultural land. The fragmentation will lead to the loss of agricultural land and no longer ensures that the land will be used for agriculture uses. Further the re-subdivision could lead to conflict between residential uses and agricultural uses. Therefore, it is considered that the proposal is not supported.

RECOMMENDATION

THAT Council having complied with the relevant Sections of the *Planning and Environment Act 1987*, resolve to issue a Notice of Refusal to Grant a Planning Permit in respect of Application No. PLP159/19 for the re-subdivision of the land at Lot 7 on Plan of Subdivision 548173L (Volume 11502 Folio 975) and Crown Allotment 152A Parish of Broadford, known as 215 Englishs Road Broadford, on the following grounds:

1. The proposal is inconsistent with Clause 14.01-1S (Protection of Agricultural Land) of the Mitchell Planning Scheme as the proposal will result in the permanent removal of agricultural land for primary production purposes and

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- will detract from the long-term capacity of productive agricultural land to continue production.
2. The proposal is inconsistent with the objectives and strategies of Clause 16.01-5S (Rural Residential Development) of the Mitchell Planning Scheme.
 3. The proposal is inconsistent with the objectives and strategies Clause 21.05-1 (Agriculture) of the Mitchell Planning Scheme.
 4. The proposal is inconsistent with the purpose and decision guidelines of the Clause 35.07 (Farming Zone) of the Mitchell Planning Scheme as the proposal will create a residential lot in a rural area and will adversely affect the use of the land for agricultural purposes.
 - a) The proposal does not retain and fragments productive agricultural land.
 - b) Potential for rural land use conflict with lots used for residential use and the surrounding agricultural uses.
 5. The proposal fails:
 - a) To contribute to the orderly planning of the area.
 - b) Meet the decision guidelines of Clause 65.02 (Approval of an application to subdivide land)

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MITCHELL SHIRE COUNCIL

Council Meeting Attachment

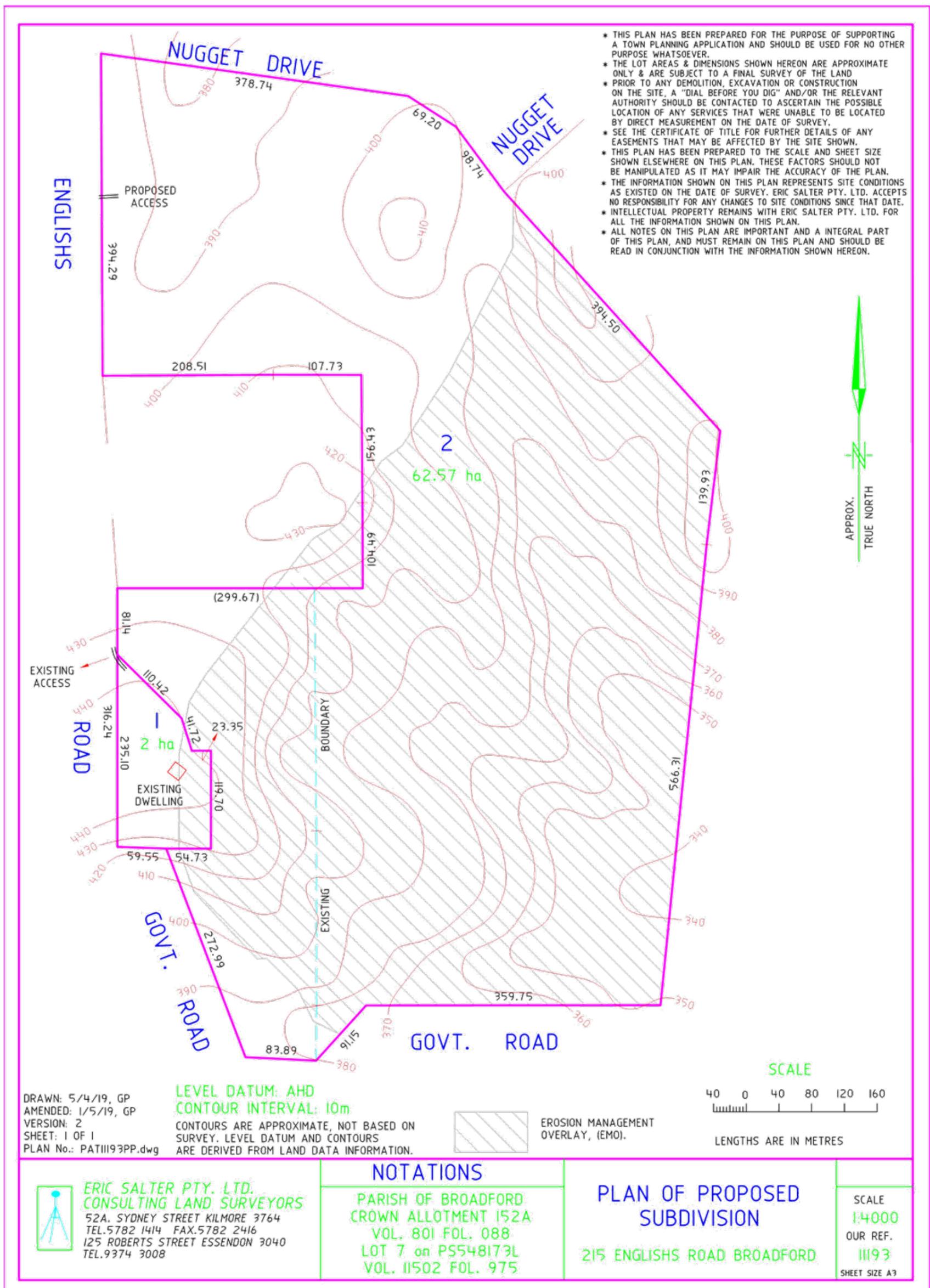
DEVELOPMENT AND INFRASTRUCTURE

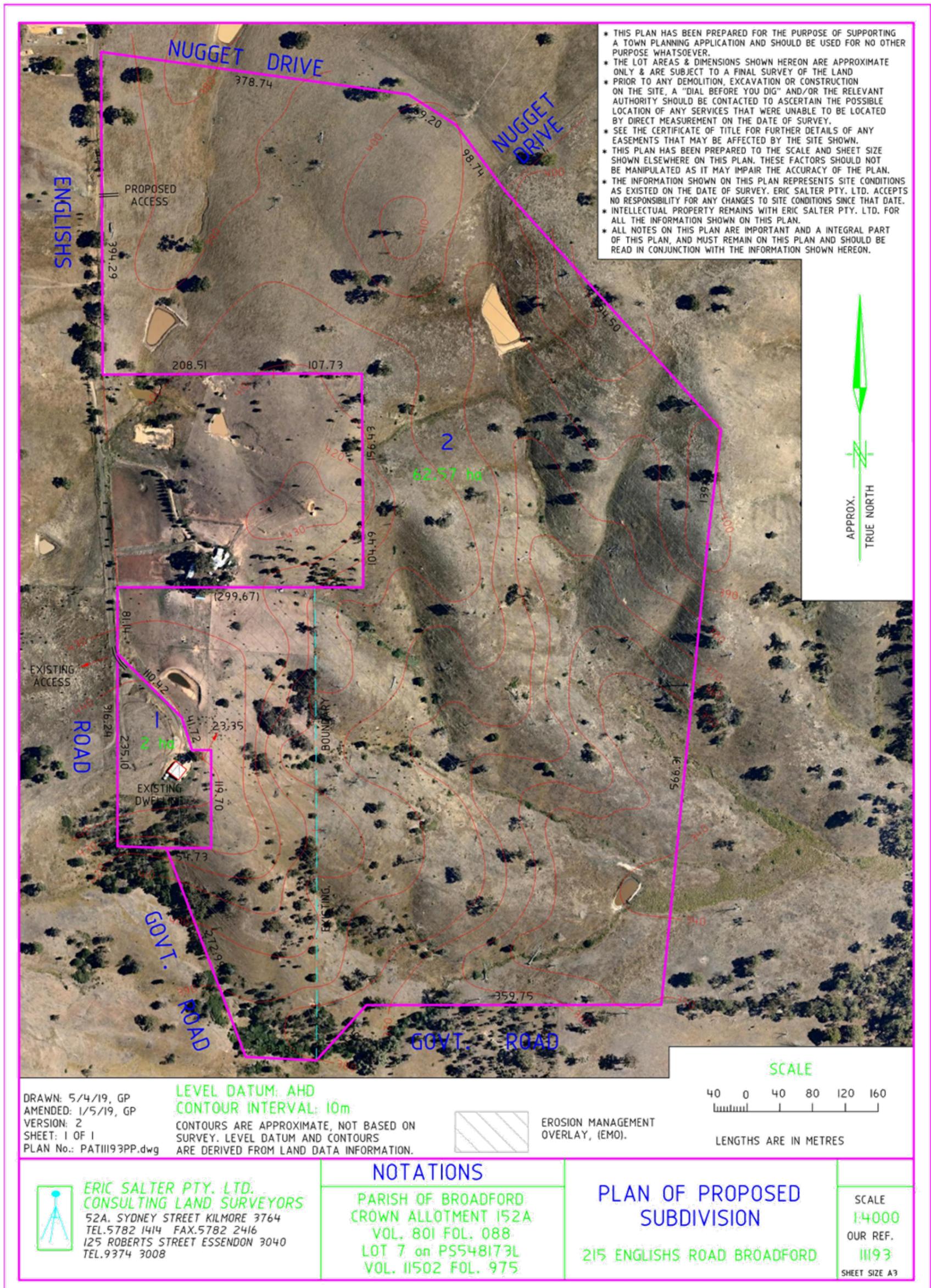
22 JUNE 2020

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**PLANNING PERMIT APPLICATION PLP159/19
FOR THE RE-SUBDIVISION OF THE LAND AT
215 ENGLISHS ROAD BROADFORD**

**Attachment No: 1
Proposed Plan of Subdivision**





MITCHELL SHIRE COUNCIL

Council Meeting Attachment

DEVELOPMENT AND INFRASTRUCTURE

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**PLANNING PERMIT APPLICATION PLP159/19
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Attachment No: 2

Planning Policy Framework - Applicable Policies

The following clauses of the PPF and MSPF are considered relevant to this application	
Clause 13.04-2S Erosion and landslip	This clause is relevant and has the following objective: <i>To protect areas prone to erosion, landslip or other land degradation processes.</i>
Clause 14.01-1S Protection of agricultural land	This clause is relevant and has the following objective: <i>To protect the state's agricultural base by preserving productive farmland.</i>
Clause 14.01-2S Sustainable agricultural land use	This clause is relevant and has the following objective: <i>To encourage sustainable agricultural land use.</i>
Clause 15.01-3S Subdivision design	This clause is relevant and has the following objective: <i>To ensure the design of subdivisions achieves attractive, safe, accessible, diverse and sustainable neighbourhoods.</i>
Clause 15.01-6S Design for rural areas	This clause is relevant and has the following objective: <i>To ensure development respects valued areas of rural character.</i>
Clause 21.04-3 Soil degradation	This clause is relevant and has the following objective: <ul style="list-style-type: none"> • <i>To ensure that the use and development of land does not cause significant land disturbance.</i> • <i>To minimise land degradation.</i>
Clause 21.05-1 Agriculture	This clause is relevant and has the following objective: <ul style="list-style-type: none"> • <i>To ensure that the use, development or subdivision of land is not prejudicial to agricultural enterprises or to the productive capacity of the land.</i> • <i>To support the diversification of agriculture, the development of agro-forestry and the processing of agricultural products grown within the municipality.</i> • <i>To encourage and promote environmentally sustainable management of land, water and biological resources.</i>

MITCHELL SHIRE COUNCIL

Council Meeting Attachment

DEVELOPMENT AND INFRASTRUCTURE

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Attachment No: 3

Advertising Area

